REL: November 15, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2180978

Ex parte Sea Coast Disposal, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Shawn O. Bell

v.

Sea Coast Disposal, Inc.)

(Dallas Circuit Court, CV-18-900185)

DONALDSON, Judge.

Sea Coast Disposal, Inc. ("the employer"), petitions this court for a writ of mandamus directing the Dallas Circuit

Court ("the trial court") to vacate that portion of its July 24, 2019, order finding that the neck and lower back injuries of Shawn O. Bell ("the employee") are compensable under the Alabama Workers' Compensation Act ("the Act"), § 25-5-1 et seq., Ala. Code 1975. We grant the petition in part and deny it in part.

Procedural History

On July 20, 2018, the employee sued the employer, alleging that, while working within the line and scope of his employment with the employer as a garbage-truck driver on November 24, 2017, he had injured his left shoulder, neck, and lower back when he lifted a garbage can that had been overturned by the robotic arm on the garbage truck he was driving. As relief, the employee sought compensation and medical and vocational benefits pursuant to the Act. On July 12, 2019, the trial court held a bench trial that was limited to the issue whether the employee's injuries to his left shoulder, neck, and lower back are compensable under the Act. On July 24, 2019, the trial court entered an order finding that those injuries are compensable but reserving a ruling on the remaining issues. The employer filed its petition for a

writ of mandamus on September 3, 2019, which was within the 42-day presumptively reasonable time for doing so. See Rule 21(a)(3), Ala. R. App. P. ("The presumptively reasonable time for filing a petition seeking [mandamus] review of an order of a trial court ... shall be the same as for taking an appeal."); and § 25-5-81(e), Ala. Code 1975 (providing that the period for filing a notice of appeal from an order or judgment in a workers' compensation action is 42 days).

Propriety of Mandamus Review and Requirements for Mandamus Relief

Because the trial court's July 24, 2019, order did not dispose of all the issues pending before the trial court, it is not a final judgment from which an appeal will lie under current caselaw. See, e.g., Adams v. NaphCare, Inc., 869 So. 2d 1179, 1181 (Ala. Civ. App. 2003). This court has held that a petition for a writ of mandamus is the appropriate means of seeking review of an interlocutory order determining compensability in a workers' compensation action. See Ex parte Ampro Prods., Inc., 252 So. 3d 683, 687 (Ala. Civ. App. 2017) (holding that a petition for a writ of mandamus was the appropriate means of seeking review of a trial court's order finding an employee's injury compensable under the Act but

reserving a ruling on other issues); see also Ex parte Fairhope Health & Rehab, LLC, 175 So. 3d 622, 626 (Ala. Civ. App. 2015) (the same). Therefore, the employer's petition for the writ of mandamus is appropriately before us.

> "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995).

Issues

The employer argues that substantial evidence does not support the trial court's findings that the employee's neck and lower back injuries are compensable.

> "'"[F]or an injury to be compensable under the Workers' Compensation Act, the employee must establish both legal and medical causation." Ex parte Moncrief, 627 So. 2d 385, 388 (Ala. 1993). "Once legal causation has been established, i.e., that an accident arose out of, and in the course of employment, medical causation must be established, i.e., that the accident caused the injury for which recovery is sought." Hammons v. Roses Stores, Inc., 547 So. 2d 883, 885 (Ala. Civ. App. 1989).'
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> "Ex parte Southern Energy Homes, Inc., 873 So. 2d 1116, 1121 (Ala. 2003)."

Ex parte Fairhope Health & Rehab, LLC, 175 So. 3d at 627. The employer does not challenge the trial court's finding that the employee's left-shoulder injury is compensable as the result of an accident that arose out of and in the course of the employee's employment on November 24, 2017 ("the November 24, 2017, accident"). The employer asserts that the November 24, 2017, accident was not, however, the medical cause of the employee's neck and lower back injuries. Therefore, our review is limited to determining the propriety of the trial court's finding that the November 24, 2017, accident was the medical cause of the employee's neck and lower back injuries. See Ex parte Fairhope Health & Rehab, LLC.

Standard of Review

> "'The standard of appellate review in workers' compensation cases is governed by § 25-5-81(e), Ala. Code 1975, which provides that, "[i]n reviewing pure findings of fact, the finding of the circuit court shall not be reversed if that finding is supported by substantial evidence." "Substantial evidence" is "'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.'" Ex parte Trinity Indus., Inc., 680 So. 2d 262, 268 (Ala. 1996)(quoting West v. Founders Life Assurance Co., 547 So. 2d 870, 871 (Ala. 1989)).

> "'When evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented. Blackman v. Gray Rider Truck Lines, Inc., 716 So. 2d 698, 700 (Ala. Civ. App. 1998). The role of the appellate court is not to reweigh the evidence but to affirm the judgment of the trial court if its findings are reasonably supported by the evidence and the correct legal conclusions have been drawn therefrom. Ex parte Trinity Indus., 680 So. 2d at 268-69; Fryfogle v. Springhill Mem'l Hosp., Inc., 742 So. 2d 1255 (Ala. Civ. App. 1998), aff'd, 742 So. 2d 1258 (Ala. 1999). The "appellate court must view the facts in the light most favorable to the findings of the trial court." Ex parte Professional Bus. Owners Ass'n Workers' Comp. Fund, 867 So. 2d 1099, 1102 (Ala. 2003).'
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> "Ex parte Hayes, 70 So. 3d 1211, 1215 (Ala. 2011)."

Ex parte Caldwell, 104 So. 3d 901, 904 (Ala. 2012).

Evidence Before the Trial Court

The employee testified that on November 24, 2017, he was acting within the line and scope of his employment with the employer and that his job duties included driving a garbage truck along two routes in Selma that had been assigned to him. His work duties included picking up garbage cans located along those routes with the robotic arm on the garbage truck,

dumping the contents of the garbage cans into the garbage truck, setting the garbage cans back on the ground, and getting out of the garbage truck and picking up any garbage that had spilled on the ground while the garbage cans were being dumped. On November 24, 2017, when he was near the end of the second of his two assigned routes, he extended the robotic arm to take hold of a garbage can in order to lift and dump it; however, the robotic arm knocked the garbage can over on its side, spilling garbage on the ground. The employee got out of the garbage truck, put the spilled garbage back in the garbage can, and lifted the garbage can to return it to its upright position. While he was lifting the garbage can, he felt "sharp pain from the top of [his left] shoulder to [his] hand." Because of the pain, the employee was unable to complete his second assigned route and reported his injury to the employer. Later that same day, the employer sent the employee to MainStreet Family Urgent Care in Selma for treatment. The employee testified that his neck, which had not been swollen before the November 24, 2017, accident, was swollen after the November 24, 2017, accident, and he attributed the swelling in his neck to the injury he suffered

when he lifted the garbage can. Despite the swelling, however, he did not feel any pain in his neck on November 24, 2017. He first experienced pain in his neck when he began putting his left arm in a sling after he had shoulder surgery on January 31, 2018. He experienced some weakness in his legs after the November 24, 2017, accident and experienced some discomfort in his lower back when he drove to and from Montgomery to see one of his physicians beginning in December 2017; however, he did not experience any significant pain in his lower back until November 2018.

Robert Atkins, Sr., the employee's father-in-law, testified that the employee, the employee's wife, and the employee's son live with Atkins; that, when the employee came home from work on November 24, 2017, Atkins observed that the left side of the employee's neck was swollen; and that Atkins had periodically noticed that the left side of the employee's neck was swollen since November 24, 2017. Atkins testified that, on occasion, he had observed the employee weeping because of the pain he was experiencing and that, on those occasions, Atkins had observed that the left side of the employee's neck was swollen.

MainStreet Family Urgent Care's records regarding the employee's November 24, 2017, visit indicate that the employee reported experiencing sharp pain in his left shoulder and left forearm on November 24, 2017; that his left forearm had soft-tissue swelling; and that X-rays of his left shoulder and left forearm did not reveal any fractures, dislocations, or bony erosions.

The employer subsequently referred the employee to an authorized treating physician, Dr. Charles Hartzog, an orthopedic surgeon in Montgomery. Dr. Hartzog's records indicate that he first saw the employee on December 7, 2017, and that, on that date, the employee reported to Dr. Hartzog that the pain the employee had experienced when he lifted the garbage can on November 24, 2017, had radiated from his left shoulder "down through the arm, all the way down to the wrist." According to Dr. Hartzog's office note regarding a subsequent visit on April 5, 2018, Dr. Hartzog had a discussion with the employee on December 7, 2017, regarding the fact that the employee "had had some swelling in the supraclavicular fossa region and he had had some radiation [of pain] down to about the mid forearm or so on his initial

event."[1] The only pain the employee told Dr. Hartzog he was experiencing on December 7, 2017, however, was in his left upper arm and left shoulder. Consequently, Dr. Hartzog limited his investigation to determining whether the employee had suffered a left-shoulder injury in the November 24, 2017, accident. With respect to the employee's left shoulder, Dr. Hartzog ultimately determined that the employee had suffered a small tear of the labrum in his left shoulder as a result of the November 24, 2017, accident, and Dr. Hartzog surgically repaired that tear in the labrum on January 31, 2018.

When Dr. Hartzog saw the employee on April 5, 2018, the employee reported that he was experiencing pain "up into the neck." Dr. Hartzog testified that a shoulder injury can cause pain from the shoulder up to the base of the neck and can cause pain that radiates from the shoulder down to approximately the elbow; however, he testified, the pain from a shoulder injury "doesn't typically go beyond the elbow." Dr. Hartzog testified that an injury to the neck can cause pain below the elbow. Dr. Hartzog testified that, in light of the employee's reporting on December 7, 2017, that he had

[1]Dr. Hartzog testified that the supraclavicular fossa is the region between the collarbone and the trapezius muscle.

experienced pain radiating all the way to his left wrist when he lifted the garbage can and his experiencing some swelling of the supraclavicular fossa, Dr. Hartzog had recommended, on April 5, 2018, that the employee have an MRI of his cervical spine to determine whether the employee had neural impingement in his neck. Dr. Hartzog explained: "My plan was to get an MRI of his neck. If it didn't show some bulging disc or something pressing on a nerve, then there was nothing else that would be related to this work comp injury." According to Dr. Hartzog's office note regarding the employee's April 5, 2018, visit, "[i]f [the MRI] is positive [for neural impingement in the employee's neck,] then [Dr. Hartzog would] likely ask [the employer] to get [the employee] seen by someone for his neck officially." The employer, however, denied workers' compensation coverage for the employee's neck injury and declined to pay for an MRI of his cervical spine. Dr. Hartzog testified that the employee never complained that he was experiencing lower back pain. Dr. Hartzog further testified that he did not believe any lower back problems the employee may have been experiencing were causally related to the November 24, 2017, accident.

On June 11, 2018, the employee, using his personal health insurance, sought treatment of his neck injury from Dr. Jeff Pirofsky, a Montgomery physician specializing in, among other things, the nonsurgical treatment of spine issues. Dr. Pirofsky ordered an MRI of the employee's neck. Dr. Pirofsky testified that the MRI had shown that "the discs between [C]4 and [C]5 showed a spur and a bulge and caused some narrowing on the right side and effaced the nerve, meaning it had some narrowing of the hole where the nerve comes out on that side, had some narrowing of the level below, and some, again, nerve effacement on the right" and that "the level below that, which is at [C]6-7, there were discs bulging and narrowing with no effacement at C7-T1." Dr. Pirofsky further testified that "effacement" meant that the space where the nerve comes out of the spine is narrowing and getting close to the nerve or touching it. Dr. Pirofsky testified that, due to the lapse of time between the date of the accident on November 24, 2017, and his first examining the employee on June 11, 2018, he could not express an opinion regarding whether the November 24, 2017, accident caused the employee's neck problem; however, he testified that, typically, lifting a heavy object

is more likely to affect a person's lower back than it is to affect his or her neck. He further testified that it would be unusual for a neck injury to result from lifting a heavy object but that it was not impossible. Dr. Pirofsky testified that, when he first saw the employee on June 11, 2018, the employee did not complain of pain in his lower back. Dr. Pirofsky testified that, during a subsequent visit, the employee complained of lower back pain but that Dr. Pirofsky did not treat the employee for lower back pain because the employee had not complained of experiencing lower back pain when Dr. Pirofsky first saw the employee. Dr. Pirofsky testified that he did not have an opinion regarding whether the employee's lower back pain was causally related to the November 24, 2017, accident.

At his deposition, Dr. Hartzog was presented with the radiologist's report regarding the MRI performed on the employee's neck at Dr. Pirofsky's direction and was asked for his impression. Dr. Hartzog noted that, according to the report, the nerve effacement was on the right side, so any symptoms caused by the nerve effacement should be manifested in the employee's right arm rather than his left arm. Dr.

Hartzog testified, however, that he had not seen the actual MRI images and that, if he had, he might have seen bulging on the left side of the neck as well as the right side of the neck that could account for the employee's pain in his lower left arm. When asked whether the accident on November 24, 2017, had caused the employee's neck condition, Dr. Hartzog testified that he did not know and that he could not say that it did to a reasonable degree of medical certainty. However, at various times in his deposition, he testified that it was "possible" that the November 24, 2017, accident had caused the employee's neck condition; that the November 24, 2017, accident "potentially" could have caused the employee's neck condition; and that, given the employee's age of 31, the November 24, 2017, accident "likely" caused the employee's neck condition. After expressing those opinions, however, Dr. Hartzog was presented with the employee's medical records regarding injuries he had sustained in an automobile accident in May 2017. After reviewing those records, Dr. Hartzog testified that the "[c]ontext of the crash was a single car crash; restraints; air bag; location of injuries, head, neck, upper back, mid back, low back, right hip, left shoulder." Dr.

Hartzog testified that the employee's neck condition was more consistent with the mechanism of injury in an automobile accident than it was with the mechanism of injury in lifting a garbage can and that it was more likely that the May 2017 automobile accident had caused the employee's neck condition than it was that the employee's lifting a garbage can had caused it. Dr. Hartzog also testified, however, that the cause of the employee's neck condition "could possibly be a combination" of both the automobile accident and the employee's lifting the garbage can on November 24, 2017.

On February 15, 2019, the employee was seen by Dr. Michael E. Davis, an orthopedic surgeon in Montgomery. Dr. Davis's office note for that visit states that the employee told Dr. Davis that the employee had hurt his shoulder and his neck when he lifted a garbage can on November 24, 2017, and that he had experienced pain radiating down his left arm. No testimony from Dr. Davis was introduced at the trial, and his office note does not express an opinion regarding whether the November 24, 2017, accident had caused the employee's neck condition. Dr. Davis's office note for a February 15, 2019,

visit also contains the following history pertinent to the employee's lower back condition:

> "[The employee] has had some radicular complaints in the legs, some weakness and numbness as well as some pain at one point. Not really having the pain as much now as he has some weakness and numbness in the legs at times. He says standing, sitting, bending, walking, and getting out of the bed all seem to make the symptoms worse and nothing seems to make it much better. He has not noticed any balance changes."

Dr. Davis's February 15, 2019, office note states that "X-rays of the lumbar spine [from front to back] and lateral are normal" and that Dr. Davis's impression was "[l]umbar radiculopothy." Dr. Davis's office note does not express an opinion regarding whether the employee's lower back condition was causally related to the November 24, 2017, accident.

Analysis

> "To establish medical causation in cases involving an accident, '"an employee must ... establish medical causation by showing that the accident caused or was a contributing cause of the injury."' Page v. Cox & Cox, Inc., 892 So. 2d 413, 417 (Ala. Civ. App. 2004) (quoting Pair v. Jack's Family Rests., Inc., 765 So. 2d 678, 681 (Ala. Civ. App. 2000)). ... '[T]he factfinder is authorized to find the [medical] causation element absent medical evidence to that effect.' Ex parte Price, 555 So. 2d 1060, 1062 (Ala. 1989). 'It is in the overall substance and effect of the whole of the evidence, when viewed in the full context of all the lay and expert evidence, and not in the witness's use of any

> magical words or phrases, that the test finds its application.' Id. at 1063.
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> > "'The trial court has wide discretion in reaching its findings regarding medical causation. Ex parte USX Corp., 881 So. 2d 437, 442 (Ala. 2003). It may interpret the evidence according to its own best judgment. 3-M Co. v. Myers, 692 So. 2d 134, 137 (Ala. Civ. App. 1997). A trial court may infer medical causation from circumstantial evidence indicating that, before the accident, the worker was working normally with no disabling symptoms but that, immediately afterwards, those symptoms appeared and have persisted ever since. See Boise Cascade Corp. v. Jackson, 997 So. 2d 1042, 1047 (Ala. Civ. App. 2008) (citing Alamo v. PCH Hotels & Resorts, Inc., 987 So. 2d 598, 603 (Ala. Civ. App. 2007) (Moore, J., concurring specially)).'
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> "Waters Bros. Contractors, Inc. v. Wimberley, 20 So. 3d 125, 134 (Ala. Civ. App. 2009)."

Equity Grp.-Alabama Div. v. Harris, 55 So. 3d 299, 311 (Ala. Civ. App. 2010).

The following evidence tends to support the employee's claim that the November 24, 2017, accident was the medical cause of the employee's neck condition: Dr. Hartzog's testimony that an injury to the neck can cause pain below the elbow, while the pain from a shoulder injury "doesn't typically go beyond the elbow"; the employee's testimony that, while he was lifting the garbage can on November 24, 2017, he

felt "sharp pain from the top of [his left] shoulder to [his] hand"; the medical record regarding the employee's November 24, 2017, visit to MainStreet Family Urgent Care indicating that the employee reported experiencing sharp pain in his left forearm as well as his left shoulder; the employee's testimony that his neck had not been swollen before the November 24, 2017, accident, that his neck was swollen after the November 24, 2017, accident, and that he attributed the swelling in his neck to the injury he suffered when he lifted the garbage can; Atkins's testimony that he had observed that the left side of the employee's neck was swollen when the employee came home from work on November 24, 2017, that Atkins had observed swelling of the left side of the employee's neck periodically since November 24, 2017, that occasionally the employee would weep because of the pain he was experiencing, and that Atkins had observed swelling in the left side of the employee's neck on those occasions; Dr. Hartzog's December 7, 2017, office note recording that, on that date, the employee had told Dr. Hartzog that, while the employee was lifting the garbage can on November 24, 2017, he had felt "sharp, shooting pain in his left shoulder from the anterior aspect down

through the arm, all the way down to the wrist"; Dr. Hartzog's testimony that, on December 7, 2017, he had had a discussion with the employee regarding the swelling in the supraclavicular region of the employee's neck; Dr. Hartzog's testimony that it was "possible" that the November 24, 2017, accident had caused the employee's neck condition; Dr. Hartzog's testimony that the November 24, 2017, accident "potentially" could have caused the employee's neck condition; Dr. Hartzog's testimony that, given the employee's age of 31, the November 24, 2017, accident "likely" caused the employee's neck condition; and Dr. Hartzog's testimony that, although it was more likely that the May 2017 automobile accident was the cause of the employee's neck condition, the cause of the employee's neck condition "could possibly be a combination" of both the May 2017 automobile accident and the November 24, 2017, accident.

It was not necessary for a physician to testify that the November 24, 2017, accident was the medical cause of the employee's neck condition "to a reasonable degree of medical certainty" in order for the trial court to properly find that the employee had established medical causation with respect to

his neck condition. See Harris v. Russell Petroleum Corp., 55 So. 3d 1225, 1230 (Ala. Civ. App. 2010), in which this court stated:

> "[I]t was not necessary for Dr. Roland Hester or Dr. Rodney Swillie to have used any special words or phrases, such as 'reasonable degree of medical certainty,' to establish that the knee-replacement surgery caused the employee's stroke; rather, the trial court should view any such statements in the context of the whole of Dr. Hester's and Dr. Swillie's testimony, along with the other evidence, when determining whether medical causation exists."

The "'evidence presented by a [workers'] compensation claimant must be more than evidence of mere possibilities that would only serve to "guess" the employer into liability,'" Ex parte Southern Energy Homes, Inc., 873 So. 2d 1116, 1122 (Ala. 2003) (quoting Hammons v. Roses Stores, Inc., 547 So. 2d 883, 885 (Ala. Civ. App. 1989)); however, "[w]hen coupled with other evidence implying a causal connection between the injury and the employment, expert testimony that the employment ... 'could have,' 'might have,' or even 'possibly' caused the injury will support a finding of medical causation." 1 Terry A. Moore, Alabama Workers' Compensation § 7:12 (2d ed. 2013) (footnotes omitted). The evidence showed that the employee consistently told all the medical providers who treated his

shoulder injury from November 24, 2017, on that he had experienced sharp pain below the elbow when he lifted the garbage can on November 24, 2017; that a neck injury is more likely to cause pain below the elbow than a shoulder injury; that the employee did not have swelling in the left side of his neck before the November 24, 2017, accident; and that the employee did have swelling in the left side of his neck immediately following the November 24, 2017, accident. Accordingly, we conclude from the overall substance and effect of the whole of the evidence that the record contains "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer" that the November 24, 2017, accident was the medical cause of the employee's neck condition, West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989), and that, therefore, the record contains substantial evidence supporting the trial court's finding that the November 24, 2017, accident was the medical cause of the employee's neck condition. Consequently, the employer has not shown a clear legal right to mandamus relief with respect to the trial court's finding that the employee's neck condition is compensable, and,

therefore, we deny the employer's petition insofar as it seeks relief with respect to that finding.

The evidence tending to prove that the November 24, 2017, accident was the medical cause of the employee's lower back condition, however, is sparse. That evidence consists of the employee's testimony that he experienced weakness in his legs after the November 24, 2017, accident; the employee's testimony that he experienced some lower back discomfort when he drove to and from Montgomery beginning in December 2017; the employee's testimony that he began experiencing significant pain in his lower back in November 2018; the employee's telling Dr. Pirofsky on a follow-up visit that he was experiencing lower back pain; and the employee's telling Dr. Davis in February 2019 that he was experiencing weakness and numbness in his legs and that, at one point, he had experienced some pain in his lower back, although "[n]ot really having the pain as much now ...." There is no evidence indicating that the employee complained of weakness in his legs or any other symptom of a lower back injury when he went to MainStreet Family Urgent Care on November 24, 2017. There is no evidence indicating that the employee ever complained of

leg weakness or any other symptom of a lower back injury to Dr. Hartzog, and Dr. Hartzog testified that he did not believe that any lower back problems the employee was experiencing were caused by the November 24, 2017, accident. The evidence indicates that the employee did not complain of any symptoms of lower back pain when Dr. Pirofsky saw the employee for the first time. The evidence indicates that, when the employee saw Dr. Davis in February 2019, the employee attributed his left-shoulder and neck injuries to the November 24, 2017, accident but did not attribute his lower back symptoms to the November 24, 2017, accident. None of the employee's physicians testified that the employee's lower back condition was even possibly attributable to the November 24, 2017, accident. Finally, the employee testified that he had not experienced any significant lower back pain until November 2018, approximately a year after the November 24, 2017, accident. Accordingly, we conclude from the overall substance and effect of the whole of the evidence that the record does not contain "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer" that the November 24, 2017, accident was the medical cause of

the employee's lower back condition, West, 547 So. 2d at 871, and that, therefore, the record does not contain substantial evidence supporting the trial court's finding that the November 24, 2017, accident was the medical cause of the employee's lower back condition. Consequently, the employer has shown a clear legal right to mandamus relief with respect to that portion of the trial court's July 24, 2019, order finding that the employee's lower back condition is compensable. Accordingly, we grant the employer's petition insofar as it seeks relief with respect to that finding, and we issue a writ of mandamus directing the trial court to enter an order (1) vacating that portion of its July 24, 2019, order that found that the employee's lower back condition is compensable and (2) ruling that the employee's lower back condition is not compensable.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.