

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NOS. H301278 & H303725

MICHELLE BURNETT, EMPLOYEE CLAIMANT

SOUTHSIDE HIGH SCHOOL, EMPLOYER RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
CARRIER RESPONDENT

OPINION FILED AUGUST 16, 2024

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed March 12, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 21, 2023, and contained in a Pre-hearing Order filed August 22, 2023, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries to her low back, right knee, right arm, and coccyx on or about February 24, 2023.
3. The claimant has proven by a preponderance of the evidence that she is entitled to medical treatment for her compensable low back injury of January 18, 2023, in the form of an MRI of the lumbar spine.
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable cervical spine injury on January 18, 2023, and/or February 24, 2023.
5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her cervical spine.

We have carefully conducted a *de novo* review of the entire record herein, and it is our opinion that 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 March 12, 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 failed to prove by a preponderance of the evidence that she sustained compensable injuries to her low back, right knee, right arm, and coccyx on or about February 24, 2023, that she proved by a preponderance of the evidence that she is entitled to medical treatment for her compensable low back injury of January 18, 2023, in the form of an MRI of the lumbar spine, that she failed to prove by a preponderance of the evidence that she sustained a compensable cervical spine injury on January 18, 2023 and/or February 24, 2023, and finally, that the Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her cervical spine. I concur in part and dissent in part.

1. The Claimant sustained a compensable injury to her coccyx on or about February 24, 2023.

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).

On February 24, 2023, Claimant fell at work, falling on her right buttocks. The Claimant presented to the emergency department at Mercy Hospital in Fort Smith where she was diagnosed with a contusion of the coccyx. On March 2, 2023, Claimant presented to Dr. Thomas Cheyne for evaluation of her coccyx. Dr. Cheyne noted that the Claimant was quite tender over her coccyx and diagnosed the Claimant with coccydynia.

Claimant continued treatment with Dr. Cheyne for her coccydynia and on April 26, 2023, Dr. Cheyne stated that Claimant's coccydynia was likely

from her February 24, 2023, fall. 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.*

Therefore, I would rule that Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her coccyx as a result of her work accident on February 24, 2023.

2. The Claimant has proven by a preponderance of the evidence that she sustained a compensable cervical spine injury on January 18, 2023, and/or February 24, 2023.

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

objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

The Claimant was involved in a motor vehicle accident in July of 2022 where she was t-boned at a rate of approximately 40 miles per hour. The Claimant underwent treatment for her injuries as a result of the motor vehicle accident and she was diagnosed with whiplash, neck pain and shoulder pain on the left side. Claimant had an MRI of her cervical spine on September 26, 2022, which showed:

Impression:

C5-C6 central right paracentral disc protrusion indenting subarachnoid space and cord. Causing central canal stenosis.
Broad-based central disc bulge spurring C3-4 with mild canal stenosis.
Prominent foraminal spurs. Three broad-based central disc bulge.
C6-C7: canal stenosis.
T2-T3 small central disc protrusion.

On January 18, 2023, Claimant was walking up the stairs at her place of work when she lost her footing and landed on her knees and then fell back onto the stairwell wall. Claimant presented to the Mercy Occupational Medicine Clinic in Fort Smith and was seen by Dr. Ian Cheyne who diagnosed her with an initial encounter for her fall.

On February 24, 2023, Claimant was walking back into the school when she tripped on a curb causing her to fall backwards and onto her right side. Claimant presented to Mercy Hospital Fort Smith Emergency Department where she was again diagnosed with an initial encounter for her fall.

Claimant continued to treat her symptoms and followed up with Dr. Jeffrey Hamby on June 2, 2023. Dr. Hamby noted on Claimant's physical examination that she had a diminished range of motion in her neck and needed an MRI of her cervical spine. Dr. Hamby diagnosed the Claimant with cervicgia and radiculopathy affecting her upper extremities. Claimant underwent an MRI of her cervical spine on June 6, 2023, which showed new findings of:

At C3-4, there is mild retrolisthesis by 2 or 3 mm. There is a central disc herniation, moderately severe canal stenosis, there may be mild cord compression. Additionally, moderate bilateral foraminal spurring/exit foramina stenosis at this level.

At the C4-5 level, there is mild broad disc bulging. There is left foraminal disc herniation producing moderately severe stenosis of the left exit foramen. Mild narrowing right exit foramen. Mild central canal stenosis.

Dr. Hamby read Claimant's MRI of her C-spine on June 22, 2023, where he diagnosed her with a herniated cervical disc and referred Claimant to a neurosurgeon for evaluation and treatment options. Claimant was seen by Dr. Zane Grimes on August 15, 2023, who noted the history of her injury as being:

She reports progressive neck pain after a fall at work in January of this year. She describes pain through the right side [of] her neck which extends to the right shoulder but does not typically radiate down the arms.

Dr. Grimes diagnosed the Claimant with cervical spondylosis with myelopathy, cervical stenosis of the spine, and cervical spinal cord compression. Dr. Grimes recommended surgery in the form of decompression of the spinal cord.

Claimant has marked differences in her cervical spine as visualized in the September 26, 2022, and June 2, 2023, MRIs. Prior to Claimant's two work accidents, Claimant did not have pathology at the C3-4, or C4-5 levels. Therefore, I would rule that the Claimant has proven by a

preponderance of the evidence that she sustained a compensable injury to her cervical spine on January 18, 2023, and/or February 24, 2023.

3. The Claimant has proven by a preponderance of the evidence that she is entitled to medical treatment for her cervical spine.

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).

Claimant suffered a compensable injury to her cervical spine after her two work related falls on January 18, 2023 and February 24, 2023. As noted above, Dr. Grimes recommended surgery for Claimant's compensable injury in the form of decompression of the spinal cord because if left untreated this injury carries an increased risk of spinal cord injury. This treatment is reasonable and necessary to prevent the further deterioration of the damage produced by the compensable injury.

Therefore, I would rule that the Claimant has proven by a preponderance of the evidence that she is entitled to medical treatment for her cervical spine.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner