

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H103121**

CORRY W. BAKER, EMPLOYEE

CLAIMANT

**ROCK REGION METRO,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MGMT RESOURCES,
THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED FEBRUARY 2, 2024

Hearing before Administrative Law Judge, Steven Porch, on January 3, 2024, in Little Rock, Arkansas.

Claimant was represented by Ms. Sheila Campbell, Attorney at Law, North Little Rock, Arkansas.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on January 3, 2024. A prehearing telephone conference took place on June 7, 2023. A prehearing order was entered on that date and subsequently entered into evidence, with amendments by the parties, as Commission Exhibit 1. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employee/self-insured employer/third-party administrator relationship existed among the parties on or about November 1, 2020, when Claimant alleges, he sustained a compensable injury to his cervical spine and left shoulder.
3. Respondents have controverted this claim in its entirety.

4. Claimant's average weekly wage of \$950.47, entitles him to a temporary total disability rate of \$634.00, and a permanent partial disability rate of \$475.00.¹

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury to his cervical spine and left shoulder by specific incident.
2. Whether Claimant gave proper notice of his injuries to Respondent/Employer.²
3. Whether Claimant is entitled to any reasonable and necessary medical treatment.
4. Whether Claimant is entitled to temporary total disability benefits from November 2, 2020, to a date yet to be determined.
5. Whether Respondent/Employer, pursuant to Ark. Code Ann. §11-9-411, is entitled to a set-off for all benefits paid by Claimant's group health carrier, along with all short-term and long-term disability benefit and all unemployment benefits received by him.
6. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that he has sustained a compensable injury to his cervical spine on or about November 1, 2020. Claimant was making a left turn onto Scott Hamilton Drive. When he turned his head, something popped in his neck and the pain radiated into his shoulder and neck. The pain gradually worsened until he went to the emergency room on February 5, 2021. Claimant reported the injury to Gwen Amhurst in Human Resources and was then sent to Concentra. Claimant

¹ The parties stipulated and the Commission approved Claimant's average weekly wage, temporary total disability benefits, and permanent partial disability benefits on the hearing date.

² Respondents moved to add the issue of notice of injuries, and it was granted.

contends that he is a candidate for injections to his neck. Claimant contends he is entitled to permanent partial disability, temporary partial disability, and wage loss benefits. Claimant further contends that he is entitled to additional medical treatment, including medical expenses, travel, and a controverted attorney's fee.

Respondents' Contentions: The Claimant did not sustain a compensable injury on November 1, 2020, or at any other time while working for Respondent/Employer. There was no notice of the alleged injury until February 5, 2021.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, and other matters properly before the Commission, and having the opportunity to hear the testimony and observe the demeanor of both the Claimant and Gwen Amhurst, Director of Human Resources for Respondent/Employer, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven by the preponderance of the evidence that he sustained a compensable cervical spine and left shoulder injury by specific incident.
4. Based on my finding of no compensability, the remaining issues of notice, reasonable and necessary medical treatment, temporary total disability benefits, offsets, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of 5 pages, Respondents' Exhibit 1, Medical Records, that consist of 93 pages, Respondents' Exhibit 2, Non-Medical Documents, consisting of 35 pages, Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages, and Claimant's and Respondents' blue-backed post-hearing briefs. The Claimant, Corry Baker, and Gwen Amhurst, Director of Human Resources for Respondent/Employer, were the only two witnesses in the full hearing.

Claimant was a bus driver for the Respondent/Employer. He has worked for the Respondent/Employer for fourteen years. Based on testimony, on or around November and December 2020, Claimant was turning his assigned bus onto Scott Hamilton Drive when he heard a pop in his neck followed by immediate pain radiating into his shoulder and neck. Claimant testified that he believed this pain would go away, but instead it worsened over time. The pain increased so much that he felt it necessary to report it to Respondent/Employer on February 5, 2021. The Claimant went to Respondent/Employer on that date and completed all the necessary paperwork and was immediately sent to Concentra for medical treatment. However, the source of Claimant's pain was not revealed until an MRI was administered on July 5, 2022. The MRI report revealed the source of his pain as being a "left subarticular disc extrusion at C4-C5 causing moderate spinal canal stenosis and slight mass effect on the left and the cord. There is moderate to severe right and mild left neural foramen stenosis...." The Claimant also had a "Central disc protrusion at C3-C4 causing moderate spinal canal stenosis and mild mass effect on the ventral cord." This MRI report was done by Dr. Miles Ritter.

Respondents argue that Claimant had previously been in several car wrecks and one as early as ten months before his alleged November and December 2020, cervical spine injury. One car wreck of note occurred March 15, 2011, where Claimant was taken, by ambulance, to the Baptist Health Medical Center located in Little Rock, Arkansas. There a CT scan was administered which showed at his “C4-5...moderate posterior spurring of the C5 end-plate with left lateral recess predominance.” The CT report further stated, “There is mild left-sided canal stenosis. There is left proximal foraminal stenosis.” Dr. Scott B. Harter created this radiology report. Respondents feel due to this pre-existing condition they are not responsible for Claimant’s alleged work-related cervical spine injury. Respondent/Employer is also requesting, pursuant to Ark. Code Ann. §11-9-411, a set-off for all benefits paid by Claimant’s group health carrier, along with all short-term and long-term disability benefit and all unemployment benefits received by him.

Adjudication

A. Whether Claimant sustained a compensable cervical spine and left shoulder injury by specific incident.

To determine compensability, I find Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), applies to the analysis of Claimant’s alleged injuries, and it defines “compensable injury” as:

(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 be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16).

The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

I find the Claimant has not proven by the preponderance of the evidence that he sustained a compensable injury. Though the Claimant has presented objective findings in the forms of a C4-C5 disc extrusion and a C3-C4 disc protrusion, he has not proven an identifiable time or date for his alleged cervical injuries. For example, on February 5, 2021,

Claimant went to Concentra and reported that his injury occurred on November 1, 2021. See Respondents' Exhibit 1, page 56. However, on February 4, 2021, he stated in a physical therapy note that he has been experiencing pain in his shoulder and neck since October 2020. See Respondents' Exhibit 1, page 51. The Commission's review of Claimant's AR-C filed on April 1, 2021, by the Claimant himself shows a date of injury of January 21, 2021. See Respondents' Exhibit 2, page 11. And finally, during the full hearing on January 3, 2024, Claimant testified, more than once, that his injury occurred around November and December 2020. See Full-Hearing Transcript, page 12, lines 5-8 and page 27, lines 1-5.

The Claimant, although sincere in his testimony, does not know the date and time of his alleged injuries. True the Arkansas Supreme Court held, in *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001), that a claimant does not have to identify the precise time and numerical date upon which an accidental injury occurred. Instead, the statute only requires that a claimant show that the occurrence of their injury is capable of being identified. But due to the multiple inconsistencies cited above, I am not able to find that the occurrence of Claimant's alleged cervical and shoulder injuries is capable of being identified without resulting to speculation and conjecture. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Consequently, I am unable to find a causal connection between his alleged injuries and his employment. This, coupled with a lack of objective findings regarding his left shoulder, compel the conclusion that Claimant has not satisfied his burden of establishing compensability; and his claim must fail for that reason.

B. Miscellaneous Issues.

Based on my previous finding of no compensability in this opinion, the issues regarding notice, reasonable and necessary medical treatment, temporary total disability benefits, offsets, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge