BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H303020**

CASEY THOMPSON, EMPLOYEE	CLAIMANT
LOCOMOTIVE SERVICE INC., EMPLOYER	RESPONDENT
BERKSHIRE HATHAWAY HOMESTATE, CARRIER	RESPONDENT

OPINION FILED **SEPTEMBER 27, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by ZACHARY F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 20, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 20, 2024, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on February 26, 2023.
3. Respondents have controverted the claim in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing

were limited to the following:

1. Whether claimant sustained a compensable injury on February 26, 2023.

2. Whether claimant is entitled to medical benefits.

All other issues are reserved by the parties.

The claimant contends that "He is entitled to the medical treatment recommended by Dr. Zhang, as such treatment is necessary for his compensable injury. The claimant further contends that the respondents have denied his entitlement to such treatment and have controverted any appropriate benefits that may arise in the future from such medical treatment."

The respondents contend that "Clamant was not injured in a MVA on February 26, 2023. The claimant's alleged need for treatment is because of a preexisting condition. The recommended treatment is not reasonable and necessary."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on June 20, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on February 26, 2023.

HEARING TESTIMONY

Claimant testified that on February 26, 2023, he was involved in an accident when the fuel tanker truck he was driving was struck from behind by an inattentive driver. The force of the collision

caused him to spill the coffee in his hand. While there was no discernable damage to the vehicle claimant was operating, the sedan was disabled due to the damage to it.

Claimant was already seeing Dr. William Willis for problems with his neck, back, and shoulders, and had seen Dr. Willis three days before the collision. Among the dozen or more current problems that were listed was cervicalgia; claimant had undergone a C4-C7 anterior cervical fusion in 2011. Because claimant had a regularly scheduled appointment with Dr. Willis on March 23, 2023, he did not immediately seek medical treatment for his neck pain. When the soreness and stiffness across his shoulders and neck continued, Dr. Willis recommended an MRI or a CT scan. Claimant said the pain that he was experiencing after the collision was radiating down the left side of his neck and across the shoulder into his left arm, which was not occurring before the accident.

After the MRI, claimant saw Dr. Shihao Zhang who prescribed physical therapy and injections for the neck condition. Claimant said the workers' compensation carrier refused to pay for the injections. Claimant said Dr. Zhang recommended surgery and that he is willing to undergo that procedure because he cannot stand the pain and the popping in his neck.

On cross examination, claimant confirmed that he had a cervical fusion on three levels of his neck in 2011 and had treated with Dr. Willis for pain management for his lower back and neck issues prior to the collision on February 26, 2023. Regarding the accident itself, claimant said that he was a bit sore and stiff but did not have any injuries that were bleeding or anything like that. He continued to work normal hours during the following days and weeks. Claimant explained that Dr. Willis had recommended that he see a neurosurgeon and the physician that had done his neck and back surgery had retired, so he saw Dr. Zhang at the same facility.

REVIEW OF THE EXHIBITS

The parties submitted medical records from November 20, 2022, through March 4, 2024, and eliminated most of the duplicate records. These records included those from Dr. William Willis, Dr. Shihao Zhang, the MRI reports of May 25, 2023, and October 12, 2023, and both a chart review and independent medical evaluation conducted by Dr. Luke Knox. While there are over a hundred pages of these records, claimant's testimony adequately summarized what was contained in the records from Dr. Willis. He had treated for neck and back issues for years before February 26, 2023 and did not go see Dr. Willis until almost a month after the accident when he kept his regularly scheduled appointment for March 23, 2023 and complained that the accident caused his neck to hurt more than it had before February 26, 2023. At respondent's request, Dr. Knox did a thorough chart review which I found to be an accurate summary of what had taken place prior to the independent medical evaluation. The parts of these records which are determinative to the issue of compensability will be discussed below.

ADJUDICATION

As established by the testimony and medical records, claimant has a long history of problems with his neck that existed before his employment with respondent. An aggravation of a preexisting non-compensable condition is considered a new injury with an independent cause, and thus must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). Arkansas Code Annotated section 11-9-102(4)(A)(i) defines a compensable injury as:

> "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."

The proof supports claimant's contention that he was involved in a motor vehicle collision while at work on February 26, 2023. His delay in seeking medical treatment is a matter of credibility, and I believe his testimony that the collision was hard enough to cause him to spill the coffee he had in his hand when his truck was struck.

However, a compensable injury must be established by medical evidence supported by objective medical findings, Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2009). "Objective findings" are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). Thus, to be compensable, claimant's alleged aggravation of a preexisting condition must itself meet the definition of a compensable injury, and it is here that claimant's proof is lacking.

Dr. Willis did not express an opinion as to whether the collision of February 26, 2023, caused an aggravation of claimant's preexisting injury. I would not have expected a general practitioner to have felt qualified to make such a determination. Dr. Willis recommended a CT scan and then a referral to a neurosurgeon if warranted. Dr. Zhang saw claimant on October 31, 2023, following an MRI and recorded: "Patient has adjacent level disease at C3-4 that might have been aggravated. Certainly, this could be causing his pain." (Emphasis added). Dr. Knox did not relate the February 26, 2023, collision to claimant's need for treatment at the C3-4 level: "It appears the need for the anterior cervical discectomy and fusion, in my opinion, is preexisting to the incident occurring on 2/26/23."

A doctor need not be absolute in an opinion or use the magic words "within a reasonable degree of medical certainty" so long as his medical opinion be more than speculation, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296 (2001). However, medical opinions based on "could," "may," or "possibly" lack the definiteness required to prove compensability. *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). "Might" and "could" was how Dr. Zhang termed the connection

between the collision and claimant's neck condition at C3-4; Dr. Knox found that condition predated the incident. As such, claimant lacks the objective medical evidence necessary for him to prove his claim by a preponderance of the evidence, and it must therefore be denied.

As I found claimant did not prove he suffered a compensable injury, his claim for additional medical treatment is moot.

ORDER

For the reasons set out above, claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury on February 26, 2023. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges of $ 427.95 for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE