

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300170

TERESA KIMES,
EMPLOYEE

CLAIMANT

INDEPENDENCE AT HOME,
EMPLOYER

RESPONDENT

GUARD INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 7, 2024

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

Claimant is *Pro Se*.

Respondents represented by the HONORABLE KAREN H. McKINNEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 3, 2024. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The record indicates that Teresa Lynn Kimes, now age 62, treated at Sparks Regional in June 2012: "The patient is a 50 years old female who presents with lumbar pain. The onset was abrupt." The diagnosis was

“Back strain.” A physician noted in May 2015, “Patient has been having a lot more back pain. Has history of degenerative disc....Will refer to pain management.” An MRI of the claimant’s lumbar spine was taken on June 12, 2015 with the following impression:

1. At L3-4, there is a posterior disc herniation with spinal and bilateral foraminal stenosis, worse on the left than the right.
2. At L4-5, there is a disc bulge and degenerative facet change with spinal and bilateral foraminal stenosis.
3. At L5-S1, there is degenerative facet change with bilateral foraminal stenosis.
4. At L1-2, there is a slight disc bulge without spinal stenosis.
5. Degenerative facet change at all levels.

Dr. Brian Goodman provided a Pain Clinic Consultation in July 2015:

“Ms. Kimes is a 53 y.o. female who presents to pain clinic with back pain which has been gradually worsening over time. She thinks the likely cause of this pain is degeneration. The pain is described as constant aching.” Dr. Goodman assessed “1. Moderate spinal stenosis. 2. Lumbar spondylosis. 3. Mechanical back pain.” Dr. Goodman scheduled a diagnostic medial branch block, which was performed in September 2015. It was reported at Sparks Regional in March 2016 that the claimant had been suffering from back pain for three years.

Dr. Donald Paul Samms noted on October 1, 2020, “Patient was getting down out of her son-in-law’s jacked up pickup truck when she stepped wrong and had back pain and pain going down her left leg all the way to the foot. She does have history of a bad back.” An x-ray of the

claimant's lumbar spine was taken on October 1, 2020 with the impression, "Degenerative disc disease and minimal spondylolisthesis." Dr. Sams assessed "1. Left sided sciatica (Primary)." An x-ray of the claimant's lumbar spine was taken in April 2022 with the impression, "Advanced degenerative changes. Grade 1 anterolisthesis of L4 on S1."

The parties stipulated that the employee-employer-carrier relationship existed on December 4, 2022. The claimant testified on direct examination:

Q. What were you doing on December 4th?

A. I was working at Frances's place as a home health provider.

Q. And what does that involve?

A. It involves cleaning, doing light housekeeping, and helping them with their personal care and cooking a meal.

Q. What all is involved in this personal care?

A. Okay. She was bed – she could not walk or nothing, so I had to change her diaper, her bedding. Give her a sponge bath, dress her. I put lotion on her. Comb her hair....

Q. Now, explain to the judge what happened on December 4th of 2022.

A. Okay. It was a Sunday and I had got permission prior before from my work and I was going to go to communion at church and I had to leave at 10 o'clock to be there by 10:30....While [Frances] was eating I got the linens, they are called Tucks, and her sheets, her diapers, her pads and laid them all out....I took the blankets off her bed. She lowered her bed....She grabs ahold of the rail and I was trying to start the roll I call it and all her stuff that needs to go under her and she lets go of the rail and she says, "I can't do this. It hurts." I said, "Okay, Frances." I said, "Frances, you are going to have to help me." So she done it again, so I put my arm up to hold her where she cannot roll back over and I can proceed to roll her diaper and all the items that she needed under her bed, her linens, and she kept hollering, "I can't do it. It hurts. It

hurts.” So that did take some time....So when I was bent over and I was rolling up the unsanitary linens and trying to roll out the other one and I was tugging on it and she lets go and just says she can’t do it no more. When I leaned over, I had a pain in my back. I stopped right then....Eventually I did get it done, but I did not do everything like it should have been....I sat down for a minute. So I left there at 10:15. When I got in the car, I called Independence and I called Samantha to tell her that I hurt my back. I did not get nobody on the phone....Coming back from church, I called Independence and I got Tiffany. She told me that she will tell the girls, which the girls was Christy and Carolyn....

Q. During this period of time, did you contact the personnel at Independence and tell them your back was bothering you?

A. Yes, sir.

Q. Did you tell them it was bothering you because of this accident on the 4th?

A. Yes, sir....

Carolyn Langley testified that she was the respondent-employer’s scheduling supervisor. The respondents’ attorney examined Carolyn Langley:

Q. Tell us about Ms. Frances.

A. She is one of our bedridden clients. She has a hospital bed that is in her living room. She has a trapeze and also the two bedrails....

Q. Now, we are here because Ms. Kimes is claiming that she injured her back on December the 4th, 2022, while working for Ms. Frances. Are you aware that is her allegation?

A. I’m aware that that is the allegation.

Q. Okay. What do you know, if anything, about what Ms. Kimes claims about what happened on December 4th? Did she tell you anything?

A. No, ma’am.

Q. What do you know?

A. Nothing other than just the call-ins for needing to go to the doctor for her back hurting and us requesting a doctor’s release to come back to work, as we would with any caregiver.

Q. So you are aware that she reported she needed to go to the doctor for back pain?

A. Yes.

Q. Was there any discussion about why she had back pain or how it occurred?

A. No, ma'am.

Q. Did she ever volunteer to you that she got hurt at work?

A. No....

Q. Are you aware of any complaints of anything occurring with Ms. Kimes working on December the 4th?

A. The only one that I am aware of is when I received a phone call on the 5th from the client herself asking us to remove Teresa and never send her back due to a temperamental situation....

Q. So she was blocked from treating Frances after December the 4th. Is that correct?

A. Correct....

Q. Did she at any time report to you that she hurt her back taking care of Ms. Frances on December 4th?

A. No.

The claimant testified on direct examination:

Q. Now, what happened on December 15th?

A. That morning when I got up I had problems walking, so I went to the walk-in clinic. I called in that morning to tell them, "I cannot do nothing else no more. I am going to the doctor," and I went to the walk-in clinic.

According to the record, the claimant treated at Baptist Health Urgent Care on December 15, 2022: "Patient comes in today for a back pain....PT IS HOME HEALTH NURSE HAS HURT BACK WORKING WITH PATIENTS. WORSENING BACK PAIN FOR A WEEK." Physical examination showed, among other things, "Bilateral muscle spasm."

The assessment on December 15, 2022 was "Dorsalgia, unspecified – High risk of morbidity without treatment - Poorly controlled – Worsening."

An x-ray of the claimant's lumbar spine was taken on December 15, 2022 with the following impression:

1. There is loss of the normal lumbar spine lordosis which would be concerning for muscle spasm.
2. Severe multi-level degenerative change of the spine.
3. Grade I anterolisthesis of L5 on S1.

The claimant agreed on cross-examination that she did not work for the respondents after December 15, 2022. An APRN saw the claimant on December 20, 2022: "Complains of lower back pain. She went to urgent care not long ago and was told she had spinal enthesopathy and needed to see a neurosurgeon. She would like a referral. She states this [has] been going on for years. She has recently been on a Medrol Dosepak and cyclobenzaprine. She states she has tried injections and physical therapy. She does see an orthopedic doctor about this but states none of it is helping. She declines chiropractor referral." The assessment on December 20, 2022 included "Spinal enthesopathy of lumbar region (HCC)."

Dr. Robert Cline Lane reported on December 21, 2022:

Teresa L. Kimes is a 60 y.o female to the emergency department with complaints of increasing lower back pain. She states that she has been having gradual increase in pain over the past 7 months or so however the past week she has had much more trouble with it. She is she does (sic) heavy lifting at work as she works in home health and was seen last week at urgent care and had imaging done and is subsequently seen (sic) her PCP who has sent a referral for neurosurgery evaluation. She has been on a Medrol Dosepak along with Flexeril however this does not seem to be helping

her pain. The pain goes mostly into her right hip and leg but sometimes on the left side as well....

Dr. Lane diagnosed "Chronic right-sided back pain with right-sided sciatica (primary)."

An MRI of the claimant's lumbar spine was taken on January 6, 2023 with the impression, "Degenerative changes of the lumbar spine which are described in detail by level above."

The claimant began pain management treatment with David Holt, PA-C on January 18, 2023: "Teresa is a 60 year old female who presents to the clinic with complaint of pain in low back, bilateral legs, bilateral knees. Has known severe lumbar foraminal stenosis." David Holt assessed "Lumbar degenerative disc disease." Dr. Holt noted on February 15, 2023 that the claimant "fell in the rain."

Dr. Gautam Kanu Gandhi noted on February 21, 2023, "This is a chronic problem. The current episode started more than 1 year ago (>10 years)....The pain is present in the lumbar spine." Dr. Gandhi discussed conservative treatment and surgery, and he advised the claimant to return to the clinic in six months.

Dr. Michael S. Wolfe assessed the following on May 4, 2023: "Radiographs show degenerative changes at L3-4 L4-5 and L5-S1 with grade 1 spondylolisthesis at L5-S1 findings are somewhat similar to what was noted 3 years ago but she definitely has progressive disc deterioration

and joint space narrowing she is having mechanical pain related to her disc changes and I do think that surgical intervention could be of help to her because she is having such severe problems she is to follow-up with the physician in Conway she will continue on Mobic at present I will see her back in clinic on [an] as needed basis.”

A pre-hearing order was filed on August 8, 2023. According to the text of the pre-hearing order, the claimant contended, “The claimant contends that she sustained compensable injury to her lower back while attempting to move a patient on December 3 [sic], 2022. She contends that her injury has required reasonably necessary medical services and has rendered her temporarily totally disabled from December 5, 2022, until a date yet to be determined. She seeks the statutory attorney’s fee for her attorney on all appropriate benefits that might be subsequently awarded.”

The parties stipulated that the respondents “have controverted the claim in its entirety.” The respondents contended, “Respondents contend that the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury for which she is entitled to medical and indemnity benefits. Specifically, Respondents contend that the claimant suffers from pre-existing degenerative disc disease for which she has received treatment as far back as 2010 and that the claimant did not report

a work related injury occurring on December 3 [sic], 2022, or at any time during her employment.”

The parties agreed to litigate the following issues:

1. Whether Claimant sustained a compensable injury to her low back on or about December 4, 2022.
2. Whether Claimant is entitled to medical treatment for her compensable low back injury.
3. Whether Claimant is entitled to temporary total disability benefits from December 5, 2022, to a date yet to be determined.
4. Whether Claimant’s attorney is entitled to an attorney fee.

A hearing was held on October 5, 2023. The claimant testified that Dr. Gandhi had scheduled surgery for October 30, 2023. An administrative law judge filed an opinion on January 3, 2024 and found that the claimant failed to prove she sustained a compensable injury. The administrative law judge therefore denied the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) 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 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).

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)(Repl. 2012). 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, “2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back on or about December 4, 2022.” The Full Commission affirms this finding. The record indicates that the claimant has suffered from chronic low back pain since at least 2012. An MRI in 2015 showed herniation and bulging in the claimant’s lumbar spine. The claimant thereafter underwent pain management, and x-rays in April 2022 showed “Advanced degenerative changes.”

The parties stipulated that the employment relationship existed on December 4, 2022. The claimant testified that she was employed with the respondents as a Home Health Provider, and that she was working in the home of a client named Frances. The claimant testified that she felt a pain in her back while leaning over Frances’ bed to change linens. The claimant

testified that she informed personnel with the respondent-employer that she had injured her back.

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).

The Full Commission finds in the present matter that the claimant was not a credible witness. We find credible the testimony of Carolyn Langley, the respondents' scheduling supervisor. Carolyn Langley testified that the claimant never reported an alleged injury to her. Ms. Langley specifically testified that she claimant did not report she injured her back at work on December 4, 2022. Carolyn Langley testified that Frances requested that the claimant not be allowed to return to her home: "The allegations were that she was cussing and screaming at the client and threw the client's phone."

Nor did the medical evidence corroborate the claimant's contention that she sustained an accidental injury on December 4, 2022. The claimant did not seek medical treatment of record until December 15, 2022. It was noted that the claimant "HURT BACK WORKING WITH PATIENTS.

WORSENING BACK PAIN FOR A WEEK.” However, there was not a specific incident identified. An APRN’s assessment on December 20, 2022 was “Spinal enthesopathy of the lumbar region (HCC).” The evidence does not demonstrate that this condition was causally related to an alleged accidental injury on December 4, 2022. Nor does the evidence demonstrate that the subsequent reports of “right-sided sciatica” or lumbar degenerative changes were causally related to an alleged accidental injury.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant did not prove that she sustained an accidental injury causing physical harm to the body. The claimant did not prove that she sustained an injury which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury which was caused by a specific incident or was identifiable by time and place of occurrence on or about December 4, 2022. Nor did the claimant prove that she sustained a compensable aggravation of a pre-existing condition. See *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.5 (1998).

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion that the claimant did not prove she sustained a compensable injury on or about December 4, 2022. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Wilhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that the Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back on or about December 4, 2022, that she was entitled to medical treatment for such injury and that she is entitled to temporary total disability benefits from December 15, 2022, to a date yet to be determined. After conducting a thorough review of the record, I concur in part and dissent in part. I would rule in favor of the Claimant for her compensable injury to her low back which she sustained

on or about December 4, 2022 and is entitled to medical treatment for her compensable injury.

1. The Claimant sustained a compensable injury to her low back on or about December 4, 2022 and is entitled to medical treatment for that injury.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002)

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See,

Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

On December 4, 2022, Claimant was working for Respondent as a home healthcare worker. Claimant testified that the Respondent's patient required an undergarment changing. During this, the patient was uncooperative, and Claimant had to roll the individual over when she felt pain in her back. On December 15, 2022, an X-Ray was obtained of

Claimant's L-Spine which showed a loss of normal lumbar spine lordosis which would be concerning for muscle spasm, severe multi-level degenerative changes, and grade I anterolisthesis of the L5 on S1 level of the spine. Claimant reported to the ER on December 21, 2022, for worsening pain in her back where she was diagnosed with chronic right-sided low back pain with right-sided sciatica. Claimant underwent an MRI on February 21, 2023, which showed a worsening condition of multisegmented lumbar spondylosis with significant spondylosis worse at the L3-4 level with collapse of the interspace, and severe central canal stenosis at the L3-4 and L4-5 levels compared to an MRI performed in May 2018 as read by Dr. Gautam Kanu Gandhi. Dr. Gandhi found that Claimant's condition was worse than her comparable MRI performed in May of 2018. Dr. Gandhi recommended Claimant for surgical intervention of an L3-5 posterior fixation with L3 laminectomy.

Therefore, I would find that the Claimant suffered a compensable lower back injury and is entitled to medical treatment of such injury in the performance of Dr. Gandhi's recommended surgery.

2. The Claimant is not entitled to temporary total disability benefits from December 15, 2022 to a date yet to be determined.

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from

earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). While the Claimant is clearly still in her healing period as she is still treating for her compensable injury, I cannot say she is totally incapacitated from earning wages. Claimant has not been restricted from working by her authorized physician or another medical provider.

Therefore, I would find that the Claimant is not entitled to temporary total disability benefits from December 15, 2022 to a date yet to be determined.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner