

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H301483

ELIAS CHAVEZ,
EMPLOYEE

CLAIMANT

THOMPSON CONSTRUCTION GROUP, INC.,
EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 10, 2024

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

Claimant is *Pro Se*.

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

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal an administrative law judge's opinion filed December 13, 2023. The administrative law judge found that the claimant proved he sustained a compensable left hip injury. The administrative law judge awarded reasonably necessary medical treatment but found that the claimant did not prove he was entitled to temporary total disability benefits. The administrative law judge reserved the issues of permanent anatomical impairment and wage-loss disability. After reviewing the entire record *de*

novo, the Full Commission affirms the administrative law judge's opinion as modified.

I. HISTORY

The testimony of Elias Chavez, now age 61, indicated that he became employed as a "rodbuster" for the respondents, Thompson Construction Group, Inc., in June 2021. The parties stipulated that the employee-employer-carrier relationship existed on September 9, 2022. The claimant testified on direct examination:

Q. Could you tell us exactly what happened to you on September 9th of 2022?

A. Yes. It was just a normal day. We started working at 7:00....And so we had to start carrying the metal rods down. There were two packages of Number 7 rods that are 40 pieces each that we had to carry between two of us. And so as we're coming in with the rods is when I slipped, because my shoes were muddy and wet, because of the work site, and it was just as we were trying to put the rods down that I slipped. My left foot slipped and I was carrying the metal rods on my right shoulder....I was in a lot of pain....They gave me three pills and sent me home for the rest of the day, and told me to come back to work the following morning. So I came back the next day to the office and in the office they asked me how I was doing. And I told them that the same pain was still with me. So they told me they were going to send me to work, but not doing the same job, that was just going to be pulling rods....

Q. Could you describe your pain for us?

A. The pain ran from my back all the way down the length of my legs....

Q. And you're noting that this is a pain in your left hip and thigh that is on the outer side of your left hip?

A. From the center of my back....

Q. And when you fell, at that moment, on September 9th, did you feel that pain immediately?

A. Immediately....

Q. You got hurt on September 9th, and you came back to the job the next day. Is that right?

A. Yes.

The parties initially stipulated that the claimant “sustained compensable injuries to his left hip and low back” on September 9, 2022. The parties stipulated that the respondents “accepted this claim as compensable and paid some benefits.”

According to the record, the claimant presented for treatment with Dr. Sherita D. Willis on November 22, 2022. The claimant complained of Musculoskeletal Pain in his “left hip,” “present for 1-6 months.” Dr. Willis assessed “1. Acute low back pain.” Dr. Willis also reported, “Left Hip: tenderness and pain on palpation.” Dr. Willis recommended conservative treatment, and she noted “Patient to full duty.”

The claimant returned to Dr. Willis on January 10, 2023: “Patient states that he has left lateral back pain that radiates down to the sciatic notch and below. He states that this occurs regularly and that it gets better and worse spontaneously. He states that he woke up this am and that his back was hurting but that when he went to work, he bent over to tie his shoe and that it got acutely worse.” Dr. Willis assessed “Sciatica – Left – Explained to patient [that] this pain is chronic and is not a work injury....Patient to see his primary care physician for x ray, PT, and definitive treatment.” Dr. Willis noted “Work full duty.”

Dr. Ricky Carson reported on March 8, 2023:

60 yo male Hispanic builder man comes for chronic back pain and left hip pain for about 6 months after he admits fell over in his job area when he was pushing lifting heavy things on 09/09/22, but he never go to the Dr. evaluation, he said he went to the Dr. 3 months after trauma event to private clinic with DX [back] pain and hip by facultative he does not bring the complete history resume, he admits still with lumbar back pain and left side hip that getting worse during flexion extension joint [motion] area rate pain 8/10 when he is walking[.]

Dr. Carson's assessment included "1. Low back pain" and "3. Hip pain."

Kristina Ward, Senior Resolution Manager, corresponded with the claimant on March 9, 2023:

Gallagher Bassett Services is the Workers' Compensation Administrator for the above captioned client. I am handling the above captioned Workers' Compensation claim on behalf of your employer....
Enclosed you will find a HIPPA release, two copies of the AR Form N (Employee Notice of Injury) and a Medical Questionnaire for you to complete and return to me in the self-addressed envelope that I have provided you. Please feel free to contact me with any questions in this matter....

The record contains an unsigned "Formulario AR-N."

The claimant testified on direct examination:

Q. Mr. Chavez, do you remember signing any form labeled a Form N that was sent to you by respondents? I think, its Gallagher Bassett representing Thompson Construction?

A. No.

Q. Okay. And you understand that respondents have submitted a Form N for their exhibits today?

A. They never had me sign a form....

Q. I'm showing you the Form N submitted with the respondents on this. As you're looking at this, is any of that filled out?

A. No.

Q. Is your signature on that page?

A. No.

Q. Or on that page?

A. No.

Dr. John Rocco Rodney noted on March 15, 2023:

60 yo male Hispanic physical laborer presents for follow up a week later on back pain and left hip pain for about 6 months after he fell over in his job area when he was pushing/lifting heavy things on 09/09/22, but he never go to the Dr. evaluation, he said he went to the company Dr. 3 months after the trauma event to private/work? clinic with DX of chronic sciatica not workplace injury. He reports continued left lumbar/sacral back pain and left side hip worse with movement and especially long walking....He has some company paperwork, reports he can still work at a machine, but walking and lifting and other tasks are too difficult.... Difficult to say why still so symptomatic six months after supposedly causative fall. No red flag back pain symptoms. PE consistent with muscular/conneftive (sic) tissue strain. XR without evidence of bony or joint pathology. Radiation pattern not consistent with sciatica....

Dr. Rodney assessed "1. Acute bilateral low back pain without sciatica" and "2. Muscle strain." Dr Rodney recommended conservative treatment and noted, "If pt continues to fail conservative therapy recommend orthopedic followup."

The claimant testified on direct examination:

Q. When did you leave employment with Thompson Construction?

A. I'm not sure if it was the 22nd or the 23rd.

Q. So somewhere in the mid-20s of this March, correct?

A. Or the 21st....I left on the 25th to go back to Maryland.

An MR of the claimant's left hip was taken on March 27, 2023 with the following impression:

1. Very mild osteoarthritis of both hips.
2. Low-grade partial-thickness tears at the origins of bilateral hamstring tendons.
3. Low-grade partial-thickness tears at the insertions of the left gluteus minimus and medius tendons.
4. Low-grade partial-thickness tear at insertion of the right gluteus medius tendon.

The claimant testified on direct examination:

Q. And I understand that you were struck by a vehicle on June 2nd of 2023, is that correct?
Yes....I was going to walk in a park.

The record includes a "State of Maryland Motor Vehicle Crash Report" dated June 2, 2023. The Crash Report indicated that the claimant was struck by a vehicle while walking across a boulevard. The claimant was admitted to SH Suburban Hospital, Bethesda, Md. on June 2, 2023. An x-ray of the claimant's left femur was taken on June 2, 2023 with the impression, "Mild displaced comminuted fracture of the left mid femoral shaft." A CT of the claimant's Chest/Abdomen/Pelvis was taken on June 2, 2023 with the impression, "No acute traumatic abnormality in the chest, abdomen, or pelvis." Dr. Lisbi Rivas Ramirez reported on June 2, 2023, "I reviewed the images myself and no apparent injuries identified other than femur fracture."

The claimant was discharged from SH Suburban Hospital on June 6, 2023:

This is a 60 year old male who presented to the trauma center after being struck by a car. He was found to have a left femur fracture. Orthopedics was consulted and he underwent an IM nail on 6/3. He is WBAT in a knee immobilizer and has been working with physical therapy, who have recommended either acute rehab or home with in home physical therapy services....He is now stable for discharge to home with Home PT, which has been arranged by Social Work.

A pre-hearing order was filed on July 5, 2023. The claimant contended, "On 9/9/2022, claimant, in the course and scope of employment with respondent-employer, was carrying a rail when he fell from an elevated section of the construction site, sustaining a left hip injury. The respondents took two months of the claimant complaining about pain to send him to a doctor, but initially accepted the injury as compensable. Claimant initially was provided treatment from Dr. Sherita Willis, where his complaints were of left hip and blow (sic) back pain. Claimant was allowed to return to Dr. Willis in January of 2023, where she sited (sic) that the claimant's complaints of pain were chronic in nature. Respondents then denied his claim. Claimant was then forced to treat on his own and went to Dr. Rickey Carson, where he complained of low back and left hip pain, and was referred to Dr. John Rocco Rodney. Claimant underwent an MRI which revealed tears of his bilateral hamstring tendons, the left gluteus minimus and medius tendons, and at the right insert of the gluteus medius tendons.

Claimant contends that he suffered a compensable injury at work, that he is entitled to temporary total disability, medical benefits, and that his attorney is entitled to an attorney's fee. All other issues are reserved."

The respondents contended, "Respondents contend they accepted this claim as a medical only. The claimant continued to work for Respondent/Employer through 3/19/23, when he was terminated. As is evidenced by the attached wage information. The medical documentation does not support an off work status beyond that. In light of this, it is Respondents' position Claimant is not entitled to temporary total disability benefits. Additionally, the medical records indicate the claimant does not have any acute objective findings to support an injury on 9/9/22. The claimant has received unauthorized medical treatment with Drs. Rodney and Carson."

The parties agreed to litigate the following issues:

1. Whether Claimant is entitled to any additional reasonable and necessary medical treatment rendered after January of 2023.
2. Whether Claimant is entitled to temporary total disability (TTD) and permanent partial disability (PPD) benefits from September 9, 2022, to a date yet to be determined.
3. Attorney's fee. All other issues are reserved.

The respondents' attorney corresponded with the administrative law judge on September 29, 2023:

Enclosed please find the indexes for Respondents' medical and non-medical exhibits. Claimant has not produced

objective evidence of an acute, work-related injury to his hip. Therefore, Respondents are not willing to stipulate that he suffered a compensable injury to that body part. Additionally, Respondents assert that Claimant's current symptoms and complaints are the result of a new accident occurring 06/02/23 when he was hit by a car as a pedestrian. Respondents also assert that Claimant is not entitled to temporary total disability both because there is insufficient evidence that he remained in a healing period while being totally incapable of working, but also because he returned to work at pre-injury wages after his alleged accident.

After a hearing, an administrative law judge filed an opinion on November 29, 2023. The administrative law judge found that the claimant proved he sustained a compensable injury to his left hip. The administrative law judge awarded reasonably necessary medical treatment but found that the claimant was not entitled to temporary total disability benefits.

The administrative law judge filed an amended opinion on December 13, 2023. The administrative law judge found that the claimant proved he sustained a compensable injury to his left hip. The administrative law judge awarded reasonably necessary medical treatment but found that the claimant was not entitled to temporary total disability benefits. The administrative law judge reserved the issue of permanent anatomical impairment and wage-loss disability. The claimant appeals to the Full Commission and the respondents cross-appeal.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Supp. 2023) provides, in pertinent part:

(A) “Compensable injury” means:

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Supp. 2023). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Supp. 2023).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Supp. 2023). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “3. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left hip on September 9, 2022.” The Full Commission affirms this finding. The parties stipulated that the employment relationship existed on September 9, 2022. The claimant testified that he

slipped and fell while carrying a set of rods on the work site. The claimant testified that he immediately felt pain in his back and left hip. The parties initially stipulated that the claimant “sustained compensable injuries to his left hip and low back” on September 9, 2022. The respondents now contend that the claimant did not sustain a compensable left hip injury, but they have not withdrawn their stipulation that the claimant sustained a compensable back injury.

The claimant began treating with Dr. Willis on November 22, 2022. The claimant reported pain in his left hip which had been “present for 1-6 months,” and Dr. Willis also assessed “1. Acute low back pain.” Dr. Willis treated the claimant conservatively. However, Dr. Willis advised the claimant on January 10, 2023 that his pain was “chronic and is not a work injury.” The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, the Full Commission attaches minimal evidentiary weight to Dr. Willis’ conclusion that the claimant’s pain was “chronic and is not a work injury.” We find that the claimant’s complaints of pain were causally related to the compensable injury which occurred on September 9, 2022.

The Full Commission also finds that the claimant proved he sustained a compensable left hip injury. An MR of the claimant's left hip on March 27, 2023 showed, among other things, "3. Low-grade partial-thickness tears at the insertions of the left gluteus minimus and medius tendons." These objective medical findings demonstrated a compensable injury to the claimant's left hip and were not within the claimant's voluntary control.

The parties have stipulated that the claimant sustained a compensable injury to his low back. The Full Commission finds that the claimant proved he also sustained a compensable injury to his left hip. The claimant proved that he sustained an accidental injury causing physical harm to his left hip. The injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident which was identifiable by time and place of occurrence on September 9, 2022. In addition, the claimant established a compensable injury to his left hip by medical evidence supported by objective findings. Diagnostic testing on March 27, 2023 plainly showed partial thickness tears in the claimant's left gluteus. We find that these objective medical findings were causally related to the compensable injury and were not the result of a prior injury or pre-existing condition.

B. Medical Treatment

The 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)(Supp. 2023). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 70 (1984).

In the present matter, the claimant sustained a compensable injury to his low back and left hip on September 9, 2022. The Full Commission finds that the medical treatment of record provided beginning November 22, 2022 was reasonably necessary in connection with the compensable injury to the claimant's low back and left hip. The evidence does not demonstrate that any of the claimant's medical treatment of record was "unauthorized" in accordance with Ark. Code Ann. §11-9-514(Supp. 2023). As we have noted, the record contains an unsigned "Formulario AR-N." The claimant testified, however, that he did not sign a Form AR-N, and there is not a signed Form AR-N in the record before the Commission. If there is not a signed and delivered Form AR-N in the record, then the claimant is not bound by the Change of Physician rules and is free to seek reasonably

necessary medical treatment from any physician. *Tempworks Management Services v. Jaynes*, 2023 Ark. App. 147, 662 S.W.3d 280 (Ark. App. 2023).

The record does not demonstrate that there was an independent intervening cause on June 2, 2023 in accordance with Ark. Code Ann. §11-9-102(4)(F)(iii)(Supp. 2023). The claimant was struck by a vehicle while crossing a boulevard on June 2, 2023. The claimant sustained a “comminuted fracture of the left mid femoral shaft.” The evidence does not demonstrate that the claimant re-injured his low back or left hip on June 2, 2023. A CT on June 2, 2023 specifically showed “No acute traumatic abnormality in the chest, abdomen, *or pelvis* [emphasis supplied].” Dr. Ramirez reported on June 2, 2023, “I reviewed the images my self and *no apparent injuries identified other than femur fracture* [emphasis supplied].”

C. Temporary Disability

Finally, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12)(Supp. 2023). The healing period continues until the employee is as far restored as the permanent character of the injury will permit. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The determination of when the healing period has

ended is a question of fact for the Commission. *Porter Seed Cleaning, Inc. v. Skinner*, 1 Ark. App. 235, 615 S.W.2d 380 (1981).

An administrative law judge found in the present matter, “5. Claimant has not proven by the preponderance of the evidence that he is entitled to temporary total disability benefits for any period of time.” The Full Commission affirms this finding. The claimant sustained a compensable injury to his low back and left hip on September 9, 2022. The claimant testified that he returned to work the day after his compensable injuries. Dr. Willis reiterated on November 22, 2022 that the claimant could work at “full duty.” The claimant testified that he voluntarily left his employment with the respondents on or about March 25, 2023. Whether or not the claimant remained within a healing period for his compensable injuries, the evidence does not demonstrate that the claimant was ever incapacitated from earning wages. The claimant therefore did not prove that he was entitled to temporary total disability benefits.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable injury to his low back and left hip. The claimant was not bound by the change of physician rules because there was not a signed and delivered Form AR-N in the record. Nor does the record show that the June 2, 2023 pedestrian accident constituted an “independent intervening cause” in accordance with Ark.

Code Ann. §11-9-102(4)(F)(iii)(Supp. 2023). The claimant proved that the medical treatment of record was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Supp. 2023). The Commission notes Dr. Rodney's March 15, 2023 recommendation of "orthopedic followup" if conservative treatment failed. The claimant did not prove he was entitled to any period of temporary total disability benefits. Based on the record currently before us, the Full Commission finds that the claimant did not prove he was entitled to permanent anatomical impairment or wage-loss disability. For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Supp. 2023).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved he sustained a compensable injury to his low back and left hip and that the medical treatment of record was reasonably necessary.

I. The claimant failed to meet his burden of proving that he sustained a compensable left hip or low back injury or his entitlement to related medical treatment.

a. There are no objective medical findings of a specific incident injury.

Arkansas Code Annotated section 11-9-102 (4)(A)(i) provides that a compensable injury includes “[a]n accidental injury causing internal or external physical harm to the body. . . An injury is ‘accidental’ only if it is caused by a specific incident and is identifiable by time and place of occurrence.”

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an

injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.*

The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

Here, the claimant was examined by Dr. Sharita Willis on November 22, 2022, and January 10, 2023. Dr. Willis ultimately opined that the claimant's pain was chronic and not a result of any work injury, and she referred the claimant to his primary care physician for treatment.

The claimant was released to work at full duty on January 10, 2023, and he worked for nearly three months prior to obtaining his own MRI on March 27, 2023. The MRI revealed, primarily, “very mild osteoarthritis of both hips.”

With regard to the claimant’s alleged low-back injury, Dr. Willis assessed “Sciatica – Left – Explained to patient this pain is chronic and is not a work injury.” A later x-ray was normal with no evidence of bony or joint pathology, and no evidence of sciatica.

The claimant did not seek treatment for his alleged left hip injury for three (3) months. He never received any actual treatment for his back and there were no objective medical findings on his MRI. His treating physician opined his problems were chronic and not work related.

- b. The claimant’s June 2, 2023, car accident was an independent intervening event.

Our rules provide that:

benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

Ark. Code Ann. § 11-9-102(5)(F)(3).

On June 2, 2023, the claimant was struck by a car in a severe accident while he was walking across an intersection in Montgomery County, Maryland, resulting in a comminuted intertrochanteric left femur fracture. Claimant underwent surgery for this injury on June 3, 2023, and received extensive medical treatment for this injury which was on the same side of the body and in very close proximity to the alleged left hip and low back injuries.

It is impossible to state that being hit by a moving vehicle in the same area as the alleged work-related injuries is not an independent intervening event extinguishing the respondent's responsibility for any benefits after June 2, 2023. In fact, the claimant has not received any treatment for his left hip or low back since June 2023 that is not related to the June 2, 2023 vehicular accident.

The evidence is clear that any treatment the claimant has received since June of 2023 is the direct result of this accident on June 2, 2023, when he was struck by a vehicle while crossing the street. While the claimant attempts to distinguish between the symptoms of his alleged on-the-job injury and the 2023 car accident, the records do not support his claims.

The claimant was not receiving treatment for his hip or back in Maryland prior to the accident in June 2023, and the only evidence he presented at the hearing indicates that all treatment has been associated with that accident. Thus, the claimant has failed to prove he sustained a compensable injury to his left hip or low back.

Accordingly, for the reasons set forth above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner