

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G603919 and G806966**

**MICHAEL D. LOWE, EMPLOYEE**

**CLAIMANT**

**UNIVERSITY OF ARKANSAS, EMPLOYER**

**RESPONDENT NO. 1**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
CARRIER/TPA**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED APRIL 21, 2022**

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

Claimant, Mr. Michael Lowe, was represented at the hearing by Mr. Kenneth A. Olson, Attorney at Law, Bryant, Arkansas.

Respondents No. 1 were represented by Mr. Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on January 20, 2022, in Pine Bluff, Arkansas.

A Prehearing Order was previously entered in this case on September 28, 2021.

**Stipulations:**

During the prehearing 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. The employee-employer relationship existed on April 13, 2016, (G603919) and October 15, 2016, (G806966) when Claimant sustained alleged work-related injuries to his lumbar spine.
3. On April 13, 2016, Claimant's average weekly wage was \$646.00, entitling him to temporary total disability (TTD)/permanent partial disability (PPD) compensation rates of \$431.00/\$323.00. On October 15, 2016, Claimant's average weekly wage was \$753.38, entitling him to temporary total disability (TTD)/permanent partial disability (PPD) compensation rates of \$502.00/\$377.00.
4. Respondents controverted the low back injury that occurred on April 13, 2016 (G603919).
5. Respondents accepted the low back injury that occurred on October 15, 2016, as medical only, and medical treatment has been provided (G806966).

Issues:

During the prehearing telephone conference and as amended at the hearing, the parties agreed to the following issues to be litigated at the hearing:

1. Compensability and medical benefits for the April 13, 2016, injury to the low back (G603919).
2. Additional medical benefits for the October 15, 2016, injury to the low back (G806966).
3. All other issues are reserved, including indemnity benefits for both claims.

Contentions:

The following contentions were submitted by Claimant:

Claimant contends that as a result of his compensable lumbar spine injuries, he is entitled to additional indemnity and medical benefits. He also contends that Respondents controvert his entitlement to continuing indemnity benefits and attorney's fees are payable thereon.

The following contentions were submitted by Respondents:

Respondents No. 1 contend that Claimant's April 13, 2016, claim for an injury to the low back was controverted because there were no objective findings of an injury. Respondents No. 1

contend that Claimant's claim for an injury to the low back on October 15, 2016, was accepted, but as medical only because Claimant did not miss work due to an injury to his low back. The medical treatment he had, including a clinic visit and physical therapy, was paid for by Respondents No. 1, and he was returned to work. At the time of his deposition on September 27, 2017, Claimant admittedly was working full time for the Respondent-Employer at the same position he had been in previously.

Respondents No. 1 had filed a Motion to Dismiss for want of prosecution in claim G603919 on July 8, 2019, which Claimant objected to.

Both files were last returned to the Commission's General Files on the day of the February 27, 2020, hearing, when Claimant stated that his issues to litigate had changed. The issues to litigate that day were listed in the October 15, 2019, Prehearing Order as: compensability of claim G603919, permanent partial disability benefits, wage loss and attorney's fees. The wage rate for each claim was stipulated in that Prehearing Order. Claimant now demands a hearing on unspecified additional medical and indemnity benefits related to either claim.

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

Summary of Evidence:

The record consists of the hearing transcript of January 20, 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 September 28, 2021, and the parties' responsive filings; Claimant's Exhibit #2 consisted of nineteen (19) pages of medical records; Respondents No. 1 Exhibit #1 consisted of thirty-three (33) pages of medical records; and Respondents No. 1 Exhibit #2 consisted of forty-seven (47) pages of documentary evidence. As

Claimant's Exhibit #1 was not provided within the Commission's seven (7)-day window, and in light of Respondents' objection, the Claimant was allowed to proffer the exhibit.

Witnesses:

Michael Lowe (Claimant, used interchangeably herein) was the only witness to testify at the hearing.

**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 witness and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on April 13, 2016, while working for Respondent-Employer by lifting/moving a stage (G603919). In addition, Claimant has sustained his burden of proving by a preponderance of the evidence that the medical evidence of record from April 22, 2016, and April 28, 2016, is reasonably necessary in connection with Claimant's work-related injury of April 13, 2016, to his low back.
4. Claimant has failed to prove by a preponderance of the evidence that medical treatment by Dr. Currie was reasonably necessary in connection with his October 15, 2016, compensable low back injury (G806966).

**CASE IN CHIEF**

Hearing Testimony:

Claimant testified at the hearing that he was sixty-four (64) years old and had worked for Respondent-Employer for twenty-five (25) years. Previously, Claimant had worked briefly as an electrician helper for Respondent-Employer; however, at the time of the hearing, he was working

in the maintenance department, where he had worked the longest. In the maintenance department, Claimant's job duties included moving, lifting, and hauling heavy objects. Prior to his work at Respondent-Employer, he was self-employed in construction.

On April 13, 2016, Claimant was lifting stages for Respondent-Employer when he alleges that he sustained an injury to his low back. Claimant described the stages as platforms for standing and sitting that were made out of wood and metal. Claimant testified that the stages were "very heavy." Claimant testified that when lifting the stage on April 13, 2016, he felt a pop in his low back. He reported the injury to his supervisor, who was present at the time of the accident. His supervisor advised him to see a doctor. Claimant testified that he received medical attention at Health Care Plus and was given prescription pain medication, which helped pain for a while. Claimant described the pain as sharp and radiating from the low back to the lower right hip and down the right leg. He also described some numbness in his right leg since that time. Claimant couldn't exactly recall how long he was off work, but he thought it was approximately until April 28, 2016, at which time he was released without restrictions. Claimant recalled that he returned to work at the end of April and continued his regular job duties. From that time until October, he did not receive any medical treatment, but he testified that he continued to have pain and numbness. Claimant testified that the pain and numbness were also present at the time of the hearing.

Claimant also testified that on October 15, 2016, he was lifting stages and taking them to a parade downtown when his back "started hurting" again. Claimant testified that the medical records showed that he was having muscle spasms in his back after the October 15, 2016, event. Claimant clarified that his supervisor, Samuel Adams, was present for the October 15, 2016, event, and that David Adams, his previous supervisor, was present for the April 13, 2016, event. Claimant testified that he continued to work after the October 15, 2016, injury, and although he was unsure

of the dates, he did not dispute that the medical records showed that he received medical treatment on October 15, 2016. Claimant was unsure as to whether he missed any work following the October 15, 2016, injury. He had an MRI on his back on August 17, 2017, which he agreed was almost ten (10) months later. Claimant stated that he did not get a lot of treatment on his back and felt that it was still injured. In his opinion, the doctors treated his symptoms, but the treatment did not fix the problem with his back. Claimant said he could not recall what doctor he saw after his MRI but testified that he had not undergone surgery on his low back. Claimant could recall having an injection in his back and having been seen by a chiropractor, Dr. William Brown.

Although Claimant agreed that he continued to work for a year after the second incident, he testified that he was still having all of the symptoms he complained of after the first incident.

Claimant testified as follows:

My back got worse and worse as time went on. At first, I wasn't having the real sharp pains like paralyzing my legs. It started paralyzing my legs just, since the pandemic more or less. It started paralyzing my legs. At first, I was just getting muscle spasm in my legs and it just locked my muscles up and I couldn't move my legs, but later on it got to where it would paralyze my legs and I couldn't walk. For about ten minutes or so, it was just paralyzing, and then, it – it would just come back.

Claimant clarified that it was about the time the Covid-19 pandemic began that he began having increasingly worse symptoms in his back. He also clarified that he currently experienced paralysis in both legs to the point that he could not move for approximately ten (10) minutes. He stated that he had trouble when going from a sitting to a standing position. Claimant stated that he took off work for his low back issues and used all of his sick and vacation leave. However, he did not request a transfer to a different job, and one was not offered. Claimant testified that he did not believe that there were light duty jobs available for him at Respondent-Employer. Claimant stated that the Physical Plant Manager called him to inquire as to whether he would be returning to work

and told Claimant that he could not hold the job any longer. As a result, Claimant stated that he felt pressured to resign because around that time, Claimant felt that his back pain had increased to the point that he was no longer able to work.

Claimant also testified that he had experienced other back injuries while at work that he reported; however, he did not file any other claims for injuries. He also stated that he was seeing doctors off and on since he injured his back in April of 2016. Claimant stated that he had seen Dr. Glen Brown in Pine Bluff, Arkansas, and Dr. Keith Currie, a chiropractor in Conway. Claimant heard about Dr. Currie through television advertising, and since Dr. Harris was recommending surgery on his back, he wanted to see if Dr. Currie could offer him an alternative. Claimant stated that he thought surgery should be a last resort and was also concerned about the possibility of a less than desirable result from the surgery.

Claimant continued by stating that he applied for a program with Dr. Currie in 2020, around the time the pandemic began. Claimant stated that as of April of 2019, he was unable to continue working, and in 2020, he began experiencing temporary paralysis in both of his legs several times throughout the day. Claimant stated that he was accepted into the program and agreed that he first saw Dr. Currie in November of 2020. He did not have health insurance and stated that he was still paying for the medical treatment by Dr. Currie, which consisted of the use of a machine that “stretches” the back and works to align the spine. Claimant had more than a dozen treatments, which provided him some relief. He also stated that his symptoms had continued to improve. Claimant stated that he was able to walk, until he recently underwent knee surgery; that he did not have the stabbing pain very often; that he did not have the paralysis in his legs very often; and that his muscle spasms were less frequent. Claimant agreed that once his symptoms were manageable, he stopped receiving treatment from Dr. Currie. Claimant stated that he paid for the treatment

from Dr. Currie and had not received any assistance paying that bill. Claimant believed that he needed additional treatment from Dr. Currie. Claimant believed that additional, weekly treatment from Dr. Currie would prevent him from having surgery.

On cross-examination, Claimant testified that he was receiving approximately \$1,340.00 per month in social security disability (which he had been receiving for more than one year) and approximately \$10,000.00 to \$11,000.00 yearly in retirement from Respondent-Employer that he began receiving when he was around sixty (60) years old, approximately four (4) years ago.

As for Claimant's knee surgery (which was performed the day before the hearing), Claimant stated that he began having issues with his knee when he hurt his back. He explained that the pain from his back extended to his right leg, causing numbness in the right leg and swelling in his right knee.

On cross-examination, Claimant confirmed that he testified at his deposition that he had undergone treatment on his low back prior to April of 2016, because he had "back problems before" and had "hurt [his] back several times out there on the job."

When asked about an MRI from 2017 that was noted to have been unchanged from a previous MRI from 2015, Claimant could not recall the specific dates or imaging. Claimant testified, however, that his back symptoms had worsened between 2015 and 2017.

Claimant also testified that he saw Dr. Glen Brown, a chiropractor, after he saw a specialist in Little Rock, despite being asked about medical records that indicated that Claimant had seen a chiropractor "in the past." Claimant stated that Dr. Brown's treatment helped "at the time" but it did not fix his problem.

When asked about continuing to work after the April 13, 2016, event, Claimant responded that he did not miss much work from 2016 until 2019. Claimant stated, "If I can work, I'm gonna



work.” Claimant confirmed that his doctors were not taking him off work, and that he worked steadily until he retired in 2019. When asked if he continued to lift stages even after his injuries, Claimant responded, “I did whatever they told me to do.” He also participated in other job duties, such as painting, installing ceilings, helping electricians, pouring concrete, installing floor tiles, hanging pictures, and painting the football and baseball fields.

As far as his back pain, Claimant testified that he only took medication when he had to as he did not like to take medication. He was taking medication to minimize infection from his knee surgery at the time of the hearing; however, he testified that he did not take much additional medication. Claimant had previously lost an eye in an unrelated incident and developed a stomach ulcer as the result of the pain medication he was prescribed. The ulcer prevented him from currently taking anything for pain related to his back.

As for his treatment by Dr. Currie, Claimant confirmed that he had treated with Dr. Currie after seeing a television advertisement for treatment for back pain. Claimant also confirmed that he had not been instructed by anyone to go see Dr. Currie, and that Dr. Currie had not recommended surgery on Claimant’s back. Claimant also testified that at the time of the hearing, he did not have any medical appointments scheduled for his back issues, and the cane he was using at the hearing was because of his recent knee surgery.

On re-direct examination, Claimant testified that the nature of the work that he had done for Respondent-Employer was considered heavy-duty work. Claimant stated that he had experienced everyday aches and pains from the heavy-duty work throughout the years for which he had seen chiropractors; however, he had not seen a chiropractor for a condition that left him unable to work. Claimant stated that he could not recall having a significant back injury prior to April of 2016 when he was lifting stages at work. Claimant stated he was not having back pain

prior to the April 13, 2016, event. At the time of the accident, Claimant was in good physical shape, had no back pain, was not seeking treatment, and was not taking any medication. When asked if he ever had any days that he felt like he did before he was injured on April 13, 2016, Claimant responded, “No, I don’t get to feeling that good.”

On re-cross examination, Claimant was asked about a medical report from Dr. John Harris, Claimant’s primary care physician, dated April 26, 2019. Claimant testified that he would see Dr. Harris when he needed treatment, but he was unsure whether the visit on April 26, 2019, was for an annual exam or something else. Claimant did recall that because he was worried about his heart, Dr. Harris did an EKG on his heart to rule out any heart issues. Claimant was unsure if he was able to work at the time of the EKG; however, his recollection was that the test yielded normal results.

Upon examination by the Commission, Claimant testified that he was lifting stages on both occasions, April 13, 2016, and October 15, 2016, when he injured his back. Claimant stated that he received medical treatment fairly soon after the April 13, 2016, event and the October 15, 2016, event, but he was unsure how many additional medical visits he had attended. Claimant testified that Dr. Currie recommended additional treatments “every now and then to get some adjustments.” Claimant has not returned to Dr. Currie for the routine adjustments on his back. Claimant testified that he was not taking any prescription or over-the-counter medication for his back.

Medical Exhibits:

After a thorough review of the medical exhibits, the relevant medical records are summarized below.

On April 22, 2016, Claimant visited Jefferson Regional Medical Center (JRMC) for low back pain and reported pain in his lumbar spine when sitting, standing, and moving. Hospital

records indicate that Claimant was injured as he was lifting or moving stages when he experienced an acute onset of pain in the lower back with radiation down his right lower extremity. Hospital records indicated that Dr. Lester Alexander observed a decreased range of motion due to pain, tenderness to palpation, paraspinal tenderness, and vertebral tenderness upon physical examination. An x-ray showed narrowing of the L5-S1 disc space with evidence of disc degeneration. Claimant was diagnosed with strain of the lumbar spine and given prescription medication for inflammation and Robaxin for muscle spasms. Claimant was to remain off work until his follow up appointment on April 28, 2016.

Claimant returned to JRMC on April 28, 2016, for a follow-up appointment on his low back and right lower leg pain after an event when he was moving stages at work. Claimant reported that his low back pain had improved but that he continued to have pain in the right knee and leg. A physical examination by Dr. Alexander showed that Claimant's range of motion was intact and there was no pain in his low back with range of motion. Dr. Alexander released Claimant to return to full-duty work with no restrictions that day.

A few months later on October 18, 2016, Claimant saw Dr. Holly Handloser at MedExpress in Pine Bluff, Arkansas, with complaints of lower back pain and pain down the right leg. Clinic records indicate that Claimant reported twisting his back on October 15, 2016, when he was positioning stages for a parade. Claimant's prior injury was noted and that his symptoms had improved; however, clinic notes stated that the numbness in the right lower leg had returned. Claimant's physical examination revealed a right sided limp, paraspinal tenderness, and muscle spasm to the low back. Dr. Handloser diagnosed Claimant with sprain of the ligaments of the lumbar spine. She prescribed Medrol dose pack and made a referral for physical therapy. She

opined that Claimant was released to return to work on October 19, 2016, at light duty work, with restrictions of lifting less than fifteen (15) pounds.<sup>1</sup>

Medical records showed that seven (7) months after Claimant saw Dr. Handloser, Claimant visited Dr. John Harris, his primary care physician, on May 18, 2017, and complained of chronic back pain greater than three (3) months duration. Clinic notes indicate that Claimant's chronic back pain started more than one year ago and had gradually worsened since onset. Claimant's pain was intermittent, aching, radiating to the right thigh, and located in the sacroiliac area. The pain was described as moderate, specifically a six (6) out of ten (10), and the pain was aggravated by bending. Dr. Harris's physical examination revealed decreased range of motion, pain, and spasm in the lumbar area. Claimant was prescribed naproxen for his back pain and referred to cardiology for an evaluation for complaints of shortness of breath.

On August 17, 2017, Claimant underwent an MRI on his lumbar spine, which yielded the following results:

1. Small central protrusion of disc material at L2-3 causing mild compression of the thecal sac which is unchanged from the previous study.
2. Protrusion of disc material at L3-4 which is projecting to the left causing mild compression of the thecal sac and mild neural foramina stenosis which is unchanged from the previous study.
3. Protrusion of disc material which is central and projects to the right causing compression of the thecal sac with mild bilateral neural foramina stenosis as [a] result of foramina disc protrusions at this level. This has not significant[ly] change[d] since the previous study.

Thereafter, Claimant saw Dane Miller, PA-C, at OrthoArkansas on September 25, 2017. The report notes that Claimant was injured in April of 2016 and that low back pain was Claimant's main complaint. Clinic notes also indicate that Claimant had participated in physical therapy, but

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<sup>1</sup> Based on a subsequent medial record (discussed below), it appears that Claimant underwent two (2) months of physical therapy after the October 18, 2016, visit with Dr. Handloser, but the physical therapy records were not offered as exhibits at the hearing.

without much relief. An x-ray revealed diffuse, multilevel disc space narrowing and degenerative changes in the lumbar spine, most severe at L4-5 and L5-S1. Upon review of the MRI, Physician Assistant Miller noted diffuse degenerative changes throughout the lumbar spine, with the degeneration most severe at L5-S1. He also noted a small disc protrusion and disc bulging, resulting in mild bilateral foraminal stenosis, which was unchanged when compared to a prior MRI of September 11, 2015. Claimant was assessed with diffuse degenerative disc disease of the lumbar spine with mainly axial back pain, with some right leg numbness and tingling. Clinic records indicate that surgical intervention was not recommended for Claimant's low back pain but that he could undergo steroid injections. Claimant decided not to undergo the steroid injection treatment and to try to remain active on his own.

On July 5, 2018, Claimant returned to Dr. Harris for a wellness examination and follow-up where he complained of leg swelling and requested a referral to a cardiologist. Dr. Harris's physical examination yielded normal results. Claimant was assessed with pedal edema and referred to a cardiologist. He was also assessed with essential hypertension and chronic GERD. Claimant was prescribed medication for swelling in the leg and GERD.

On August 26, 2019, Claimant saw Dr. Harris for an annual examination and to re-establish care after losing his insurance. That day, Claimant complained of shortness of breath when sitting, which was temporary. Claimant reported being out of work and that he was experiencing depression due to a recent divorce and the loss of his eye more than ten (10) years ago. Claimant also reported concerns about his heart, but also stated that he had no trouble doing any kind of physical work. Claimant's physical examination was normal. He was noted to have a panic disorder for which he was prescribed Lexapro and referred for an EKG. Other diagnoses included essential hypertension and blindness of the right eye.

On September 23, 2019, Claimant returned to Dr. Harris for a wellness check-up and to refill medications. Claimant reported to be doing well and tolerating medications. He was encouraged to exercise and to stay on a sensible diet. Claimant also reported having trouble sleeping but did not want to take medication for the issue. Dr. Harris noted numbness in Claimant's right leg, which Claimant reporting having experienced since he began having back issues the last two years. Dr. Harris noted that, overall, Claimant was doing well with regard to his other diagnoses.

Documentary Exhibits:

Respondent #1, Exhibit 2 included the following:

1. A Form AR-N, dated April 28, 2016, demonstrated that Claimant reported his injury on April 13, 2016, at 9:00 a.m. On the form, Claimant indicated that he injured his low back when "lifting and setting up stages."
2. A Form PECD Employee's Report of Accident. The form indicates that Claimant reported his injury on April 13, 2016, at 9:00 a.m., to Mr. Samuel Vance, his supervisor.
3. A second Form AR-N was included indicating that Claimant reported a low back injury on October 15, 2016, at 7:30 a.m. On that form, Claimant stated that he injured his low back when lifting stages downtown for a parade.
4. An Acknowledgement of the October of 2016, Form AR-C, signed by Claimant.
5. A Form PECD Employee's Report of Accident indicating that Claimant injured his low back when lifting stages downtown for a parade and reported the accident to Samuel Vance, his supervisor, on October 15, 2016.
6. An October 19, 2016, letter to Claimant from Rhonda Murphy, WC Claims Analyst, notifying Claimant that his injury of October 15, 2016, had been accepted as compensable and that Respondents would be responsible for all authorized necessary and reasonable treatment associated with the accident.
7. A handwritten note from Claimant on University of Arkansas at Pine Bluff, Human Resources letterhead, indicating that he was off work from October 16, 2016, through October 22, 2016, for his injury.

8. A page of Claimant's employee records indicating that he was terminated from Respondent-Employer on April 30, 2019, and that April 30, 2019, was the last day Claimant worked for Respondent-Employer.
9. A Faculty and Staff Clearance Form, demonstrating that Claimant requested clearance through various divisions for his last day of work to be April 30, 2019.
10. Claimant's time record for the time period of April of 2016 through April of 2018, demonstrating that Claimant continued to work regular hours and take very little leave during the two-year time period.
11. Claimant's monthly time records from May of 2018, June of 2018, and July of 2018, indicated that Claimant continued to work for Respondent-Employer and took some vacation and sick leave.
12. Claimant's monthly time records from August of 2018 indicate that Claimant began using sick leave on August 21, 2018, through August 31, 2018; that he used sick leave for September 4, 2018, through September 28, 2018; that he began using FMLA leave on October 1, 2018 and used FMLA until October 31, 2018; that Claimant used Leave Without Pay (LWOP) from November 1, 2018, through November 15, 2018. Claimant worked nine (9) days between November 16 and November 30 of 2018; that Claimant worked regular hours from December 3, 2018, through December 31, 2018, including four (4) holidays; and that Claimant used sick and holiday leave for the month of January of 2019 and February of 2019.

#### ADJUDICATION

A. Compensability of the April 13, 2016, injury (G603919) to the low back:

Claimant contends that on April 13, 2016, he sustained a work-related injury to his low back while he was lifting stages (platforms for standing/sitting) for Respondent-Employer (G603919). Claimant contends that he felt a pop in his low back and began experiencing low back pain. Respondents have controverted this claim (G603919) in its entirety contending there were no objective findings of an injury.

Ark. Code Ann. § 11-9-102(4)(A) 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). Complaints of pain are not considered objective medical findings. Ark. Code Ann. § 11-9-102(16)(A)(ii)(a).

Claimant must prove by a preponderance of the evidence that he 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).

Claimant credibly testified that on April 13, 2016, while employed with Respondent-Employer, he sustained an injury to his low back. At the time, he felt a pop in his low back when he was lifting stages (or platforms for standing and sitting) that were made from metal and wood and were very heavy. He testified that he reported the injury to his supervisor, who was present at the time of the accident, and he was advised to see a doctor. Medical records showed that Claimant was seen at a Jefferson Regional Medical Center facility on April 22, 2016, and he reported that he was lifting stages at work when he had an acute onset of pain in his lower back with radiation down his right lower extremity. Medical records revealed that Dr. Lester Alexander noted pain and tenderness to palpation; paraspinal tenderness; vertebral tenderness; decreased range of motion due to pain; pain with forward bend; pain with lateral bend; pain with rotation; and pain with extension. An x-ray showed narrowing of the L5/S1 disc space, with evidence of disc degeneration. Claimant was diagnosed with strain of the lumbar region and treated conservatively with prescription ibuprofen and acetaminophen-hydrocodone for pain, as well as Robaxin for



muscle spasm. Dr. Alexander opined that Claimant should remain off work until April 28, 2016, when he was scheduled to return for a follow-up appointment.

Claimant returned for a follow-up appointment with Dr. Alexander on April 28, 2016, when Claimant reported that his back pain was “much better but his right leg and knee has constant pain.” Claimant’s prescription medication list included acetaminophen-hydrocodone for pain, ibuprofen, Robaxin for muscle spasm, and trazadone, among other medications. Claimant’s physical examination showed that his range of motion was intact and there was no pain in the back with range of motion. As the conservative treatment had provided some improvement for Claimant’s symptoms, Dr. Alexander released Claimant to return to work without restrictions on that date.

Here, Respondent No. 1 contends that there were no objective findings of an injury. In a recent case from the Arkansas Court of Appeals, *Melius v. Chapel Ridge Nursing Center, LLC*, 2021 Ark. App. 61, 618 S.W.3d 410, the Court found appellant’s diagnosis of muscle strain along with prescribed treatment of medications, physical therapy, and pain management was sufficient to establish objective findings. Specifically, in *Melius* the Court of Appeals stated:

Appellant was diagnosed with a strain of muscle, fascia, and tendon of right hip, received medication, and subsequently was referred to physical therapy and a pain specialist for relief. What is disputed is whether appellant presented proof of objective medical evidence and whether the injury was work related. Following our Supreme Court’s precedent, we agree with appellant’s argument that her diagnosis of muscle strain along with prescribed treatment of medications, physical therapy, and pain management is sufficient to establish objective findings. *See Fred’s, Inc.*, 361 Ark. 258, 206 S.W.3d 238. In *Fred’s, Inc.*, no physician, or physical therapist reported witnessing or feeling Jefferson’s muscle spasms. *Id.* at 262, 206 S.W.3d at 241. The doctor noted Jefferson’s work-related injury (falling off a ladder) in the medical record; diagnosed a muscle strain; and prescribed Flexeril, a muscle relaxer, pain medication, and physical therapy. *Id.* at 263, 206 S.W.3d at 242. Jefferson was also placed on limited work duties and ordered to not engage in lifting more than ten pounds. *Id.* Jefferson’s doctor did not indicate what the medications were for or state specifically why he prescribed physical therapy. The Supreme Court held that it is reasonable to infer from the chronology of events that the

medication and physical therapy were prescribed to aid Jefferson and to treat her injury and that the medical evidence was supported by objective findings. *Id.*

*Id.*

The instant claim is similar to the *Melius* and *Fred's, Inc.* cases. Here, the Claimant was diagnosed with strain of the lumbar region for which medication was prescribed for pain control and specifically for muscle spasm. Moreover, as in *Fred's, Inc.*, the physician in the instant claim noted Claimant's work-related injury (lifting stages) in the medical records. While the Claimant in *Fred's Inc.* was placed on limited work duties and ordered to not engage in lifting more than ten pounds, the instant Claimant was taken off work completely by his treating physician until he could attend his follow-up appointment.

There is no requirement under Arkansas law that a doctor, physical therapist, or other medical provider actually observe a patient having a muscle spasm before an employee's injury can be compensable. *See Melius*, 2021 Ark. App. 61, 618 S.W.3d 410 (*citing Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W. 3d 167 (2000)). Therefore, in keeping with precedent from both the Arkansas Supreme Court and the Arkansas Court of Appeals, I find that a diagnosis of muscle strain (lumbar strain in the instant claim), along with prescribed medication for pain and medication (Robaxin) for muscle spasm, is sufficient to establish objective findings. As noted above, Claimant's treating physician, Dr. Alexander, also noted his work injury in the medical records and took him off work completely until he could return for a follow-up appointment.

Based on the foregoing, I find that Claimant has established that his current low back injury of April 13, 2016, arose out of and in the course and scope of his employment and that the injury caused internal harm to the body which required medical services. The accidental injury was caused by a specific incident identifiable by time and place of occurrence. Claimant established a

compensable back injury by medical evidence supported by objective findings not within his voluntary control.

B. Additional Medical Treatment for the April 13, 2016, Low Back Injury (G603919):

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).

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 medical evidence of record from April 22, 2016, and April 28, 2016, is causally related to Claimant's compensable low back injury of April 13, 2016. I, therefore, further find that Claimant has sustained his burden of proving by a preponderance of the evidence that the medical treatment of record from April 22, 2016, and April 28, 2016, is reasonably necessary in connection with the compensable injury he received on April 13, 2016, to his low back.

Hence, Respondents are therefore liable for the medical treatment of record dated April 22nd and 28th, which consisted of conservative treatment, for Claimant's April 13, 2016, compensable low back injury.

C. Additional Medical Treatment for the October 15, 2016, Low Back Injury (G806966):

Here, the parties stipulated that the Claimant sustained a compensable injury to his low back on October 15, 2016, while lifting and setting up stages for a parade. Respondent No. 1 accepted the claim as medical only and paid some medical benefits. However, Respondent No. 1 has since controverted Claimant's entitlement to additional medical treatment, in the form of machine therapy for stretching and aligning of the spine as recommended by Dr. Keith Currie. Specifically, Respondent No. 1 contends that all benefits to which the Claimant is owed have been

paid, including a clinic visit and physical therapy. Respondent No. 1 also contends that Claimant was returned to work.

Claimant testified at the hearing that he voluntarily applied for a treatment program; that he was accepted to the program; and that he began treatment with Dr. Currie in November of 2020 (four years after the October of 2016, injury). Claimant testified that he completed twelve (12) or more sessions with Dr. Currie and while his symptoms did not go away completely, he did have significant improvement. Claimant testified at the hearing that he continued to experience symptoms of back pain and leg numbness, and he stated that he needed to return to Dr. Currie for follow-up visits. However, with respect to the medical records from Dr. Currie, I am unable to make a determination as to whether they are reasonably necessary, as those medical records were not introduced into evidence.<sup>2</sup> I acknowledge Claimant's testimony regarding the treatment by Dr. Currie, but Claimant's testimony alone is insufficient to prove that the treatment is reasonably necessary. Claimant is not a physician or a medical expert witness; therefore, minimum weight has been given to this testimony.

Respondent No. 1 contends that they have paid for the initial visit to Dr. Handloser on October 18, 2016, and the subsequent physical therapy sessions, and that Claimant is not entitled to any further medical treatment. In reviewing the other medical treatment of record, it appears that several of those visits were for wellness exams, as they occurred approximately once a year with Claimant's primary care physician, Dr. Harris. In fact, a few of those medical records from Dr. Harris do not include complaints, diagnoses, or prescribed medication for Claimant's low back pain.

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<sup>2</sup> Although the medical records were proffered, they have not been considered in this Opinion.

Although Claimant denied having undergone prior medical treatment for his low back, his testimony was not corroborated by the medical records from Claimant's one visit to OrthoArkansas with Physician Assistant Miller in September of 2017, almost one year after the October 2016 injury. Physician Assistant Miller's clinic notes indicate that Claimant's low back problems were degenerative in nature. He based that opinion on the August 17, 2017, MRI results, revealing diffuse degenerative changes throughout the lumbar spine, with the most severe degeneration at L5-S1. He also noted the MRI results showing a small disc protrusion and disc bulging, resulting in mild bilateral foraminal stenosis, which was unchanged when compared to a prior MRI of September 11, 2015 (prior to Claimant's October 2016 compensable injury). Based on comparisons between the 2015 MRI and the 2017 MRI, Physician Assistant Miller opined that Claimant's degenerative condition did not require surgery and offered steroid injections as treatment for the degenerative condition. However, Claimant declined the treatment.

Based on the medical evidence of record, it appears that the Claimant's October 15, 2016, low back injury has resolved. However, it is well settled in workers' compensation law that a Claimant might be entitled to medical treatment after the healing period has ended if the medical treatment is intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury. *Tina Haskins v. TEC*, Full Workers' Compensation Commission, Opinion filed July 14, 1993 (E107391). Nonetheless, in order to prove his entitlement to the requested treatment, Claimant must also prove that it is causally related to his compensable injury of October 15, 2016. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. I find that based on the evidence of record, there is no causal connection between the wellness visits to Dr. Harris and the OrthoArkansas visit with Physician Assistant Miller, and the Claimant's October 15, 2016, compensable low back injury.

Moreover, it appears from the documentary evidence and the testimony that Claimant did not miss much time from work after his compensable October 15, 2016, low back injury. At the time of his deposition on September 27, 2017, Claimant testified that he had returned full time to his laborious job duties for the Respondent-Employer. At the hearing, Claimant confirmed that his doctors had not taken him off work for his October 15, 2016, injury and that he had continued to work at the same position until April of 2019, when he stopped working for Respondent-Employer, which was two (2) and one-half (1/2) years after the October 15, 2016, compensable injury to his low back.

Based on the foregoing, I find that Claimant has failed to prove by a preponderance of the evidence that medical treatment by Dr. Currie was reasonably necessary in connection with his October 15, 2016, compensable low back injury (G806966).

**AWARD**

Respondent No. 1 is directed to pay benefits in accordance with the findings of fact set forth here in this Opinion.

**IT IS SO ORDERED.**

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**KATIE ANDERSON  
ADMINISTRATIVE LAW JUDGE**