

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H202787**

**MICHAEL STROUD,
EMPLOYEE**

CLAIMANT

**LITTLE ROCK WATER RECLAMATION AUTHORITY,
EMPLOYER**

RESPONDENT

**LITTLE ROCK WATER RECLAMATION AUTHORITY,
CENTRAL ADJUSTMENT CO.
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION AND ORDER FILED AUGUST 21, 2023

Hearing conducted on May 2, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Tanner Thomas, Rainwater, Holt & Sexton, Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable Karen H. McKinney, The Barber Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed March 17, 2022, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including October 4, 2021, when the claimant alleges he tripped at work and sustained an injury to his lower back/lumbar spine.
3. The parties shall exchange wage records and confer as soon as possible and be prepared to stipulate to the claimant's average weekly wage (AWW) and the corresponding indemnity benefit rates preferably before or at the hearing.
4. The respondents have controverted this claim in its entirety.

Michael Stroud, AWCC No. H202787

5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 5). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Act (the Act) to his lower back/lumbar spine on October 4, 2021.
2. If the claimant's alleged injury is deemed compensable, the extent to which he/she is entitled to medical and indemnity benefits.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 2; T. 5).

The claimant contends that on October 4, 2021, he tripped and fell on concrete in the course and scope of his employment and injured his lower back/lumbar spine. The claimant underwent an MRI which revealed disc protrusions with extrusions at L3-4 and L4-5, and he has undergone conservative treatment to date. The claimant contends he sustained a compensable injury to his lower back/lumbar spine within the course and scope of his employment, and he is entitled to medical treatment, and TTD benefits, and his attorney is entitled to a controverted attorney's fee. The claimant reserves any and all other issues for future determination or litigation. (Comms'n Ex. 1 at 2-3; T. 5).

The respondents contend the claimant has received all benefits to which he is entitled, and he cannot meet the Act's burden of proof in demonstrating he sustained a lower back/lumbar spine

Michael Stroud, AWCC No. H202787

injury on October 4, 2021. The respondents accepted this as a medical only claim. They contend the claimant initially reported his fall as a minor scrape of the elbow and did not request medical treatment until November 2, 2021. The claimant did not report any lower back pain related to the subject fall at work on October 4, 2021. When the claimant finally requested medical treatment from respondents, he was sent to Concentra on November 2, 2021, where he reported an onset of lower back pain that started on a Saturday, just two (2) days before the November 2, 2021, appointment with Concentra, and he had taken tramadol and hydrocodone pills for this pain. The claimant did not report any acute injury at work or otherwise that prompted this onset of lower back pain when he presented himself for medical treatment at Concentra on November 2, 2021. The claimant was diagnosed with chronic lower back pain and advised to follow up with his treating physician. The claimant's treating physician opined he reached maximum medical improvement (MMI), and released him to return to work with no restrictions, and no/zero percent (0%) permanent anatomical impairment, as a result of the October 4, 2021, work incident. (Comms'n Ex. 1 at 3; T. 5).

STATEMENT OF THE CASE

The claimant, Mr. Michael Stroud (the claimant), is 62 years old. After serving twice in the military and having received an honorable discharge after his first stint of service, then a dishonorable discharge after his second stint of service for being absent without leave (AWOL), the claimant worked as a drywaller, but he testified the vast majority of his work experience – some 30 years – has been in the wastewater treatment field. He began working for Little Rock Wastewater in May of 2013. Little Rock Wastewater is now known as the Little Rock Wastewater

Michael Stroud, AWCC No. H202787

Reclamation Authority (LR Wastewater). (T. 11-14).

The claimant testified that in 2014 he was working the night shift in the wintertime and he slipped on some ice which had accumulated on the railing on which he was walking, causing him to fall and slide three (3) to four (4) feet down some stairs and land on a concrete sidewalk. He said he turned in an incident report following this slip-and-fall, and took some Tylenol. He testified that between the time of this 2014 incident until 2021 he had treated with his personal care physician (PCP) and she gave him a cortisone shot in, “the affected area” (apparently his lower back), and he treated some with his chiropractor, but that was all the treatment he had, “During that time frame.” (T. 16; 15-16).

The work incident that prompted the subject claim occurred on October 4, 2021, when the claimant was working the night shift early in the morning, apparently was alone at the time, and was walking when he tripped over a piece of one of the clamps used to hold down some tubing that was “sticking up” through the concrete walkway. The claimant testified that when he tripped he fell on his right side and hit his back and right arm, scraping his right arm. He said he reported the incident to his supervisor when the supervisor arrived at work a little time later, and that he – the claimant – completed an incident report. The claimant testified when he fell on his right side he felt pain in the area of his lower back which went down into the area of his right buttock. (T. 16-20; Claimant’s Exhibit 2).

The claimant testified he did not immediately go see a doctor after this October 4, 2021, trip-and-fall, but agreed with his attorney he did have an MRI at the White River Health System on October 21, 2021. (T. 20). The written report/interpretation of this MRI appears in the

Michael Stroud, AWCC No. H202787

claimant's medical exhibit and is self-explanatory. (Claimant's Exhibit 1 at 1-2). The claimant testified he never took off work, but his medical exhibit reveals he did see various medical providers between October 27, 2021 and November 4, 2021. (T. 21-29; CX1 at 3-37). A "Return to Work / School" slip dated 11/04/2021 from OrthoArkansas states the claimant may return to full duty work on 11/11/2021, with no restrictions. (CX1 at 86). The claimant testified the treatment he has had to date has not helped his lower back pain, and it is his understanding the next step in his treatment is surgery, but he does not want to undergo surgery. He explained that the way he understood it, if he underwent surgery at this time he eventually would need to have surgery again at some point in the future. (T. 26; 21-29). The claimant testified his work schedule is 12 hours a day for seven (7) days, then he is off work for seven (7) days. He testified he has not had to miss any work, that his back pain limits his ability to engage in personal activities. (T. 28-29).

DISCUSSION

The claimant has failed to meet his burden of proof in demonstrating he sustained a "compensable injury" within the Act's meaning to his lower back/lumbar spine as a result of the October 4, 2021, work incident.

The Burden of Proof

For any specific-incident injury to be compensable the claimant must prove by a preponderance of the evidence that his injury: (1) arose out of and in course of his employment; (2) caused internal or external harm to his body that required medical services; (3) is supported by objective findings, medical evidence, establishing the alleged injury; and (4) was caused by a specific incident identifiable by time and place of occurrence. *Ark. Code Ann.* § 11-9-102(4) (2022)

Michael Stroud, AWCC No. H202787

Lexis Replacement); *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, 687 (Ark. App. 2009). Of course, the claimant bears the burden of proving the compensable injury by a preponderance of the credible evidence. *Ark. Code Ann.* § 11-9-102(4)(E)(i) (2022 Lexis Repl.); and *Cossey, supra*.

“Objective findings” are those findings which cannot come under the voluntary control of the patient. *Ark. Code Ann.* § 11-9-102(16)(A) (2022 Lexis Repl.); *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, at 80 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings, “specifically exclude such subjective complaints or findings such pain, straight-leg-raising tests, and range-of-motion tests.” *Burks v. RIC, Inc.*, 2010 Ark. App. 862 (Ark. App. 2010). Objective medical evidence is not essential to establish a causal relationship between the work-related accident and the alleged injury where objective medical evidence exists to prove the existence and extent of the underlying injury, and a preponderance of other nonmedical evidence establishes a causal relationship between the objective injury and the work-related incident(s) in question. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010). Moreover, the claimant must prove a causal relationship exists between her employment and the alleged injury. *Wal-Mart Stores, Inc., v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, 953 S.W.2d 907, 909 (Ark. App. 1997)).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc.*,

Michael Stroud, AWCC No. H202787

2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010) (Emphases added). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury*. *Vaughn*, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require “new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition”); *Barber, supra* (affirming the Commission’s denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added.). In *Mooney*, 2010 Ark. App. 600 at 4-6, 378 S.W.3d at 165-66 (Ark. App. 2010), the court affirmed the Commission’s decision denying a back injury claim where the objective evidence of an injury - including muscle spasms, positive EMG test results, and spinal stenosis revealed on an MRI - were all present *both before and after the date of the alleged aggravation injury*. (Emphasis added).

Both attorneys did an excellent job presenting their respective client’s positions and interests. However, based on the aforementioned law as applied to the facts of this case, and the totality of the credible evidence of record – both in the form of the claimant’s own testimony and the medical records – I am compelled to find the claimant has failed to meet his burden of proof in demonstrating he sustained a lower back/lumbar spine injury as a result of the March 4, 2021, work incident. Indeed, the preponderance of both the claimant’s own testimony and the relevant

Michael Stroud, AWCC No. H202787

medical evidence conclusively demonstrate the claimant's lower back pain/lumbar spine condition was degenerative in nature, and was both preexisting and symptomatic long before the October 4, 2021, work incident.

As the record readily reveals, the respondents' attorney's cross-examination of the claimant proved to be quite effective and, especially when read in conjunction with the relevant medical records, conclusively demonstrates the claimant's lower back pain/lumbar spine condition was clearly degenerative in nature and not the result of any injury, was preexisting, and was patently symptomatic – and apparently fairly painful – long *before* the subject October 4, 2021, work incident. The following evidence of record supports my opinion in this regard.

First, on cross-examination the claimant admitted that when he himself completed, in his own handwriting, the initial incident report a couple of hours after the October 4, 2021, subject trip-and-fall, he stated only that he, “scraped right arm at elbow landed on right side”; but he never mentioned having injured his lower back. (CX1 at 1; T. 29-32). Indeed, even a cursory review of the report reveals that while he certainly had an opportunity to state he had injured his lower back in the fall since he himself was the one who completed the report, signed it, and dated it in his own handwriting, he never even mentions his lower back, nor having injured it as a result of the incident.

Second, concerning the 2014 slip-and-fall – which, of course, occurred some seven (7) years before the subject October 4, 2021, incident, and for which the claimant never filed a workers' compensation claim – the claimant admitted no incident report existed for this incident, although he said he completed one. The claimant also admitted he had not received any medical

Michael Stroud, AWCC No. H202787

treatment following the 2014 incident, nor did he file a workers' compensation claim alleging a compensable work injury. (T. 32-33).

Third, the respondents' medical exhibit contains medical records from April 27, 2020, through September 14, 2021 (and this latter date was some three (3) weeks before the subject October 4, 2021, incident) contains numerous medical records where the claimant has presented himself to healthcare providers for evaluation and treatment of leg, knee, and right-sided lower back pain radiating into the area of his right buttock. (Respondents' Exhibit 1 at 1-29). The claimant admitted on cross-examination he had presented himself to his own PCP for evaluation and treatment of right-sided lower back pain that the claimant described as seven (7) out of ten (10), and nine (9) out of ten (10) on a pain scale of one (1) to ten (10). The claimant admitted he had received steroid injections in the area of his lumbar spine, and chiropractic adjustments by two (2) different chiropractors (apparently a mother and a daughter, both of whom were chiropractors) in the area of both his lumbar and cervical spine. (T. 34-37).

Medical and chiropractic reports during the aforementioned time period from April 2020 through September 2021 contain numerous references to lower back pain, neck pain, right-sided lower back pain radiating into the claimant's right leg, and list an onset date of "02/14/2016" for the "low back pain." (RX1 at 1-29; 3). A clinic note dated May 28, 2020, states, "No injury"; notes the location of the claimant's pain to be his, "lower back; lower back and leg pain; chronic knee pain bilateral; leg pain bilateral." (RX1 at 4). Among the medications the claimant was prescribed and taking in April of 2020 were meloxicam (an anti-inflammatory often prescribed for degenerative and arthritic conditions), and tizanidine (a muscle relaxant used to treat muscle

Michael Stroud, AWCC No. H202787

spasms, and even muscle spasms related to multiple sclerosis). (RX1 at 2).

Significantly, and perhaps most revealing, are the medical and chiropractic records from March 3, 2021, through September 14, 2021, which, again, conclusively demonstrate the claimant received steroid injections for what he described as significant lower back pain, which the claimant admitted. For example, the March 3, 2021, chiropractic report of Tonya Holt states the onset of the claimant's "lumbar, right lumbar, right sacroiliac, sacral, right pelvic, right buttock right posterior leg and right posterior knee" discomfort and began "years ago after he fell and landed on his rt side...then it came back about 3 weeks ago. (RX1 at 6; 6-29; T. 34-37). Indeed, and once again, the respondents' medical exhibit is replete with such references to both the location and severity of the claimant's right-sided, radiating lower back pain and treatment which existed long before the subject October 4, 2021, work incident. The claimant himself admitted these facts when confronted with them on cross-examination. (RX1 at 1-29; T. 30-47). Moreover, a medical record from the White River Health System dated October 27, 2021 – which was over three (3) weeks *after* the date of the subject alleged lower back/lumbar spine injury – as being "10/02/2017". Of course, this is almost four (4) years *before* the date of the subject October 4, 2021, alleged lower back/lumbar spine injury. (RX1 at 38; 36-42).

Fourth, and finally, there exists no physician's opinion stated within a reasonable degree of medical certainty. In fact, the MRI results of October 21, 2021, reveal no evidence of an acute, specific-incident injury, but reveal only degenerative changes in the claimant's lumbar spine which are consistent with his longstanding symptoms of lower back pain which radiated into the claimant's right buttock and right leg that existed *well before* the date of the subject October 4,

Michael Stroud, AWCC No. H202787

2021, work incident. In addition, on these facts and in this case, the narrative report of Dr. Theodore Hronas, a radiologist certified by the American Board of Radiology, is instructive. (RX1 at 68-69). In his fully-informed, well-written narrative report, Dr. Hronas accurately summarizes the claimant's entire relevant medical history and opines within a reasonable degree of medical certainty that the claimant's October 21, 2021, MRI reveals merely degenerative changes not unusual for a man of his age and that, "there are no objective findings of either a remote or recent injury... ." (RX1 at 69). This is a health insurance claim, not a workers' compensation claim, and the claimant has submitted his related medical bills to his health insurance carrier which has paid for his treatment.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations contained in the prehearing order filed March 27, 2022, which the parties affirmed on the record at the hearing, hereby are accepted as facts.
2. The claimant has failed to meet his burden of proof in demonstrating he sustained a "compensable injury" within the Act's definition to his lower back pain/lumbar spine on October 4, 2021.
3. The preponderance of the evidence – including the relevant medical records and his own admissions on cross-examination – conclusively demonstrate the claimant's lower back pain/lumbar spine condition is degenerative in nature, was longstanding, and admittedly symptomatic *well prior to* the subject work incident of October 4, 2021. In summary, there exists no objective medical evidence of any specific-incident injury to the claimant's lower back/lumbar spine occurring on October 4, 2021, as the claimant contends.
4. The claimant's attorney is not entitled to a fee on these facts.

Michael Stroud, AWCC No. H202787

WHEREFORE, for all the aforementioned reasons, I hereby am compelled to deny and dismiss this claim. If the respondents have not already done so, they shall pay the court reporter's invoice within twenty (20) days of their receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp