

NIKKI I. BROWN

NO. 19-CA-118

VERSUS

FIFTH CIRCUIT

ENTERTAINMENT PARTNERS, LLC
AND AIG

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION
DISTRICT 9
STATE OF LOUISIANA
NO. 16-7822
HONORABLE ELIZABETH C. LANIER, JUDGE PRESIDING

October 02, 2019

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Jude G. Gravois,
Robert A. Chaisson, and Hans J. Liljeberg

AFFIRMED

HJL

JGG

RAC

COUNSEL FOR PLAINTIFF/APPELLANT,
NIKKI I. BROWN

Christine L. DeSue

COUNSEL FOR DEFENDANT/APPELLEE,
ENTERTAINMENT PARTNERS AND INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA

Jeffrey C. Napolitano

LILJEBERG, J.

Claimant/appellant, Nikki Brown, appeals the workers' compensation court's judgment which awarded her medical benefits for injuries to her left knee, left ankle, and left calf, but did not award any benefits for her back pain, right knee injury, or increased anxiety, depression, and blood pressure. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Nikki Brown suffered various injuries as a result of an accident that occurred on August 31, 2015, while she was working as a makeup artist on a movie for defendant, Entertainment Partners, L.L.C. ("EP"). Ms. Brown contends that while on a movie set early that morning, she stepped into a pothole and twisted her left foot into her body, injuring her left ankle, left calf, left knee, and aggravating her pre-existing back condition. Ms. Brown also contends that she suffered a right knee injury and increased blood pressure, anxiety, and depression as a result of the accident.

On or about December 15, 2016, Ms. Brown filed a Disputed Claim for Compensation against EP and its insurer, AIG. The matter came before the workers' compensation court for trial on the merits on November 13, 2017. At trial, the parties stipulated that Ms. Brown was employed by EP and was injured in a work-related accident on August 31, 2015. They further stipulated that Ms. Brown injured her left ankle and left calf during the accident. Defendants disputed that any other injuries or damages were caused by this accident.

At trial, Ms. Brown and her mother testified, and numerous exhibits, including medical records and several depositions, were admitted into evidence. In addition to testifying about the August 31, 2015 accident, Ms. Brown also testified regarding a prior work-related injury that she sustained in 2011 when she fell out of a van on another movie set. Ms. Brown suffered from back pain as a result of

that accident, and she treated primarily with an orthopedist, Dr. Andrew Todd, and a pain management specialist, Dr. Paul Hubbell. Dr. Todd recommended surgery at L3-4 and L5-S1. Ms. Brown testified that she continued to work after the 2011 accident, albeit with pain, that she still had a “decent” quality of life, and that she could still perform daily activities.

Ms. Brown received benefits for some time after the 2011 accident and she settled her claims arising from that accident in July of 2015. A few weeks later, the instant accident occurred on August 31, 2015. Ms. Brown did not seek medical treatment on the day of this accident. Rather, she noticed that her leg was swollen the next day, and a “medic” on the movie set told her to go to an urgent care clinic for an examination. On that date, September 1, 2015, Ms. Brown sought medical treatment at an urgent care clinic, Total Occupational Medicine, where she complained of swelling in her left knee and calf. She did not complain of pain in her right knee or back. A few days later, on September 4, 2015, Ms. Brown saw her primary care physician, Dr. Patricia Gendusa, and she again complained of left leg pain and left knee swelling.¹ The records do not indicate that Ms. Brown complained of right knee or lower back pain at that time.

Ms. Brown testified that after the August 31, 2015 accident, her quality of life deteriorated and she was unable to perform chores or participate in many activities. Ms. Brown stated that she continued to work after this accident, because EP made accommodations for her. However, she had surgery on her left knee in December of 2015, and could not work for some time thereafter. Ms. Brown was paid indemnity benefits while recovering from this surgery.

Ms. Brown admitted that she had back pain prior to the August 31, 2015 accident, but she stated that it was different from the pain she had after this

¹ It is noted that Ms. Brown had prior complaints of left knee pain, and she went to an urgent care clinic for her left knee pain on August 26, 2015, just days before the accident at issue. However, the injury to her left knee is not at issue in this appeal.

accident. She testified that she did not notice that her back pain was different for some time after the accident, because she was focused on her excruciating left leg pain. Ms. Brown also testified regarding a subsequent accident that occurred in August of 2016. Ms. Brown stated that she was getting out of a van on a movie set when she “came down too hard” on her right side and heard a “pop.” She indicated that this is when her right knee pain began.

In November of 2015, Ms. Brown saw Dr. Deryk Jones, an expert in orthopedic surgery, complaining of left knee pain. Dr. Jones diagnosed a medial meniscus tear in her left knee, a ruptured Baker’s cyst by her left knee, and a left ankle sprain. He examined her right knee at this visit and found it to be within normal limits. He performed surgery on her left knee on December 23, 2015, and she attended physical therapy thereafter.

In his deposition, Dr. Jones testified that Ms. Brown did not complain of back pain until July 11, 2016, when she reported lumbar and lower back pain, and left sciatica pain. Dr. Jones testified that she first reported right knee pain on August 8, 2016, when she called his office and spoke with a nurse, indicating that she felt a “pop” in her right knee while getting out of a van at work. He performed surgery on her right knee for medial and lateral meniscus tears on November 8, 2016.

Dr. Jones referred Ms. Brown to Dr. Eric Royster, a pain management specialist, and she first saw him in June of 2016. According to Dr. Royster, Ms. Brown reported that she had severe pain in her lower back and left knee. She reported that her left knee injury occurred at work in August of 2015 and that she had suffered from back pain for four years. After examining Ms. Brown, Dr. Royster concluded that she had chronic knee pain, sacroiliitis, low back pain, and muscle spasm. When he saw her in September of 2016, Ms. Brown reported that she had fallen onto her right knee a couple of weeks prior to this visit. When asked

if he had an opinion as to whether the right knee injury had any causal relationship to the August 31, 2015 accident, Dr. Royster indicated that he did not believe so, though he agreed it is possible she could have torn the meniscus in her right knee due to compensating for injuries to her left leg. His records indicate that she had right knee surgery in November of 2016. At her December 2016 visit, based on the history provided by Ms. Brown, Dr. Royster believed her lower back complaints were related to the August 31, 2015 accident, because the radicular symptoms, nerve impingement, and radiating pain into the leg had recurred at the time of that injury. However, he admitted that if it was documented that she had radicular pain prior to the August 2015 accident, it could affect his opinion.

Dr. Ralph Katz, an expert in orthopedic surgery, testified that he saw Ms. Brown on September 14, 2016, for an evaluation. Ms. Brown told him that before her left knee surgery, she had soreness in her lower back, which she had typically had in the past, but she started having more pain in her left buttock area, going to the left knee, after she had surgery on her left knee. Ms. Brown reported that she never had any issues with sciatica or left leg pain prior to this accident. Ms. Brown also indicated that prior to this accident, she had not had treatment for her lower back since August 2014 when she treated with Dr. Hubbell. Dr. Katz's examination of Ms. Brown revealed minimal tenderness in her lower back, with pain in her left buttock area going into her hamstring and calf. Dr. Katz did not examine her right knee, and he was not aware of any complaints regarding her right side.

When he examined Ms. Brown, Dr. Katz did not have any records of Dr. Hubbell's treatment of Ms. Brown prior to August 2015 accident. Based on information from Dr. Hubbell's records prior to the accident indicating that she had radiating pain to the legs bilaterally and that her pain was "under poor control," Dr. Katz testified that she may have had continued ongoing leg pain at the time of the

accident and that her back complaints, sciatica complaints, and buttock pain pre-existed the August 31, 2015 accident. He stated that “more than likely” he would not relate back, leg, and buttock pain to the August 2015 accident.

Ms. Brown saw Dr. Samar Shamieh, an expert in orthopedic spine surgery, on September 12, 2016. At this visit, she reported lower back pain with radiation down her left lower extremity and informed him that Dr. Jones had performed left knee surgery. She also reported that she had seen Dr. Royster for pain and he had given her an epidural steroid injection. Dr. Shamieh recommended a laminectomy at L4-L5-S1, which he stated was at a different area than where Dr. Todd recommended surgery prior to the August 31, 2015 accident. Thus, he would relate her back pain to this accident based on the information he was provided. However, Dr. Shamieh agreed that if there was no increase in back pain symptoms within six to eight weeks after the accident, he would not find that her increased back pain was related to this accident.

Dr. Paul Hubbell, an expert in interventional pain management, testified that he first saw Ms. Brown on February 8, 2012, after she was referred to him by Dr. Todd for a corti-epidural steroid injection. She reported pain in her lower back and buttocks. During an examination in July of 2012, she had signs and symptoms of radicular pain in the L4 and L5 dermatomes, running down her legs. The radicular pain followed the L4 and L5 nerve root distribution bilaterally. Dr. Jones stated that Ms. Brown had a herniation and annular tear at L5-S1, and an annular tear at L4-L5 as well. She had two bulging discs that could irritate the nerves at L4 and L5. Dr. Hubbell recommended a second transforaminal epidural steroid injection bilaterally at L4 and L5 which was done in October of 2012. At that time, he made a diagnosis of sciatica and lumbar spondylosis. The records indicate Ms. Brown had radiating pain in her leg from time to time, but it was not constant. In October 2013, she had significant lower back pain. The last time he saw Ms. Brown was on

June 15, 2015, when she complained of lower back pain and pain in her legs bilaterally.

According to Dr. Hubbell, when he saw Ms. Brown on June 15, 2015, she described her pain as more intense than on her previous visits and she did not know why it was getting worse. Ms. Brown indicated her pain was “aching, sharp, throbbing, and shooting” and her symptoms included muscle spasms in the lumbar region on the sides and numbness down the left leg. She stated that she was not sleeping well and thought she was being kept awake by her pain. She felt like her daily activities and work were becoming more difficult to complete and her social relationships were faltering. Dr. Hubbell believed that Ms. Brown was becoming anxious and depressed, so he wanted her to try to increase her anti-depression medication to see if they could get her anxiety and depression under control. He believes that after he last saw her in June of 2015, she would have continued to have depression, anxiety, low back pain, buttock pain, maybe radiating, numbness in her leg, and sacroiliac joint pain. He felt that her anxiety and depression were “under such poor control that it was hard to judge the real intensity of the real pain because the patients who have depression/anxiety can’t tell you the difference, the cause.” Dr. Hubbell stated that patients who are depressed can have pain all over their bodies. Dr. Hubbell opined that if a patient was in a subsequent accident that aggravated her back, he would expect symptoms of back pain to appear a couple of days to ten days after the accident.

Dr. Douglas Lurie, an expert in orthopedic surgery, examined Ms. Brown on September 15, 2016. Ms. Brown indicated that she was having pain in her knees and lower back pain that was radiating down her leg. Ms. Brown admitted that she had back pain prior to the August 31, 2015 accident, but she indicated that she did not have radiating pain down her left leg until after that accident. Dr. Lurie testified that the medical records he had at the time of the examination were

“sparse.” Based on his examination and limited review of medical records, he believed she had left lumbar radiculopathy and “non-injury related right knee pain.” Dr. Lurie opined that Ms. Brown’s right knee symptoms were not caused by the August 31, 2015 accident. According to his notes, Ms. Brown reported that her right knee started bothering her about six weeks prior to the September 15, 2016 examination when she “came down and heard something pop in her right knee.” Based on her description, Dr. Lurie believed she most likely suffered a degenerative meniscal tear in her right knee.

With regard to her back pain, Dr. Lurie opined that based on the information he was provided, he believes the lower lumbar complaints “clearly predated the accident.” He stated that based on his review of the records, at the time of the August 31, 2015 accident, Ms. Brown already had a chronic back condition of such severity that her doctors were considering surgery.

At the conclusion of trial, the workers’ compensation court took the matter under advisement. On May 7, 2018, the court rendered a judgment finding that Ms. Brown did not meet her burden of proving that her lower back pain, right knee injury, and increased blood pressure, anxiety, and depression were caused by the August 31, 2015 accident, and denying her claim for benefits as to these injuries or conditions. The court found that Ms. Brown’s injuries to her left calf and ankle, as stipulated by the parties, as well as her left knee injury, were related to the accident and ordered EP to pay for reasonable and necessary medical treatment for these injuries. The court also ordered EP to pay Supplemental Earnings Benefits (“SEBs”) to Ms. Brown for all months in which she did not earn 90% of her pre-accident wages. It denied all claims for penalties and attorney fees.

EP filed a motion for new trial on May 14, 2018, arguing that Ms. Brown had not proven at trial that she was entitled to SEBs. After a hearing, the workers’ compensation judge granted the motion for new trial and vacated the award of

SEBs to Ms. Brown. Thereafter, on January 8, 2019, the workers' compensation judge rendered a final amended judgment finding that EP is responsible for reasonable medical treatment associated with her left knee, calf, and ankle, but Ms. Brown did not meet her burden of proving that her lower back pain, right knee injury, and increased blood pressure, anxiety, and depression were causally related to the August 31, 2015 accident. The judgment also denied Ms. Brown's claims for SEBs, penalties, and attorney fees. Ms. Brown appeals.

LAW AND DISCUSSION

In order to recover workers' compensation benefits, the claimant must establish a "personal injury by accident arising out of and in the course of his employment." La R.S. 23:1031; *Billiot v. Pala Group, L.L.C.*, 18-664 (La. App. 5 Cir. 6/28/19), 275 So.3d 951. It is the claimant's burden to prove a work-related accident and a resulting injury by a preponderance of the evidence. *Johnson v. Wal-Mart Stores, Inc.*, 06-907 (La. 2/27/07), 953 So.2d 831, 832, writ denied, 07-605 (La. 5/4/07), 956 So.2d 621; *Ratliff v. Brice Bldg. Co.*, 03-624 (La. App. 5 Cir. 11/12/03), 861 So.2d 613.

The workers' compensation court's determinations as to whether the claimant's testimony is credible and whether the claimant has discharged his burden of proof are factual determinations that should not be disturbed on appellate review unless they are manifestly erroneous or clearly wrong. *Billiot, supra*; *Dean v. Southmark Constr.*, 03-1051 (La. 7/6/04), 879 So.2d 112, 117. Under this standard, in order to reverse the workers' compensation court's factual finding, it must find from the record that a reasonable factual basis does not exist for the finding of the trial court and that the record establishes the finding is clearly wrong. *Id.*; *Forbes v. Metropolitan Development Center*, 09-901 (La. App. 5 Cir. 3/9/10), 35 So.3d 377, 382; *Mart v. Hill*, 505 So.2d 1120, 1127 (La. 1987). When there is a conflict in the testimony, reasonable evaluations of credibility and

reasonable inferences of fact should not be disturbed upon review, even if the appellate court may feel that its own evaluations and inferences are as reasonable.

Forbes, 35 So.3d at 382; *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989).

The workers' compensation court is granted considerable discretion in evaluating expert testimony, and the decision to accept the testimony of one expert over the conflicting testimony of another can never be manifestly erroneous.

Delgado v. Barriere Constr. Co., Inc., 98-741 (La. App. 5 Cir. 1/26/99), 726 So.2d 489. The manifest error/clearly wrong standard of appellate review applies in workers' compensation cases even when the trial court's decision is based upon conflicting written reports, records, or depositions in lieu of live testimony. *Id.*; *Forbes*, 35 So.3d at 383.

In her first assignment of error, Ms. Brown contends that the trial court erred in finding that her right knee injury was not causally related to the August 31, 2015 accident and in denying her claim for indemnity and medical benefits, attorney fees, and penalties. She contends that she injured her right knee by placing more stress on it when overcompensating by using her right leg more in order to protect her left leg. Dr. Jones performed surgery on her right knee in November of 2016. Ms. Brown argues that the workers' compensation judge was manifestly erroneous in finding that her right knee injury was not causally related to the August 2015 accident, because Dr. Jones related it to the accident.

EP and AIG respond that any complaints Ms. Brown reported as to her right knee did not arise until after an intervening accident in August of 2016. They also contend that Dr. Jones found the August 2016 accident to be the cause of her right knee injury, and that Dr. Lurie did not believe the tearing of the meniscus in the right knee was related to the August 2015 accident.

A review of the record reveals that there is a reasonable factual basis for the workers' compensation court's finding that Ms. Brown's right knee injury was not

causally related to the August 31, 2015 accident. The medical records do not show that Ms. Brown complained of right knee pain until well after the August 31, 2015 accident. At trial, even Ms. Brown testified that her right knee pain began in August of 2016, while she was getting out of a van on a movie set and “came down too hard” on her right side and heard a “pop.”

Ms. Brown argues that Dr. Jones indicated it was his medical opinion that her reliance on her right knee while recovering from injuries to her left knee and calf was a contributing factor to her right knee injury. However, it is noted that Dr. Jones testified in his deposition that he did not have any documentation regarding right knee pain prior to August of 2016 and he stated that the August 2016 incident when she felt a pop in her right knee while getting out of a van could have been the cause for her to ultimately need surgery on her right knee. He opined that Ms. Brown could have continued to go without any meniscus tear in her right knee absent the August 2016 event.

Additionally, Dr. Lurie opined that Ms. Brown’s right knee symptoms were not caused by the August 31, 2015 accident. According to his notes, Ms. Brown reported that her right knee started bothering her about six weeks prior to the September 15, 2016 examination when she “came down and heard something pop in her right knee.” Dr. Lurie believed Ms. Brown suffered a degenerative meniscal tear in her right knee at that time.

Also, Dr. Royster testified that when he saw Ms. Brown in September of 2016, she reported that she had fallen onto her right knee a few weeks earlier. Dr. Royster did not believe that her right knee injury was causally related to the August 31, 2015.

Considering the testimony and evidence presented, we find no manifest error in the trial court’s finding that Ms. Brown’s right knee injury was not causally

related to the August 31, 2015 accident. Accordingly, this assignment of error has no merit.

In her second assignment of error, Ms. Brown asserts that the trial court erred in finding that her lower back injuries were not causally related to the August 31, 2015 accident and in denying her claim for indemnity and medical benefits, attorney fees, and penalties. Although Ms. Brown admits that she injured her back in a prior work-related accident in 2011, she argues that she experienced an increase in back pain after the August 31, 2015 accident that felt different from her prior back injury. She argues that Dr. Shamieh recommended back surgery at different levels than Dr. Todd had recommended prior to the accident, that Dr. Shamieh noted her “disc herniation at L4-5-S1” was larger in 2016 than in 2014 which could have been caused by trauma, and that Dr. Shamieh felt the August 31, 2015 accident exacerbated her prior back injury. Ms. Brown also contends that the trial court erred by relying on Dr. Jones’ testimony in finding that she did not injure her back in the accident, because Dr. Jones primarily treated her for her knee injuries.

EP and AIG respond that the doctors who related Ms. Brown’s back injuries to this accident were not provided with an accurate history. They note that according to Dr. Royster and Dr. Shamieh, Ms. Brown indicated she did not have any radiating pain or radicular symptoms prior to the August 31, 2015 accident. According to Dr. Shamieh, Ms. Brown also indicated that she had not been treated by Dr. Todd or Dr. Hubbell for back pain for approximately one year prior to this accident. They further argue that Ms. Brown did not report any increased back pain to her doctors until well after the August 31, 2015 accident and that based on her medical records, Dr. Lurie and Dr. Katz did not believe the August 31, 2015 accident aggravated her back condition.

A pre-existing condition does not prevent recovery through workers' compensation because an employer takes his employee as he finds her. *Summers v. Ritz-Carlton New Orleans*, 14-800 (La. App. 5 Cir. 5/28/15), 171 So.3d 329, 337, writ denied, 15-1256 (La. 9/25/15), 178 So.3d 569; *Bailey v. Jefferson Parish Gov't.*, 13-905 (La. 5/14/14), 142 So.3d 95, 101, writ denied, 14-1170 (La. 9/19/14), 149 So.3d 245. Aggravation of a pre-existing injury may constitute a disabling injury when the claimant begins to suffer new symptoms after the accident. *Hotard v. Murphy, Rogers, Sloss & Gambel*, 11-1143 (La. App. 5 Cir. 5/31/12), 97 So.3d 407, 412, writ denied, 13-1818 (La. 11/1/13), 125 So.3d 436.

Upon review, we find that the determination that Ms. Brown's back injuries were not causally related to the August 31, 2015 accident was reasonable and supported by the record. The record does not show that Ms. Brown began to suffer new symptoms after the August 31, 2015 accident or within the following months. At trial, Ms. Brown testified that she did not perceive any increase in back symptoms during the latter part of 2015 as compared to her pre-accident condition. The record shows that Ms. Brown did not complain of back pain when she went to Total Occupational Medicine on the day after the accident or days later when she saw Dr. Gendusa. Dr. Jones indicated that Ms. Brown first reported back pain and sciatica pain in July of 2016.

Dr. Royster first saw Ms. Brown in June of 2016, and she reported that she had been having pain in her lower back for four years. He testified that Ms. Brown reported she did not have any radiating pain from her lower back prior to the August 31, 2015 accident. Although Dr. Royster testified that he believed Ms. Brown's back pain was related to her job injury due to the onset of radicular symptoms, nerve impingement, and radiating pain into the leg at the time of that injury, he admitted that his opinion could be affected if there was documented radicular pain prior to the August 31, 2015 accident.

Dr. Hubbell testified that he first saw Ms. Brown in February of 2012 and she had pain in her lower back and buttocks. He noted radicular pain in the L4 and L5 dermatomes in 2012, and he made a diagnosis of sciatica and lumbar spondylosis. Dr. Hubbell testified that on June 15, 2015, not long before the accident at issue, Ms. Brown reported lower back pain and pain in her legs bilaterally, and she indicated that her back pain had gotten more intense.

Dr. Katz testified that Ms. Brown reported she had never had issues with sciatica prior to the August 31, 2015 accident, but based on Dr. Hubbell's records showing prior sciatica complaints, he believes that her back complaints, sciatica complaints, and buttock pain pre-existed the accident. He concluded that he would not relate her back pain to the August 31, 2015 accident.

Dr. Shamieh testified that he recommended a laminectomy at L4-5-S1, which is a different area than where Dr. Todd recommended surgery prior to the accident, so he would relate Ms. Brown's back pain to this accident based on the information he was provided. However, on cross-examination, he admitted that if there was no increase in back pain within six to eight weeks after the accident, he would not find the increased back pain to be related to that accident.

The record shows that some of Ms. Brown's doctors were not provided with accurate information regarding her back pain and symptoms prior to the August 31, 2015 accident. In many cases, the credibility of the history given by the claimant to his physicians becomes as important as the medical opinions based in part on that history. *Magee v. Abek, Inc.*, 04-2554 (La. App. 1 Cir. 4/28/06), 934 So.2d 800, 807, *writ denied*, 06-1876 (La. 10/27/06), 939 So.2d 1287.

Considering the testimony, and evidence, we find no error in the trial court's determination that Ms. Brown did not suffer increased back pain or a back injury as a result of the August 31, 2015 accident. This assignment of error is without merit.

In her third and final assignment of error, Ms. Brown argues that the trial court erred in finding that her increase in blood pressure, anxiety, and depression were not causally related to the August 31, 2015 accident and in denying her claim for indemnity and medical benefits, attorney fees, and penalties. She argues that while she had suffered from depression and anxiety after her 2011 accident, these conditions intensified after the August 31, 2015 accident. She claims that her argument is supported by the testimony of her treating psychiatrist, Dr. Brandy Mouton. She contends that her blood pressure also elevated to the point that she now takes blood pressure medication on a regular basis. She also argues that Dr. Gendusa testified that her need to take blood pressure medicine was related to this incident and that Dr. Jones believed her anxiety and depression were aggravated by this incident.

EP and AIG respond that Ms. Brown failed to prove that any increase in her depression, anxiety, or blood pressure was due to the August 31, 2015 accident. They argue that Dr. Mouton did not see Ms. Brown until January of 2017 and that many “co-morbidities” unrelated to her work accident arose after this accident. They also argue that Ms. Brown did not start taking blood pressure medication until 2017, which was well after the accident at issue, thus making the cause of needing this medication to be speculative.

The employee bears the burden of proving a causal connection between a work-related accident and a resulting disability by a preponderance of the evidence. *Johnson*, 953 So.2d at 832. An employee’s pre-existing disease or infirmity does not disqualify a workers’ compensation claim, if the work injury aggravated, accelerated, or combined with the disease to produce the disability for which the compensation is claimed. *Fiffie v. Borden, Inc.*, 618 So.2d 1199 (La. App. 5th Cir. 1993), *writ denied*, 624 So.2d 1235 (La. 1993).

The record shows that Ms. Brown suffered from severe anxiety and depression prior to the August 31, 2015 accident. Ms. Brown did not prove that her symptoms increased after the accident. Dr. Hubbell testified that when he saw Ms. Brown on June 15, 2015, prior to the accident, she was anxious and depressed and he wanted her to increase her anti-depression medication in order to get these conditions “under control.” Dr. Hubbell also testified that Ms. Brown reported that her daily activities and work were becoming more difficult to complete and that her social relationships were faltering at that time. Ms. Brown also suffered a subsequent accident in August of 2016 that resulted in her right knee injury which required surgery. This could have contributed to her anxiety and depression as well.

Considering that Ms. Brown had anxiety and depression prior to the August 31, 2015 accident, that she did not begin taking blood pressure medication until 2017, and based on all of the testimony and evidence presented, we cannot say that the workers’ compensation court erred by finding that Ms. Brown did not prove by a preponderance of the evidence that she suffered an increase in blood pressure, anxiety, and depression as a result of the August 31, 2015 accident. Accordingly, this assignment of error is without merit.

DECREE

For the foregoing reasons, we affirm the workers’ compensation court’s January 8, 2019 final amended judgment.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
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JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **OCTOBER 2, 2019** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:



MARY E. LEGNON
INTERIM CLERK OF COURT

19-CA-118

E-NOTIFIED

OFFICE OF WORKERS' COMPENSATION, DISTRICT 9 (CLERK)
HON. ELIZABETH C. LANIER (DISTRICT JUDGE)
CHRISTINE L. DESUE (APPELLANT) JEFFREY C. NAPOLITANO (APPELLEE)

MAILED