

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H108010

SARA L. DALRYMPLE, EMPLOYEE

CLAIMANT

AR PUBLIC DEFENDER COMMISSION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 8, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Ms. Sarah Dalrymple, was represented by Mr. Charles Hancock, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Robert Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on March 10, 2022, in Pine Bluff, Arkansas. A Prehearing Order was previously entered in this case on January 7, 2022. The Prehearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

Stipulations:

During the pre-hearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

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

2. An employer-employee relationship existed on October 24, 2019, at which time Claimant alleges a compensable work-related injury to her low back and bilateral knees.¹
3. Respondents accepted the Claimant's bilateral knee injury as medical only and benefits were paid.²
4. The issue of Claimant's average weekly wage and compensation rates were held in abeyance.³
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues:

The parties agreed to litigate the following issues, which were also modified at the hearing:

1. Compensability of the low back injury.⁴
2. Claimant's entitlement to medical treatment to her low back and right knee and continued treatment for the left knee.
3. The issues of temporary total disability benefits and attorney's fees are reserved.⁵

Contentions:

The following contentions were submitted by the parties:

Claimant contends that the injury she suffered to her back on October 24, 2019, as a result of tripping over the trailer hitch of a county vehicle should be covered under her Workers' Compensation claim. Claimant should also receive additional treatment for the injuries to her knee because the pain has not subsided.

¹ At the hearing, the parties agreed to modify the second stipulation to include bilateral knees, rather than just the right knee.

² At the hearing, the parties also agreed to modify the third stipulation to include bilateral knees.

³ At the hearing, the parties agreed to hold these issues in abeyance.

⁴ At the hearing, the parties agreed to litigate only the issue of compensability of the low back.

⁵ At the hearing, the parties agreed to reserve these issues.

Respondents contend that the Claimant reported an injury on October 24, 2019. She reported falling as a result of tripping over a trailer hitch on a county vehicle that had been backed into a parking space. As a result of the fall, the Claimant reported complaints to various body parts. Appropriate medical treatment was provided to the Claimant for her reported injuries. The claim was accepted as a medical-only claim as the Claimant continued working for the Respondent-Employer.

The Respondents have denied compensability of the Claimant's alleged back injury claim. The Respondents contend that the Claimant did not sustain a compensable injury to her back while employed by the Respondent-Employer on or about October 24, 2019. There are no objective findings of a back injury related to the October 24, 2019, incident. If it is determined that the Claimant sustained a compensable injury to her back as a result of an incident on or about October 24, 2019, the Respondents contend that the Claimant merely sustained a temporary aggravation of her pre-existing condition for which she previously returned to her baseline condition.

The Claimant has received appropriate medical treatment for her knee complaints. The Claimant has been found to be at MMI relative to her knees and no surgery has been proposed or suggested and no permanent impairment rating has been assigned relative to her knee complaints.

The Respondents reserve the right to raise additional issues, or to modify the contentions stated herein, pending the completion of discovery.

Summary of Evidence:

The record consists of the hearing transcript of March 10, 2022, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Prehearing Order entered on January 7, 2022; Claimant's Exhibit #1

consisted of ninety-one (91) pages medical records; Respondents' Exhibit #1 was eleven (11) pages in length and consisted of medical records; Respondents' Exhibit #2 was not admitted into evidence, but Respondents were allowed to proffer the exhibit.⁶

Witnesses:

During the hearing, Ms. Dalrymple (Claimant, used interchangeably herein) and CyMBER Tadlock, a Deputy Prosecutor at the Jefferson County Prosecuting Attorney's Office, were the only witnesses to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their 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 of the within claim.
2. I accept the above stipulations as fact.
3. Claimant failed to prove by a preponderance of the credible evidence that she sustained a compensable injury to her low back on October 24, 2019, when she fell over a trailer hitch while working for Respondent-Employer.
4. Claimant has proven her entitlement to the authorized medical treatment of record, including the conservative treatment of record by Dr. Smith, for her compensable bilateral knee injuries as a result of her fall on October 24, 2019, while working for Respondent-Employer.
5. All other issues have been reserved by the parties and are not addressed in this Opinion.

⁶Claimant objected to the admission of Respondents' Exhibit # 2, as it was submitted at the hearing and not within the Commission's seven (7)-day window. The objection was sustained. Respondents' Exhibit # 2 was proffered but not considered in this Opinion.

CASE IN CHIEF

Claimant's Testimony:

Claimant testified that she was sixty-three (63) years old at the time of the hearing. Claimant testified that she is an attorney and works as an Assistant Public Defender for the Public Defender Commission. She has worked there for six (6) years and was assigned to Jefferson and Lincoln County. As for her job duties, she handles criminal matters from the beginning to end; she also handles mental competency hearings; and she handles drug court cases.

Claimant testified about the events of October 24, 2019, stating that:

On that day, we were having a hearing in Judge Wood's courtroom. It might have been omnibus pretrial. It was some type of hearing with a lot of people there and he had a break and I think what I've been told, it was ten o'clock. I didn't remember, but I was told at the deposition, it was at 10:00 a.m. We had a break, so I went downstairs to get my paperwork. Now, you probably are familiar with the courthouse that you go out the back way facing the lake, the Pine Bluff lake. And so my car was parked right in front of the back of the courthouse. So you go down the steps, and then, there's my car. Right next to it was one of the maintenance, county maintenance trucks and the maintenance truck had backed into the sidewalk and right in front of the sidewalk and the trailer hitch covered the whole sidewalk or pretty much all of it. And so I went to get my paperwork and as I'm walking, I did not see the trailer hitch and I flipped right over it and as I flipped over, obviously, a female wants to protect her face, I flipped over it and I put my hands out in front of me. Part of me landed on the asphalt; so I pretty in-between both the sidewalk and the asphalt. So my face was more on the asphalt and my face hit. I had my hands they hit, my elbows hit, my knees hit, but it was more - - every part of my body, basically, hit except - and with my face, it was really the side, I think it was more here, (indicating right side of face), meaning the right side of my forehead.

(Tr. 11-12). Claimant noted that it was her left knee that hit the trailer hitch. Claimant stated that initially, she experienced pain and some bruising, but that she continued with court that day. Several days passed, and on October 29, 2019, Claimant went to the emergency room due to pain as a result of the October 24, 2019, fall. When she arrived at Jefferson Regional Medical Center,

she complained of knee and back pain. Claimant testified that the hospital staff took x-rays of her knees and her back, and she was diagnosed with back strain.⁷ She was not prescribed any medication for her injuries because she “already had the medication for pain; so [she] took that.”

(Tr. 14). When asked to explain why she was already taking pain medication, Claimant stated:

When I first started taking the medicine - - I have an old-time doctor. He’s a family doctor. I moved down here – I’m from Pine Bluff. My family’s lived here forever, but I was moving from New York down here to go to law school and so right after law school, I went to see the family doctor - - very close to our family. And in the meantime - - and New York’s very expensive for teeth. I had my whole mouth redone, because I had probably eight - - over a number of about four or five years, eight of my teeth removed. I had gum surgery. They had to do all these human grow, pig growth to make the implant work and I lost approximately twenty pounds during all that. I was on Hydrocodone at that time and so that was one reason I was on it, because we were going through that process and my doctor knew about it, and also Dr. Swenson is my specialist. One reason I took this medicine, it was great pain to have your teeth removed and all the gum surgeries. The other was because he does not take gas, because he’s allergic to it and to have extensive - - going there at least twice a month, it hurts a lot. So I can take pain. Another reason, which is personal, and you’ve seen in the medical records of some form is that I have endo - - I can never pronounce it, endometriosis and so Dr. Dedman knew since I was thirteen, seven days of the month, I’m in such pain and so that could also be used. I guess it could be used as a jack of all trades, but he knew I was getting near menopause, because I was forty-two, but it also can be used in giving relief. I also had some pains in my back, but I could live with that, but that also helped it. I also have insomnia. My whole life, I have - - well, I didn’t even go to sleep last night, because of the nerves, but my whole life, I just toss and turn and it relaxes you. I can’t take Ambien. I don’t want Ambien. I think, in the records, it says I’m depressed, but I am not on any Zoloft or Xanax. That is what I have used and my family, meaning the personal issue, the female issue, wanted me to have a hysterectomy.

Now, the doctor’s an old-time doctor and in my generation they didn’t talk about these things that much and so that’s the reason I was taking all of that. Now - -

(Tr. 14-16). At the emergency room, Claimant was given crutches and an ice pack and told to continue her current prescription for Soma and Tramadol for knee and back pain.

⁷ Claimant was also diagnosed with right knee strain.

According to the Claimant, she filed a claim for workers' compensation benefits based on the events of October 24, 2019, and she was sent to Dr. Philip Allan Smith. She saw Dr. Smith in March of 2020 and at that visit she and Dr. Smith discussed only her left knee, as that was where her pain was located at the time. Claimant explained that she spoke with Rhonda Murphy at the Commission, and she informed Ms. Murphy that she was having pain in both her back and her knees; however, Claimant stated that when her imaging came back normal, "they decided that I didn't have a problem in both places." Claimant further testified that when she went to the emergency room, "everything was fine." When she went to Med-Express, she also told them she had a back problem, however, it was "sort of just ignored," there was no additional treatment or diagnosis for her back that day. According to the Claimant, her back pain was about at an "eight" between November of 2019 and March of 2020; however, Claimant stated that her back pain was "worse now." She stated that her whole body hurt during that time, but "what hurt the most was [her] knee and [her] back."⁸ Claimant testified that her back pain was along the "entire left side."

When asked by her attorney why she did not discuss her back problems with Dr. Smith, Claimant replied, "There's a couple of reasons. One, I'm a person that feels guilty and I felt like my back hurt some before, it'll go away and also everybody that I spoke to ignored me and I don't always speak up for myself." Furthermore, Claimant testified that the COVID-19 pandemic and the situation she was in at work during the pandemic caused her to not seek treatment for her back like she needed to do. She followed up with Dr. Dedman in 2021 with regard to her back. According to the Claimant, Dr. Dedman recommended an MRI for her back; however, she was not able to have the MRI done or get the treatment she needed on her back through her regular

⁸ When asked by the Commission to clarify which knee was hurting the most, Claimant specified that it was her left knee.

insurance due to her workers' compensation claim.

Claimant's attorney asked her about a medical record from Dr. Dedman dated November 1, 2019, Claimant testified that the purpose of the visit to Dr. Dedman that day was her "annual exam," and she relayed to Dr. Dedman that an injury she had sustained at work was causing pain in her back. When asked if the "chronic back pain" referenced by Dr. Dedman was related to an old injury or the new injury from October 24, 2019, Claimant stated that it was for the "new injury."

When Claimant's attorney asked her about the medical records indicating that she had a previous back injury, Claimant stated that she "did a reverse sit-up, when [she] was forty years old, but it was something [she] could live with and [she] wasn't on pain medication for two years or quite a while without it." Claimant stated that she was sixty-three (63) years old at the time of the hearing, so the back injury referenced in the medical records was twenty-two (22) to twenty-three (23) years prior. For that back injury, Claimant had physical therapy as needed. She stated that she was taking pain medication for her other issues, including the dental work and the endometriosis. She specifically stated that prior to the October 24, 2019, event, she was not having any back pain.

Claimant testified that she had problems seeing a doctor in 2020, but that she returned to Dr. Dedman on September 30, 2020. Claimant stated that she visited with Dr. Dedman that day about her pain in her knees and back; however, when asked why it was not included in the medical report from September 30, 2020, Claimant responded, "I would say no, but I would think that he knows that. It's ongoing, so he doesn't have to put it that date and it's not the annual physical, but he knew." Claimant further stated, "Because I would tell him every time I saw him. And he

thought that workman's comp was handling it or hoping they would.”

Claimant also testified that she returned to Dr. Dedman in December of 2020, with complaints of back pain. Medical records show a diagnosis of “left lower and upper-lumbar pain. Tramadol and Soma.” There is also a mention of a motor vehicle accident at age twenty (20) and lists hydrocodone at one time, but none since 2014. Claimant stated that she had a bicycle accident at age twenty (20), but she had not experienced a motor vehicle accident, and she did not injure her back in the bicycle accident.

According to the Claimant, she returned to Dr. Dedman in April of 2021 at which time Dr. Dedman recommended physical therapy for the left knee. Claimant stated that she was to complete fifteen (15) sessions; however, due to a family emergency in 2021 when her brother passed away from liver cancer, she had not been able to complete all of the sessions. Dr. Dedman also recommended an MRI for the back; however, she was refused the treatment through workers' compensation.

Claimant stated that she returned to Dr. Dedman again on December 16, 2021, where Dr. Dedman's records indicate “trauma at work, fall 2019. Workers' comp bilateral knees, left greater than right and left-lower posterior thoracic pain with radiculopathy along the thoracic cavity.” Claimant stated that she and Dr. Dedman discussed her left knee issues and the pain in her left lower back that day. She stated that it was her understanding that Dr. Dedman's hands were tied because she was in “limbo between comp and [her] health insurance through the state.” As a result, Claimant stated that she had still not received any treatment for her left-lower back pain, which she attributed to the injury on October 24, 2019, when she fell over the trailer hitch.

As for Claimant's low back pain, she stated that she was still having pain in her low back

on the day of the hearing and that the pain interfered with her being able to represent her clients to the best of her ability. Therefore, Claimant was requesting to receive the diagnostic testing recommended by Dr. Dedman for her lower left back pain and also any treatment required for her low back pain.

On cross-examination, Claimant stated that after she fell on October 24, 2019, two women from the prosecutor's victim witness division helped her get back on her feet. Claimant then collected her files, returned to the courtroom, and finished court for the day. She ultimately sought treatment approximately five days later on October 29, 2019. Claimant agreed that an x-ray was taken of her back on October 29, and that the x-ray yielded normal results. Furthermore, an x-ray of her right knee was negative for any bone abnormality, fracture, or malalignment. Claimant also complained of left knee pain as well.

Claimant acknowledged that her claim was accepted and that her treatment from Jefferson Regional Medical Center and Med-Express was paid by Respondents. Claimant agreed that she later saw Dr. Philip Smith an orthopedist, for her left knee and that an MRI was performed on the left knee in 2020, but Claimant could not recall the exact month. Claimant acknowledged that Dr. Smith indicated that no surgery was necessary for the left knee.

As for Claimant's right knee, she stated on cross-examination that she had x-rays of the right knee as well. She indicated at her deposition and again at the hearing that her right knee was "actually doing some better."

As for Claimant's back, she stated that her pain had increased since her deposition was taken on January 27, 2022. She stated that Dr. Dedman had prescribed hydrocodone, Soma and Tramadol prior to the fall on October 24, 2019, but that she took those medications for several

health reasons. She stated that she stopped hydrocodone in 2014 because she was approaching menopause and had taken hydrocodone previously for endometriosis. Dr. Dedman, who had been her doctor for twenty (20) years, then prescribed Tramadol, rather than hydrocodone, for her other health issues, including dental work, insomnia, and back pain.

When asked about Dr. Dedman's report from November 1, 2019, where Dr. Dedman noted, "When I first saw her in 2004, she was taking hydrocodone and Soma for her chronic back problems and chronic abdominal problems that were started prior to my intervention," Claimant stated that the abdominal issue he referenced was the endometriosis and that the hydrocodone was for her dental issues. Further, when asked to agree that dental issues were not mentioned by Dr. Dedman in that sentence, Claimant agreed. However, she noted that her dental issues were noted further down in the medical record. Further, when asked if she had chronic back issues prior to October 24, 2019, Claimant said she had trouble with her back when she was forty (40) years old when she did a reverse sit up and her back would pop and hurt on occasion. She also mentioned a bike accident when she was twenty (20) years old where she damaged three teeth, for which she ultimately underwent dental repair to her entire mouth. Lastly, Claimant was asked about the following statements from Dr. Dedman's report, "About a week and a half ago, she fell at work. Finally went to the ER, they x-rayed her right knee and also her face." The second statement was, "Everything was stable, but they did tell her she probably had a contusion of her right knee and they gave her a brace." Claimant ultimately stated that in Dr. Dedman's opinion, everything was stable.

Continuing with Dr. Dedman's report from November 1, 2019, Claimant was asked about Dr. Dedman's reference to "lower thoracic and upper-lumbar pain on the left side since 2001."

When asked about her demonstrating where her back pain was located and pointing to the left side of the thoracic and lumbar area, and if the pain she was describing was more or less the same pain she had experienced since 2001, Claimant replied, “No.” Claimant further explained that previously, she “could work with it” and sometimes it would “go out” on her, but that at the time of the hearing, it was hurting her “so much” and she would wake up in pain. Claimant did not deny that she had lower thoracic and upper lumbar pain on the left side since 2001. She admitted that she was still taking Tramadol and Soma at the time of the hearing and had been taking the medications since 2004. As for any additional medications, she stated that Dr. Dedman told her to add Celebrex, but she stated that anti-inflammatory medication had too many side effects and was hard on her stomach.

Lastly, Claimant testified that she had continued working even after her October 24, 2019, fall and that no doctor had recommended that she be off work since her fall.

On redirect examination, Claimant testified that over the period of time from 2004 until October 24, 2019, she took the prescribed medication for her back on an as needed basis, but almost everyday “because of eating especially, because I would have a pain, and that might not be the best method, but Tramadol does work with that.” However, she also stated that she was not having back pain every day.

Cyber Tadlock’s Testimony:

Ms. Tadlock testified that she was a Deputy Prosecutor at the Prosecuting Attorney’s Office in Jefferson County and had been in that position since 2003. She met the Claimant while working at the prosecutor’s office in February of 2004. They worked together full time from 2004 until 2010.

Ms. Tadlock testified that she did not hear Claimant complain of back pain or back injury, and to her knowledge, Claimant did not miss work for a back injury or other type of injury. Moreover, Ms. Tadlock testified that in 2005 or 2007, she and Claimant traveled to Denver, Colorado, for a work trip. During that trip, Ms. Tadlock and Claimant had free time to explore Denver, and Ms. Tadlock stated that Claimant did not mention any problems related to her back. During the time period of 2016 through her accident in October of 2019, when Claimant and Ms. Tadlock were on opposite sides of the cases in court, Ms. Tadlock said that Claimant did not ever complain of pain or a back injury.

As for the Claimant's October 24, 2019, injury, Ms. Tadlock testified that she was in court with Claimant on October 24, 2019. She stated that the court took a recess, and Claimant went out to her car. When the Claimant returned, Ms. Tadlock noticed that the Claimant was pale and shaky. When she asked the Claimant what was wrong, Claimant stated that she had fallen and that she was hurting. Since that time, the Claimant had complained about whole body pain, specifically about her back and knees. Ms. Tadlock testified that she would see Claimant struggling to do her job, which caused claimant to feel frustrated. However, Ms. Tadlock stated that the Claimant was a hard worker and was not one to complain, but she was not able to do her work as efficiently as she could before October 24, 2019. Ms. Tadlock stated that, "If you didn't know her, you might not notice it as much." She also stated, "It's just if she says she hurts, you can see it in her face and it hurt, and she still did her job." When asked if Claimant mentioned back pain specifically, Ms. Tadlock replied, "Yes. I couldn't say how often, but there were definitely times when she would say, you know, this has just not been a good day or not been a good week. My back has been killing me and usually also her knee as well. It was usually a combination of the two." Ms.

Tadlock noted that prior to the October 24, 2019, event, the Claimant had not mentioned anything regarding her back and knee.

On cross-examination, Ms. Tadlock testified that when she and the Claimant were traveling to Denver for work between 2005 and 2007, she was not aware of any kind of prescription medication that the Claimant was taking.

Medical Exhibits:

Medical records showed that the Claimant was seen at Jefferson Regional Medical Center (JRMC) on October 29, 2019. Hospital notes indicate that Claimant was “hurting all over” after she fell over a trailer hitch at work the week before. Claimant’s assessment indicated no visual lacerations on her head, a supple neck, non-tender c-spine, sensitive left side of spine, no evidence of trauma on the extremities, but tenderness noted on all four extremities. Claimant’s physical examination showed normal gait and station, joints and limbs grossly normal, some general right knee tenderness, slight swelling, no joint pain, slight ACL laxity, and some lumbar paraspinous tenderness. An x-ray of Claimant’s lumbar spine showed no acute fracture or dislocation of the lumbar spine. Further findings included: the natural lumbar lordosis was maintained, no scoliosis, vertebral body heights were uniform, L5-S1 disc was diminutive, and small disc osteophyte and facet hypertrophy was noted at L3-4 and L4-5. An x-ray of the Claimant’s right knee was negative with findings of no fracture or malalignment and no effusion. She was discharged the same day with an immobilizer and crutches; she was instructed to continue the Soma and Tramadol she was already taking; she was instructed to add Motrin to her medication regimen; and she was told to follow up with orthopedics if her condition worsened. She was diagnosed with back strain and right knee strain. She was to be excused from work through the next day, October 30, 2019.

Medical records showed that on November 1, 2019, Claimant saw Dr. Dedman for her “annual exam.” Dr. Dedman’s notes state that when he first saw Claimant in 2004, “she was taking hydrocodone and Soma for chronic back problems and chronic ‘abdominal problems’” that started prior to her treating with him. Dr. Dedman noted that “when he finally got her off hydrocodone” she began taking Tramadol and Soma. He noted her dental problems and treatment. He noted her fall about a “week-and-a-half ago” and that her visit to the ER showed that everything was stable including her right knee and face. She was told she likely had a contusion to her right knee, and she was given a brace. Claimant reported that when she did have back pain, it was usually underneath the left scapular area and toward the midline. Examination of Claimant’s right knee revealed a “little bruise” just below the knee, but otherwise it was stable. There was no pedal edema. Claimant was diagnosed with lower thoracic and upper lumbar pain, left side, since 2001, for which she took Tramadol and Soma. Dr. Dedman also noted an “MVA at 12 yr of age” for which Claimant took hydrocodone at one time, but since 2014, she had taken Tramadol and Soma. Another diagnosis listed was the trauma/fall that occurred approximately two weeks prior and the following emergency room visit on October 30, 2019, that showed no fractures.

On November 3, 2019, Claimant visited MedExpress for her knee injury as she was instructed to follow up with MedExpress by the workers’ comp adjuster. Dr. Jerry Sadler noted that Claimant had a workplace injury to her bilateral knees, elbows, face, and low back approximately ten (10) days ago, and all imaging from JRMC was negative. After an x-ray of the Claimant’s right knee was obtained, it showed normal alignment, no evidence of fracture, and no effusion. She was diagnosed with right knee contusion and was to return to MedExpress if her symptoms failed to improve. She was instructed to take naproxen for pain. She was released to

full-duty work with no restrictions as of the next day, November 4, 2019.

On February 12, 2020, Claimant returned to MedExpress for a follow up on her left knee following her October 24, 2019, fall. An x-ray of the left knee showed normal alignment, no evidence of fracture, and no effusion. Nurse Practitioner Jennifer Scott assessed the Claimant with pain in the left knee of “uncertain cause.” Claimant was instructed to ice her knee for twenty (20) minutes every hour, elevate the knee as much as possible, and take ibuprofen as needed for pain. Nurse Scott also made a referral to orthopedics.

Claimant was seen at OrthoArkansas by Dr. Phillip Smith on March 12, 2020, for complaints of left knee pain. He noted her fall approximately five months ago; noted her pain and swelling over the medial joint line since that time; noted occasional swelling; noted her use of anti-inflammatory medication; and noted her participation in physical therapy. Claimant’s physical examination showed no deformity, mild swelling of the medial joint line, tenderness to palpation over the medial joint line; full motion with no ligamentous instability; palpable pulses; and intact sensation. Dr. Smith ordered an MRI due to her persistent pain over the last several months, which would rule out a meniscus tear. She was released to return to work with no restrictions.

Claimant saw Dr. Smith again on March 31, 2020, for complaints of pain in her left knee. Dr. Smith noted Claimant’s fall that occurred several months ago and noted her continued pain with mechanical symptoms. He noted that her MRI showed no evidence of a meniscus tear but showed chondromalacia of the medial compartment. Claimant reported that oral inflammatory medication had improved her pain. A physical examination of her left knee showed no swelling or deformity, but some mild medial joint line tenderness. The exam showed full motion with no ligamentous instability, good strength, and palpable pulses. Dr. Smith opined that Claimant did

not require any surgery at the time, but she should continue anti-inflammatory medication and modify her activity. Claimant declined an injection for the left knee. She was to return to work with no restrictions, she was at MMI, and she had a zero percent (0%) impairment rating. She was assessed with left knee pain.

On July 24, 2020, the Claimant saw Dr. Smith for follow up on her left knee pain after her fall on October 24, 2019, at work. Dr. Smith administered an injection in Claimant's left knee. Dr. Smith instructed her to modify her activities but released her to return to work without restriction and a zero percent (0%) impairment rating. She was to return only as needed.

Claimant returned to Dr. Dedman on September 30, 2020, where Claimant and Dr. Dedman discussed health issues including high blood pressure and elevated blood sugar. Claimant also complained of left knee issues for which she was prescribed Naprosyn and omeprazole for her stomach. There was no mention of back pain.

Claimant returned to Dr. Dedman on December 9, 2020, where Dr. Dedman noted Claimant's report of mild shortness of breath which she could feel in the lower thoracic area. Claimant reported the symptoms occurred over the last three months and occurred in the morning and lasted throughout most of the day. Dr. Dedman noted that in gathering information about Claimant's complaints, her friends and family felt that the shortness of breath was a symptom of anxiety. Dr. Dedman noted there was no external component and no exertional chest pain. Claimant's physical examination revealed palpable pain in the left scapular area that she said she has had for twenty-two (22) years. It showed that both knees were stable, but apparently there was some arthralgia in the knees. There was no pedal edema. Claimant's relevant diagnoses included, shortness of breath, but were labeled as insignificant; abdominal pain of unknown etiology; and

trauma from a fall in 2019, right knee and arthralgia in both knees.

Dr. Dedman authored a letter to the Claimant on December 16, 2020, wherein he stated that he thought she was doing very well overall. He noted that the Celebrex should help her knees. Should her shortness of breath worsen, she should return for a chest x-ray.

On April 2, 2021, the Claimant returned to Dr. Smith. Dr. Smith's notes indicate that Claimant was returning for symptoms of left knee pain. Clinic notes indicated that she had been seen previously after her injury at work. He noted a prior MRI showing no intra-articular injury, but some medial compartment chondromalacia. He also noted a prior injection of the left knee. Claimant was complaining of left knee pain that day. Claimant's physical examination showed no swelling or effusion, but she described diffuse tenderness over the anterior aspect of her knee. Dr. Smith noted full motion with no ligamentous instability, good strength, and a normal gait. He assessed her with left knee pain with prior contusion. As there were no structural findings requiring surgery, Dr. Smith offered her an injection. Claimant declined. Dr. Smith started her on meloxicam and instructed her to stop taking Celebrex. He recommended physical therapy. He released her to return to activities as tolerated with no work restrictions.

Claimant saw Dr. Dedman on April 13, 2021, with complaints of knee and back problems. He noted her fall at work in October of 2019, which resulted in pain in her knees and back. He noted that during the treatment with the orthopedist, Claimant had continued to have with some lower left thoracic back area with some radiculopathy around the lower thoracic cavity. Claimant reported that she had mentioned her back pain to the orthopedist, but he did not make a referral for her back pain. As a result, she came to Dr. Dedman for an evaluation. Dr. Dedman stated in his notes that, "There is no doubt that Workers Comp is responsible for the situation. Even though

she may not have complained to them and the orthopedist about her back as much as her knees, she did injure it in the fall of 2019 to the point where x-rays were done on one of her trips to the ER.” Dr. Dedman also noted her fall in October of 2019 with injury to her bilateral knees, greater on the left than the right for which he recommended rehab and physical therapy of the left knee with next steps to be determined by the orthopedist. He noted her lower left posterior thoracic pain with radiculopathy along the thoracic cavity for which Dr. Dedman recommended an MRI for full diagnosis.

Medical records show that during the time period of April 26, 2021, through May 26, 2021, Claimant attended physical therapy sessions to address her left knee pain.

In December of 2021, Claimant returned to Dr. Dedman with complaints of ongoing pain in the left lower thoracic area and in her knees, primarily on the left knee. Dr. Dedman noted her work-related fall in October of 2019 and her immediate issues with both knees (left greater than right) and her left lower posterior thoracic area. He noted that her x-rays were unremarkable and that her conservative treatment on the knees did not seem to help. Dr. Dedman stated that because workers’ compensation was involved, he was unable to intervene. Dr. Dedman’s notes reflect that as of December 16, 2021, Claimant continued to complain of discomfort in her left posterior lateral thoracic cavity and left knee. Claimant’s physical examination and diagnosis revealed that the left lower posterior thoracic cavity was “a little sensitive” and that the left knee was “sensitive to manipulation.” Her other relevant diagnoses were chronic left lower and upper lumbar pain as a result of an MVA at twenty (20) years-of-age for which she took Tramadol and Soma (with Hydrocodone at one time, but not since 2014), as well as abdominal pain with exact etiology unknown (with the same prescription treatment history as that of her lumbar pain). Dr. Dedman

noted that there was not much he could offer Claimant as far as her thoracic pain or left knee pain because it was “under the realm of workers comp;” however, he did offer her Celebrex to see if that would help. A follow-up letter from Dr. Dedman stated that after her examination and diagnostic studies, “everything seems to be doing well.” He encouraged her to stay on her current medications and to follow his suggestions for her “musculoskeletal system.”

ADJUDICATION

A. Compensability of Claimant’s Alleged Low Back Injury on October 24, 2019:

Claimant contends that she sustained a compensable injury to her low back and bilateral knees when she tripped over a trailer hitch while at work for Respondent-Employer on October 24, 2019. During her testimony, Claimant testified that she was asking for diagnostic testing for her low back as recommended by Dr. Dedman and any subsequent treatment that was recommended for her low back pain. On the other hand, Respondents contend that they accepted the claim for injury to Claimant’s bilateral knees as medical only and have paid for medical treatment; however, Respondents deny compensability of Claimant’s alleged back injury as there are no objective findings of a back injury related to the October 24, 2019, fall.

Ark. Code Ann. § 11-9-102(4)(A) (Repl. 2012) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

Claimant must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947).

It is well-settled that under Arkansas workers' compensation law that an employer takes the employee as he finds her, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). 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 workers' compensation is sought. Id. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id. at 511-12, 277 S.W.3d at 600.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that Claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable low back injury, by medical evidence supported by objective findings. Under these circumstances, I find that the Claimant did not suffer a compensable low back injury on October 24, 2019.

In the present matter, Claimant sought medical treatment on October 24, 2019, at Jefferson Regional Medical Center (five days after her fall at work) where she complained of right knee pain and low back pain as a result of the fall. Diagnostic imaging of Claimant's lumbar spine did not reveal any evidence of an acute fracture or dislocation of the lumbar spine, and thus no signs of an acute injury. Claimant had some findings on the x-ray that were consistent with degeneration the

low back; however, there was no evidence of an acute injury. Claimant was prescribed pain medication (that she testified she was already taking and had been taking for years prior to the accident), assessed with lumbar “strain,” and discharged. She was also directed to follow up with MedExpress a few days later; however, her complaints that day were regarding her right knee pain. The Claimant also began treating with her own personal physician, Dr. Dedman.

Despite the treatment received by several physicians, there are no reports of any swelling, contusion, bruising, fracture, muscle spasms, or any other objective findings establishing a compensable injury to the Claimant’s low back. As noted above, x-ray imaging was conducted after the Claimant’s fall on October 24, 2019, when she allegedly injured her low back, but the testing did not demonstrate any "acute" injury to the Claimant’s low back. While Claimant was prescribed Tramadol and Soma, as well as Celebrex at a later date, the prescriptions were based on the Claimant’s subjective complaints of pain. I also note that Claimant admitted during her testimony that she had taken those medications for various health reasons, including back pain, since 2001. Based on the foregoing, I find that the claimant failed to prove by medical evidence supported by objective findings that she sustained a compensable injury to her low back during the work incident on October 24, 2019.

Moreover, even if the Claimant is able to overcome the medical evidence supported by objective findings requirement, I think it would require pure conjecture and speculation to show a causal connection between her current low back problems and the work accident at issue. Speculation and conjecture, even if plausible, cannot take the place of proof. Ark. Dep’t of Corr. v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). The Claimant’s own testimony, in addition to the medical records, reveals that she had suffered prior problems with her back. Specifically,

Claimant admitted during her testimony that she had experienced lower thoracic and upper-lumbar pain since 2001. The medical evidence also shows a long history of chronic back problems. Specifically, a review of Dr. Dedman’s clinic notes from November 1, 2019, reveal a long history of what Dr. Dedman described as “chronic back problems and chronic abdominal problems” that started prior to 2004 for which Dr. Dedman prescribed Hydrocodone (and later replaced with Tramadol) along with Soma. Dr. Dedman also noted Claimant’s long history of lower thoracic and upper-lumbar pain on the left side since 2001. Dr. Dedman’s notes also reference a motor vehicle accident when Claimant was twelve (12) years old that involved her back. Although Claimant explained during her testimony that the back pain she was experiencing since the October 24, 2019, fall at work was different than the back pain she was experiencing prior to the fall, her testimony and the medical records show that she had been prescribed Hydrocodone (which Dr. Dedman replaced with Tramadol) and Soma since 2004 for several conditions including treatment for her prior back pain. Claimant admitted during her testimony that she was still taking Tramadol and Soma at the time of the hearing. The medical evidence also demonstrates that in December of 2020, Dr. Dedman noted that based on the information he had regarding Claimant’s lower thoracic back pain, the pain and shortness of breath may have been a symptom of Claimant’s anxiety. Hence, the evidence shows that the Claimant had a long history of back problems, along with a documented prior motor vehicle accident and testimony regarding an incident with her low back while exercising.

I also note that there is no mention in the medical records of low back complaints from the time Claimant was seen at MedExpress on November 3, 2019, until Claimant saw Dr. Dedman on December 9, 2020, more than one year later, when she complained of shortness of breath and pain

in the lower thoracic area. Even in December of 2020, there was no treatment recommended for her shortness of breath/thoracic back pain complaints and no mention of lumbar spine symptoms. During Claimant's treatment with Dr. Smith, the orthopedist, from March of 2020, until April of 2021, there was no evidence in the medical records regarding a lumbar spine injury or treatment. There was also no indication that any authorized treating physician took the Claimant off work for her low back complaints.

While I recognize that Dr. Dedman ultimately opined in 2021 that Claimant's symptoms with her back and knees were related to her October 24, 2019, fall at work and recommended an MRI for full diagnosis of her lower left posterior thoracic pain, there were no objective findings in the record of an injury to her low back in connection with her October 24, 2019, fall at work. Rather, the medical evidence showed that Claimant's imaging of her lumbar spine on October 29, 2019, revealed some findings of degeneration, but no evidence of an acute injury. Based on the evidence of record, I give little weight to Dr. Dedman's opinion that Claimant's October 24, 2019, fall at work was the cause of her low back complaints of pain.

Based on the foregoing, I find that Claimant failed to meet her burden of proving that she sustained a compensable injury to her low back on October 24, 2019, by medical evidence supported by objective findings. As such, the issue of medical treatment as it relates to the Claimant's low back has been rendered moot and is not discussed in this Opinion. Accordingly, this claim for an injury to Claimant's low back is respectfully denied and dismissed in its entirety.

B. Medical Treatment for Claimant's Bilateral Knees:

The Claimant contends that she is entitled to medical treatment for her compensable bilateral knee injuries as a result of the October 24, 2019, fall at work. Respondents contend that

they have accepted the bilateral knee injuries and that appropriate medical treatment for Claimant's bilateral knees has been received. Respondents further contend that Claimant was found to be at maximum medical improvement (MMI) as it relates to her knees and that no surgery has been proposed or suggested and no permanent impairment rating has been assigned for her bilateral knee complaints.

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)(1) (Supp. 2017). However, the employee has the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary. Stone v. Dollar General Stores, 91 Ark. App. 260, 209 S.W.3d 445 (2005). 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).

On the basis of the record as a whole, and after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the authorized medical treatment of record to include the conservative treatment by Dr. Smith, with regard to Claimant's bilateral knees is causally related to Claimant's compensable bilateral knee injuries on October 24, 2019. I, therefore, further find that Claimant has sustained her burden of proving by a preponderance of the evidence that the authorized medical treatment of record is reasonably necessary in connection with the compensable injuries she received on October 24, 2019, to her bilateral knees, which Respondents have accepted as compensable.

Here, the evidence before me demonstrates that since her compensable incident involving her knees, Claimant has continued with ongoing bilateral knee pain, despite conservative

treatment. Claimant was initially diagnosed with knee strain after her fall at work on October 24, 2019. She ultimately saw Dr. Smith, an orthopedist, for her knee issues. Dr. Smith's examination of Claimant revealed right knee tenderness, slight swelling, and slight ACL laxity. After further complaints of left knee pain, an MRI ruled out a meniscus tear. As such, Dr. Smith opined that there were no structural findings requiring surgery for Claimant's left knee and offered conservative treatment of injections, medication (Meloxicam) and physical therapy. The medical record shows that Claimant participated in physical therapy sessions from April 26, 2021, until May 26, 2021, and underwent an injection in her left knee.

The medical record also demonstrates that on March 31, 2020, Dr. Smith assessed Claimant with left knee pain, found her to be at maximum medical improvement (MMI) with zero percent (0%) impairment rating, and released her to return to work with no restrictions. Accordingly, I find that the Claimant reached the end of her healing period on March 31, 2020, for her compensable bilateral knee injuries.

Nonetheless, it is well settled under workers' compensation law that an employee may be entitled to ongoing medical treatment after the healing period has ended if the medical treatment is geared toward management of the employee's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). I am persuaded that such circumstances exist in this case. The Claimant credibly testified that she hit her left knee against the trailer hitch and ultimately landed on her knees when she fell, and the pain in her knees was ongoing after the October 24, 2019, fall. She also testified at the hearing that she had seen some improvement with her right knee. No evidence to the contrary has been presented.

I note, however, that based on the medical record, it appears that Claimant has exhausted

all of the conservative treatment recommended by Dr. Smith for her bilateral knee injuries. Therefore, based on the testimony and the medical records, I find that Claimant had some recurring right and left knee symptoms between October 24, 2019, (the date of her compensable bilateral knee injuries) and April of 2021 (the last medical record from Dr. Smith) and that the treatment of record by Dr. Smith was reasonable and necessary for ongoing management of her knee symptoms. Therefore, Claimant has proven that the authorized medical treatment of record, including the conservative treatment of record as prescribed by Dr. Smith, is reasonably necessary in connection with the injuries she received to her bilateral knees.

Respondents are therefore liable for all authorized medical treatment of record for Claimant's compensable bilateral knee injuries, including the conservative treatment (physical therapy, medication, and injections) prescribed by Dr. Smith for further management of Claimant's bilateral knee pain.

AWARD

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury to her low back on October 24, 2019, by medical evidence supported by objective findings. Therefore, this claim for an injury to Claimant's low back is hereby respectfully denied and dismissed in its entirety.

As for medical treatment for Claimant's compensable bilateral knee injuries of October 24, 2019, Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

Additionally, issues not addressed herein are expressly reserved under the Arkansas Workers' Compensation Act.

IT IS SO ORDERED.

KATIE ANDERSON
Administrative Law Judge