

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H407169**

**MICHAEL B. WEAVER, EMPLOYEE**

**CLAIMANT**

**CITY OF MOUNTAIN HOME,  
EMPLOYER**

**RESPONDENT**

**ARKANSAS MUNICIPAL LEAGUE  
WORKERS COMPENSATION PROGRAM,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED NOVEMBER 20, 2025**

Hearing before Administrative Law Judge, James D. Kennedy, on September 17, 2025, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by Mary Edwards, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 17<sup>th</sup> day of September, 2025. At the time of the hearing, the parties stipulated that the Claimant's average weekly wage was \$792.72, which would result in a temporary total disability rate of \$528.00 and a permanent partial disability rate of \$396.00. The primary issue before the Commission at the time of the hearing was compensability, with the claimant contending he sustained a gradual-onset injury to his lower back after performing his required work-related duties for over 29 years. If the Claimant satisfies the issue of compensability, then the issues of reasonable and necessary medical treatment by Doctor Lance Lincoln and Pain Management by Doctor Ira Chapman are before the Commission, plus the issue of attorney fees.

The Respondents contended that the injury was denied in its entirety and that the Claimant cannot satisfy the elements of proof for a compensable gradual-onset back

injury. Further, if the injury is found to be compensable, that the Notice provision of A.C.A. 11-9-701(a)(1) is applicable. Respondents also raised the statute of limitations as a defense.

A Prehearing Order dated July 15<sup>th</sup>, 2025, provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee/carrier relationship existed on or about April 1<sup>st</sup>, 2023, and all relevant times, when the Claimant alleges he sustained a gradual onset injury to his right hip, groin, and lower back.

The Prehearing Order and the Claimant's and Respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses for the Claimant were Melissa Weaver, the wife of the Claimant, and Michael Weaver the Claimant. The Respondents called Susan Strop, Alma Clark, and Kirsten Skiver-Sanders. From a review of the record which included medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee/carrier relationship existed on April 1, 2023, and at all relevant times.

3. That the Claimant earned an average weekly wage of \$792.72, sufficient for a TTD rate of \$528.00 and a PPD rate of \$396.00.
4. That Claimant has failed to prove by a preponderance of the evidence that he sustained a work-related injury on the specific date of April 1, 2023. Additionally, there is no alternative but to find that the Claimant has also failed to prove by a preponderance of the credible evidence that he established a work-related gradual onset injury to his lower back, his right hip, and groin, with medical evidence supported by objective findings sufficient to satisfy the requirements of the Arkansas Workers' Compensation Act.
5. That, consequently, all other issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were made part of the record without objection. The Claimant's Exhibit One, which consisted of medical records, was admitted into the record without objection. In addition, the Claimant also submitted Exhibit Two which consisted of the deposition of the Claimant, which was also admitted into the record without objection. The Respondent's Exhibit One, which also consisted of medical records, was also admitted into the record without objection. The Respondents Exhibit Two consisted of non-medical records, which was admitted into the record without objection. Additionally, both parties submitted briefs at the request of the Respondents, and the briefs are "Blue Backed" and made part of this opinion.

Melissa Weaver, the wife of the Claimant, testified that the Claimant received a radiation treatment the morning prior to the hearing. They had been married 31 years, and the Claimant had worked for the City of Mountain Home for over 20 years. He started out as a meter-reader, then the Vactor truck, and then worked at the warehouse. The Vactor truck has a big hose which goes down into the sewer. Claimant then went to the warehouse and had to lift like 100 pounds. He couldn't stand very long and his lower back hurt. (Tr. 8 – 11) "He would have to miss some workdays because his back was bothering him." He was no longer able to do yard work. She thought his employer fired him. She also stated that his primary-care physician was Doctor Lance Lincoln for many-years and Claimant has been going to the Interventional Pain Clinic and Dr. Ira Chapman. (Tr. 12 – 14)

Under cross-examination, Ms. Weaver admitted she had not worked for the City of Mt. Home and had not seen the Claimant perform his job. She also admitted that he had been diagnosed with cancer and that the cancer was not work related. (Tr. 14, 15)

The Claimant was then called as a witness. He testified he had a total retirement of 29 years. He noticed that his back was hurting while he was working on the Vactor truck. He was required to drag about 600 feet of one-inch hose off the truck to reach manholes. One day while dragging the hose up a hill, he "noticed my back pretty much gave out on me." He testified he then went to his supervisor and stated he needed to leave and see his doctor due to his back hurting. (Tr. 16, 17) He then went to see a doctor who made a referral to a doctor in Springfield, about fifteen plus years ago, while probably in his late thirties. He was basically diagnosed with a bulging disc which took him out of work for about three weeks. He then transferred to the TV van, where he

would lower a camera which was on a tractor system that weighed about 45 pounds, and he would lower it about 10 to 15 times a day, and this was when he noticed his back hurting again. At times he would just sit in the van. (Tr. 18)

He also worked part time in the inventory cage, where he was kind of performing double duty and noticed his back was constantly in pain. That was when he went to see Dr. Lincoln, who referred him to Dr. Chapman, probably within the last two years “before I retired.” He went on to state that he had been with Dr. Chapman ever since and had been diagnosed with spinal stenosis, degenerative disc disease, and arthritis in his spine. In the inventory cage, he had to move thousands of different parts that weighed between less than one pound to over 500 pounds. (Tr. 19) He went on to state there was a long period between the injury 15 years ago when he was in his late thirties when he wasn’t having any more difficulties with his back. It was just an off and on type of thing. The pain then became every day, an everyday ache, and then it got worse and became constant. “Matter of fact, the day that they were coming to fire me, I took off that day because I was having back issues.” He said they came the next day, and he retired. He was in constant pain by then and couldn’t do anything at home such as yard work, and it took a while to even wash dishes. He was asked if he knew that his condition was related to his employment and responded, “I was assuming, yes.” (Tr. 20, 21) He admitted that he had conversations with the doctor as to what could possibly cause some of these issues. He was then specifically asked if he had anything to do in regard to the “To Whom it May Concern” letters and he responded, “Not really.” He also admitted that he was suffering with Stage 4 kidney cancer. (Tr. 22)

Under cross examination, the Claimant admitted that he was alleging that he injured his back while working for the city. He agreed that he stated in his deposition that he noticed his back hurting while he was dragging a hose in the Vactor truck, where he worked back in 2008 to 2010 more or less. He also admitted going to Baxter Regional Medical Center at the time and that he may possibly have received an MRI on February 5, 2010, but did not remember for sure. He did recall receiving a steroid injection on February 14, 2010. He also admitted presenting to Garrettson Chiropractic at the time, and seeing Doctor Lincoln, his PCP, in 2010, who referred him to a specialist in Springfield who took him off work for three weeks. He admitted that he was aware he was having back problems back in 2010, but that he did not file a workers' compensation claim at the time. He started having problems again while he was working on the ATV van and agreed that he never requested to file a workers compensation complaint at that time and that he never told anybody at work that his problems were work related while working on the ATV van. (Tr. 23 -27)

In regard to the Inventory Clerk position, he testified that he thought he started a little later than 2019. He had worked for the city for 23 years, and that while working as an inventory clerk, he admitted that he never told anyone that his back pain was related to his job duties. He also admitted that in the Inventory Clerk position, he had tools to help him lift heavier objects, which included a forklift and a dolly. He also admitted that he also had the option of asking for someone to assist him, but went on to state there usually wasn't anyone around to assist. (Tr. 27, 28)

He also admitted seeing Doctor Chapman starting in approximately 2022 or 2023, in regard to his back issues and that the notes in regard to the first visit with Dr. Chapman

were probable correct where it stated that the onset of the complaint was in August of 2022. He then added that the pain got worse. In regard to the February 28, 2023, report which provided for the “same symptoms and findings when (you) saw the neuro in Springfield back in 2010” and he responded that this had never been discussed with him. He also admitted he never filed a workers’ compensation claim at the time. (Tr. 29) He testified he told his supervisor that he was seeing a doctor and doing physical therapy due to his hurting back, but never stated it was related to work in any way. He also admitted he voluntarily retired from work on April 25<sup>th</sup>, 2023, due to some social media usage and that his retirement had nothing to do with any sort of back complaints. (Tr. 29, 30)

The Claimant continued seeing Doctor Chapman after retirement, and was prescribed Tizanidine and Tramadol, and also received two lumbar medial range blocks. The Claimant admitted he was not aware that with the exception of the causation report, Doctor Chapman’s records made no mention regarding the Claimant’s back injury being related to working for the Respondent. (Tr. 31)

On redirect, the claimant testified that Doctor Lincoln was his primary care physician for over 20 years, and they talked on a regular basis during the last years of his work, while his condition worsened. When asked if Doctor Lincoln was aware of all his lifting issues at work, he responded yes. “We had a lot of discussion, yes.” He also testified he told Doctor Chapman about his work issues that were getting worse over time. He denied having any thing to do with the “To Whom It May Concern” letters. (Tr. 32, 33) He also testified that he had told his supervisor Kirsten Skiver and later Lonnie Williams about his back hurting when he was working for the Respondent. (Tr. 34)

Again, on recross examination, the Claimant was questioned about the “To Whom It May Concern” letters and he admitted he did not work for the Water Department as an Inventory Clerk for 29 years. He agreed he had only worked for the Respondent for twenty-three (23) years. (Tr. 35)

At this point, Claimant rested, and the Respondents called Sue Edwards Strop. She testified she was the HR Coordinator for the Respondent and had been with the city since April of 2021, and was the HR Coordinator in April of 2023. She went on to testify that she first met with the Mayor and Lonnie Williams in regard to productivity concerns regarding the Claimant and his use of computers on April 24, 2023, and then on April 25, 2023, they were scheduled to again meet with him, and he came in that morning and submitted his retirement. He formally retired on April 25, and to her knowledge, his retirement had nothing to do with back issues. She stated that she was not aware of any inability of the Claimant that would prevent him from performing his job and no accommodations were requested. She testified that she first became aware of the Claimant’s claimed back injury when she was on vacation and received a phone call from the Respondent’s Chief Deputy Treasurer, Astina Hicks, on November 4, 2024, who submitted the First Report of Injury or Illness to the Municipal League Workers’ Compensation. She went on to testify that they did not receive an N Form, an accident report, or a witness statement from the Claimant and never received a supervisor’s report. (Tr. 39-41)

Under cross examination, Ms. Strop stated that in her duties in charge of HR for the Respondent, no one had previously come to her about his injury. (Tr. 42)

The Respondent then called Alma Lee Clark, who testified she had worked for the city for 34 years as of September 25, 2025, and that she currently worked as the Director of Finance and Treasury, a position she has held since April 26, 2022. She had previously worked as the Water Director for the Respondent for sixteen (16) years, and prior to that worked as the Manager of the Wastewater Plant for nine and a half years and knew pretty well about the job duties of each position. She testified that Meter Readers used hand-helds and performed manual readings at that time, plus doing meter change outs and getting down inside the meter box to do a reading. In regard to the Vector truck, the employee would drive or ride in the truck and clean out sewer lines. The Vector truck was hydraulic with controls out front with a hose reel that you could drop down and turn the water on and then flip a switch that pulled the line back in. You removed the manhole cover which exposed everything. To replace the manhole cover, you could pull the lid with a manhole hook to where it's over the hole or give it a push with your foot. In regard to the CCTV (ATV) van, there was a working winch which was mostly electronically controlled, and a camera that was maybe about five or six inches, and you would place the camera on a braided wire and place it down in the manhole. First you had to remove the manhole lid and set it down where it was facing the tool line so you could camera the line. You had electronic remote controls, or you could run it from the truck and which pulls the line. You could also bring it back with the same controls and it was mostly automatic and would take pictures. "The only - - the only manual part would be to get the camera down into the manhole and starting it up in a line" and of course pulling the manhole lid and placing it back. (Tr. 43 – 46) She was not aware of the claimant having any back problems as a Meter Reader, while working in the Vector

truck, and on the CCTV (ATV) van. She testified he had never asked about filing a workers' compensation claim with the Respondent. She also testified she was not aware of the Claimant going to the doctor or taking time off in regard to back issues during his entire time while working for the Respondent. The first notice from the Claimant claiming a back injury was in the last part of 2024, November 4, she thought. (Tr. 47, 48)

The Respondents then called Kirsten Skiver, who testified that she was the Billing Manager for the Water Department where she had worked, for just shy of 20 years. At one time, she worked as the supervisor for the Inventory Clerk position and supervised the Claimant. The Claimant probably started working as a fill-in for the Inventory Clerk and started in that position around April of 2019. She stated the Claimant was very good with computers, so they initially did some house cleaning. "In inventory, you order, you receive, and then you disburse, but we also did some process streamlining, we did some - - a lot of work in the computer maintain the parts and the descriptions and, you know, kind of making them where they were all the - same, like specific parts. And then we set up bin locations, and so probably 75 percent of the work that Brent (Claimant) and I did was computer."

She went on to testify about the remaining five to 10 percent would be leg work, setting up bin locations and then going out into the warehouse and placing stock numbers and the bin locations on the card and setting that up for the product outside as well as for the product inside. The Claimant would place a large order once a week and it would arrive the latter part of the week. During the week, he would disburse the parts to the various crews. If someone needed a part, sometimes they would go back with the Claimant and get the part and sometimes he would just bring them the part. Sometimes

the part would be returned. If it was a larger part, it usually came in on a pallet and a forklift, a telehandler, or a skid steer was used to move it. The larger parts were kept outside and whoever needed it “could back their utility vehicle around to the back and either they could help load it, or they have a winch on their truck that they could load it with, or they could use the forklift and - - you know, whatever they were taking to the job.” (Tr. 49 – 52)

A photo of a movable ladder with high shelves (Respondents Exhibit Two, Page 19) was shown Ms. Skiver and she stated that product could be placed on the high shelves and the claimant had access to the ladder. She was then shown a picture of a forklift with a dolly in front and Ms. Skiver testified the Claimant had access to those items. She was also shown pictures of pallets and testified they were removed from the vendor, usually via forklifts. She was also shown pictures of a pallet jack, a manual lifter, and some “light little trucks” and Ms. Skiver stated that the claimant had access to these items. Prior to the Claimant working as the Inventory Clerk, a woman, Lisa Knight, worked in the position and Ms. Skiver thought that she may have worked in that position for 17 years. She went on to testify that the Claimant never told her of any issues with his back and that she was not aware of the Claimant having difficulty in physically performing the work of the Inventory Clerk position nor of going to the doctor or taking time off from work for any back-related issues. She was not aware of any accommodations for the Claimant in regard to his position. Her first notice of the Claimant contending he had sustained a back injury at work was this year. (Tr. 53 – 58)

Under cross examination, Ms. Skiver testified that although she could not reach the top shelf, the Claimant could. When placing something on the top shelf, it was easier to use the shelf thing. (Tr. 59)

The Claimant was then recalled. He admitted that the witnesses were not aware of issues with his back at the time of the hearing but stated that his Director gave him a cushion to sit in his office and that she knew he was having back issues. He denied that he was ever asked about his back when he was having issues walking. He thought he was given the cushion back in 2020 or 2021. No one ever suggested that he had to file a workers' compensation case. (Tr. 60, 61)

Under cross examination, the Claimant admitted that he had never requested a workers' compensation claim in his 23 years while working for the city and that he had never told anybody employed by the Respondent that his problems were work related. (Tr. 62)

On redirect, the Claimant testified that the Respondent was aware of his back condition. (Tr. 62)

The Claimant submitted medical records that consisted of twenty-one pages plus and index which were admitted into the record without objection. A report from Interventional Pain Management Associates dated February 13, 2023, provided that the Claimant was referred by Doctor Lance Lincoln with complaints of pain in his lower back, mid back, hips, and thighs and stated that the Claimant had been experiencing this pain for eight months with the onset of the pain being gradual over time. The assessment was chronic pain syndrome. (Cl. Ex. 1, P. 1 – 3) The Claimant returned to Pain Management Associates on February 28, 2023, with a complaint of mid and lower back pain radiating

to both hips and occasionally into both lower extremities distal to the knee. The report further provided the Claimant noted the pain had progressed to the point that he was having significant difficulty performing even rudimentary activities of daily life without the use of a mobility cart. The report also provided that the Claimant could be considered for opioid management in order to improve his overall quality of life and functional status, and that physical therapy was recommended. (Cl. Ex. 1, P. 4 – 13) The Claimant returned to Interventional Pain Management Associates on October 24, 2023, for follow up status post first and second diagnostic lumbar medial branch block. The Claimant provided that both the first and second diagnostic medial branch block helped lower back pain more than 80% for the first few days but that the pain gradually returned, and he continued to note significant neuraxial low back pain. The most recent lumbar MRI showed degenerative lumbar spondylosis without spinal stenosis but with foraminal stenosis with facet degenerative hypertrophy evident. (Cl. Ex. 1, P 14 – 18)

The exhibit also contained a “To Whom It May Concern” letter signed by Doctor Lance Lincoln dated October 27, 2024, that provided the Claimant worked for the Water Department for approximately 29 years as an inventory clerk and his job required him to receive and put up products lifting over 100 pounds per day. As a result of the above listed job duties on a daily basis, the Claimant sustained a gradual onset injury to his lower back due to the heavy lifting on a continual basis. The report went on to provide that “It is my belief within a reasonable degree of medical certainty (51% or greater) that the major cause of his need for medical treatment to his back is a result of his employment with the Water Department. (Cl. Ex. 1, P. 19) A second “To Whom it May Concern “ letter dated October 29, 2024, and signed by Dr. Ira Chatman, provided that the Claimant

worked for the Water Department for 29 years as an Inventory Clerk and again as the result of his job duties, the Claimant sustained a gradual onset injury to his lower back due to the heavy lifting he had to perform on a continual basis and it was Dr. Chatman's opinion and belief within a reasonable degree of medical certainty (51% or greater) that the major cause of for the Claimant's need for medical treatment to his back was a result of his employment with the Water Department. (Cl. Ex. 1, P. 20)

The Claimant also introduced his deposition into the record which was admitted without objection and consisted of 46 pages. The testimony of the deposition was very similar to the testimony at the hearing. A summary of various points of the deposition provided that the Claimant denied any lifting when he worked as a meter reader but stated that he did a lot of bending. (Cl. Ex. 2, P.11) While working as a meter reader, he denied any issues with his back. (Cl. Ex. 2, P. 12) The claimant next worked on the Vactor truck where they clean sewer lines using a vacuum system. He lifted manhole lids which probably weighed 40 to 50 pounds. They at times used a manhole hook. To clean the sewer lines, they took six to eight feet long tubes that weighed five or six pounds and attached them together and to the vacuum system. He also testified they dragged a one-inch hose that was about 600 feet long and that was attached to a spinning drum on the truck. This was when his back problems started back in 2008 to 2010. After that, he worked for the sewer pipe inspection van and there was lifting, bending, and stooping. There was a camera on a tractor weighing 45 to 50 pounds which they would manually lower into a manhole, and this action required bending. We would do this multiple times a day, anywhere between 14 to 16 times a day. He worked at this job for five or six years. (Cl. Ex. 2, P. 13 – 16)

He then started working as an Inventory Clerk, starting in 2018 or 2019, where he worked until he retired and where he lifted items that weighed up to 500 pounds and where he used a forklift. He stated he had retired because Sue in HR had paperwork for him to sign and he had been written up a couple of times for being on Facebook and they were going to terminate him, and he retired. (Cl. Ex. 2, P. 17 – 21) The Claimant also admitted that at times he mowed and ran a weed-eater. He used a zero-turn mower or a smaller riding mower and did this every two to three weeks. He was asked about lifting over 100 pounds daily and responded that they were the parts he lifted as an inventory clerk. He was also lifting over 100 pounds cumulative on the sewer inspection van. (Cl. Ex. 2, P. 22, 23)

The first time he noticed he was having problems with his back was when he was working on the Vactor truck and was dragging the hose. He did not recall having an MRI in February of 2010. He remembered first going to Garretson Chiropractic after he noticed back issues. He was also seeing Doctor Lincoln who referred him to a doctor in Springfield and who he saw one time. The Springfield doctor instructed him to do stretching exercises but ordered no physical therapy. Gradually over time, his back got worse. He took off about three weeks and then returned to work. When he returned to work, his back was okay. (Cl. Ex. 2, P. 24 – 27)

He would often cinch up where he “couldn’t move” while at work and he did this quite a few times. He testified he told his supervisor, Kevin Tuperville, who retired and is no longer with the city, about his back. He also told his partner on the Vactor truck who is now deceased. He admitted he never asked to file a workers compensation claim. His back was hurting about the same while working on the TV van and as an inventory clerk.

(Tr. 28, 29) He testified in his deposition that he told Alma Clark, Kirsten Skiver, and Lonnie Williams about his back. He also admitted he never requested to report his back as a workers' compensation claim. (Cl. Ex. 2, P. 30, 31)

The Claimant testified in his deposition that he had seen his family physician, Doctor Lance Lincoln, through the years for his back issues. Doctor Lincoln had referred him to Doctor Ira Chapman, when he was asked what Doctor Lincoln had done for him in regard to his back. He also testified that Doctor Lincoln had not prescribed any medications for his back. Doctor Chapman prescribed the Tizanidine and Tramadol. The claimant was specifically asked if Doctor Lincoln had done anything else for the Claimant's back other than refer him to Doctor Chapman. This could include physical therapy or an MRI or anything like that, and the Claimant replied that Doctor Lincoln did not. Doctor Chapman scheduled him for an MRI and had him do physical therapy but never mentioned surgery. The Claimant denied seeing anyone else in regard to his back. (Cl. Ex. 2, P. 32 – 35)

Respondents Exhibit One consisted of twelve pages of medical records plus an index and was admitted into the record without objection. An ED Physician Note dated January 25, 2010, provided that the Claimant presented with back pain, with the onset being three days ago. The type of injury was stated as "none." The note provided that two views of the lumbosacral spine were submitted. Under impression, the report provided that there were unremarkable views of the lumbosacral spine. (Resp. Ex. 1, P. 1, 2) A Certificate to return to work was provided on January 29, 2010, with no restrictions. (Resp. Ex. 1, P. 3) Later, an MRI Report for the Lumbosacral Spine, dated February 5, 2010, and ordered by Doctor Lance Lincoln, provided under impression that there was a left

paracentral disc protrusion at L4-L5 which caused moderate left neuroforaminal stenosis and contacted and displaced the exiting L4 nerve root and went ahead and stated that a neurosurgical consultation should be considered. The report also provided for multilevel degenerative facet hypertrophy and ligamentum flavum thickening, and that there was a minimal concentric disc bulge at L5 – S1. (Resp. Ex. 1, P. 4)

A Procedure Note dated February 15, 2010, and electronically signed by Doctor James Newton, provided that the Claimant was referred by Dr. Lance Lincoln, for a therapeutic trial of a lumbar epidural steroid injection for his discogenic low back pain and left hip radiculopathic pain secondary to an L4-5 herniated disc pulposus. The Claimant stated that approximately seven weeks ago, he was lifting something and had an acute onset of left thigh radiculopathy and that he describes as pain burning in nature. (Resp. Ex. 1, P. 5, 6)

An ED Physician Note dated April 5, 2021, provided among other matters that the claimant suffered from acute back pain with sciatica. (Resp. Ex. 1, P. 7-10) A later medical report provided that the Claimant returned to Baxter Regional Medical Center on January 12, 2023, for an exam in regard to lumbar stenosis with neurogenic claudication. The admitting doctor was Doctor Lincoln, and the report provided under impression, for diffuse degenerative changes including spurring and disc narrowing which had progressed from 13 years ago. A CT or an MRI would better evaluate disc herniation. An MRI of the lumbar spine dated July 18, 2023, provided there were mild posterior disc bulges at L1-2, L3-4, L4-5 and L5 – S1. There was no fracture, subluxation, lytic, or bistatic bony lesion. A vertebral hemangioma was noted in the L4 vertebral body. No disc herniation was seen. Facet degenerative hypertrophy was seen bilaterally at L3-4, L4-5, and L5-S1, but no

spinal stenosis was seen. There was mild foraminal stenosis on the left at L4-5 and L5-S1 and on the right at L5-S1. Under impression, the report provided Claimant suffered from degenerative lumbar spondylosis without spinal stenosis, with mild foraminal stenosis on the left at L4-5 and mild bilaterally at L5-S1. (Resp. Ex. 1, P. 11, 12)

The Respondents also submitted 33 pages of non-medical records that were admitted without objection. Claimant submitted a letter of resignation on April 25, 2023. (Resp. Ex. 2, P. 15) The AR-C Form received on November 4, 2024, provided that the Claimant sustained a gradual onset injury to his lower back due to the required heavy lifting up to 100 pounds daily over his 29-year employment at the water department. The AR-C Form provided that it was signed on October 30, 2024, and that the date of the onset of the gradual onset injury was April 1, 2023. (Resp. Ex. 2, P. 16) The First Report of Injury provided that the date of the notification of the Administrator was November 6, 2024. (Resp. Ex. 2, P. 17) The exhibit also contained various photographs that showed fork-lifts, a platform ladder somewhat similar to one seen in large retail box stores, desks, manhole covers, water boxes, bins, boxes, lift jacks, and other items. (Resp. Ex. 2, P. 18 – 33)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for his injuries under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the

Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

A compensable injury is an accidental injury causing internal or external physical harm to the body arising out of and in the course of employment which requires medical services or results in disability or death. An injury is normally “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence. See A.C.A. 11-9-102(4)(A)(i). However, a spinal injury (neck or back) which is not caused by a specific incident, or which is not identifiable by time and place of occurrence, does not have to meet the specific incident requirement under A.C.A. 11-9-102(4)(A)(ii)(b). It is also noted that a spinal injury that is claimed to be a gradual onset injury does not have to satisfy the requirement for rapid and repetitive motion. However, a back or neck injury must still be established by medical evidence supported by objective findings. See A.C.A. 11-9-102(4) (D). Objective findings are those findings which cannot come under the voluntary control of the patient. See A.C.A. 11-9-102(16)(A)(i).

Here, the Claimant primarily contends that he is suffering from a gradual onset injury to his lower back that occurred while working for the Respondent. He agreed that he testified in his deposition that his back was hurting while dragging a hose when working with the Vactor truck back in 2008 to 2010, more or less. He also admitted seeing his PCP in 2010, who referred him to a specialist in Springfield for his back issues. The Claimant was off work for three weeks and he admitted not filing a workers' compensation claim at that time. He also testified that he started developing back problems again when working with the CCTV (ATV) van, but again never filed a claim for workers' compensation benefits. He later went to work as the Inventory Clerk and admitted he never told anyone

that his back pain was related to work, but did tell people that he had lower back issues. He also admitted that he started seeing Doctor Chapman in approximately 2022 or 2023. In regard to the two “To Whom It May Concern” letters, he admitted he had not worked for the Water Department for twenty-nine (29) years as stated in both letters and had only worked for the Respondent for twenty-three (23) years, total, in different job descriptions. It also must be noted that when the Claimant was asked if he knew that his condition was related to his employment, he responded, “I was assuming, yes.”

The Respondent’s witnesses testified that they were not aware of the Claimant’s back issues until he filed his Form AR- C on November 4, 2024, which was over a year after he submitted his letter of resignation on April 25, 2023. In regard to medical evidence, an ED physician note, dated January 25, 2010, provided that the Claimant presented with back pain and the injury was “none” and returned the Claimant to work with no restrictions on January 29, 2010. The report in regard to an MRI that was ordered by Doctor Lincoln and dated February 5, 2010, provided there was a left paracentral disc protrusion at L4-5 which caused moderate left neuroforaminal stenosis which contacted and displaced the exiting L4 nerve root and additionally provided that the Claimant should consider a neurosurgical consultation. Additionally, there was multilevel degenerative facet hypertrophy and ligamentum flavum thickening with a minimal concentric bulge at L5 – S1. The claimant received epidural steroid injections for his discogenic low back pain and left hip pain secondary to an L4-5 herniated disc pulposus on February 15, 2010. Nearly thirteen years later, on January 12, 2023, the Claimant returned to Baxter Regional Medical Center for a finding of lumbar stenosis with neurogenic claudication. The medical report provided for diffuse degenerative changes including spurring and disc narrowing

which had progressed from thirteen (13) years earlier. Later, an MRI of the lumbar spine dated July 18, 2023, provided there was mild posterior disc bulges at L3-4, L4-5, and L5-S1. Facet degenerative hypertrophy was seen bilaterally at L3-4, L4-5, and L5-S1, with mild foraminal stenosis on the left at L4-5 and L5-S1. There were no objective findings in the actual medical reports to connect any of the findings to a work related back injury, only degenerative changes. The only items that provided any opinion as to the cause of the injuries were the two “To Whom it May Concern” letters from two treating physicians with the letters dated two days apart, and which were identical. Both “To Whom it May Concern” letters stated that it was their opinion with a reasonable degree of medical certainty (51% or greater) that the Claimant had sustained a gradual onset injury and the major cause for the Claimant’s need for medical treatment was a result of his employment with the Water Department for approximately 29 years. No medical records nor objective findings from either physician supported these findings. Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). It is also important to note that the claimant’s testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985)

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the Claimant has failed to establish a specific incident that is identifiable by time and place of occurrence in regard to sustaining a work-related injury on the date of April 1, 2023. Additionally, there is no alternative but to find that the Claimant has also failed to prove by a preponderance of the credible evidence that the Claimant established a work-related gradual onset injury

to his lower back, right hip, and groin, with medical evidence supported by objective findings, sufficient to satisfy the requirements of the Arkansas Workers' Compensation Act. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge