

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H305681

JAMES T. FANNON, EMPLOYEE

CLAIMANT

**NORTHWEST PUBLIC WATER
AUTHORITY, INC., EMPLOYER**

RESPONDENT

**TRAVEDLERS PROPERTY AND
CASUALTY OF AMERICA,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MARCH 3, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 21ST day of January 2026, in Mountain Home, Arkansas.

Claimant is represented by C. Michale White, Attorney at Law, of North Little Rock, Arkansas.

Respondents are represented by Guy Alton Wade, Attorney at Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 21st day of January 2026, to determine the issue of compensability of an alleged injury to the Claimant's lower back on August 22, 2023, plus medical treatment, and attorney fees. At the time of the hearing, it was agreed that the issue of temporary total disability would be reserved. The Respondents contend that the Claimant did not sustain a compensable work-related injury to his lower back at that time. A copy of the Pre-hearing order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee/carrier-TPA relationship existed on or about August 22, 2023, the date when the Claimant contends that he sustained an injury to his lower back. The

parties agreed that the Claimant earned an average weekly wage of \$676.69 which would entitle him to TTD rate of \$451.00. The Respondents controverted the claim in its entirety.

The Claimant's and the Respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. Specifically, the Claimant contends that he sustained compensable injuries on August 22, 2023, when a backhoe bucket struck him and threw him several feet. The Respondents initially accepted the claim and paid for medical treatment involving the injuries to his left hip, his left arm, and his left knee. Throughout the course of his claim, the Claimant contends that his primary complaints have involved problems related to his lower back. However, the Respondents have denied liability for any benefits related to his low back. The Claimant contends that he sustained a compensable injury to his low back and that additional medical treatment is reasonable and necessary, particularly treatment for his continued low back complaints. He further contends that the Respondents are liable for the medical treatment that he obtained after their denial of liability for the injury to his low back. At the time of the hearing, the Claimant reserved his claim for temporary disability benefits.

The Respondents contend that they accepted the Claimant's contusion injuries to his left knee and hip, laceration of his left arm, and paid the applicable medical and indemnity benefits. The Respondents contend that the Claimant did not sustain a compensable low back injury but that any such complaints are the result of a pre-existing condition for which they are not responsible.

From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the

testimony and demeanor of the sole witness, the Claimant, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on August 22, 2023, the date of the claimed injury.
3. That the Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable work-related injury to his lower back on August 22, 2023.
4. That all remaining issues are moot.
5. If not already paid, the Respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. The Claimant submitted an exhibit of medical records consisting of fifty-one pages that was admitted without objection. The Respondents submitted an exhibit of one hundred and two pages of medical records that was also admitted without objection.

The Claimant was the only witness to testify. He was thirty-eight (38) years old at the time of the hearing and had attended a little college toward becoming a paramedic and had also served in the military. On August 22, 2023, he was employed by the

Respondent, Northeast Public Water Authority, where he had worked since April of 2021, as a water operator-in-training. His job consisted of repairing water lines and busted mains, along with other things. On August 22, 2023, they were training a new person and were repairing a small leak. The Claimant stated he was digging with his back to the backhoe in a hole. The experienced backhoe operator was off that day and a backhoe operator-in-training was operating the backhoe. The Claimant had his shovel down, in an attempt to keep the water from flying into the guy's face while he was digging up the water line. The backhoe had a problem with a hydraulic-line, and it was revving up and the bucket from the backhoe hit him while he was down in the hole. It knocked him out of the hole and "I remember I went airborne for just a second and then I remember tumbling, and then I got stopped by a tree. And when I tried to stand up, I kept falling down, and it took a couple of minutes for the other two operators to find me because it had knocked me over." (Tr. 7 – 9)

They lifted my pants leg up and took me to Baxter Regional and I told them, "I couldn't really feel my leg, and my knee was buckling." He went on to state that an X-ray of his knee was performed and that they gave him crutches and sent him back to work. His boss then sent him home. He returned to the Baxter Regional Emergency Room within a week on August 28th, 2023, due to pain in his lower back, down his left buttock, and continuing down his leg, which was causing pain almost like little needles. His hip was fine, but if he put too much weight on it, it would ache a little. His main complaint was his lower back, about at his pant line. He saw Dr. McConnel, who referred him to Dr. Gocio, who sent him for a nerve conduction study. (Tr. 10 – 12) He went on to testify that he was off work from August 22nd to the beginning of December. When he returned to

work, he was placed on light duty and mainly drove around looking for leaks. They eventually placed Claimant back on his regular job and then they found out that he couldn't hold his balance, so they took him back off that and placed him back on light duty. He testified that they wanted him to return to the doctor. He was on regular duty for about a week. In regard to his balance issues, he stated his leg just wobbles. "If I put too much weight on my left leg when I'm taking a step, it kind of - - it'll want to jerk." He stayed on light duty until they terminated him in the summer of 2025. He was terminated after the board members met and decided that he couldn't do the job that he was hired to do. (Tr. 13 – 15)

The Claimant admitted he had suffered from problems with his lower back previously, about six or seven years ago, but that it was higher and was due to a bulging disc, which he recovered from. After he recovered, he stated he no longer experienced any problems with his lower back. He couldn't remember having any other medical treatment relating to his back until August 22, 2023. He never received any medical treatment for his hip or his leg before. His problems at the time of the hearing consisted of just his lower back, and "It's an everyday thing but not all day. It just depends on what I'm doing or how long I'm on my feet for. And it's just like little sharp - - like it radiates down almost to my foot but not quite, like I would say around the calf area, and then it feels like I start getting a Charlie-horse trying to start out." Bending over also makes his back hurt, and he usually just sits on a heating pad to make it better. Medications don't seem to help. (Tr. 16, 17) He went on to testify that there are times that he cannot get up and down from a chair without assistance, maybe a few times a week. He keeps a cane in his car, but didn't want to be reliant on it, and used it a couple of times a week. He also

testified that he experienced weakness in his leg all of the time, that he had been unable to go on hikes and could not top carry his kayak anymore, and that he had to obtain a trailer to carry it. His girlfriend would go with him and assist him and drop him off when he wanted to go use his kayak. (Tr. 18- 20)

He is currently working at his friend's tint shop, where they do window tinting which he can do while mostly sitting. He does have to stand some and he went on to state that he has been able to perform his job. That was the only place that he has worked since leaving the Respondent. He tries to help his girlfriend around the house but even when doing the dishes, "It's like when I'm standing in one spot, it'll - - it feels like - - almost like the weight's putting pressure on the back. So, I'll get like halfway done, then I'll have to go sit down for a while, and then I'll go back." He had previously been diagnosed with PTSD and panic attacks. He also admitted having some coronary issues. His heart rate and blood pressure would get really high, and they would give him medicine that would calm him down. He admitted having slightly high blood pressure and was currently on medication and beta-blockers. (Tr. 21 – 23) He also testified that nothing had occurred since the August 22, 2023, accident that would have caused his back problems. (Tr. 24)

Under cross examination, the Claimant admitted he had completed the tenth grade, dropped out, and then obtained his GED while in the military. The Claimant also admitted that he had injured his shoulder during his first year of training and was discharged at that point, with what he described as a broken rotator cuff. The Claimant also admitted he had been attempting for a period of time to obtain disability through the VA and had not been successful, but that it was still up in the air and he had not received any treatment through the VA. He also admitted attending paramedic school at ASU-

Mountain Home, training as a detention officer, and previously working for the Marion County Sheriff's office where he oversaw about 100 prisoners in a jail type setting. He also admitted to doing some marketing work with BDS and working as a Samsung representative, building displays, training employees, and that he had also worked as an E-Z Mart clerk and a pizza delivery driver. The Claimant had also obtained his license as a bail bondsman and worked in that position for a period of time. (Tr. 25 – 28) In regard to the Claimant's PTSD, he admitted being diagnosed by his family physician, Dr. Pritchard, who had placed him on Xanax, Trazodone, and Buspirone. He also admitted that he had obtained his medical marijuana card in 2022, which was still in place. He also admitted that he had been previously treated for a bulging disc in his back, but that he could not remember at the time of his deposition when that had occurred. (Tr. 29, 30)

In regard to the incident involving the backhoe while working for the Respondent, the Claimant admitted that he described it as when the bucket hit his left hip and scratched his left arm. At that point, he noticed he was unable to put pressure on his left leg. He also admitted that he testified in his deposition that the pain in his low back did not start until the feeling in his leg returned. There was no pain immediately. The Claimant went on to state that everything was numb on the left side. He also admitted that he had testified in his deposition that he had not noticed any pain in his lower back until two or three months later and after Dr. McConnell had released him from treatment, which would have been in December of 2023. He also admitted that the only time he had been treated for any low-back complaints was for a bulging disc and that this would have been prior to the event of August 2023. (Tr. 32, 32) Under further cross examination, the Claimant stated he had been telling Dr. McConnell about the little pin prickles prior to being

released by Dr. McConnell, and that the actual pain had started about that time. The following questioning then occurred:

Q: Did you complain to McConnell or Gocio about any low-back pain?

A: Yes, sir.

Q: Well, maybe we're not communicating, because you just told me a second ago that you didn't have low-back pain until after McConnell released you - -

A: No, the -

Q: - - in December of 2023.

A: - - the low-back pain had come back. Before it was like - - like what I was telling him, it was like spot - -

Q: Come back from when?

A: - - like almost, - - almost like needles. What was that?

Q: Well, let me start over. You told us you didn't have low-back pain when this first happened in August of 2023, correct?

A: Yes sir.

Q: Okay. You also told me that you didn't have low-back pain until two to three months after you were released by Dr. McConnell, which was two or three months after August of 2023, correct?

A: Yes, sir.

Q: So that would be December when he released you correct?

A: Yes, sir.

Q: And you would've gone back to work at that point? We'll talk about that in a minute. Is that right?

A: Yes, sir.

Q: Okay. So, you didn't have low-back pain for two or three months from August 22, 2023, until December of 2023, when McConnell released you, correct?

A: Yes, sir. The actual - - like the real back pain, yes, sir.

Q: Okay. So, what did you have in between? Was it just kind of fake back pain?

A: No, sir. It was - -

Q: Was it any back pain or anything?

A: - - it was like needly, like it wasn't like a pain. It was like - -

Q: Like when your foot goes to sleep - -

A: Yeah.

The Claimant went on to state that it was hard to explain. (Tr. 33 – 35)

The Claimant also admitted that when he was initially taken to the emergency room, they only took x-rays of his left knee. He also admitted that the next physician that he saw was Dr. McConnell who he told about his complaints. He was then sent to Dr. Gocio for a nerve conduction study on his left leg. At some point, he was sent to physical therapy. The Claimant also admitted that he did not receive an MRI on his back while being treated by Dr. McConnell and Dr. Gocio. The Claimant testified, "Workman's comp actually sent a nurse with me, and she told McConnell that they had permission to do the MRI, and he just said that he didn't think it was needed, that it was weakness in my leg." He admitted that Dr. Pritchard, his family doctor, ordered an MRI of his back, and that was the only one he ever remembered having other than the one while working for the sheriff's department. The Claimant also admitted that Dr. Pritchard had not recommended any additional treatment for his back since the MRI. (Tr. 36 - 38) Dr. Pritchard had also

not made a referral or recommended surgery. Dr. Gocio and Dr. McConnell both released the Claimant to return to work in late November or early December. The Claimant had also admitted that during his deposition in January of 2025, he had gone back into the field and had only recently been moved into the office. (Tr.39)

The Claimant also admitted that he liked to use his new kayak at least twice a week while it was warm and would go as frequently as he could. He also admitted being able to use a computer, having a driver's license, and being capable of reading. He also admitted to driving to his deposition in Little Rock. (Tr. 40 - 42)

When the Claimant presented to the ER after the accident involving the backhoe, he admitted that he had referred to his left knee and left hip. In regard to Claimant's second visit to the ER after the incident with the backhoe on August 28, 2023, the Claimant was questioned about the medical report referring to low-back pain, hip pain, and knee pain. More specifically, he was questioned about the report providing under Comparison that they compared the MRI of the lower back on that date, to a CT of the spine of the same year, and was asked if he remembered going to the hospital for back pain in June of 2023, approximately two months prior to the incident involving the backhoe. He responded that he remembered going vaguely, but that "It's hard to keep up with everything that's happened." "I mean, I remember going in, but I can't remember what was said or what happened. That's been a while ago." The Claimant was also questioned about the X-rays taken on August 23 after the accident that provided "Normal lumbar spine with mild degenerative changes from L3 to S1" and he responded "Yes, sir." Additionally, the Claimant was questioned about X-rays of his hip at the time, which provided for no acute fracture of the pelvis and he again responded "Yes, sir." The

Claimant also admitted that the EMG nerve conduction study performed at Baxter Health on September 20, 2023, provided there was no electrophysiologic evidence recorded and was not suggestive of any type of radiculopathy or pain running down his bruise. (Tr. 43 – 47)

After presenting to Dr. Gocio, the Claimant followed up with Dr. McConnell, who recommended an ACL type stability brace, and the Claimant admitted Dr. McConnell stated that he could return to duty full duty. The Claimant also agreed he again returned to Dr. Gocio on November 27, 2023, who referred to the MRI and the EMG nerve conduction study and stated “I believe a portion of the patient’s injuries represents a neuropraxia that has resolved without residual impairment” and then released him from his care. The Claimant contended that Dr. Gocio made a recommendation to the nurse from Travelers about getting a second nerve conduction study and he appeared somewhat surprised that the report made no mention of the offer of a second nerve conduction study and that he could return to work with whatever restrictions that Dr. McConnell felt necessary. (Tr. 51) The Claimant also agreed he returned to Dr. McConnell on November 27, 2023, and Dr. McConnell provided that he could return to work with no restrictions and had reached MMI. (Tr. 52)

The Claimant was then questioned about a visit to the emergency department in January of 2024, with a chief complaint of acute lower back pain onset with no trauma to the site. The Claimant first responded that he could not honestly remember the visit exactly. He later agreed the report provided he just woke up with severe pain to his lower back and had not suffered any trauma. He agreed he was saying that he just woke up with the pain. “That’s whenever I was getting all the feeling back in my leg.” (Tr. 55, 56)

After the end of cross examination, and after a discussion between the Claimant and his attorney, the Claimant rested.

The Claimant's medical Exhibit consisted of 50 pages. Claimant presented to Baxter Regional ER on August 22, 2023, with a complaint of knee and hip pain. (Cl. Ex. 1, P. 1 - 6) The Claimant then returned to the ER on August 28, 2023, and the report provided under "Diagnosis for Today's Visit" for lumbar radiculopathy and left leg weakness. X-rays of the left pelvis and an MRI of the lumbosacral spine were taken. The MRI on this date was compared to a CT scan of the lumbosacral spine taken on June 16, 2023. The report provided that the bones and joints of the lumbar spine alignment were normal and unchanged and vertebral height was maintained. Narrow zones of marrow edema adjacent to the endplates were noted with no fractures or subluxations. The diagnosis provided for lumbar radiculopathy with left leg weakness. (Cl. Ex. 1, P. 7 – 18)

The Claimant then presented to Knox Orthopedics and was seen by Dr. McConnell on September 5, 2023, with a chief complaint of left hip pain and issues involving the left knee. X-rays of the lumbar spine were obtained. The report referred to multiple series of X-rays and an MRI of the lumbar spine and provided there was nothing on the Lumbar MRI that would explain the complaint. The report further stated that an EMG of the left lower extremity would assist in the diagnosis. (Cl. Ex. 1, P. 19 – 21)

The Claimant presented to Baxter Health Physical Therapy on September 20, 2023, for a nerve conduction study and the report stated that it was a normal study. All nerve conduction studies were within normal limits and all muscles showed no evidence of electrical instability. (Cl. Ex. 1, P. 22 – 25)

The Claimant returned to Knox Orthopedics and Dr. McConnell on November 27, 2023, and the report provided that the Claimant had a gait abnormality while walking that gets worse with fatigue. The doctor opined that the knee was stable, and it was a muscular problem, and that he would allow the Claimant to return to work in two weeks. (Cl. Ex. 1, P. 26, 27) The Claimant then returned to Dr. McConnel on January 8, 2024, and the report provided that there was full range of motion of the left knee, that the Claimant had reached MMI, and that he could return to work full duty with no restrictions and with no impairment, that his leg buckling was essentially gone, and he referred to lumbar degenerative disc disease. (Cl. Ex. 1, P. 28, 29) On January 31, 2024, the Claimant presented to the Baxter Regional ER with the chief complaint of lower back pain with a Thursday onset, and with no trauma reported. The report referred to a finding of sacroiliitis. (Cl. Ex. 1, P. 30 – 32)

On March 1st, 2024, the Claimant presented to the Regional Family Medicine Clinic, and Dr. Jamie Pritchard, with low back pain, left hip pain, and obstructive sleep apnea. The report provided a finding of mild arthritic changes at L5 of the lumbar spine that is otherwise normal, with normal spacing of the vertebral heights in the lumbar spine, with very tiny osteophyte formation and with no subluxation. (Cl. Ex. 1, 33 – 35) The Claimant returned again to Dr. Pritchard on March 6, 2024, with a complaint of low back pain and left hip pain, and X-rays with two views were taken of the sacroiliac joints. Under impression, the report stated that they were normal. Additionally, X-rays of the pelvis provided it was normal. (Cl. Ex. 1, P. 36, 37)

On April 1, 2024, the Claimant returned to Dr. Pritchard for a follow-up. The report mentioned a referral to Ozark Physical Therapy for low back pain and additionally

mentioned chronic PTSD. (Cl. Ex. 1, P. 38 – 40) The Claimant then again returned to Dr. Pritchard on May 9, 2024, for a follow-up for back pain. The report provided that a lumbar MRI would be ordered, and that the Claimant would be contacted if it was approved by insurance. (Cl. Ex. 1, P. 41, 42) The Claimant again returned to Dr. Pritchard on May 13, 2024, for left knee pain, and the X-ray provided for a normal left knee. (Cl. Ex. 1, P. 43) The records provided that the Claimant did not return to Dr. Pritchard until October 14, 2024. The report provided that the Claimant's depression had worsened due to his physical limitations, referred to left hip pain, depression, and generalized anxiety disorder. (Cl. Ex. 1, P. 44 to 46)

On June 11, 2024, the Claimant received another MRI of the lumbar spine due to low back pain. The report mentioned the Claimant being hit by a forklift in 2023, which would appear to be clearly incorrect. In any case, under impression, the report provided for some early degenerative changes with mild degenerative changes of the facet joints and some minimal disc disease. The most pronounced disc changes were at the L3-4 level, where there is a tiny protrusion of a disc, but which had not changed since August 28, 2023, to any degree. Minimal bulging at L4-5 and L5-S1 level as seen previously had improved to some degree. Mild narrowing of the left neural foramen at the L5-S1 was noted. (Cl. Ex. 1, P. 47)

Claimant's final medical record involved another visit to Dr. Pritchard on October 14, 2024, and referred to generalized anxiety disorder and again mentioned left knee pain. No mention of lower back pain was mentioned. Under assessment, the report referred to PTSD. (Cl. Ex. 1, P. 48 – 50)

The Respondents medical records entered into the record consisted of many of the same reports provided by the Claimant with some additional medical records added.

A report provided that the Claimant presented to Baxter Regional on October 11, 2023, for physical therapy, and the report provided for no pain, but for mild limitation of motion, and with severe limitation of function. After the discharge from physical therapy, the report provided for a very mild limitation of function. Dr. Allan Gocio assessed neurapraxia of the left lower extremity. (Resp. Ex. 1, P. 65 – 77)

On November 27, 2023, the Claimant presented to Dr. Gocio with complaints of back and hip pain, with lower extremity weakness. The report provided for left lumbar radiculopathy with neuropraxia of the left lower extremity. Dr. Gocio provided he would defer to Dr. McConnell from the standpoint of returning to work. (Resp. Ex. 1, P. 82 – 85) Dr. McConnell issued a return to work note on December 11, 2023, and stated that the claimant could return to work full duty but must wear a stability brace. (Resp. Ex. 1, P. 81)

On December 1, 2023, the Claimant again presented to Baxter Regional Physical Therapy and the report provided he stated that there was no pain, with a mild limitation to function. (Resp. Ex. 1, P. 86 – 90) The Claimant presented to Dr. McConnell on January 8, 2024. The report provided that the Claimant's leg buckling and instability was essentially gone and that he suffered from intervertebral disc degeneration. The report went on to provide that the Claimant had reached MMI and could return to work with no restrictions and no impairment. (Resp. Ex. 1, P. 91 – 92)

A report from Dr. Patrick Tobias, dated July 23, 2024, provided that the Claimant suffered from additional health issues which included heart palpitations, bradycardia, and essential hypertension. (Resp. Ex. 1, P. 93 – 96) The final medical report entered into the record by the Respondents was also one from Dr. Tobias dated May 21, 2025, which

reported that the Claimant still was suffering from heart palpitations, anxiety, and other heart issues. (Resp. Ex. 1, 97 – 100)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the claimed injury to his lower back. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. 11-9-704. Wade v. Mr. Cavananugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In regard to the current claim before the Commission, Claimant contends that he injured his back on August 22, 2023, while repairing water lines and employed by the Respondent while he was down in a hole with a shovel, with his back towards a backhoe, when he was hit by the bucket of the backhoe, which knocked him out of the hole and injured his lower back. The Claimant was immediately taken to Baxter Regional ER with a complaint of pain in his left knee and left hip. Only his left knee was X-rayed, and he was released to return to work with crutches. His boss sent him home.

He returned to the Baxter Regional ER on August 28, 2023, due to pain in his lower back, down his left buttock, which continued to his left leg. The diagnosis for the visit provided for lumbar radiculopathy and left leg weakness. X-rays of the pelvis and an MRI of the lumbosacral spine were taken. The MRI on this date was compared to a previous CT scan of the lumbosacral spine taken on June 16, 2023, and the report provided that

the bones and joints of the lumbar spine were in normal alignment and unchanged and the vertebral height of the vertebrae was maintained. Later, on September 5, 2023, the Claimant presented to Knox Orthopedics and Dr. McConnell, with the chief complaint of left hip pain and issues involving the left knee. The report provided there was nothing involving the MRI of the lumbar spine that would explain the complaint. Later, on September 20, 2023, a nerve conduction study provided that it was a normal study within normal limits and all muscles showed no evidence of electrical instability. The Claimant received another MRI of his lumbar spine on June 11, 2024. The report provided, under impression, for some degenerative changes with mild degenerative changes of the facet joints, and some minimal disc disease. Additional X-rays and findings by Dr. Pritchard provided for mild arthritic changes at L5 of the lumbar spine but that it is otherwise normal, with normal spacing.

The Claimant continued to see Dr. McConnell, Dr. Gocio, and his personal family physician, Dr. Pritchard. Dr. Gocio stated that he would defer to the opinion of Dr. McConnell, and Dr. McConnell opined that the Claimant had reached MMI, could return to work full duty with no restrictions, and with no impairment.

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and it must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must 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 harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in A.C.A. 11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which are those findings that cannot come under the voluntary control of the patient. A.C.A. 11-9-102 (16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here the medical records clearly provide that the claimant suffered from lower back issues and had previously received a CT of his lower back on June 11, 2023, only approximately two months prior to the MRI of August 28th, 2023, after the incident involving the backhoe. No change was noted between the scans. Dr. McConnell opined that the Claimant could return to full duty work with no restrictions and no impairment. It is noted that an employer takes the employee as it finds him and employment circumstances that aggravate preexisting conditions are compensable. Here, there is no proof that the incident involving the backhoe was the cause of the claimants alleged issues involving his lower back. See Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W.3d 150 (2003).

It is noted that a Claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hail v. Pitman Construction Co. 235 Ark. 104, 357 A.W.2d 263 (1962).

Here, the claimant had suffered from issues with his lumbar spine prior to the claimed work-related injury. No medical reports of record made objective findings that make any connection between the claimed injury on Augst 22, 2023, and the claimed lower back problems. The Claimant was clearly suffering from lower back problems prior to the incident involving the backhoe.

As stated above, the workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. A.C.A. 11-9-102 (4) (E) (i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that it grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ark. App 21, 732 S.W.2d 496 (1987). 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. 263, 101 S.W.3d 252 (2003). Based upon the available evidence in the case at bar, there is no alternative but to find that the Claimant has failed to satisfy the required burden of proof to show that the claimed injury to his

lower back on August 22, 2023, is the cause of his lower back problems and that consequently the claim is not compensable under the Arkansas Workers' Compensation Act.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the Claimant has failed to prove by a preponderance of the credible evidence that his claim for an injury to his lower back, on August 22, 2023, is a compensable claim under the Arkansas Workers' Compensation Act. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT SO ORDERED:

JAMES D. KENNEDY
Administrative Law Judge