

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301483**

ELIAS CHAVEZ, EMPLOYEE

CLAIMANT

**THOMPSON CONSTRUCTION GROUP, INC.,
EMPLOYER**

RESPONDENT

**ZURICH AMERICAN INSURANCE CO.,
CARRIER**

RESPONDENT

AMENDED OPINION FILED DECEMBER 13, 2023

Hearing before Administrative Law Judge Steven Porch on October 6, 2023, in Marion, Arkansas.

Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on October 6, 2023. Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas; Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier relationship existed among the parties on September 9, 2022, when Claimant allegedly sustained a compensable injury to his left hip.
3. Respondents initially accepted this claim as medical-only and paid some benefits¹.

¹ Respondents denied compensability of the hip by letter dated September 29, 2023. This is in evidence as Respondents' Exhibit 3.

4. The parties will stipulate to Claimant's average weekly wage and compensation rates on or before the hearing date.²

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury to his left hip.
2. Whether Claimant is entitled to any additional reasonable and necessary medical treatment rendered after January of 2023.
3. Whether Claimant is entitled to additional temporary total disability benefits from September 10, 2022, to a date yet to be determined.
4. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: On September 9, 2022, Claimant, in the course and scope of employment with the respondent-employer, was carrying a rail when he fell from an elevated section of the construction site, sustaining a left hip injury.

The Respondent took two months of the Claimant complaining about pain to send him to a doctor, but initially accepted the injury as compensable. Claimant initially was provided treatment from Dr. Sherita Willis, where his complaints were of left hip and low back pain. Claimant was allowed to return to Dr. Willis in January of 2023, where she cited that the Claimant's complaints of pain were chronic in nature. Respondents then

² The Claimant and the Respondent did not stipulate to the average weekly wage and compensation rates at the full hearing. Both parties verbally assured the Commission that they can stipulate to the compensation rates should an award for indemnity benefits be granted.

denied his claim.

Claimant was then forced to treat on his own and went to Dr. Rickey Carson, where he complained of low back and left hip pain and was referred to Dr. John Rocco Rodney. Claimant underwent an MRI which revealed tears of his bilateral hamstring tendons, the left gluteus minimus and medius tendons, and at the right insertion of the gluteus medius tendons.

Claimant contends that he suffered a compensable injury at work, that he is entitled to temporary total disability and medical benefits, and that his attorney is entitled to an attorney's fee. All other issues are reserved.

Respondent's Contentions: Respondents contend that they had accepted this claim as medical-only. The claimant continued to work for Respondent/Employer through March 19, 2023, when he was terminated, as is evidenced by the attached wage information. The medical documentation does not support an off-work status beyond that. In light of this, it is Respondents' position Claimant is not entitled to temporary total disability benefits. Additionally, the medical records indicate the claimant does not have any acute objective findings to support an injury on September 9, 2022. The claimant has received unauthorized medical treatment with Drs. Rodney and Carson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, post hearing briefs from the parties, and other matters properly before the Commission, 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by the preponderance of the evidence that he sustained a compensable injury to his left hip on September 9, 2022.
4. Claimant has proven by the preponderance of the evidence that he is entitled to reasonable and necessary medical treatment in connection with his compensable left hip injury, however he did not prove that the alleged physical therapy he underwent in Maryland was reasonable and necessary. Thus, all medical treatment under Claimant's Exhibit 1, with the exception of the alleged physical therapy and any treatment for the June 2, 2023, motor vehicle incident is reasonable and necessary.
5. Claimant has not proven by the preponderance of the evidence that he is entitled to temporary total disability benefits for any period of time.
6. Because the issue regarding whether Claimant is entitled to an impairment rating and permanent partial disability benefits is not yet ripe, it will be considered reserved.
7. Claimant has not proven by the preponderance of the evidence that his attorney is entitled to a controverted attorney's fee.

CASE IN CHIEF

Summary of Evidence

The sole witness at the hearing was the Claimant, Elias Chavez. The witness had the benefit of an interpreter to translate the proceedings from English to Spanish. In addition to admitting the pre-hearing order and Claimant's and Respondents' post-hearing briefs that were blue-backed, I also have admitted the following into evidence in this case: Claimant's Exhibit 1, a comprehensive exhibit containing 67 pages of medical records, Respondents' Exhibit 1, a 51-page compilation of medical records; Respondents' Exhibit 2, a 16 page non-medical document; and Respondents' Exhibit 3, a 1 page letter dated September 29, 2023.

Background

Claimant was a rod buster for Respondent/Employer. A rod buster is one who constructs concrete foundations at construction sites. Claimant slipped on some mud on the ground and fell while carrying rebar, injuring the left side of his hip on September 9, 2022. This occurred during the course and scope of his employment. Claimant reported this incident the same day and was sent home. He did not receive medical treatment for his injury until November 22, 2022, 74 days after the incident. Dr. Sherita Willis noted that Claimant had left hip tenderness and limited range of motion and prescribed him Tylenol and Ibuprofen for his injury. He was later ordered an MRI by Dr. John Rocco Rodney. Claimant received an MRI on March 27, 2023, in Baltimore, Maryland. The physicians at Community Radiology Associates found a "...2.) Low-grade partial- thickness tears at the origins of bilateral hamstring tendons, 3.) Low- grade partial- thickness tears at the insertions of the left gluteus minimus and medius tendons, 4.) Low-grade partial-thickness tears at insertion of the right gluteus medius tendon." *CL Exhibit 1 pages 19-21.*

Respondents initially accepted this claim as a medical-only one and paid some benefits. Claimant, while receiving these benefits, continued to work for Respondent/Employer until March 21, 2023. He performed light duty work such as working with equipment that bends rods, cut rods, or manually wrap bands around rods. When these jobs became difficult, he was allowed to pick up scrap. He continued to get paid his regular wage. Claimant quit his job on March 21, 2023, because he had unbearable pain. He moved to Silver Springs, Maryland, and was not getting any rehabilitation treatment for his work-related hip injury. The reason for his not getting

continued rehab treatment for his hip was a lack of insurance. Claimant was questioned as to why he did not request workers' compensation to pay for his rehabilitation. Claimant stated he signed some papers and returned them to Respondent or the Commission. Since then, he has not heard anything from Respondent or the Commission about continued treatment on his hip. Moreover, the Claimant could not state what papers he signed nor when they were sent.

On June 2, 2023, Claimant, while walking, was struck on the left side of his hip by an automobile and went to the hospital. Claimant suffered a left leg femur fracture and later needed rehab for his left hip resulting from the vehicle incident. Claimant further testified that he received Maryland state health insurance six weeks before the vehicle incident. No proof was provided proving that Claimant acquired insurance in Maryland. When testifying about his rehabilitation, Claimant stated he was getting treatment down the outer side of his left leg for the work-related injury. On the other hand, Claimant stated he was getting rehab treatment down the front of his left leg due to the motor vehicle incident. He added that he was getting rehab treatment for his hip a month and a half before the motor vehicle injury. Claimant testified he was getting rehabilitation treatment for the left hip due to both the work injury and the motor vehicle injury. However, the focus of treatment for each incident were allegedly in different areas of the left hip.

Adjudication

A. Whether Claimant sustained a compensable left hip injury.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injuries, defines "compensable injury":

- (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 and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or

any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Claimant has satisfied his burden with objective findings as to his work-related left hip injury on September 9, 2022. The Claimant sustained internal harm to his body. Claimant had an MRI of his left hip in Baltimore, Maryland. The physicians at Community Radiology Associates found a "...2.) Low-grade partial- thickness tears at the origins of bilateral hamstring tendons, 3.) Low- grade partial- thickness tears at the insertions of the left gluteus minimus and medius tendons, 4.) Low-grade partial- thickness tears at insertion of the right gluteus medius tendon." *CL Exhibit 1 pages 19-21.* I credit the MRI report for Claimant's March 27, 2023, exam date created by the Community Radiology Associates. This injury occurred by a specific incident during the scope and course of Claimant's employment when he slipped on some mud on the ground while carrying rebar for the Respondent/Employer. He also needed medical treatment and received an MRI. Thus, I find by the preponderance of the evidence that the Claimant sustained a compensable left hip injury during the course and scope of his employment on September 9, 2022.

B. Whether Claimant is entitled to any additional reasonable and necessary medical treatment rendered after January of 2023.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the Claimant's

injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The Claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing 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); *Artex, supra*.

Claimant is entitled to reasonable and necessary medical treatment for his compensable left hip injury. I find by the preponderance of the evidence that all the medical treatment paid for by the Respondents for the treatment of Claimant's work-related left hip injury was reasonable and necessary, including the x-rays and an MRI. Claimant testified that he received physical rehabilitation services for his work-related left hip injury in Maryland approximately six weeks before his June 2, 2023, motor vehicle incident. I don't credit this testimony. I don't have any physical therapy records verifying

the purpose of this treatment or that the treatment had actually taken place. There is no reason, and no reason was given why the physical therapy records were not provided to the Respondents and the Commission given this full hearing had taken place months after the alleged treatment. Therefore, I cannot find by the preponderance of the evidence that this particular treatment was reasonable and necessary.

Claimant has mentioned no other treatment for his left hip work-related injury. As for any treatment in evidence that arose out of the June 2, 2023, motor vehicle accident, the preponderance of the evidence establishes that it was not causally related to his compensable injury, and thus is not the responsibility of Respondents.

C. Whether Claimant is entitled to temporary total benefits from September 10, 2022, to a date yet to be determined.

Temporary total disability for unscheduled injuries is that period within the healing period in which the Claimant suffers total incapacity to earn wages. *Ark. State Highway and Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Claimant continued to work for the Respondent/Employer until March 21, 2023. His attorney stated in his post-hearing brief that Claimant quit his job due to unbearable pain. Claimant was on light duty when he quit working for Respondent/Employer and moved to his home state of Maryland. He quit his job voluntarily and without a doctor's orders. I don't credit Claimant's reason for quitting his job as being due to unbearable pain. This was never brought out in his sworn testimony. Though I find he did voluntarily quit his job, I find that he did so to move to his home state of Maryland. Claimant has the responsibility of proving that he suffered a total

incapacity to earn wages. No credible evidence was presented showing that the Claimant had indeed suffered a total incapacity to earn wages due to his work-related injury. Thus, I find that he did not prove by the preponderance of the evidence that he is entitled to temporary total disability benefits for any period of time.

D. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits.

Permanent impairment, generally a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Pursuant to Ark. Code Ann. § 11-9-522(g) (Repl. 2012), the Commission adopted the Fourth Edition of the AMA Guides as an impairment rating guide. See AWCC R. 099.34. A determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012). Permanent benefits are to be awarded only following a determination that the compensable injury is the major cause of the disability or impairment. *Id.* § 11-9-102(F)(ii). “Major cause” is defined as “more than fifty percent (50%) of the cause,” and a finding of major cause must be established by a preponderance of the evidence. *Id.* § 11-9-102(14). Any medical opinion must be stated within a reasonable degree of medical certainty. *Id.* § 11-9-102(16).

The credible evidence does not establish that Claimant has yet reached the end of his healing period regarding his compensable left hip injury. For that reason, the issue is not yet ripe. Instead, it will be considered reserved.

E. Whether Claimant is entitled to a controverted attorney’s fee.

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193,

745 S.W.2d 647 (1998). Under Ark. Code Ann. § 11-9-715 (Repl. 2012):

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half ($\frac{1}{2}$) by the employer or carrier in addition to compensation awarded; and one-half ($\frac{1}{2}$) by the injured employee or dependents of a deceased employee out of compensation payable to them.

Discussion. Based on my previous findings in this opinion, the evidence preponderates that Claimant's counsel is not entitled to an attorney's fee as set out above.

CONCLUSION AND AWARD

Respondents are hereby directed to pay/furnish benefits in accordance with the Findings of Fact and Conclusions of Law set forth above.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge