

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H400805

CHASE BOYD, EMPLOYEE CLAIMANT

CWC MECHANICAL LLC, EMPLOYER RESPONDENT

ACCIDENT FUND INSURANCE COMPANY OF
AMERICA, CARRIER RESPONDENT

OPINION FILED FEBRUARY 11, 2025

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

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

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed October 1, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. 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.

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

Therefore, we affirm and adopt the October 1, 2024 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that the Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his back by specific incident or gradual onset and that Claimant is not entitled to temporary total disability benefits nor a controverted attorney's fee. The Claimant appeals this decision. After conducting a thorough review of the record, I would find that the Claimant proved he sustained a compensable injury to his back by specific incident, and that Claimant is entitled to temporary total disability benefits.

1. The Claimant has proven by a preponderance of the evidence that he has sustained a compensable injury to his back by specific incident.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury

was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a).

Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

On December 10, 2023, Claimant was working for Respondent and was handed a 10-foot-long piece of pipe weighing approximately 40-60 pounds and, as he was trying to maneuver it into position, felt a pop in his back. Claimant reported that he had begun to experience back pain to representatives of Respondent. The Respondent's did not provide medical treatment for the Claimant following his injury until Claimant reported his

work injury again on January 25, 2024. Following this accident, the Claimant continued to work and his condition further deteriorated.

Claimant began receiving medical treatment for his back injury on January 26, 2024, in the form of chiropractic care as recommended by the Respondent. At this chiropractic visit, the Claimant gave a history of his back injury on December 11, 2023. Although the Claimant's recollection of the actual date he experienced back pain was not exact, I find that his testimony as to the manner in which the work accident took place was credible. The Claimant was then referred to his primary care physician for evaluation of his lower back condition. On January 31, 2024, Dr. Jonathan Cain wrote a letter to Respondent stating that the Claimant may return to work on February 1, 2024, on light duty pending more diagnostic testing. On February 12, 2024, Claimant is seen by Dr. Christina Carl who diagnosed the Claimant with lumbago and observed in his lower back on x-ray. Claimant is then referred for an MRI for a definitive diagnosis, physical therapy, and given the work status of "may return to work on 2/22/2025 with light duty restrictions until physical therapy is completed." On February 26, 2024, Dr. Christian Carl writes a letter on Claimant's condition stating "Due to recent testing and appointments, Chase Boyd can not 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." On March

18, 2024, Claimant is diagnosed with lumbosacral radiculopathy at S1 as the MRI of the lumbar spine shows “small disc protrusion at L5-S1 contracting the right S1 nerve root. No significant spinal canal or foraminal stenosis.” Claimant is then referred to neurosurgery and given the work restriction of “may return to work on 4/18/2024 or until Neurosurgery clears him for work.” On April 15, 2024, Claimant is seen by Dr. Carie Wells. Dr. Wells reviews the MRI taken in February 2024 and finds “L3/4 diffuse bulge; L4/5 bilateral LRS secondary to facet and disc disease; L5/S1 interspace narrowing with right paracentral disc bulge minimal.” Dr. Wells diagnoses the Claimant with lumbar radiculopathy and states the Claimant is to “remain off work until completing PT and PM due to increased pain with pressure on lower back.”

A doctor is not required to be absolute in an opinion nor are the magic words “within a reasonable degree of medical certainty” even required to be used by the doctor for an injury to be related to the work accident. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296 (2001). Rather, the medical opinion must simply be more than speculation. *Id.* If a doctor renders an opinion about causation of a workers’ compensation injury with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this should pass muster. *Id.* Here, the Claimant was seen by multiple physicians who visualized disc bulges at L3/4, and disc protrusions at L5/S1 and treated Claimant for

muscle spasms. The Claimant relates to these physicians that the pain began in early December of 2023. There is no credible evidence in the record that the Claimant experienced difficulty performing his employment duties or that these injuries were present before the Claimant felt a pop in his back on December 10, 2023. Therefore, I find that the Claimant has proven by a preponderance of the evidence that he suffered a compensable injury to his back on December 10, 2023. The Claimant is entitled to reasonable and necessary medical care as required by Ark. Code Ann. § 11-9-508 for his compensable injury, including treatment he has received to diagnose the nature and extent of his compensable injury and any treatment he may need for his compensable injury in the future.

2. Claimant is entitled to temporary total disability from January 31, 2024, until a date yet determined.

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Claimant was taken off of work on January 31, 2024, and was subsequently taken off work by multiple other physicians after each appointment he had for his compensable back injury. The last note in the record by a physician states Claimant is to “remain off work until completing PT and PM due to increased pain with pressure on lower back.” There is no evidence in the record that

Claimant has finished physical therapy or pain management thus his work restrictions are still in place. Therefore, I find that Claimant is entitled to temporary total disability from January 31, 2024, until a date yet to be determined.

Based on these findings, the Claimant's attorney would be entitled to a controverted attorney's fee on the indemnity benefits found here within.

Lastly, it is mentioned by the Respondent's that they were not given proper notice of the injury. This argument lacks merit as the Claimant told his co-workers and supervisor on the date of injury and followed up with his supervisor before filing this workers' compensation claim. The Claimant then filled out an AR-N on January 29, 2024. The Respondent was given notice of the Claimant's injury in accordance with Ark. Code Ann. § 11-9-701.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner