

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H304280

LARRY M. ZINTEL,  
EMPLOYEE

CLAIMANT

PULASKI COUNTY ROAD & BRIDGE,  
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 12, 2025

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE MARK ALAN PEOPLES,  
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney  
at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed March 5, 2024. The administrative law judge found that the claimant proved he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

The testimony of Larry M. Zintel, now age 46, indicated that he became employed with the respondents, Pulaski County Road & Bridge, in

about 2013. The parties stipulated that the employment relationship existed at all pertinent times, including January 18, 2022. The claimant testified on direct examination:

Q. On January the 18<sup>th</sup> of 2022, what happened?

A. I was driving in to work, my phone rang. I saw it was Foreman Gary and I went to reach for it and couldn't reach it, so I had to pull over, get my phone. I answered it and Gary was instructing me I need to go pick up David Jones because his ride was not able to come in to work.

Q. Okay. Was he asking you for a personal favor?

A. I – I didn't take it as a personal favor.

Q. What did you take it as?

A. I took it as he needed me to go pick up a fellow employee on my way in to work and bring him to work, which, in turn, I'd have to drive past the job, go pick him up and come back.

Q. All right. Did you feel like you had a choice as to whether or not you could go pick up Mr. Jones?

A. No, sir.

Q. Okay. Did you think it was a directive from your superior?

A. Yes, sir.

Q. All right. So did you do so, go pick up Mr. Jones?

A. I was on my way.

Q. You didn't pick up Mr. Jones.

A. I got hit head-on before I could do it.

Q. Okay. You got hit head-on. You were in a motor vehicle accident. A serious motor vehicle accident, and we have the police report in record on that, correct?

A. Yes, sir.

Q. Okay. What happened in the head-on the best you can remember?

A. I – I was coming up the hill at Roosevelt and Wolfe and the guy was coming at me. The car passed him and he kinda swerved over and hit his brakes, and when he did, his front brakes locked up and he slid right over in my lane and I tried to veer to keep him from hitting me too bad, and we collided. I got out the passenger side of my truck and I thought I wasn't hurt because of the adrenaline and everything, and after everything was said and done I went home and started hurting real bad. I couldn't hardly walk.

An ARKANSAS MOTOR VEHICLE CRASH REPORT dated January 18, 2022 indicated that the Time of Crash was 6:44 a.m. The ARKANSAS MOTOR VEHICLE CRASH REPORT NARRATIVE indicated that an individual drove his vehicle into the truck being driven by the claimant. The NARRATIVE indicated, "MR. ZINTEL ADVISED NO INJURIES[.]"

According to the record, the claimant received emergency medical treatment on January 18, 2022:

Pt is a healthy 43 y/o WM, presents to ED via EMS after MVA, he was a restrained driver hit by oncoming car. Airbags deployed. Co HA, doesn't think he hit his head, no LOC; neck pain, B shoulder pain....

**Good painless ROM B shoulders and hips.**

**Post c spine tenderness in midline, collar replaced.**

A physician's diagnosis on January 18, 2022 was "Motor vehicle accident, initial encounter. Strain of neck muscle, initial encounter."

An MRI of the claimant's lumbar spine was taken on April 7, 2022 with the following impression:

No evidence of acute lumbar spine injury. Lower lumbar degenerative findings are present, superimposed on mild diffuse narrowing of the bony spinal canal secondary to short pedicles, as detailed above.

The claimant followed up with Dr. Robert R. Ritchie on April 12, 2022:

Mr. ZINTEL presents with low back pain, unspecified. He characterizes it as intermittent, moderate in intensity, and aching. The event which precipitated this pain was a motor-

vehicle accident (he was the driver). He notes some pain relief with physical therapy....

Dr. Ritchie's assessment included "Low back pain, unspecified....He is now released for work. He will probably return to work on 4/18/2022."

Dr. Ritchie completed a Concentra form on April 19, 2022 and indicated that the claimant had reached Maximum Medical Improvement on April 12, 2022. Dr. Ritchie subsequently referred the claimant to Arkansas Spine and Pain, where the claimant was examined on June 2, 2022. Dr. Krishnappa Prasad's assessment included "Lumbar spondylosis" and "Lumbar radiculitis." Dr. Prasad treated the claimant conservatively and assigned work restrictions.

The claimant's testimony indicated that the respondents terminated his employment effective June 24, 2022.

The claimant began treating with Alexandria Peterson, PA-C on August 9, 2023:

45-year-old male here for evaluation of his low back pain that has been ongoing since an MVC in 2022. He endorses mainly achy low back pain and posterior buttock/upper thigh tightness as well as bilateral S1 paresthesias worse on the right. In the right leg it goes all the way to the bottom of his foot. He has undergone several months of nonoperative treatment including 36 therapy sessions with some improvement in symptoms, 1 injection with Arkansas spine and pain which worsened his symptoms, and medication management. All these interventions have minimally helped and he is still in significant pain. He has not worked since this incident. No issues prior to MVC.

He does appear to have isthmic anterolisthesis at L5 on S1, transitional anatomy. He has not had a recent MRI. I will have him get a new MRI to further evaluate the nature and severity of his symptoms today. He is currently on gabapentin 300 mg and diclofenac with some improvement in his symptoms. He does have hydrocodone but reports that his insurance does not cover this and he is not taking them. I will send him in a prescription for tizanidine 2 mg that he can use at night for his paresthesias in the meantime. I will have him follow-up with Dr. O. after advanced imaging to discuss results and further treatment options at this time. Occupation: Road worker, lays concrete, has not been working since incident.

Ms. Peterson planned “1. Lumbar MRI to further evaluate the nature of severity of his symptoms today. 2. Prescription sent today for tizanidine 2 mg at night for his muscle spasms.”

An MRI of the claimant’s lumbar spine was taken on August 18, 2023 with the impression, “Bilateral pars defects L5-S1 with grade 1 anterolisthesis. Neural foraminal stenosis worse on the right at L5-S1.”

Dr. Ikemefuna Uzo Onyekwelu reported on August 23, 2023:

45-year-old male who was involved in a motor vehicle accident and sustained severe back pain. Prior to that he has described no history of back pain and has never sought medical attention for his lower back. He works in construction and has had difficulty return to work because of this. At this time he is here today for surgical considerations given failure to improve thus far with clinician directed conservative treatment....

Neuro Exam: Grossly intact strength with intact sensation extremities. Except for EHL weakness, right side. All other myotomies are 5/5 from L2-S1. With intact station to touch L2-S1 except for right L5 paresthesia.

RADIOGRAPHIC INTERPRETATION:

8/18/2023 shows an isthmic spondylolisthesis with bilateral L5 pars defect causing spondylolisthesis at L5-S1 and severe right-sided L5-S1 foraminal stenosis with impingement of the exiting L5 nerve root.

**RADIOGRAPHIC INTERPRETATION:**

4 view radiographs lumbar spine obtained and reviewed today on 8/9/2023 shows no obvious evidence of acute osseous injury such as a fracture or dislocation. Mild anterior listhesis of L5-S1. Satisfactory alignment in sagittal and coronal planes. Transitional lumbar anatomy. Mild hip OA. Lumbar spondylosis.

Dr. Onyekwelu diagnosed "Lumbar radiculopathy, bilateral S1, R > L.

Isthmic lumbar spondylolisthesis, L5-S1. Low back pain. Lumbar spondylosis. Transitional lumbar anatomy. BMI 30+." Dr. Onyekwelu planned, "45-year-old male with isthmic spondylolisthesis, unstable spondylolisthesis with flexion-extension radiographs. He does have a bilateral L5 pars defect with severe foraminal stenosis at L5-S1 right-sided L5 radicular pain is quite severe. He has tried and failed to improve with clincher directed conservative treatment and wants to proceed with surgical intervention. This would include L5-S1 Gill laminectomy and right-sided L5-S1 TLIF."

Dr. Onyekwelu reported on September 26, 2023:

Larry M. Zintel is a 45 y.o. male with severe low back and bilateral lower extremity pain right side worse than left. Patient was involved in a motor vehicle accident approximately 2 years ago and prior to this denies any history of back pain or seeking medical attention for low back pain. He has worked in construction for most of his life however after the motor vehicle accident according to the patient he has not been unable to do his job in that same capacity. He

has had difficulty with low back pain including pain radiating to his lower extremities. Imaging studies revealed evidence of a pars defect at L5 with severe L5-S1-foraminal stenosis. This is very likely an exacerbation of her pre-existing condition. Given the patient's symptomatology with the absence of any symptoms before his accident and the presence of new symptoms after the accident it is probable, 51% likelihood that his symptoms may be related to the incident preceding his new onset low back pain and lower extremity symptoms. After 2 years she had tried and failed to improve with clinician directed conservative treatment and has now elected to proceed with surgical intervention....

Dr. Onyekwelu performed a surgical procedure on September 26, 2023 which included "L5-S1 Gill laminectomy and R TLIF." The pre- and post-operative diagnosis was "Spondylolisthesis, unspecified spinal region. Lumbar stenosis L5-S1. Isthmic spondylolisthesis L5-S1 with severe bilateral L5-S1 foraminal stenosis. Right-sided L5 radiculopathy secondary to right-sided L5-S1 foraminal stenosis."

A pre-hearing order was filed on October 31, 2023. The claimant contended, "(a) That he sustained a compensable injury to his back on 01/18/22; (b) He is entitled to medical treatment relative to his work injuries. (c) That he is entitled to TTD from DOI until a yet-to-be-determined date in the future; (d) That this claim is controverted and that the undersigned is entitled to maximum statutory attorney fees. **All other issues are reserved.**"

The parties stipulated that the respondents "have controverted this claim in its entirety." The respondents contended, "Respondents contend

that Claimant was not performing employment related services at the time of his injury. In light of this, it is Respondents' position that they are not liable for benefits associated with his injury. Alternatively, Respondents assert that the claimant did not suffer a compensable injury on or about 1/18/22, there are no objective findings of an injury and the medical documentation does not support entitlement to benefits in the event compensability is found. Respondents also contend that the claimant was released as having reached maximum medical improvement on 4/12/22 and that in the event compensability is found, he would not be entitled to temporary disability benefits beyond his MMI date."

The parties agreed to litigate the following issues:

1. Whether the Claimant sustained a compensable injury to his back injury (sic) on January 18, 2022.
2. If the Claimant's alleged back injury is deemed compensable, the extent to which he is entitled to medical benefits and temporary total disability benefits beginning on January 19, 2022 and continuing until a date yet to be determined.
3. Whether the Claimant's attorney is entitled to a controverted fee.

Dr. Ryan T. Fitzgerald corresponded with counsel for the respondents on November 28, 2023 and stated in part:

Mr. Zintel was involved in a motor vehicle accident on 1/18/22, hereafter referred to as the subject event for the purposes of this report.

On my personal review, MR imaging of the lumbar spine on 4/7/2022 revealed no evidence of an acute traumatic injury. Grade 1 anterolisthesis at L5-S1 was related to chronic



bilateral L5 spondylolysis. Findings consistent with chronic degenerative disease included mild disc space narrowing and disc desiccation at L5-S1, variable endplate osteophytes (alternatively known as bone spurs) from L1 through S1, and facet arthrosis at and below L3/4. A chronic-appearing annular fissure at L5-S1 was not accompanied by any active marrow edema or adjacent soft tissue inflammation. Minimal disc bulges at T10/11, L1/2, L5/S1 did not compromise the spinal canal or result in any nerve root impingement. Facet arthrosis contributed to mild narrowing of the right neural foramen at L4/5 and mild-moderate narrowing of the right neural foramen at L5/S1.

MR imaging of the lumbar spine obtained on 8/18/2023 was similarly negative for any findings to indicate an acute traumatic injury. Chronic degenerative disease was again evident in the form of endplate osteophytes, facet arthrosis, and disc desiccation. Grade I anterolisthesis at L5/S1 related to chronic bilateral L5 spondylolysis had not progressed.

Mild-moderate narrowing of the right neural foramen secondary to degenerative disc space narrowing and facet arthrosis was unchanged. No lumbosacral nerve root impingement was demonstrated.

In summary, MRI exams obtained in April 2022 and August 2023 showed, on my personal review, no evidence of an acute traumatic injury. Instead, both exams revealed multiple potential degenerative pain generators independent of the subject event.

After a hearing, an administrative law judge filed an opinion on March 5, 2024. The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury. The administrative law judge awarded medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Supp. 2024) provides in pertinent part:

- (A) “Compensable injury” means:
- (i) An accidental injury causing internal or external 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. An injury is “accidental” only if it is caused by a specific incident or is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Supp. 2024). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Supp. 2024). The requirement that a compensable injury must be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Supp. 2024). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “3. The claimant has met his burden of proof in demonstrating he sustained a compensable lower back injury/lumbar spine specific injury – the bilateral pars defect and/or the aggravation or acceleration of the preexisting

degenerative condition(s) of his lumbar spine – as a result of the January 18, 2022, MVA. Based on the applicable law and the facts of this claim, these conditions constitute ‘objective findings’ sufficient to support a claim for benefits herein.” The Full Commission does not affirm this finding.

The claimant became employed with the respondents, Pulaski County Road & Bridge, in 2013. The claimant testified that he was driving to his workplace on the morning of January 18, 2022. The claimant testified that a supervisor contacted him on the way and instructed him to pick up a co-worker, David Jones, to transport Mr. Jones to the place of employment. David Jones testified that he had contacted the claimant on January 17, 2022 and had asked the claimant to take him to work.

In any event, the claimant testified that he was involved in a vehicular collision on January 18, 2022 while driving to pick up David Jones. An ARKANSAS MOTOR VEHICLE CRASH REPORT dated January 18, 2022 indeed indicated that the claimant had been involved in a motor vehicle accident. We note that the ARKANSAS MOTOR VEHICLE CRASH REPORT indicated, “MR. ZINTEL ADVISED NO INJURIES[.]” According to the record, the claimant received emergency medical treatment on January 18, 2022. At that time, a physician diagnosed “Strain of neck muscle, initial encounter.” The medical evidence did not

demonstrate that the claimant had injured his lower back or lumbar spine as a result of the January 18, 2022 motor vehicle accident.

An MRI of the claimant's lumbar spine was taken nearly three months later, on April 7, 2022. The lumbar MRI showed degenerative findings with "*No evidence of acute lumbar spine injury* [emphasis supplied]." Dr. Ritchie released the claimant to return to work on or about April 18, 2022. Dr. Ritchie also opined that the claimant had reached maximum medical improvement on April 12, 2022. The respondents terminated the claimant's employment effective June 24, 2022.

As we have noted, the claimant began treating with Alexandria Peterson, PA-C on August 9, 2023. Ms. Peterson noted in part, "I will send him in a prescription for tizanidine 2 mg that he can use at night for his paresthesias[.]" There is no indication that "paresthesias" can be interpreted as an objective medical finding establishing a compensable injury. The physician's assistant planned a lumbar MRI and "2. Prescription sent today for tizanidine 2 mg at night for his muscle spasms." The Full Commission recognizes that a report of muscle spasms can constitute objective medical findings. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). In the present matter, however, there is no probative medical evidence of record demonstrating that the claimant suffers from lumbar muscle spasms as a result of the January 18, 2022

motor vehicle accident. We therefore find that Ms. Peterson's prescription of Tizanidine is not objective medical evidence establishing a compensable injury to the claimant's low back or lumbar spine. *See Howell v.*

*Arkadelphia Human Dev. Ctr.*, 2023 Ark. App. 441, 675 S.W.3d 925.

An MRI of the claimant's lumbar spine was taken on August 18, 2023 with the impression, "Bilateral pars defects L5-S1 with grade 1 anterolisthesis." The record does not show that "Bilaterals pars defects L5-S1" can be interpreted as medical evidence establishing a compensable injury to the claimant's low back or lumbar spine. Dr. Onyekwelu reported in part on September 26, 2023, "Given the patient's symptomatology with the absence of any symptoms before his accident and the presence of new symptoms after the accident it is probable, 51% likelihood that his symptoms *may be related* to the incident preceding his new onset low back pain and lower extremity symptoms [emphasis supplied]." Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Supp. 2024). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to meet the claimant's burden to prove causation in accordance with Ark. Code Ann. §11-9-102(16)(B). *See Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). In the present matter, the Full Commission finds that Dr. Onyekwelu's use of the term "may" does not

meet the definiteness required to prove causation within a reasonable degree of medical certainty. Accordingly, the Full Commission attaches minimal evidentiary weight to Dr. Onyekwelu's opinion. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Finally, Dr. Onyekwelu performed a lumbar laminectomy and fusion on September 26, 2023. The pre- and post-operative diagnoses were "Spondylolisthesis, unspecified spinal region. Lumbar stenosis L5-S1. Isthmic spondylolisthesis L5-S1 with severe bilateral foraminal stenosis. Right-sided L5 radiculopathy secondary to right-sided L5-S1 foraminal stenosis." The Full Commission finds that these diagnoses cannot be construed as objective medical evidence establishing a compensable injury to the claimant's lumbar spine.

Therefore, after reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Supp. 2024). The claimant did not prove he sustained an accidental injury causing internal or external physical harm to his low back or lumbar spine. The claimant did not prove that he sustained an injury to his low back or lumbar spine which arose out of and in the course of

employment, required medical services, or resulted in disability. The claimant did not establish a compensable injury by medical evidence supported by objective findings. Because the Full Commission has found that the claimant did not prove he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Supp. 2024), we need not adjudicate whether the claimant proved he was performing employment services in accordance with Ark. Code Ann. §11-9-102(4)(B)(iii)(Supp. 2024). The Full Commission reverses the administrative law judge's finding that the claimant proved he sustained a compensable injury, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that the Claimant proved he sustained a compensable lower back injury/lumbar spine specific injury as a result of his January 18, 2022, motor vehicle accident and was entitled to reasonable and necessary medical

care for his compensable injury. After conducting a thorough review of the record, I concur with the ALJ and dissent with the majority.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark.



App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a).

Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

On January 18, 2022, the Claimant was requested by a Respondent manager or supervisor to pick up a co-worker. On the way he was in a motor vehicle accident in which the Claimant was hit head-on by another vehicle and the airbags deployed. Claimant rejected medical care on the scene of the accident, but ultimately went to the emergency department of his local hospital because of injuries he received in the motor vehicle accident. Claimant was initially diagnosed with a strain of the neck muscle. On June 2, 2022, Claimant was seen by Dr. Krishnappa Prasad who

diagnosed the Claimant with lumbar spondylosis, and lumbar radiculitis, and facet arthritis of the lumbar spine. Dr. Prasad also gave the Claimant the work restrictions of “no heavy lifting more than 10 pounds / No prolonged standing or sitting for more than 15-20 minutes. No extreme bending or twisting.” On August 9, 2023, Claimant was seen by Physician’s Assistant Alexandria Peterson who obtained the radiographic images from the hospital and other imaging taken in the course and scope of Claimant’s treatment. Peterson found that Claimant had mild anteriorlisthesis of L5-S1 and diagnosed the Claimant with lumbar radiculopathy, bilateral S1, Isthmic lumbar spondylolisthesis of L5-S1, and lumbar spondylosis and referred the Claimant for a lumbar MRI based on those diagnoses. Peterson also diagnosed Claimant as having paresthesia and prescribed him tizanidine for muscle spasms. Claimant underwent the lumbar MRI on April 18, 2023, which showed “Bilateral pars defects L5-S1 with grade 1 anterolisthesis. Neural foraminal stenosis worse on the right at L5-S1.” On August 23, 2023, Claimant was seen by Dr. Onyekwelu to discuss the results of the Claimant’s lumbar MRI. Dr. Onyekwelu recommended surgical intervention in the form of L5-S1 Gill laminectomy and a right-sided L5-S1 TLIF because the Claimant had failed to improve with conservative treatment. On September 26, 2023, Claimant underwent surgery performed by Dr. Onyekwelu who opined:

Patient was involved in a MVA approximately 2 years ago and prior to this denies any history of back pain or seeking medical attention for low back pain. He has worked in construction for most of his life however after the MVA according to the patient he has not been unable to do his job in that same capacity. He has had difficulty with low back pain including pain radiating to his lower extremities. Imaging studies revealed evidence of a pars defect at L5 with severe L5-S1 foraminal stenosis. This is very likely an exacerbation of his pre-existing condition. Given the patient's symptomatology with the absence of any symptoms before his accident and the presence of new symptoms after the accident it is probable, 51% likelihood that his symptoms may be related to the incident preceding his new onset low back pain and lower extremity symptoms.

A doctor is not required to be absolute in an opinion nor are the magic words "within a reasonable degree of medical certainty" even required to be used by the doctor for an injury to be related to the work accident. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296 (2001). Rather, the medical opinion must simply be more than speculation. *Id.* If a doctor renders an opinion about causation of a workers' compensation injury with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this should pass muster. *Id.*

In the present case, Claimant has an objective injury to his lumbar spine and Dr. Onyekwelu states that this injury is "very likely" an exacerbation of a pre-existing condition in Claimant's lower back. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *See, Nashville*

*Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990);  
*Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462  
(Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917  
S.W.2d 550 (1996). An increase in symptoms of a pre-existing  
degenerative condition is sufficient to establish a compensable injury.  
*Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449  
(2004).

There is no credible evidence in the record to suggest that Claimant had experienced significant symptomology in his lower back prior to the motor vehicle accident on January 18, 2022.

Therefore, I would find that Claimant suffered a compensable lower back injury as a result of his January 18, 2022 work accident and is entitled to reasonable and necessary medical treatment of such injury including the surgery performed by Dr. Onyekwelu.

For the reasons stated above, I respectfully dissent.

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M. SCOTT WILLHITE, Commissioner