

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H400805**

**CHASE BOYD, EMPLOYEE**

**CLAIMANT**

**CWC MECHANICAL LLC,  
EMPLOYER**

**RESPONDENT**

**ACCIDENT FUND INS. CO. AMER.,  
CARRIER**

**RESPONDENT**

**OPINION FILED OCTOBER 1, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on July 5, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

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

**STATEMENT OF THE CASE**

On July 5, 2024, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on April 22, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

The parties discussed the stipulations set forth in Commission Exhibit 1. After an amendment of Stipulation No. 2 at the hearing, they read as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The employee/employer/carrier relationship existed among the parties on or about December 10, 2023, and at all other relevant times.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage of \$1,119.20 entitles him to compensation rates of \$746.00/\$560.00.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The following were litigated:

1. Whether Claimant sustained a compensable injury to his back by specific incident or, in the alternative, by gradual onset.
2. When did Claimant provide notice of his alleged injury?
3. Whether Claimant is entitled to reasonable and necessary medical treatment.
4. Whether Claimant is entitled to temporary total disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

### Contentions

The respective contentions of the parties, following amendments at the hearing, read as follows:

Claimant:

1. Claimant contends that he sustained injuries to his back in the course and scope of his employment on or about December 10, 2023. Respondents have controverted the claim.
2. Also, Claimant contends that he is entitled to temporary total disability benefits from January 26, 2024, to a date yet to be determined; to reasonable and necessary medical treatment; and to a controverted attorney's fee.
3. All other issues have been reserved.

Respondents:

1. Respondents contend that Claimant did not sustain a compensable injury on December 10, 2023, or at any other time while working for Respondent-employer.
2. Further, Respondents contend that there was no notice of an alleged injury until January 25, 2024.
3. Finally, Respondents contend that Claimant's temporary total disability claim is barred by his refusal of suitable employment, and/or he should be estopped from asserting entitlement to these benefits based on his lack of cooperation with Respondent-employer.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear

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the testimony of the witnesses and to 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 over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his back by specific incident.
4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his back by gradual onset.
5. Because of Findings of Fact/Conclusions of Law Nos. 3 and 4, supra, the remaining issues—whether Claimant is entitled to temporary total disability benefits and to a controverted attorney's fee, and when did he furnish notice of his alleged compensable injury—are moot and will not be addressed.

### **ADJUDICATION**

#### **Summary of Evidence**

The hearing witnesses were Claimant, Jonathan Wattingly, Kyle Boyd, Mark Chavers ("Mark"), and Buffy Chavers ("Buffy").

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of one index page and 51 numbered pages thereafter; Claimant's Exhibit 2,

non-medical documents including correspondence, Commission forms<sup>1</sup>, and a written statement, consisting of one index<sup>2</sup> page and 17 numbered pages thereafter; Claimant's Exhibit 3, a table from the Craighead County District Court that lists traffic citations purportedly received by witness Mark Chavers, consisting of one page; Claimant's

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<sup>1</sup>This exhibit includes a Form AR-2. Per Ark. Code Ann. § 11-9-529(a)-(c) (Repl. 2012):

(a) Within ten (10) days after the date of receipt of notice or of knowledge of injury or death, the employer shall send to the Workers' Compensation Commission a report setting forth:

- (1) The name, address, and business of the employer;
- (2) The name, address, and occupation of the employee;
- (3) The cause and nature of the injury or death;
- (4) The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and
- (5) Such other information as the commission may require.

(b) Additional reports with respect to the injury and of the condition of the employee shall be sent by the employer to the commission at such time and in such manner as the commission may prescribe.

**(c) Any report provided for in subsection (a) or (b) of this section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death on account of which the report is made.**

(Emphasis added) Form AR-2—one of the numerical, or administrative, forms of the Commission—is one of the forms covered under this provision. Even though Respondents did not object to its admission, the above-highlighted language prohibits the Commission from considering it for the purpose of determining, inter alia, whether Claimant sustained a compensable injury.

<sup>2</sup>The index page also has an entry that reads: “Audio file of telephone call between Claimant and Paul Carter in which Respondents agree to ‘take care of everything.’” This was not included in the exhibit; but based on remarks by Claimant's counsel at the hearing [T. 27-28], it is clear that this recording is identical to the one located at page 101 of Respondents' Exhibit 1.

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Exhibit 4, the transcript of the deposition of Mark taken June 28, 2024, consisting of 37 numbered pages; Respondents' Exhibit 1, non-medical items including audio recordings, and reports, consisting of two index pages, 114 pages thereafter, and one disc; and Respondents' Exhibit 2, a screenshot of a text message exchange, consisting of one page.

### Adjudication

#### A. Compensability

Introduction. Claimant has argued that on or around December 10, 2023, he sustained a compensable injury to his back either by specific incident or gradual onset while working for Respondent CWC Mechanical ("CWC"). Respondents dispute that he suffered a compensable injury.

Testimony. Claimant, who is 28 years old, testified that he worked for Respondent CWC on two different occasions totaling four years. His more recent stint there lasted approximately two years. His employer, whose shop is located in Jonesboro, performs welding, construction, millwright, and equipment services. These services are often performed in industrial settings. He testified that his duties at CWC prior to December 10, 2023, involved "a lot of bending," along with twisting, lifting, crouching, and working his way through attic spaces. He routinely worked eight-plus hours a day doing this.

On December 10, 2023, Claimant was working for CWC on-site at the ConAgra plant in Russellville.<sup>3</sup> Two other CWC employees were at the plant that day: Mark Chavers and Jonathan Wattingly. The project that they were working on was the replacement of old glycol lines with new stainless steel ones. This work was taking place in the attic (also referred to at times during testimony as the “interstitial”) above Kitchens 5 and 6 in the plant. Claimant’s job was to help cut out the old pipe, remove it from the attic, take measurements, and hold the new piping in place for the welder. Wattingly was handling the welding duties in the space below the attic, while Mark was acting as the supervisor. Describing the workspace, Claimant related: “It’s short. It’s crowded with other pipe and ceiling hangers, and you have to crawl around to maneuver through it. It’s pretty tight.”

The following exchange took place:

- Q. And so just to explain for the Commission and for the record what happened in terms of how the pipe got cut, how the pipe got welded, how it got delivered from where it was welded into this attic space.
- A. So you would start by cutting the pipe out in the attic. And in pieces, you would crawl through the attic dragging it, go out the little manhole door, climb down a small ladder that’s probably about four-foot tall, and then you would turn and crawl down another ladder off of that platform that was probably about 12—10 to 12 feet, something in that range. And you would go down. And then if they were welding it from below, we weld long, long stretches of pipe to avoid having to do much welding when we were in the attic; because the welding in the attic is difficult, laying down and all. So we would weld a longer stretch, carry it up. Someone would stand

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<sup>3</sup>Per Ark. Code Ann. § 11-9-704(b)(4)(B) (Repl. 2012), this case should have been assigned to an administrative law judge in District 2 (which includes Pope County, the location of the alleged accident) instead of District 4.

below, and they would hand that pipe up to the person up on the platform. That person would maneuver the pipe into the manhole, and then go through dragging the pipe and place it in the—

Q. As you were cutting out these old sections of pipe, were we dealing with different lengths of pipe?

A. Yes.

Q. And give us an idea, in terms of various lengths, that you were cutting and replacing that day, December 10, 2023.

A. We would cut out pieces anywhere from, you know, two feet to eight feet, maybe, just to pull out. And then we'd replace it with, roughly, 10, 12-foot pieces that are pre-welded together.

Q. And, I assume, from what you're telling me, the reason there's a different length in terms of what's being pulled out versus what's being taken up is you're probably—are you cutting it for ease of getting it out?

A. Yes. You just cut it at random.

It was the testimony of Claimant that he hurt his back on December 10, 2023.

He arrived at ConAgra shortly before 7:00 a.m. Asked what happened, Claimant related that the following occurred “probably around lunch time to noon or just before”:

As Giovanni [Suarez, an employee of MRM, another contractor] was handing me up one of those pre-welded pipes . . . a longer stretch. It was one of the longer stretches that we did that day. It was just after it come through the roof. We had a piece that was a long stretch that was 90 up, 90 over, and it was probably around 10, 12 foot long. It was probably about 40 to 60 pounds. Well, he would hand it up to me while I was on the platform, and I had to maneuver it into the manhole at an awkward angle. Once I got in, I was dragging it through there on my hands and knees. And I'm facing the manhole sort of to my right side. As I'm taking the pipe and moving it over some other pipe and through the hangers going towards my left, I felt a pop in my lower back. And it was sort of a shock.



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Continuing with his testimony, Claimant described the pain as being located in his lower back. He stated that he reported his back injury to Mark that day—and that Wattingly was present when this conversation took place.

Admitting that he did not immediately seek treatment, Claimant testified that he did not do so until January 26, 2024. Asked why, he responded: “It had finally gotten so painful that I needed to go.” On this occasion, he went to Lawrence County Chiropractic Clinic at the recommendation of Mark. Questioned why, per the record in evidence, that he told the chiropractor that his injury happened on December 11, 2023, Claimant responded: “I had just got the date wrong whenever I was speaking to him.” But he added that he was “certain it was December 10,” adding: “Evidence of the work we were doing that day and text messages about the insulation we put on the pipe that day indicated it happened December 10.”

The chiropractor declined to treat him that day, fearing his back condition was more serious than he would like to address. So, Claimant was referred to his primary care physician, Dr. Jonathan Cain. He saw Dr. Cain on January 31, 2024. Along with physical therapy, Claimant has been referred to a neurosurgeon and to pain management. His testimony was that he was scheduled for a follow-up visit with the pain management clinic the week after the hearing, and with the neurosurgeon the week after that. As part of the treatment for his back, he has undergone x-rays and an MRI. Moreover, he has been prescribed Neurontin and Gabapentin, along with Cyclobenzaprine (Flexeril) for muscle spasms.

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Claimant acknowledged that he had been involved in the workers' compensation matter previously: he had suffered a partial finger amputation that he had reported and had received benefits as a result. He admitted that prior to the alleged date of injury, he had been involved in multiple motor vehicle accidents. However, he stated that he did not recall being involved in an incident on September 2, 2020, when he drove off the road and struck a tree. The following exchange occurred at that point:

Q. Did you get a DWI associated with one of your wrecks?

A. Yes.

Q. Was that it?

A. Possibly.

Q. Did you run your truck off the road into some trees?

A. Yes.

Q. Okay. And did you get a DWI with that incident?

A. In Russellville?

Q. Yes.

A. Yes.

Shown photographs from Respondents' Exhibit 2 that purport to show Claimant's truck totaled in 2021 after a collision—one that did not result in a police report, he admitted that he had been involved in a wreck. But he stated that he did not remember if he left the scene of the accident. However, he did recall texting a picture of his damaged vehicle to Mark. He also remembered being struck head-on in another accident on March 4, 2023.

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Claimant admitted that on January 18, 2024, he texted Buffy, Mark's wife, to ask about getting on CWC's health insurance so that he could obtain an x-ray. He was unable to do this at that time because it was outside the open enrollment period. In addition, Claimant agreed that just one day after he allegedly hurt his back, he contacted the office to find out how much paid time off he had. The following exchange occurred:

Q. And after making these inquiries and learning you only had three days of PTO and you couldn't get on health insurance, then you report this injury formally on January 25; correct?

A. Correct.

Q. And without putting this injury on comp at the time, back in January of 2024, if you didn't put on comp, you had no other way to pay for treatment except out of your pocket; right?

A. Correct.

Despite being purportedly injured on December 10, 2023, Claimant continued to work his regular duties up through January 25, 2024.

When questioned by the Commission, and told that December 10, 2023, fell on a Sunday, Claimant confirmed that he was injured on that date, adding: "We worked weekends quite often." Asked by Respondents why he told Dr. Zhangliang Ma that his back pain began in "late December," he replied: "That's just a turn of phrase. I just said December." Later, Claimant stated that he "just accidentally said that."

Claimant's testimony was that on the date that he was hurt, December 10, 2023, he reported to Mark that he had injured his back. He added that Wattlingly was present when this occurred: "He was standing just to the side of us while we were having the

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conversation.” Mark was, according to Claimant, not only his supervisor but the owner of CWC.

However, in a recorded telephone conversation with Paul Carter and Melissa Belcher (contained in Respondents’ Exhibit 1), Claimant stated that he actually informed Mark of his alleged injury the next day, December 11, 2023.

The following exchange took place:

Q. Did CWC try to get you on their group health insurance during that time?

A. No, I don’t believe they did.

Q. If the evidence here today shows that there was communication between you and CWC about trying to get on their group health insurance between December 10[, 2023,] and January 25[, 2024,] do you disagree with that?

A. No, I wouldn’t disagree with it.

Q. Okay. Do you know why they were trying to get you on their group health insurance?

A. Yes. There was conversations about getting me on health insurance after I had told them that I was needing to seek medical attention for my back.

Q. Did they want you to file a workers’ comp claim?

A. No.

Q. Did you tell Mr. Chavers and others at CWC that you injured yourself at work?

A. Yes, I told them.

Claimant testified that on December 10, 2023, he was aware of how a work-related accident should be reported at CWC. Per the employee handbook, he was to

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notify his supervisor and human resources immediately. Moreover, CWC displayed a poster that contained information about its workers' compensation carrier and workers' compensation claims. Claimant agreed that he had reported two work-related injuries at CWC in the past. While he stated that he reported his alleged back injury to Mark, he did not know if he reported it to human resources—i.e., to Carter and Belcher. Asked why he would not have done so if Mark was not responsive, Claimant responded: “[h]e’s an owner.” While, according to Claimant, the matter “[e]ventually escalated” to Carter and Belcher, he did not contact them before January 25, 2024, about his back, it did not make sense to him to do this “at the time . . . .”

Claimant identified a number of CWC employees who functioned as his supervisors. They included not only Mark, but Reggie and Hayden Chavers, Tanner O’Guinn, Belcher, and even his own brother, Kyle Boyd. The following exchange took place:

Q. And you had cell phone numbers for all these people; right?

A. Correct.

Q. And you told me you had email addresses for most of them; right?

A. Some, yes.

Q. Okay. And you could have reported to any one of these people if what you’re saying about Mark not listening to you was true. You could have gone to any of these people and reported a work injury, couldn’t you?

A. Yes.

Q. And you didn’t, did you?

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A. No.

Notwithstanding Claimant's testimony, cited above, that he informed Mark of his alleged back injury the same day it allegedly happened—December 10, 2023—he told Belcher and Carter in the recorded telephone conversation that is in evidence that he actually told Mark the next day. Asked about this, Claimant stated on the witness stand that he would not dispute that was what he informed them, and that these are two different versions. But he repeated his testimony that he actually informed Mark on December 10. Asked if he had any witnesses who could corroborate this, Claimant identified Jonathan Wattingly. Returning to this topic when he was questioned by the Commission and asked to explain the discrepancy between his testimony and what he relayed in the earlier telephone call, Claimant explained that he "might have misspoke in that phone call." The following exchange took place:

Q. Why would you have misspoken about something like that?

A. So much stress being put on me about the subject of it.

Q. Okay. Stress from whom?

A. Pressure from my superiors in the company, the owners, and—

Q. Pressure in that they denied your claim? What kind of pressure are you talking about?

A. Yes, they were wanting to not offer me the service of workman's compensation. They were trying to avoid it and at that point in that phone call was being made that was after it got to a point where I said, hey, I need help. And then everybody started coming at me all at once try to hit me from different angles with stuff. And I'm sure I misspoke.

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Q. Okay.

A. But ask Jonathan Wattingly. He was there December 10 when I came down and said it.

Called by Claimant, Jonathan Wattingly testified that he has worked for Respondent CWC for nine years as a tig welder. He has known Claimant for at least three years. Wattingly related that on December 10, 2023, he was working with Claimant at ConAgra in Russellville. They were replacing 1.5-inch glycol pipes. These are made of stainless steel. While he was working below on the floor of the kitchen, welding, Claimant was in the attic space, cutting out the old pipe. Wattingly helped carry in some of the new pipe, which was lengthy at times because they wanted to have fewer welds. The attic space where Claimant was working was only four or five feet tall. Because of this, he “had to kneel down some.” The presence of other pipes in the attic, which were held in place with hangers, made maneuvering in and out of there with old and new pipe difficult. According to Wattingly, Mark Chavers and Giovanni Suarez were present as well.

The following exchange took place:

Q. Did Chase tell you—did he come down and tell you that his back was hurting on December 10, 2023?

A. Yes.

Q. And what time was that?

A. I said I think around two o'clock. It was after lunch. I don't know exactly when it was, but it was after lunch at sometime.

Q. But there's no doubt that he came down and said his back was hurting on December 10, 2023?

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A. Yeah. He said his back was hurting.

...

Q. Had you heard him complain of his back hurting before that day?

A. No.

It was Wattingly's testimony that he heard Claimant complain about his back "maybe once or twice" thereafter.

However, on cross-examination, Wattingly stated that Claimant never told him that he hurt his back at work on that date. The following exchange took place:

Q. Is that why you didn't report anything or send anything up the chain?

A. Yeah. I didn't say anything because I didn't know if, you know, if it was going to be any big deal, if it was just his back was hurting in passing or whatever. So I never—

Q. Did you—

A. —thought it was anything I need to say anything about.

Q. Did you understand it to be from non-work-related causes?

A. No.

Q. Did you know one way or the other?

A. No.

...

Q. You have not been given any information from Chase indicating that he had injured himself at work, injured his back?

A. Correct.



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Asked whether he knew whether Claimant told Mark about his alleged back injury on December 10, 2023, Wattingly responded: “I’m not for sure if it was specifically said to him because he was in and out all day.” Moreover, Wattingly was not aware of Claimant informing Mark about his back at any point before January 25, 2024.

Shown a form captioned “CWC Mechanical Incident Investigation Form – Accident” that is in evidence, Claimant stated that he was never offered this form to prepare in connection with his alleged back injury. Wattingly concurred.

Called by Respondents, Kyle Boyd testified that he is not only Claimant’s brother, but that he is an employee of CWC Mechanical. In his job as foreman there, he can take an injury report by an employee. The following exchange took place:

Q. Before January 25, 2024, had Chase ever mentioned to you anything about injuring himself at work on December 10?

A. No, sir.

Q. Had you seen him between December 10 and January 25, 2024?

A. Yes.

...

Q. And did you know he was saying he had some back symptoms or back problems in that window of time?

A. Not other than after the 25<sup>th</sup>.

Q. After the 25<sup>th</sup>, okay. But not once before he made the formal report to CWC had he indicated to you that he suffered a work-related injury or that he thought he had suffered a work-related injury; correct?

A. No.

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Q. Okay. That is correct?

A. Yeah, that's correct.

Q. Okay. When this did come up on January 25, 2024, and he started saying he hurt himself at work, did you ask him if he had told Mark?

A. Yeah. And I told him, I said he needed to talk to Mark about it.

Q. Did he indicate to you he had not told Mark yet.

A. He asked me did I think they would help him out on medical bills or whatnot.

Q. Okay. Did he indicate to you that he had not formally reported to Mark yet?

A. Right.

Q. And you did you tell him, you need to tell Mark?

A. Yes, sir.

...

Q. And you're positive when he started telling you on January 25 that he thought he had hurt himself at work, that he said he had not told Mark yet?

A. Correct.

Mark Chavers, one of the owners of CWC, confirmed that Claimant inquired on December 11, 2023, about the amount of paid time off that he had. He checked and informed Claimant that he had three such days left. While Claimant was off on the day that he asked this question, he returned to work the next day, Tuesday, December 12, 2023. When he did so, according to Mark, Claimant resumed his regular duties and did not show any signs of suffering an injury.

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Asked about the pipe that Claimant was carrying at ConAgra, Mark stated that it weighed approximately one pound per foot of length. This would mean that a 12-foot length—which was, by his estimation, the maximum length that could be maneuvered into the attic space without being cut into a smaller section—would weigh about 12 pounds. The pipe originally comes in 20-foot lengths.

Mark testified that he was Claimant's supervisor at CWC on December 10, 2023. He was present at the ConAgra plant in Russellville that day while Claimant worked on the pipe replacement project. But he left the job site on or before lunchtime that day, and related that Claimant did not tell him on that date that he had suffered a work-related back injury. Instead, it was Mark's testimony that he knew nothing about the alleged injury until Claimant made a formal report on January 25, 2024. Before that time, on two occasions, Claimant had mentioned his back bothering him, explaining that he did not know what he had done to it. Mark was adamant that prior to January 25, 2024, Claimant never disclosed that he believed that he had suffered a back injury at work—let alone that it happened while working in the attic of the ConAgra plant on December 10, 2023. Instead, he was simply stating that he was having back problems and needed health coverage. Mark offered to lend him money for treatment, and texted him a list of chiropractic physicians. Claimant stated that he was concerned about chiropractic treatment making his back condition worse. After this conversation took place was the first time, according to Mark, and Claimant mentioned an incident at ConAgra that supposedly happened the previous month. Mark stated that he never discouraged Claimant from filing or pursuing a workers' compensation claim. Once it

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was reported, both he and Carter investigated the matter. Mark testified that he did not fill out an investigation report on the alleged incident because it was not reported to him. Once Claimant finally made a report in January 2024, it was given to Carter, Belcher, and Buffy to handle.

While Claimant told Mark a week to ten days before January 25 that he was having a problem with his back and was going to get an MRI, he added that when he asked Claimant what had happened, he replied that he did not know what he had done to his back. It was during this period that they investigated whether Claimant could be added to the company's group health insurance.

Later, Mark stated that he would not have texted Claimant the names of chiropractors had he known that Claimant's back condition was work-related. Buffy began working on the workers' compensation paperwork the next day, January 26, 2024; and Claimant came into the office the following Monday, January 29, 2024, to fill out and sign it. Discussing the telephone conversation that he had with Claimant further, Chavers testified that in the course of it, Claimant identified his work in "the interstitial" at ConAgra "December the 10<sup>th</sup> or something, whatever weekend that was."

Buffy Chavers, the wife of Mark Chavers, testified that she began handling human resources matters for CWC in January 2024 due to the illness of Belcher. She related that in response to a text message (which is in evidence) that Claimant sent her on January 18, 2024, about getting on company health insurance (which he had waived earlier during the open-enrollment period), she called him. According to her, he did not represent during that conversation that he had been hurt at work; in fact, he did not

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even mention what he needed an x-ray for or why. She told Claimant that he could not sign onto CWC's group health insurance until April 1, 2024. However, once the matter was treated as a workers' compensation claim on January 25, 2024, she contacted the company's insurer. It was the testimony of Buffy that neither Claimant nor her husband ever stated before January 25 that Claimant had hurt his back at work or had reported that he had.

Claimant gave rebuttal testimony that he called Mark from the road after leaving Russellville on January 25, 2024, telling him that he needed to go to the doctor and that he wanted to file a workers' compensation claim. He stated that Mark's response was, "Why the 'F' are you calling me?" Claimant added that they had a "heated argument," and that Mark sent him names of chiropractors "several hours later." Asked by Respondents why he did not relate this remarkable bit of testimony during his first stint on the witness stand, Claimant replied: "I wasn't asked."

When Claimant testified again on rebuttal, the following exchange occurred when he was examined by the Commission:

- Q. Mr. Boyd, I heard you testify initially that you felt a pop in your back. Do you recall that testimony?
- A. Yes, Your Honor.
- Q. Did you relate that that that day to Mark?
- A. Specifically, a pop in my back?
- Q. Uh-huh.
- A. I can't specifically remember saying that. I remember just saying back pain, saying that I hurt my back. I feels sore.

Q. I mean, you relayed on the witness stand a specific occurrence, that you actually felt a pop in your back.

A. Yes.

Q. What did you—what sensation did you feel that came along with the pop in your back? Anything?

A. Yes. It was kind of like a shock and burning feeling.

Continuing with his rebuttal testimony, Claimant stated that he told his brother before January 25, 2024, that he had been hurt at work. Asked if Kyle Boyd had lied under oath, Claimant responded: “I wouldn’t call it lying. He might have forgotten.” When questioned whether he was disputing his brother’s testimony that Claimant told him on that date that he had been hurt at work but had not told Mark yet, Claimant replied: “I think there’s some inaccuracies in his story.” He continued:

We had a conversation. I believe it would have been earlier that day. And I said, “Hey, I’m going to have to tell Mark that I’m done and I need to go to the doctor for good, like, for sure. At this point, I’m not going to keep messing around with him.”

Medical Records. The medical records of Claimant, contained in his Exhibit 1, reflect that Claimant went to Robert Shackelford, D.C., on January 26, 2024. The history portion of the report reads in pertinent part:

Patient is a 28-year-old male who presents today stating he hurt his back at work on 12/11/2023. Symptoms include severe pain when he coughs or sneezes that has progressively worsened. Patient has pain consistent with throbbing, aching, and stabbing type pain that is continuous with some movements and produced increases in pain intermittently.

The chiropractor referred Claimant to his primary care physician, Dr. Cain, who saw him on January 31, 2024, at the St. Bernards Internal Residency Clinic (St. Bernards).

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On February 12, 2024, Claimant went back to St. Bernards and saw Shi Luo, D.O., and Christina Carl, D.O. The history portion of the record states:

28 yo male came in with a complaint of lower back pain located in the around L4-L5 and surround[ing] area with radiation to the bilateral lower extremities. Pain is worse with flexion and extension. Patient has taken Tylenol and naproxen without relief. He is no longer using naproxen. He was **last seen by Dr. Cain for similar complaints and xray lumb[a]r spine and mri was ordered.** L-spine xray shows “Mild convex left lumbar curve. Grade 1 retrolisthesis L3 on L4. The lumbar spine is otherwise negative.” MRI is schedule[d] for 2/20. Patient said the pain was getting worse and started to cause bilateral lower extremities weakness. Patient denied having trouble controlling urine or bowel and denied having symptoms resembling saddle anesthesia. He did endorse a cough/headache that started about 3 days ago and coughing makes the back pain worse.

(Emphasis added)

With respect to the language in bold above, the report reflects that Claimant previously saw Dr. Cain on January 31, 2024—and that he placed him “on light duty, pending more diagnostic testing” at that time. But the February 12 report references another visit Claimant had with Dr. Cain that took place on December 14, 2023—only four days after his alleged back injury supposedly occurred. On that particular occasion—again per the February 12, 2024, report—Dr. Cain reviewed what was termed Claimant’s “Active Problem List.” The first entry on that list is: “Lumbar back pain (Acute Medical) M54.50.” Interestingly, the report does not indicate that the list was amended on December 14, 2023; only that it was “reviewed” on that date. The March 18, 2024, report from St. Bernards (*see infra*) reflects that the Active Problem List was “updated” at that time to include the following: “Lumbosacral radiculopathy at S1 (Acute Medical) M54.17.” Per this documentation, Claimant treated with Cain for

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“acute” lumbar pain much earlier than reflected in his testimony and medical exhibit—  
arguably even earlier than December 14, 2023.

The following related exchange occurred at the hearing while Claimant was  
under direct examination:

Q. This is page one of Claimant’s medical exhibit [the January 26, 2024,  
report by Dr. Shackelford]. Is this the first time you had sought medical  
treatment?

A. Yes.

Q. And why did you go to this chiropractor?

A. It was recommended from Mark Chavers.

Claimant was also questioned about this on cross-examination:

Q. Is there a reason that you did not tell me about going to Dr. Cain on  
December 14?

A. I don’t recall.

Q. Is there a reason that you haven’t introduced records from  
December 14?

A. No.

In any case, the February 12, 2024, report continues:

Assessment & Plan

(1) Lumbar back pain:

Code(s): M54.50 – LBP, LUMBAGO, LOW BACK PAIN

Plan:

Worsening pain and start to have BLE weakness. L-spine xray shows  
“Mild convex left lumbar curve. Grade 1 retrolisthesis L3 on L4. The  
lumbar spine is otherwise negative.” MRI is schedule[d] for 2/20. No  
emergent need for neuro imaging due to lack of signs of urinary/bowel  
incontin[e]nce and lack of saddle anesthesia. Are positive for straight leg  
raising unilaterally. 5/5 on BLE motor strength and sensation are grossly



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intact in BLE as well. MRI scheduled for 2/20. OMT provided targeting paraspinal muscles with soft tissue manipulation and spinal inhibition technique with compression to the . . . paraspinal region of L4 region. Sacral rocking was utilized as well as the pain radiates lower. Also ordered Toradol IM 60mg. **Also ordered Flexeril ER 15 mg once daily as needed (10 pills in total) for muscle spasm.** Hopefully all the above treatment is going to last him until the MRI for definitive diagnosis and formulation of treatment plan.

Plan:

. . .

**Cyclobenzaprine ER 15 mg PO QDAY PRN 10 caps ORF muscle spasm**

(Emphasis added) Dr. Carl wrote that Claimant “may return to work on 2/22/2024 with light duty restrictions until physical therapy is completed. On February 26, 2024, Carl stated that Claimant “cannot do any kind of bending or flexing of his back. Mr. Boyd can also not lift anything over 25 pounds. He can return to work with these restrictions, until physical therapy is completed.”

As stated previously, Claimant went again to St. Bernards on March 18, 2024, and saw Paul Saad, M.D. The history portion reads in pertinent part:

Mr. Boyd presents to clinic this morning with complaints of ongoing lumbosacral pain. Patient initially had pain since December 2023, has undergone conservative management since then including 3 weeks of physical therapy and OMM which have not alleviated his symptoms. Patient states that it is affecting his ADLs including walking with a gait favoring his right leg, pain when he walks especially uphill and downhill, flexion and extension, sitting posture is affected, patient has awakenings in the middle of the night when he moves, and is currently affecting his job.

The report continues:

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Assessment & Plan

(1) Lumbosacral radiculopathy at S1:

Code(s): M54.17 Radiculopathy, lumbosacral region

Plan:

Patient endorses ongoing lumbosacral pain with radiculopathy to the bilateral lower extremities since December 2023. Patient has undergone conservative management, OMM session, and 3 weeks of physical therapy which have not alleviated his symptoms. Patient is denying any red flag symptoms.

Lumbar spine x-ray shows mild convex left lumbar curve. Grade 1 retrolisth[esis] L3 on L4. The lumbar spine is otherwise negative. MRI of the lumbar spine shows small disc protrusion at L5-S1 contacting the right S1 nerve root. No significant spinal canal or foraminal stenosis.

Neurosurgery referral

Saad wrote that Claimant “may return to work on 4/18/2024 or until Neurosurgery clears him for work.”

Next, Claimant went to NEA Baptist Clinic on April 15, 2024. He told treating personnel:

[His lower back pain] was caused by a work injury that occur[red] in December 2023 felt a pop in his back working in an attic. He lifted a 40-60 pound pipe weaving through an attic. He felt a sharp burning pain in his lower back and buttocks. He has been off work since the symptoms began.

The report continues:

Tenderness to palpation in the middle to lower lumbar spine. No muscle spasms noted.

...

Radiographic studies:

I have personally reviewed the images listed below and these are my findings from looking at these images. These findings have been discussed with the patient.

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Lumbar MRI revealed: 20 February 2024 L3/4 diffuse bulge, L4/5 bilateral LRS secondary to facet and disc disease; L5/S1 interspace narrowing with right paracentral disc bulge.

Claimant was diagnosed as having lumbar radiculopathy and was referred to physical therapy and pain management. Also, the author of the report wrote: “Remain off work until completing PT and PM due to increased pain with pressure on lower back.”

When Claimant presented to the NEA Baptist Pain Management Clinic on May 15, 2024, he reported that he had been having “chronic lumbar pain since late December 2023, worsening recently. Pt states he hurt his back when he was working in the attic at work.” Zhangliang Ma, M.D., wrote: “I reviewed MRI of L-spine done on 4/13/24 with the following findings: Disc bulging at L5/S1 level posteriorly toward the left side.” She diagnosed Claimant as having the primary diagnosis of lumbar radicular pain, along with discogenic lumbar pain, lumbar disc disease, and lumbar spondylosis. Ma prescribed him Neurontin and Mobic, and scheduled him for a transforaminal epidural steroid injection at L5-S1 on the left.

Thereafter, from May 28, 2024, through June 20, 2024, continued to undergo physical therapy.

Nonmedical Records. These have been discussed in the context of the witness testimony, *supra*.

Discussion. In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show that: (1) an injury occurred that arose out of and in the course of his employment; (2)

the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415 (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

Pursuant to Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2012), proof of rapid repetitive motion is not required to establish a gradual-onset back injury. However, Claimant must still prove by a preponderance of the evidence that the alleged injury was the major cause of the disability or need for treatment. He must also show that a causal connection exists between the injury and the employment. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and

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translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Claimant undoubtedly has an objective finding of a back condition. His February 20, 2024, lumbar MRI revealed, inter alia, a disc bulge at L5-S1. Furthermore, he has been diagnosed as having, inter alia, lower back pain/lumbago and was prescribed Cyclobenzaprine (Flexeril) for muscle spasms. Muscle spasms can constitute objective medical findings. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000); *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). This, in and of itself, is sufficient to establish objective findings of a lumbar injury. See *Bradford v. Stracener Bros. Constr. Corp.*, 2021 Ark. App. 316, 2021 Ark. App. LEXIS 334; *Melius v. Chapel Ridge Nursing Ctr., LLC*, 2021 Ark. App. 61, 2021 Ark. App. LEXIS 67. Moreover, this condition caused internal or external physical harm to his body and required medical services.

As for whether this back condition arose out of and in the course of employment, and was caused by a specific incident that is identifiable by time and place of occurrence, Claimant testified that it was due to his carrying pipes through the interstitial/attic at the ConAgra plant in Russellville on December 10, 2023. In his testimony, he related that while carrying a 12-foot section of pipe—which he estimated weighed 40 to 60 pounds—and having to maneuver around the other pipes in the interstitial, he felt a “pop” in his back.

However, the first appearance in the evidentiary record of his suffering a “pop” in his back was in his visit to NEA Baptist Clinic on April 15, 2024—over four months after

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its purported occurrence, and not until at least his seventh visit to a provider for his back. Working with Claimant that day at ConAgra was Giovanni Suarez—an employee of another company. According to Claimant, Suarez would have been nearby—in or near the interstitial—when he suffered the “pop.” But Mark Chavers’s testimony was that both Suarez and his employer, Mike Maggard, told Mark that Claimant never said anything to Suarez about being hurt. I credit this. Claimant claimed that he told Mark on December 10, 2023, that he had been injured. He admitted that while he supposedly felt “kind of a shock and burning feeling” that came with the pop, he may not have relayed this detail to Mark. But Mark denied that Claimant said anything to him at all that day about injuring his back. To the contrary: according to Mark, Claimant told him more than once that he was not sure what he had done to his back before eventually claiming that it was work-related. After assessing both of these individuals during the hearing, I credit Mark Chavers over Claimant.

Claimant’s testimony was that Wattingly supposedly was a witness to the alleged conversation between Claimant and Mark. However, Wattingly stated that the only thing that he heard was Claimant stating “[i]n passing” that his back was hurting. This remark occurred around 2:00 p.m. Claimant never stated that the origin of the pain was something work-related. Because of this, it never occurred to Wattingly to report it. I credit his account.

Claimant’s brother, Kyle Boyd—who, again, is a fellow employee of Respondent CWC—testified that he saw Claimant between December 10, 2023, and January 25, 2024. Yet he related that during that interim, Claimant never told him that he had been

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hurt at work until 46 days after the alleged accident. Asked to explain this, Claimant stated that his brother had simply forgotten that he had been told. But having had the opportunity to view both witnesses and assess their respective testimonies, I credit Kyle Boyd over Claimant.

In the days after this alleged back injury supposedly occurred, Claimant—who as the evidence reflects, was acquainted with the workers' compensation process—did not act like someone who had suffered a work-related injury. The day after the alleged incident, December 11, 2023, Claimant contacted the office of CWC to find out how much paid time off he had accumulated. When he was told that he had three days' leave, he returned to work the next day and resumed his regular duties. His medical exhibit does not include a report of his December 14, 2023, visit to Dr. Cain. But as discussed above, a later report references it—and indicates that on that date, Cain “reviewed” Claimant’s “Active Problem List,” which included “[l]umbar back pain.” Another report shows that this list was later “updated.” When was the list first updated to reflect that Claimant was presenting with lumbar pain? This is unknown, since the first St. Bernards report in evidence<sup>4</sup> was for the February 12, 2023, visit. Yet what is known is that just four days after this incident, Claimant presented to his physician with complaints of back pain. Asked at the hearing why he did not disclose this, he responded, remarkably, that he did not recall this appointment.

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<sup>4</sup>While Claimant saw Dr. Cain on January 31, 2024, only an off-work slip from that visit is in evidence.

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Again, the evidence reflects that Claimant was in fact suffering from a back issue during this time frame. But instead of attempting to report it as being work-related—as he ultimately did on January 25, 2024—he texted Buffy on January 18, 2024, to see if he could be added to their group health insurance policy. Only after he learned that this was not possible because it was not during the open enrollment period did he finally tell CWC one week later that he had been hurt on the job.

In light of the foregoing, I cannot—and do not—credit Claimant concerning the circumstances surrounding his alleged back injury. He has not shown that his purported injury arose out of and in the course of his employment. For that reason, he has not proven by a preponderance of the evidence that he sustained a compensable back injury by specific incident.

As for his alternative allegation that his back injury was gradual-onset in nature, the evidence as highlighted above does not establish that a causal connection exists between his back condition injury and his job at Respondent CWC. Consequently, he has not met his burden of proof under this theory, either.

For me to find otherwise would require that I engage in speculation and conjecture. But such cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). In sum, he has not proven that he suffered a compensable injury to his back.

B. Remaining Issues

Because Claimant has not shown that he sustained a compensable injury to his back, the remaining issues—whether he is entitled to temporary total disability benefits



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and to a controverted attorney's fee, and when did he furnish notice of his alleged compensable injury—are moot and will not be addressed.

**CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby denied and dismissed.

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Chief Administrative Law Judge