

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H207039

BILLY WRIGHT,
EMPLOYEE

CLAIMANT

REYNOLDS CONSUMER PRODUCTS,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MGMT. SERVICES, INC.,
CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED MARCH 15, 2024

A hearing was held before Administrative Law Judge Chandra L. Black, Pulaski County, Little Rock, Arkansas.

Claimant represented by the Honorable Aaron L. Martin, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the Honorable Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on October 24, 2023, in Little Rock, Arkansas. A prehearing telephone conference was held in this matter on August 30, 2023. A prehearing order was entered on that same day. This prehearing order set forth the stipulations proposed by the parties, their contentions, and the issues to be litigated.

STIPULATIONS

The parties submitted the following stipulations, either pursuant to the prehearing order, or at the start of the hearing. I hereby accepted the following stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. That the employee-employer-carrier relationship existed at all relevant times including on or about May 20, 2022, when the Claimant allegedly sustained a compensable injury to his lower back.
3. The Claimant is entitled to the maximum weekly compensation rates for his alleged 2020 low back injury if found to be compensable. His weekly rate for temporary total disability (TTD) benefits is \$790.00; and his rate for permanent partial disability (PPD) compensation is \$593.00.
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the Claimant sustained a compensable low back injury on May 20, 2022.
2. Whether the Claimant is entitled to reasonable and necessary medical benefits for his back condition.

Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends that he sustained a compensable injury to his lower back on May 20, 2022. The Claimant further contends that he is currently entitled to medical treatment for his back injury and reserves his rights to all additional benefits.

Respondents:

Respondents will assert the following defenses: The Claimant has no objective medical findings of an injury due to the May 20, 2020, incident. Also, his lower back is a pre-existing condition. The MRI taken before the accident is the same as the MRI taken after the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to establish by medical evidence supported by objective findings that he sustained a compensable injury to his low back on May 20, 2022, while performing his employment duties for the respondent-employer.
4. The remaining issue pertaining to reasonable and necessary medical treatment has been rendered moot and not addressed herein this opinion.

Summary of Evidence

Mr. Billy B. Wright (referred to herein as the "Claimant"), was the only witness to testify during the hearing.

The record consists of the October 24, 2023 hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 comprises the Commission's Prehearing Order filed on August 30, 2023 and the parties' responsive filings; Claimant's Medical Exhibit consisting of seventy pages was marked Claimant's Exhibit 1; and Respondents' Medical Exhibit includes eleven numbered pages and it has been marked as Respondents' Exhibit 1.

Testimony

As of the date of the hearing, the Claimant continued to work for Reynolds Consumer Products, in Malvern. He has worked for the Respondents for eighteen years. His current position as of late entails employment duties as a roll grinder. The Claimant testified that he has a lot of different job duties, but his main job function is to bring in rolls and operate a machine lathe. According to the Claimant, they grind and turn rolls in his department. Specifically, the Claimant explained:

Q Okay. When you say roll, what do you mean?

A I mean a castor roll is probably about eight, nine, ten feet long. It's a big shell. It's 36 inches in diameter, and we have to bring those in and take the old metal off after they run 'em out in the plant, and we put a new finish on 'em and send 'em back out - -

Q Okay.

A -- to make the product with them.

According to the Claimant he has worked as a roll grinder for sixteen years. The Claimant agreed that he sustained a back injury on May 20, 2022, while picking up a 0-ring plate. Per the Claimant, when he picked it up, he felt his back get stiff, and a pain went down his leg. He testified that an O-ring is a giant piece of metal, and the entire roll weighs approximately 30,000 pounds. According to the Claimant, the rolls are about 36 inches in diameter. He testified that the roll bolts on, and it slides over a neck into the roll, and it holds the O-ring in place, which is a piece of rubber.

The Claimant provided the following description of the O-ring:

Q Okay. Describe that for us.

A Okay. It's probably four or five inches wide around. It's – it's round. It's got probably 50 bolt holes on – in it that holds the – which bolts to the caster roll, which holds the O-ring in place. It weighs about 140 pounds.

Q Okay. And you testified that you were lifting this at the time?

A Yes. Me and – me and another guy, there were two of us doin' this.

According to the Claimant, normally they would use a crane to pick this plate up because it is very heavy. He testified that management had them trying something completely new this day, they wanted them to put a gasket on the roll. The Claimant stated that they could not place the gasket on it, so they had to pick it up by hand, and that is when he got hurt.

Regarding his symptoms, the Claimant essentially testified that he had an immediate onset of symptoms that included tightness in his back and pain going down into his left leg. He confirmed that he stayed at work until the end of his shift, but he did not continue to work. The Claimant testified that he went and sat in the office of the roll shop department for the remainder of the day. He further testified that his coworker and another guy finished the job that they had started.

According to the Claimant, he reported his injury within the first hour that it happened. The Claimant testified that he reported his injury to his supervisor, Iteima Allen. Per the Claimant, he told his supervisor that he hurt his back picking up the 0-ring plate. The Claimant also testified that he told Mr. Allen about the pain he felt going down into his left leg.

The Claimant first sought medical treatment for his back from CHI St. Vincent. They referred the Claimant for an MRI and neurosurgical consultation with Dr. Shahim. He testified that Dr. Shahim ordered some medications, physical therapy, and injections for his back pain and related symptoms. The Claimant denied that he got any benefit from either the medications, physical therapy sessions, or the injections. He confirmed that he must have surgery for his symptoms because they are getting worse, and he must have this fixed.

Specifically, the Claimant testified that he currently has the following symptoms associated with his May 20, 2022, work-related accident:

Q What are your symptoms?

A. Stiffness in the back. I have pain from my lower back, I'd call it right above my hip, and it goes down into my leg, my hamstring, into my knee, into the calf area of my leg, into my toes. I have a constant pain - -I have pain all the time, but a lot of the times I'm having sharp, shooting pains. I'm having tingling, pins and needles sensations in my feet and toes.

The Claimant denied having any symptoms in his right leg. He agreed that he currently he has weakness in his leg, and sometimes when he is walking, he drags his leg because he is not able to pick it up all the time. According to the Claimant, he must be careful because he drags his left leg, and this causes him to stumble. The Claimant confirmed that he does not have any work restrictions. However, the Claimant agreed that his symptoms affect his ability to do his job. Specifically, the Claimant explained: "How I do my job is that I -- I take it real easy, real slow, very careful." The Claimant confirmed that he told Dr. Shahim that if he gave him work restrictions, they would not allow him to return to work at Reynolds.

He acknowledged that his symptoms also affect his daily activities outside of work. The Claimant has problems with performing his duties as a deacon at his church when serving the Lord's Supper. He must be careful so that he does not trip and fall. The Claimant stated that he has problems at home when he needs to pick up something heavy. As a result, his son helps him to lift heavy objects and does the weed eating for him. The Claimant stated that his son also helps him with the mowing of his lawn. He testified that he has not been able to do any gardening work since his injury happened because it is too hard on his back.

Regarding his prior injury to his lower back in 2011 or 2012, the Claimant admitted he injured his back at work taking a water jacket off. He testified that he had to pry the bar off, and it slipped off and fell on the ground and hurt his back. The Claimant testified that from that injury,

he had symptoms of pain in his back, and left leg down to his knee. However, the Claimant denied that his pain ever went below his knee, or into his feet. The Claimant verified that he underwent surgery for his prior 2012 back injury. He confirmed that he received significant relief from the surgery after a period of recovery time of about a year. The Claimant testified that this prior surgery resolved all his back problems, and he did not have any more pain or stiffness in his back. He confirmed that he returned to work after he recovered from his surgery in 2011. The Claimant did not recall whether he had any physical restrictions or limitations when he returned to work on full duty.

The Claimant was shown a copy of the medical records from Respondents' Exhibit 1. This exhibit includes an MRI from June of last year (2023), but before that the records go through until about November of 2012. He maintained that he did not see any doctors for his back from November of 2012 until his accident on May 20, 2022. The Claimant denied having any problems for which he did not see a doctor during that time limit.

Under further questioning, the Claimant was asked if he believes that the accident on May 20, 2022, is the cause of his current symptoms and need for surgery. He replied, "Definitely, yes." The Claimant specifically maintained that he has never experienced these symptoms before. He further maintained that he never had a similar prior problem with his leg. The Claimant testified that previously his pain stopped at the knee. He went on to clarify that what is going on now is numbness and tingling in his knee, calf, and feet.

On cross-examination, the Claimant testified that he does not recall if his prior surgery occurred in 2011 or 2012. He confirmed that he has had two previous back surgeries. One of his surgeries was performed by Dr. Schlesinger and his second surgery was performed by Dr. Mason. He confirmed that he had back surgery years ago by Dr. Mason because he was having problems

with his back. The Claimant verified that his surgery by Dr. Mason did not involve a work-related injury. According to the Claimant, Dr. Schlesinger performed his second surgery.

The Respondents' attorney presented the Claimant with a report authored by Dr. Schlesinger, which is Respondents' Exhibit at page 4. The Claimant did not recall having problems after his second surgery. Although an MRI was ordered of the Claimant's back following his surgery, the Claimant continued to maintain he did not recall having problems after surgery.

Dr. Mason¹ reviewed the MRI and said that there was nothing he could do to help the Claimant from a surgical standpoint. As a result, Dr. Schlesinger released the Claimant from surgical care since there was nothing he could do for the Claimant in terms of a rating or limitations. The Claimant admitted that he testified earlier that he got better after back surgery and was fine between 2012 and 2022.

The following exchange took place with the Respondents' attorney and the Claimant:

Q But you had been to Dr. Schlesinger just following the surgery to see if something else could be done?

A I don't remember that.

Q Okay. And then that – that MRI from 2012 that he relied on showed that you had a post-surgical change at L4-5, disc displacement, and a small annular tear at L5-S1 level. Is that – which of those sites are the site of your surgery? Do you recall?

A Oh, I don't even know what any of that means.

Q Okay.

A I don't know.

The Claimant was questioned about the report on page 10 of the Respondents' exhibit.

¹ Although the transcript reads Dr. Mason, this is a clerical error. Instead, this should read Dr. Schlesinger.

However, the Claimant did not recall the radiologist having opined that the MRI in 2022 did not reveal an acute fracture and that only degenerative changes were revealed. The Claimant admitted that he discussed the findings of the MRI with Dr. Shahim. He maintained that he did not understand any of what all that stuff means. The Claimant confirmed that he went to the company doctor, Dr. Larey. Although Dr. Larey referred the Claimant to Dr. Zachary Mason, he did not see him. The Claimant was unsure of how he got to see Dr. Shahim.

Under further questioning, the Claimant admitted that his need for surgery is because he is having problems with the same leg, except the now the problem goes all the way down to his toes. The Claimant stated that he was not sure if back in 2012 after his surgery, he had the same thing going on with the same two levels (L4-5 and L5-S1) that he has involved now. The Claimant maintained that he was not sure of what Dr. Shahim meant when he stated in his medical report the Claimant the radiologist misread the MRI, or his problems are degenerative in nature and nothing acute. However, Dr. Shahim went on to opine that if the MRI was misread by the radiologist, then the Claimant already had L5-S1 issues going as reflected in the previous MRI's. The Claimant denied he understood what Dr. Shahim meant when he said the Claimant most likely has a new facet injury. Dr. Shahim also stated, "He has either a combination of facet cysts from a facet injury and subligamentous disc herniation."

The Claimant admitted that he has worked the whole time since May 20, 2022. The Claimant admitted that he has not missed any time from work since his alleged back injury. He did not recall asking Dr. Shahim to tell Reynolds he had no restrictions and could work full duty. The Claimant admitted that he did tell Dr. Shahim he probably would not be allowed to return to work if he had restrictions. However, the Claimant denied that his employment duties are heavy manual labor all the time.

He confirmed that the Reynolds plants that he works at do not make aluminum foil. The Claimant testified that they make “cash metal,” which is turned into aluminum foil somewhere else. As of the date of the hearing, the Claimant continued to work his scheduled shift at Reynolds. He confirmed that he plans to work up until his surgery. The Claimant again denied that his current symptoms are the same as those he experienced previously.

Medical Records

A review of the medical records demonstrates that on September 28, 2011, the Claimant underwent an MRI of the lumbar spine without contrast due to lower back pain/lumbar strain, authorizing provider was Dr. Mark Larey. The reviewing radiologist, Dr. Stephen Penor, rendered the following **Result Impression**:

1. There is central disc protrusion with a larger left paracentral disc protrusion at L4-5. There is moderate to severe left paracentral spinal canal stenosis with mass effect on the left L-5 and sacral nerve roots.
2. There is mild bilateral neural foraminal narrowing at L4-5.
3. There has been a laminectomy at L4-5.
4. Central annular tear at L5-S1. There is no stenosis that this level.

On October 4, 2011, the Claimant underwent a lumbar MRI due to low back pain since August 1, 2011. The patient has a history of low back surgery in 2003 with pain in the lower left extremity. Dr. Andrew Finkbeiner rendered the following **Conclusion**:

No enhancing 8mm left paracentral disc protrusion at the L4-5 level results in mild compression of the descending left L5 nerve. There is a left-sided hemilaminectomy defect with enhancing granulation tissue in the left lateral recess. Small soft central protrusion with associated enhancing annular tear at the L5-S1 level.

Dr. Scott Schlesinger referred the Claimant for an MRI of the lumbar spine, which was performed on April 2, 2012. Specifically, the Claimant underwent an MRI of his low back without contrast due to ongoing complaints of low back pain associated with lower left extremity pain with

a history of low back surgery in October 2011. Direct comparison was made with preop MRI of the lumbar spine from October 4, 2011. Accordingly, the radiologist opined, in relevant part:

FINDINGS: L4-5: There is a shallow disc displacement most pronounced in the bioforaminal positions with enhancement along the left paracentral/foraminal portion of the disc with an adjacent left-sided hemilaminectomy defect. There is enhancing granulation tissue in the left lateral recess surrounding the descending left L5 nerve. In addition, there is facet hypertrophy at this level contributing to mild to moderate bilateral exiting neural foraminal stenosis. There is metallic artifact seen with the surgical site best noted on image #13 of series #7.

L5-S1: There is enhancement along the posterior central margin of the disc at this level possible representing annular tears along with shallow disc displacement contributes to mild to moderate bilateral exiting neural foraminal stenosis with abutment of bilateral exiting L5 nerves.

CONCLUSIONS: There is interval left-sided hemilaminectomy defect without evidence of residual or recurrent soft herniation or protrusion. Enhancing granulation tissue in the left lateral recess surrounds the descending left the L4-5 nerve. There also remains shallow disc displacement and associated facet hypertrophy contributing to mild to moderate bilateral exiting neural foraminal stenosis and associated facet atrophy contributing to mild to moderate bilateral exiting neural foraminal stenosis without definite nerve root compression. Please see report for level-by-level description.

On November 13, 2012, Dr. Scott Schlesinger, a neurosurgeon, saw the Claimant in clinic for a consultative neurosurgical work-up. At that time, by written account Dr. Schlesinger provided an updated report with details of a development of a management and treatment plan for the Claimant's continual complaints of chronic lower back pain that radiated down his left leg, to the foot associated with numbness and tingling.

History of Present Illness

This 44-year-old male presents with lower back pain that radiates down the left leg to the foot with numbness and tingling. He has a history of lumbar surgery done about ten years ago by Dr. Mason and an additional lumbar surgery done by me in 2011. He also underwent a series of post-operative epidural steroid injections in April and May of 2012 with no relief. He is now here in follow up with a new MRI of the lumbar spine.

Neurological Surgeries

Lumbar Surgery X 2:

L4-5 Lumbar decompression and discectomy done in 2002 by Dr. Zachary Mason.

L4-5 Redo lumbar discectomy done on October 11, 2011, by me.

Medical Decision Making

Interpretation of Data: Mr. Wright's MRI scan of the lumbar shows postoperative changes and degenerative changes only.

A decision was made to request the medical records pertinent for the current problem. I have reviewed these records and have incorporated this information into the medical decision making.

Differential Diagnosis

Low Back Pain

Low back pain has many etiologies. The back pain may come from facet joint arthritis, degeneration of discs, musculoskeletal symptoms, rheumatologic disorders, musculoskeletal symptoms, rheumatologic disorders, herniated discs, spinal stenosis, fracture, spinal tumors, etc.

Diagnosis:

The patient's diagnosis is:

Low Back Pain.

Plan:

There is nothing further I can do for him neurosurgical. I will release him from further neurosurgical care. The only thing I might suggest to him is attempting medication management with anti-inflammatory agents such as Celebrex. There is nothing further to give him in terms of limitation or disability.

Thank you once again for allowing me to provide this neurosurgery consultation for this patient.

The Claimant underwent an MRI of his lumbar spine on November 13, 2012, without contrast, pursuant to recommendation by Dr. Schlesinger. Specifically, Dr. Andrew A. Finkbeiner rendered the following **Conclusion:**

No significant interval changes from the prior examination of April 2, 2012. Postsurgical changes again were noted at the L4-5 level with a left-sided hemilaminectomy/facetectomy

defect with multiple small metallic artifacts seen with the surgical site. There is enhancing granulation tissue in the posterior central and left paracentral portion of disc the as well as the left lateral recess surrounding the descending the left L5 nerve. Shallow disc displacement most pronounced in the central position with suggestion of a small posterior annular tear at the L5-S1 level.

On June 2, 2022, the Claimant sought medical treatment for his back condition from CHI St. Vincent's Corporate Health, in Hot Springs. At that time, the Claimant underwent evaluation by Dr. Mark Eugene Larey. Per these notes, the Claimant began having problems with his back on June 1, 2022. Nevertheless, the Claimant reported to Dr. Larey that he injured his back while handling a ring plate with a coworker. He also reported that he felt a twinge in his left lower back area. The Claimant continued to work and began to have pain/tingling go down the back of his leg into the lateral side of his left foot. Dr. Larey stated that the medical cause of the Claimant's problem was related to his work activities. He assessed the Claimant with "Lumbago with sciatica, left side (M54.42)." XR LUMBAR SPINE 2 or 3 VW taken of the Claimant's back were interpreted by Dr. Larey as "Normal alignment. Moderate disc space narrowing L3-4 and marked narrowing of L4-5 with associated facet arthropathy."

An MRI of the Claimant's lumbar spine without contrast was performed on June 21, 2022 due to lumbago with sciatica, left sided. Per this diagnostic testing, Dr. Sorayo Ong, the radiologist, rendered in applicable part, the following:

Findings:

L4-5 severe disc bulge, asymmetric towards the right, bilateral arthropathy cause moderate neural canal stenosis bilaterally.

L5-S1, mild disc bulge slightly asymmetric towards the left causes mild right and moderate left neuroforaminal stenoses. There are lobulated annual stenoses. There are lobulated annular fissures also seen in the posterior midline portion of the disc.

Impression:

1. No acute fracture.

2. Degenerative changes. The worst levels are L4-5 and L5-S1, where there are bilateral neuroforaminal stenosis as noted above.

The Claimant underwent evaluation by Dr. Reza Shahim on July 28, 2022, due to a chief complaint of chronic low back pain. Dr. Shahim opined: “The Claimant has a combination of facet injury and degenerative disc disease. I think he mostly has a new facet injury of left L4-5 annular tear at L5-S1 this is a work-related injury with radicular pain on the left side. At that time, Dr. Shahim stated that he would put the Claimant through a course of physical therapy treatment and spinal injections.

On September 21, 2022, Dr. Shahim recommended that the Claimant undergo surgical intervention since physical therapy and injection did not provide him with any significant improvement of his back pain and related symptoms. At that time, Dr. Shahim noted that he reviewed the Claimant’s MRI, and he stated that he believes the radiologist stated that the Claimant has either a combination of a facet cyst from a facet injury and a subligamentous disc herniation at left L4-5 causing nerve root compression, which failed conservative management. Therefore, Dr. Shahim recommended surgical treatment including a redo discectomy or he may require a fusion. Dr. Shahim assessed the Claimant with lumbar radiculopathy which was located on the left L4 left posterior dermatome.

The Claimant returned to Dr. Shahim for a follow-up evaluation on October 12, 2022, for reevaluation of his lumbar spine pain. He recommended surgery for the Claimant since he failed conservative treatment. Per these clinical notes, Dr. Shahim stated that the Claimant’s accident was the cause of his new onset of symptoms, which entailed back, hip, and left leg pain. At that time, Dr. Shahim stated that the radiologist misread the MRI. Specifically, Dr. Shahim opined that the Claimant does have a combination of facet hypertrophy disc herniation left L4-5 causing severe nerve root compression on the left side contributing to his symptoms. Dr. Shahim further stated

that he would submit a request to workers' compensation for authorization of a left L45 redo discectomy. The Claimant was scheduled for a follow-up visit with Dr. Shahim after he finished his physical therapy treatment. He diagnosed the Claimant "Herniated disc, lumbar. Intervertebral disc disorders with myelopathy, lumbar region (M51.06) Pain intensity was a 7.0 - 7/10."

On January 12, 2023, Dr. Shahim saw the Claimant for follow-up evaluation of his chronic back pain and related symptoms. Dr. Shahim noted that he reviewed the Claimant's previous MRI with him in detail that shows "spondylosis with stenosis L4-L5." Per this medical report, the Claimant reported to Dr. Shahim that he was not having any symptoms prior to his work-related accident in May of last year. Dr. Shahim opined in relevant part:

He is having radicular pain in the left leg associated with what appears to be either a recurrent disc herniation or a facet cyst associated with inflammation of the joint at L4-5 on the left side this not read well by radiologist. I do believe that his injury is directly related to the workers' compensation accident are directly related too the pinched nerve at left L4-5 he is already fell more than six months of conservative management including injections which were not effective medical activity modification. I do not believe he had a pre-existing condition so I would recommend at this point for the insurance to approve redo discectomy left L4-5 if they do not agree with my opinion they can send him for a second opinion.

On April 3, 2023, Dr. Shahim authored an amendment to his March 13, 2023, clinic notes. Per this amendment, Dr. Shahim stated that he was releasing the Claimant from care because they had received multiple denial by workers' comp for his treatments due to the Claimant's condition being pre-existing.

ADJUDICATION

Compensability

The Claimant has asserted that he sustained a compensable accidental work-related back injury while performing his employment duties for his employer, Reynolds Consumer Products, on May 20, 2022.

Specifically, the Claimant contends that he sustained a back injury in the course and scope of his employment at Reynolds while working with a coworker during a lifting incident involving an O-ring plate.

The Respondents contend that the Claimant has no objective medical findings of an injury due to the May 20, 2022, incident because his low back condition is a pre-existing condition. They further contend that the MRI taken before the accident is the same as the MRI taken after the accident.

The burden of proving a specific incident compensable injury is the employee's and must be proved by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If the Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2019). "Objective findings" are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Complaints of pain are not considered objective medical findings. Ark. Code Ann. § 11-9-102(16)(A)(ii)(a).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant failed to prove by a preponderance of the credible evidence that he sustained a work-related back injury on May 20, 2022. More specifically, I cannot find the existence of a causal connection between the Claimant's May 20, 2022, employment related

incident/activities, and the medically documented objective findings for his alleged back injury as demonstrated on his June 2022 lumbar MRI .

In the case at bar, the Claimant worked for Reynolds Consumer Products for over eighteen years. His most recent employment duties entailed those of a roll grinder. The claimant has an extremely extensive history of significant back problems dating back to 2002. The Claimant has undergone two prior back surgeries at L4-5. Beginning in 2002, the Claimant underwent lumbar decompression and discectomy at L4-5 by Dr. Zachary Mason. His testimony demonstrates that after a lengthy recovery time he returned to work with no physical limitations or restrictions. According to the Claimant, his back did well until 2011. At that time, the Claimant sustained a second injury at the same level. In October 2011, Dr. Schlesinger performed back surgery at the same level. The medical records show that Dr. Schlesinger performed “a redo lumbar discectomy at L4-5.”

Although the Claimant initially maintained he did well after his second back surgery, he admitted that he obtained an MRI of his lumbar spine after his 2011 surgery due to continued complaints of back pain and related symptoms. On direct examination, the Claimant further maintained that he complained of back pain and left leg symptoms, but his leg symptoms stopped at the knee. However, on cross-examination, after being presented with a medical exhibit by the Respondents’ attorney that showed he previously complained of pain all the way down to his left foot, the Claimant admitted that his prior symptoms extended into his left foot with associated numbness and tingling. In fact, the Claimant’s back symptoms and leg problems were severe enough for him to seek a lumbar MRI in 2012. Although I am convinced that the Claimant is a diligent and valuable employee of Reynolds, I found his testimony to be less than forthcoming regarding his prior identical symptoms.

Nevertheless, I am persuaded that there was a work-related incident on May 20, 2020, involving the Claimant's back as he attempted to lift a 140 pound O-ring with a coworker. However, I am not convinced that the Claimant has met his burden of proof of a compensable back injury resulting from the May 20 incident by objective medical evidence to establish the existence of a work-related injury. Our case law is clear on this issue. A compensable injury must be established by medical evidence supported by objective findings. In that regard, although the Claimant complained of pain after his work incident and now attributes his back condition and need for surgery to the May 20 incident, there are no objective findings in support of that conclusion- only the maintain sequence of events and the alleged new symptoms.

Here, the medical evidence presented by the Claimant from his lumbar MRI of June 2022 contains only pre-existing degenerative changes, in the form of the following:

Findings:

L4-5 severe disc bulge, asymmetric towards the right, bilateral arthropathy cause moderate neural canal stenosis bilaterally.

L5-S1, mild disc bulge slightly asymmetric towards the left causes mild right and moderate left neuroforaminal stenoses. There are lobulated annular stenoses. There are also lobulated annular fissures seen in the posterior midline portion of the disc.

Impression:

3. No acute fracture.
4. Degenerative changes. The worst levels are L4-5 and L5-S1, where there are bilateral neuroforaminal stenosis as noted above.

It is well-established in workers' compensation law that a pre-existing condition may be aggravated by a work-related and be found compensable as a new injury. However, I do not find that to be the case here. I reached this conclusion based on the following probative evidence.

Here, the Claimant's complaints and related symptoms are identical to those he complained of in 2012, which included back pain, and pain and tingling and numbness down into his left leg. The Claimant's current complaints of back pain and related symptoms are at the same level that

resulted in his prior two back surgeries. There are no new objective findings of an injury to his back. In fact, the findings on the 2012 lumbar MRI are identical to Claimant's most recent lumbar MRI in 2022, which was performed after this May 20 work-related incident. Most significantly, all of the objective medical findings on the 2022 MRI are degenerative in nature and pre-existed his work incident.

Under these circumstances, I am convinced it would require sheer conjecture and speculation to attribute the Claimant's back condition to his work activities with this respondent-employer/Reynolds on May 20, 2022. Conjecture and speculation, however plausible, cannot supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W. 2d 155 (1979). Therefore, I must find that the Claimant failed to establish by medical evidence supported by objective medical findings that he sustained a compensable back injury in the course and scope of his employment within the meaning of the Arkansas Workers' Compensation Act.

I realize that Dr. Shahim opined that the Claimant's current back complaints are caused by his work-related incident of May 20, 2022. I have attached minimal weight to this expert opinion because it was based on an incomplete/inaccurate history of no continual back symptoms by the Claimant, namely that his 2011 surgery resolved his problems. It also appears that Dr. Shahim did not review the Claimant's prior lumbar MRI from 2012 and because both MRIs revealed essentially the identical degenerative changes, including the annular fissures. Also, when comparing the 2012 lumbar MRI to the lumbar MRI from 2022, I am unable to find the Claimant sustained new facet injury or that the radiologist misread the 2022 MRI, considering that the relevant objective medical findings (all of which are pre-existing degenerative changes) are present on both diagnostic exams. Most notably, the Claimant has continued working since his

May 20 work-related incident without any modification of his work duties or any special accommodation being made by his employer.

Additionally, for all of the same aforementioned reasons, minimal weight has been assigned to Dr. Larey's expert opinion stating that the Claimant's current back symptoms are related to his employment duties on May 20, 2022, primarily because Dr. Larey was provided an inaccurate history of the Claimant's prior ongoing chronic back problems and complaints dating back to 2012, which existed at the time of his May 20, 2022 work-related incident.

Having found that the Claimant did not sustain a compensable injury, the issue pertaining to medical benefits for this injury is rendered moot and therefore has not been addressed herein this opinion.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim for a back injury is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE