

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G506453

KENNETH A. JOHNSON, EMPLOYEE	CLAIMANT
LAND O'FROST, INC., EMPLOYER	RESPONDENT
PMA MANAGEMENT, CORP., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 12, 2023

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed June 20, 2023. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on August 21, 2015, the date of the claimed injuries. At the time, the claimant earned an average weekly wage sufficient for TTD / PPD rates of \$629.00 / \$427.00, respectively, per week.

3. That the claimant sustained a compensable right hip and neck injury on August 21, 2015, which was accepted by the respondents.
4. The claimant received an eleven percent (11%) disability rating to the body as a whole in regard to his neck injury, which has been paid in full.
5. That the claimant has failed to satisfy the required burden of proof to show that he sustained a compensable work-related injury to his back and head on August 21, 2015, and consequently the claims for medical, as well as PPD in regard to the back injury, are moot.
6. The claimant has failed to satisfy the required burden of proof that he is entitled to permanent and total disability and, in the alternative, has also failed to satisfy the required burden of proof for wage-loss.
7. The issue of attorney fees is moot.
8. That all other issues are reserved.
9. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's June 20, 2023 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the

Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that an employer/employee relationship existed at the time on August 21, 2015, the date of the claimed injuries, that the Claimant sustained compensable right hip and neck injuries on August 21, 2015, which were accepted by the Respondents, and that the Claimant received an eleven percent (11%) disability rating to the body as a whole in regard to his neck injury, which has been paid in full.

The ALJ then found that Claimant has failed to prove by a

preponderance of the evidence that he sustained a compensable work-related injury to his back and head on August 21, 2015, and consequently the claims for medical as well as permanent partial disability were denied. Lastly, the ALJ held that the Claimant has failed to satisfy the required burden of proof that he is entitled to permanent and total disability benefits and, in the alternative, has also failed to satisfy the required burden of proof for wage-loss. I concur in part and dissent in part. I would rule in favor of the Claimant for his compensable lower back injury and additional medical treatment of such injury and defer the issue of wage-loss until the Claimant has reached the end of the healing period for his compensable lower back injury.

1. Claimant has suffered a compensable work-related injury to his lower back and his claims for medical treatment should be awarded.

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 August 21, 2015, Claimant fell from the top of his semi-truck injuring his head, neck, back and hip. The parties stipulated that the Claimant suffered compensable neck and hip injuries. The Claimant contended that he also sustained additional injuries, including his lower back, but the ALJ found that the Claimant's back injury was not compensable primarily due to the perception that the treating physicians, Dr. Wornock and Dr. Seale, failed to provide sufficient testimony regarding causal connection to the work accident. However, I find that this conclusion fails to fully consider the medical evidence.

Claimant began complaining of lower back pain to Dr. Wornock two-months after the date of the work accident. (CL Ex. 4, p. 11). Dr. Wornock prescribed Claimant medication for pain management and referred Claimant to physical therapy for Claimant's lower back and neck pain. (CL Ex. 4, p. 12). Claimant continued to complain to Dr. Wornock of lower back pain on several visits.

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.* Here, the Claimant underwent physical therapy at the referral of Dr. Wornock for treatment of his neck and back and further states that Claimant needs to be evaluated for chronic pain of the neck and back after the work-related accident.

Dr. Wornock referred Claimant to Dr. Seale where Claimant underwent an x-ray which showed “C5-6 degenerative disc disease with left-sided neck pain to the shoulder” and “L5-S1 severe degenerative disc disease back pain and bilateral leg pain.” (CL. Ex., p. 26).

Although Claimant clearly had degenerative issues in his lower back prior to the work accident, there is no evidence that he suffered from any symptoms of such condition until after the accident. The Courts have held in several cases that an increase in symptoms following a work-related

accident is sufficient proof to establish compensability. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004). In the present claim, the Claimant sustained a specific-incident injury which only requires him to establish a causal connection between the injury and his symptoms. There was change in the condition of Claimant's lower back after the August 15, 2015 work accident as Dr. Seale provided the following opinion regarding Claimant's neck and back condition following his evaluation on October 18, 2017:

The patient's symptoms began on and after the work injury. The patient has no history of **pain in the low back or down the leg** prior to the work injury. Therefore, it is within a certain degree of medical certainty that at least 51% of the patient's **current symptoms and need for surgery** are directly related to their work injury. [emphasis added].

After giving due consideration to the Claimant's lack of lower back symptoms prior to the work accident, consistent complaints of pain following the accident, and the statements relating to causal connections of his treating physicians, the only reasonable conclusion I can reach is that the Claimant sustained a compensable injury to his lower back as the result of the work accident on August 21, 2015.

Therefore, I would rule that the Claimant has proved by a

preponderance of the evidence that he sustained a compensable injury of his low back. Further, Claimant continues to actively seek medical treatment for his low back and is entitled to such medical treatment as may be reasonably necessary for this compensable injury. Additionally, I would defer the issue of wage-loss until the Claimant has reached the end of the healing period for his compensable lower back injury.

M. SCOTT WILLHITE, Commissioner