

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H200280

BILLY EALY,
EMPLOYEE

CLAIMANT

ARKANSAS STATE POLICE,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JANUARY 22, 2025

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 25, 2024. The administrative law judge found that the claimant failed to prove he sustained a work-related injury or gradual-onset injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

The record indicates that Billy Ealy, now age 44, became employed with the respondents, Arkansas State Police, in August 2003. Mr. Ealy

testified in a deposition of record that he worked with the Arkansas State Police in Lake Village, Arkansas for three years, was employed with the respondents in Little Rock for a time, and was then transferred to Damascus, Arkansas in about 2008. The claimant described his job duties in Damascus: "Made traffic stops at that time. I was assigned to highway patrol, so made traffic stops and worked accidents and do what we call road blocks, but that's about it."

The claimant testified at hearing on direct examination:

Q. And that gun belt that you wear just basically – briefly tell us what is all – how come it's up to 60 pounds or over? Help us understand that.

A. The belt – the gun belt is thick leather....And then, you know, you have OC spray, and then the gun in a leather holster, and then handcuffs, and then extra bullets – magazines. Then that baton. Sometimes even a flashlight on the back of that – the gun belt.

Q. You have a radio?

A. Yes, and radio.

Q. Okay, sir. And as a trooper, are you having at many times to go in rough terrain and be involved in rough terrain?

A. Yes.

Q. Okay. Tell us when you first started having trouble with your hip and back when you were working for Arkansas State Police, and just kind of give us a feel for what was going on with the symptoms when you were working for Arkansas State Police?

A. With that heavy gun belt, you know, I mean the first time you put it on, I mean, it just bears down on your hips, and your lower back. And it's just a struggle to get through the day, but I toughed it out kind of thing.

The director of the Arkansas State Police corresponded with the claimant on December 2, 2013:

Effective Wednesday, January 1, 2014, you will be laterally transferred from your present assignment in the Highway Patrol Division, Troop A to your new assignment in the Criminal Investigation Division, Company A, Polygraph Examiner....
I want to offer my full support as you enter this new position.

The respondents' attorney examined the claimant at deposition:

Q. Can you explain to me what sort of job duties and all that you had when you were in that division? What all did that require?

A. I performed polygraph exams, but on top of that I had to work criminal cases, done search warrants, you know, searching for evidence, lifting beds, moving refrigerators, having to bend down, measuring out scenes. The main thing is doing search warrants.

Lt. Stacie Rhoads corresponded with the claimant on February 5, 2019 and stated in part: "Over the past year, you have been counseled twice due to deficiencies noted in your investigative work and for failure to document pertinent actions as required by ASP Policy and Directives....We value what you have to offer in Company A but we also expect that you will perform your duties in timely and efficient manner."

The claimant treated at Greenbrier Family Clinic in October 2019, at which time the claimant complained of shoulder pain and right hip pain. Dr. Gary Wayne Bowman assessed "Acute pain of right shoulder" and "Tensor fascia lata syndrome."

The record contains an Arkansas State Police Memorandum to Major Mark Hollingsworth from Lt. Stacie D. Rhoads, dated May 24, 2020:

On May 21, 2020, Sgt. Blackmon and I met with SA Billy Ealy regarding concerns for his physical health. Over the past few months, I noticed that SA Ealy had taken around 40 hours of sick leave. This generally would not cause me alarm, but while at the firing range last week (May 12th) I observed some mannerisms that cause me concern. SA Ealy seemed very unsteady on his feet and many times had to use his rifle to steady himself while getting out of the kneeling position. On one occasion, I was speaking with Sgt Middleton at the tables under the awning and Billy passed us and almost fell into the picnic table. I asked if he was ok and he said yes. Later that same day, as we were passing by each other, I noticed that he was not walking in a straight line but seemed to veer off and almost walked into the side of the building. I stopped him and asked what was going on. He said he had an ongoing issue with his hip....

The amount of sick days coupled with my observations, I decided that we needed to speak with Billy to see if there were any underlying issues that we needed to be aware of. He denied having any major health issues and reiterated that he had an issue with his hip....

I also noted that Billy had obtained a medical waiver in October 2019, which excused him from participating [in] the annual physical assessment test. The waiver indicated it was from shoulder pain.

The claimant testified on direct examination:

Q. Did you ever – did [Stacie Rhoads] ever ask you about your health or seemed like she had any concerns about your health before you retired?

A. She did ask me at the shooting range, because I had trouble getting off the ground in the wrong position....I just had trouble getting up with this right hip. I just didn't have any power, and when I tried to walk off, you know, I stumbled, because this right hip didn't get me any kind of power, and so she asked me about it....

The parties stipulated that an employee-employer relationship existed on July 1, 2020, "when the claimant contends that he sustained

injuries to his right hip, groin and lower back that were the result of a gradual onset.” The respondents’ attorney examined the claimant at deposition:

Q. So, the workers’ comp file they gave me talks about an injury occurring some time in 2020.

A. Yes.

Q. That’s the date I have on this. Is that right? Can you explain to me about your injury and how it occurred, please?

A. Well, the thing about it is that I – the gun belt is sitting heavy on my hips, on my right hip, and it just kind of got to where I couldn’t, you know, perform the job correctly, and so it’s just sitting on my hips and that’s – that’s the injury. I mean, it just kind of wore, wore me out, wore down my hip and that’s all I can think of.

Q. So, let’s talk a little bit about that. The gun belt you’re talking about, kind of describe that for me. I know those things are pretty large. What all did it have on it?

A. It has a gun, two magazines of full bullets, a baton, pepper spray. Because it’s thick leather, probably about 50 pounds sitting on my hips, but that’s about it that I can think of.

Q. And do you recall – when did you begin – can you remember beginning to notice some problems with your hips or your body to cause this thing?

A. I mean, as soon as – I mean, when I first put the belt on, I could tell it was heavy, but it took probably three or four years to notice that my hip couldn’t really take it. I took it – you know, I lasted for 10 years in the highway patrol area and then I asked for a transfer to criminal investigation....

Q. So that would be a gun belt issued to you way back in 2003?

A. Yes.

Q. And if I’m understanding you right, are you saying that – was it in 2020 or thereabouts that you began to notice this problem with your hip?

A. Yeah.

Q. Or do you remember when it started?

A. I don’t. I can’t remember.

Dr. Bowman diagnosed "Right hip pain" on August 7, 2020. An x-ray showed "Degenerative changes right hip."

Tiffany Epperson, APRN examined the claimant at Conway Orthopedic & Sports Medicine Center on August 12, 2020:

Mr. Ealy presents concerning his right hip. He reports groin pain that began in 2019. He doesn't remember a specific injury and states that the pain has gradually increased. His pain radiates to his proximal thigh but no further. No lateral hip or buttock pain. No lower back pain. He now has pain with simple activities such as walking. Hip extension while striding out is painful. He works as an Arkansas State Police Officer....

X-ray: AP pelvis and lateral view of the right hip obtained today in clinic show well-maintained femoral acetabular cartilage interval, no acute abnormalities or fractures. Osteophytes to the superior lateral aspect of the acetabulum.

Tiffany Epperson's impression was "right hip pain," "Possible right hip acetabular impingement," and "Possible right hip labral tear."

An MRI of the claimant's right hip was taken on August 17, 2020 with the following conclusion:

1. Small tear involving the anterior superior labrum. An os acetabuli incidentally noted.
2. Small bony protuberance of the superior lateral femoral head neck junction with small amount of associated marrow edema. Additionally, the alpha angle is borderline elevated. These findings could represent CAM type femoral acetabular impingement syndrome in the appropriate clinical setting.

The claimant followed up with Tiffany Epperson on August 19, 2020: "The MRI results were reviewed with the patient and options were

discussed at length. I explained that it can take up to weeks for the steroid injection to become fully effective. Given the physical nature of his job with the Arkansas State Police, I recommend referral to Dr. James Tucker for further evaluation and management of his labral tear."

Dr. James Tucker examined the claimant on September 15, 2020:

Right hip pain x 1 year. No specific injury. Had a hip injection Aug. 2020....

He presents with right hip pain he is a state trooper and indicates he has groin pain and posterior pain with activities also has problems when he has been sitting for long period of time. He has an MRI which shows a labral tear....

X-rays we obtained a Dunn view and a frog-lateral of his right hip they show an alpha angle of 70 degrees and center edge angle of 45 degrees he also has an os acetabuli he has no signs of any significant tonus changes. No loss of joint space.

Assessment and plan

Combined femoral acetabular impingement with labral tear and no degenerative changes.

We are going to proceed with physical therapy working on core strengthening and hip strengthening but not range of motion....

Dr. Tucker assessed "1. Body mass index 30+ - obesity" and "2. Pain in right hip joint."

Dr. Tucker performed a procedure on December 2, 2020:

"Diagnostic arthroscopy with Acetabuloplasty right hip. Femoroplasty. Labral repair." The post-operative diagnosis was "Combined femoroacetabular impingement right hip. Labral tear."

The respondents' attorney examined the claimant at deposition:

Q. Let's say prior to your first surgery in December of 2020, can you recall ever telling anybody at State Police that I think my hip problem might be related to the job that you had done over the years? Did you ever do that?

A. No. I did not.

The claimant testified that he did not return to work for the respondent-employer following the December 2020 surgery. The record indicates that the claimant underwent "Hip arthroscopy, with chondroplasty, abrasion arthroplasty and/or resection of labrum (surg) – 03/03/2021."

Dr. Tucker referred the claimant to Dr. David Gordon Newbern, who reported on or about July 1, 2021:

Billy Ealy is a 41 year old Male who presents to discuss concerns about their Hip, that began on 07/01/2020....
Mr. Ealy presents today as a pleasant, 41-year-old gentleman having trouble with pain in his right hip. He has had a large os acetabuli around the right hip that was causing pain as well as a labral tear, and this was treated arthroscopically by Dr. Tucker. Unfortunately, he developed a significant amount of heterotopic bone formation in the anterior hip, and this resulted in second surgery to remove this. The labral repair had held up, but now he is still having some troubles and CT imaging reveals that he has had a regrowth of heterotopic bone in the anterior hip, especially in the very anterior portion of the hip where the bed of some of the previous bone removal has reformed bone and this projects downward and very likely is causing impingement and pain. He also has had femoroplasty to reduce the pincer impingement in the area. Unfortunately, he has continued to have pain and is eager to move on and get better and do better....
X-rays are reviewed as well as CT imaging. We do see the previous femoroplasty. We see the heterotopic bone that has reformed in the anterior acetabulum which is hooking down into the anterior aspect of the hip joint as a source of persistent impingement, and also two small fragments of heterotopic bone in the more lateral hip capsule.

Dr. Newbern assessed “Arthritis as a consequence of impingement and heterotopic bone formation about the right hip....I think the quickest way to a more rapid recovery will be through hip replacement with removal of overhanging bone at that time but also with a single dose of low-dose radiation therapy to prevent heterotopic bone formation about the right hip.”

Dr. Newbern’s assessment on July 1, 2021 was “1. Body mass index 30+ - obesity,” “2. Localized, primary osteoarthritis,” and “3. Heterotopic ossification of joint.”

Dr. Newbern performed a “Total hip arthroplasty” on August 9, 2021. The claimant testified that he began suffering from symptoms of Multiple Sclerosis “several months after that hip replacement,” after he was no longer employed with the respondents.

Donna Barron, PA reported on October 7, 2021:

The patient returns today 8 weeks postop from a right total hip and removal of HO bone. His surgery was August 9, 2021. He reports that 1-2 weeks after our last visit, his right hip pain returned and was accompanied by significant weakness. He has fallen twice in his home even while using his walker. He does not feel steady on his feet.... He reminds me that he works for the AR State Police and is currently off from work. He fears that he will be unable to return to work in 4 weeks as expected. He reminds me that while working, he is expected to carry a 50lb belt. He has present (sic) catastrophic leave papers today for consideration....The anterior groin pain is new....With the profound weakness and unsteady gait, I am concerned that he has developed a nerve palsy.

Dr. Newbern reported on November 18, 2021:

Mr. Ealy is my patient with ongoing treatment for his recent right hip replacement three months ago. He has a year-long audacity of trying to improve his function with a painful right hip and difficulty walking. He has had a quite physical job over the last 10 years as a state trooper wearing a heavy equipment belt, significant lifting, and getting into unusual positions and stresses in the line of duty of his work. At this time, it seems very likely the stresses of his work duties have contributed to his loss of ability to work and function. At this time, he is still undergoing further investigation and treatment of the right hip. MRI of his cervical and lumbar spine is ongoing. There are further documents to review his history but at this time, I do believe it is more than 50% that the stress and strains of his work, that is the physical requirements, have compounded, if not caused, his current disability....

The claimant corresponded with Colonel William J. Bryant, Arkansas State Police, on November 19, 2021 and stated in part, "I respectfully submit my medical retirement from the Arkansas State Police effective 01/01/22." Colonel Bryant replied on December 8, 2021, "Allow me to congratulate you on your retirement effective December 31, 2021." The parties stipulated that an employee-employer-carrier relationship existed until on or about December 31, 2021.

The claimant testified on direct examination:

Q. Help the judge understand what was going on with pain and symptoms that got to the point where you had to retire. You didn't really have choice, did you?
A. No choice. Cause -
Q. Yeah. Tell the judge about that.
A. Yeah. With this right hip it just catches. It just gets like locked up. It locks up on me. It just makes it tough to walk,

better than that even run. Something that I had to do a lot of times, and it just go so painful that I couldn't do it anymore.

That's why I had to retire....

Q. Do you remember any specific injury, really, that happened before?

A. No.

Q. It was all gradual?

A. It was all gradual.

The respondents' attorney cross-examined the claimant:

Q. I've heard you testify that there was no specific injury to your hip, that it's just a gradual event. Is that correct?

A. Yes, I remember saying that, but I mean, it's gradual onset with this hip, because of the gun belt....

Q. Did you ever report an injury to your hip to work?

A. No, I did not.

The record indicates that the claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on January 6, 2022. The ACCIDENT INFORMATION section of the Form AR-C indicated that the Date of Accident was July 1, 2020. The claimant described the cause of injury: "The claimant sustained a gradual onset injury to his right hip, groin and lower back. The injuries are as a result of the clamant (sic) performing his job duties which required him to wear a heavy belt, to perform heavy lifting and to be physically active which required him to get into unusual positions."

The record contains a "Company Nurse" Report of Injury dated January 13, 2022. The Report of Injury indicated that an incident occurred on July 1, 2020, and that the incident was reported on January 13, 2022.

The Nature of Incident/body part was "Hip (Lower Extremities)." The Triage Notes indicated, "The employee stated that his right hip started giving him trouble. The employee stated that his supervisor noticed he was having trouble." The Triage Notes indicated that the accident was related to "Work." The Triage Notes additionally indicated:

The employee stated that he received a letter from his attorney to report the injury. The employee stated that there is not a specific time or of injury so he does not know what time he started work on the day of the injury. The employee stated that the address of the injury is unknown due to his job. The employee stated that he does not have a time or date of the injury because it was onset....

Captain Stacie D. Rhoads prepared a memorandum dated January 18, 2022 and stated in part:

Regarding Billy Ealy's worker's comp claim, Ealy never reported a work related injury to me. He never reported any issues he was having with his physical health as being related to work or occurring while working in his official capacity as a special agent. The reported date of injury as noted on worker's comp documents indicate he was injured on or about July 1, 2020 and that I was aware of the injury. I was on annual leave for several weeks surrounding the reported injury date and was never told by Billy that he had sustained a work injury....

Sgt Blackmon and [I] met with Billy on May 21, 2020, and he denied having any major health issues and reiterated that he had an issue with his hip. He said that he was supposed to go to physical therapy but had not gone as directed by his physician. He never conveyed to me his hip issue was from a work related injury. Based on his statement that he had refused to participate in previously prescribed physical therapy, he obviously had sought medical attention on an unrelated personal injury. Ealy never reported any type of

work related injury to me and there is no definitive indication of when a work injury could have occurred.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on January 19, 2022. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was July 1, 2020: "The employee stated that his right hip started giving him trouble. The employee stated that his supervisor noticed he was having trouble."

The respondents' attorney examined the claimant:

Q. As of January 19th of this year, can you recall if you had told people at State Police that, if you can remember, that you felt like your hip problem or surgeries were related to either the gun belt or just the job itself? Do you remember ever telling anybody that?

A. No, I did not. I don't remember telling anybody.

Dr. Erika Santos Horta stated on September 27, 2022: "Mr. Billy Ealy has Multiple Sclerosis that effects (sic) the central nervous system. This neurological disease does not have effects on the bones. Therefore, him needing a hip surgery is not related to his diagnosis of Multiple Sclerosis."

The parties deposed Dr. Newbern on May 19, 2023. Dr. Newbern described the claimant's work for the respondents as "physically stressful."

The claimant's attorney examined Dr. Newbern:

Q. It's my understanding based upon your letter of November 18th of '21, you do believe that the major cause of that would be all of the work that he had had to do for the State of Arkansas as an Arkansas state policeman. Is that correct?

A. Well, I mean, really, at the time that I wrote that letter, I'm trying to – we still don't know why he's having such trouble, so it's – I think it's complicated. I think he does have – I think his hip definitely is a problem with him being able to perform his duties. I think the multiple sclerosis with the significant – ability walking and the tremulous and all those issues he was having, which has gotten somewhat better, it seemed, at his last visit, I was pleased to see. But I think it's really – it's a combination of those two things....

Q. The idea behind workers' comp is that the cost of doing business should be borne by the employer and not by the taxpayer and Medicare or Medicaid, and that's the reason that it's so open in terms of causation. And that's all I really wanted to confirm with you is that at least more than 50 percent, which is what you said, with the stress and strains of his work, physical requirements, is the cause for the need for treatment, at least, if not the need – you said disability, but at least is the need for treatment. Would you agree with that?

A. Yes, sir. Based on all – the determination happened before I even had met him. That kind of had already been determined, and I did agree with that.

A pre-hearing order was filed on July 11, 2023. According to the text of the pre-hearing order, the claimant contended, "The claimant alleges that as a result of his job duties as a state trooper, he sustained injuries to his right hip, groin and lower back. He was required to wear a heavy equipment belt, perform heavy lifting and be physically active which required him to get into unusual positions. All these combined duties was (sic) the cause of his injuries. The claimant contends that he is entitled to reasonable and necessary medical treatment and past due temporary total disability benefits (dates to be determined)."

The parties stipulated that the respondents “have controverted this claim in its entirety.” The respondents contended, “The claimant alleges he sustained gradual on set (sic) work-related injuries to his right hip, groin and lower back. The claimant lists the date of injury as July 1, 2020 and filed a Form AR-C which was dated January 6, 2022. The Form AR-C appeared to have been received by Arkansas Workers’ Compensation Commission on January 11, 2022, and by the respondent/Public Employee Claims Division on January 12, 2022. The Company Nurse Report of injury is dated January 13, 2020, at which time the claimant reported his alleged injuries. That report states that the claimant indicated there was no specific date or time of the alleged injury. Respondents would contend that the notice provisions of Ark. Code Ann. §11-9-701(a)(1) apply to the facts of this claim and the respondents are not responsible for disability, medical, or other benefits prior to receipt of the employee’s report of injury.”

The respondents contended, “Respondents contend that the claimant did not sustain compensable injuries while employed with the Arkansas State Police. The claimant had longstanding problems with his hip and underwent extensive medical treatment and never reported a work-related condition to his employer prior to January 13, 2022. The claimant applied for FMLA leave and completed the necessary FMLA paperwork during the time he was receiving medical treatment for his hip problems.

He did not indicate that he had sustained any work-related injur(ies). The claimant contends that he sustained gradual injuries to various body parts, and therefore the provisions of Ark. Code Ann. §11-9-102(4)(A) apply to the facts of this case. The claimant ultimately chose to retire from his employment with the Arkansas State Police. He then filed this workers' compensation claim. The claimant had long-standing hip problems which were not the result of his work activities with the ASP. As the claimant's hip problems are not work-related, he is not entitled to the benefits he seeks."

The respondents contended, "In the alternative, if it is determined the claimant sustained a compensable injur(ies) and is entitled to any benefits, the respondents hereby request an offset for all benefits paid by the claimant's group health carrier, all short-term and/or long-term disability benefits received by the claimant, and all unemployment benefits received by the claimant. Respondents contend that it (sic) would be entitled to a credit pursuant to Ark. Coe (sic) Ann. §11-9-411 against any additional indemnity benefits that may be awarded to the claimant. Respondents reserve the right to offer additional contentions, or to modify those stated herein, pending the completion of discovery."

The parties agreed to litigate the following issues:

1. Compensability of the right hip, groin and lower back that was the result of a specific incident and a gradual onset.
2. Entitlement to reasonable and necessary medical treatment.

3. Entitlement to past due temporary total disability benefits (dates to be determined).
4. Disability rating.
5. Controverted attorney fees.
6. Respondents raise the issue of lack of appropriate notice.
7. All other issues reserved.

After a hearing, an administrative law judge filed an opinion on June 25, 2024. The administrative law judge found that the claimant “has failed to satisfy the required burden of proof to show that the claimed injury to the right hip, groin, and lower back, is in fact work related and compensable under the Arkansas Workers’ Compensation Act.” The claimant appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
 - (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
 - (a) Caused by rapid repetitive motion....
 - (b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the

voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

Ark. Code Ann. §11-9-102(4)(Repl. 2012) further provides, in pertinent part:

(E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

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). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

An administrative law judge found in the present matter, "4. That the claimant has failed to satisfy the required burden of proof to show that he sustained a work-related injury on the specific date of July 1, 2020." The claimant on appeal does not contend that he sustained an accidental injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The administrative law judge further found, "5. The claimant has failed to satisfy

the required burden of proof to show that he sustained a gradual onset injury to his right hip, groin, and lower back.” The administrative law judge concluded that the claimant failed to prove he sustained a compensable injury as the result of rapid repetitive motion. With regard to the alleged compensable injury to the claimant’s back, the administrative law judge erred as a matter of law. The claimant was not required to prove that his alleged compensable back injury was caused by rapid repetitive motion. See Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012), *supra*.

Nevertheless, the Full Commission reviews an administrative law judge’s decision *de novo*, and it is the duty of the Full Commission to conduct our own fact-finding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The claimant contends on appeal that he sustained a compensable “gradual-onset” injury. The Full Commission finds that the claimant did not prove he sustained a compensable injury to his right hip, groin, or lower back in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii) *et seq.* As we have discussed, the claimant became employed with the respondents, Arkansas State Police, in 2003. The claimant testified that he was required

to wear a thick leather belt as part of his employment. The claimant testified that the belt carried OC spray, a gun, handcuffs, bullets, a magazine, a baton, and occasionally a flashlight. The claimant testified, “With that heavy gun belt, you know, I mean the first time you put it on, I mean, it just bears down on your hips, and your lower back.”

The claimant was transferred to the respondent-employer’s Criminal Investigation Division effective January 1, 2014. The claimant testified at deposition that he was no longer required to wear a heavy gun belt when he began working in the respondents’ Criminal Investigation Division. The claimant testified that he began wearing “a plastic hip holster.” In any event, the claimant contended that he sustained gradual-onset injuries to his right hip, groin, and lower back on July 1, 2020. The Full Commission reiterates the claimant’s testimony regarding these alleged gradual-onset injuries:

Q. Can you explain to me about your injury and how it occurred, please?

A. Well, the thing about it is that I – the gun belt is sitting heavy on my hips, on my right hip, and it just kind of got to where I couldn’t, you know, perform the job correctly, and so it’s just sitting on my hips and that’s – that’s the injury. I mean, it just kind of wore, wore me out, wore down my hip and that’s all I can think of.

In workers’ compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). 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 it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). See also *Tucker v. Roberts-McNutt, Inc.*, 342 Ark. 511, 29 S.W.3d 706 (2000). In the present matter, the Full Commission does not find credible the claimant's testimony that he sustained gradual-onset injuries to his right hip, groin, and lower back as the result of wearing a leather belt in the course of his employment with the respondents. With regard to the alleged compensable injuries to the claimant's right hip and groin, the evidence does not demonstrate that the claimant's tasks were repetitive or were performed rapidly. See *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). Nor does the record show that the claimant sustained injuries to his right hip, groin, or back as the result of activities such as executing search warrants, lifting beds and refrigerators, or bending to measure crime scenes.

The Full Commission recognizes Dr. Newbern's opinion stated on November 18, 2021, "I do believe it is more than 50% that the stress and strains of his work, that is the physical requirements, have compounded, if not caused, his current disability." Dr. Newbern re-stated his causation opinion at a deposition taken May 19, 2023. However, it is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337

Ark. 94, 989 S.W.2d 151 (1999). The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission finds that Dr. Newbern's opinion is entitled to minimal evidentiary weight. The probative evidence does not demonstrate that "more than 50 percent" of the claimant's physical condition involving his right hip, groin, or lower back was caused by the "stresses and strains" of the claimant's employment duties with the respondents. We also note the claimant's testimony that he never reported an alleged work-related injury to the respondents prior to the claimant's retirement effective December 31, 2021. A supervisor with the respondents, Major Stacie Rhoads, confirmed in her correspondence of record and in her testimony that the claimant never reported a work-related injury prior to his retirement.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a "compensable injury" in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(Repl. 2012). The claimant did not prove that he sustained an injury causing internal or external physical harm to the body which arose out of and in the course of employment. The claimant did not prove that he sustained a compensable injury to his right hip or groin which was caused by rapid repetitive motion.

Nor did the claimant prove he sustained a back injury which was not caused by a specific incident or was not identifiable by time and place of occurrence. The claimant did not prove by a preponderance of the evidence that the alleged compensable injury was the major cause of the disability or need for treatment with regard to his right hip, groin, or lower back.

After reviewing the entire record, the Full Commission affirms the administrative law judge's implicit finding that the claimant failed to prove he sustained a compensable injury to his right hip, groin, or lower back. The claimant did not prove that he sustained a compensable injury as a result of the "positional risk doctrine" enunciated in *Deffenbaugh Indus. v. Angus*, 313 Ark. 100, 852 S.W.2d 804 (1993). The claimant did not prove that any portion of Act 796 of 1993 as administered by the Arkansas Workers' Compensation Commission was unconstitutional. See *Rippe v. Delbert Logging*, 100 Ark. App. 227, 266 S.W.3d 217 (2007); *Murphy v. Forsgren*, 99 Ark. App. 223, 258 S.W.3d 794 (2007); *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007). This claim for workers' compensation benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner