

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H205069 & H304225

ERICA BEARFIELD, EMPLOYEE	CLAIMANT
ROCK REGION METRO, EMPLOYER	RESPONDENT
ATA WC TRUST, INSURANCE CARRIER/ RISK MANAGEMENT RESOURCES/TPA	RESPONDENT

OPINION FILED APRIL 9, 2024

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

Claimant represented by the HONORABLE STEVEN R. McNEELY, Attorney at Law, Jacksonville, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals an administrative law judge's opinion filed October 11, 2023. The administrative law judge found that the claimant proved she sustained a compensable injury on March 15, 2022, but that the claimant did not prove she sustained a compensable injury on September 3, 2021. The administrative law judge awarded medical treatment and temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury on March 15, 2022. The claimant proved that the medical treatment

of record provided after March 15, 2022 was reasonably necessary, and that she was entitled to temporary total disability benefits from July 26, 2022 through January 26, 2023.

I. HISTORY

Erica Rochelle Bearfield, now age 49, testified that she became employed with the respondents, Rock Region Metro, in 2004. Ms. Bearfield testified that she drove a bus for the respondents. The claimant testified that beginning in 2020 she was required to open and close a “COVID shield” installed on Rock Region buses. The claimant’s testimony indicated that she was required to open and close the COVID shield 30-35 times per hour over the course of at least an eight-hour work shift driving the bus. The parties stipulated that the employee-employer relationship existed on September 3, 2021. The claimant testified that her right arm began hurting approximately a month before September 2021, and that she suffered from swelling in her neck and shoulder. The claimant contended that she “sustained a compensable injury to her right shoulder” on September 3, 2021.

The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on September 17, 2021. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Place of Accident was “on duty on bus” and that the Date of Accident was September 15, 2021. It was written on

the Form AR-N that the claimant injured “Right side of neck,” and that the cause of injury was “Moving passenger bags on wheelchair to secure the chair the bags were heavy.”

The record includes a Workplace Injury Triage & Reporting “Incident Report” describing a right shoulder injury. The Incident Report indicated that the Mechanism of Injury was “Repetitive Motion.” Miriam Lawrence, N.P. reported on September 17, 2021, “The patient presents today with right shoulder, neck and arm pain from repetitive movement pulling on shield to board passengers and moving heavy bags.” Miriam Lawrence assessed “1. Right shoulder pain” and “2. Sprain of right shoulder.” An x-ray of the claimant’s right shoulder was taken on September 17, 2021 with the impression, “No radiographically evident acute abnormalities of the right shoulder.”

The claimant treated at Concentra Health Centers on September 21, 2021, at which time the claimant was diagnosed with “Pain in right shoulder.” The claimant was returned to work with no restrictions on September 21, 2021. The record indicates that the claimant returned to work for the respondents.

The parties stipulated that the employee-employer relationship existed on March 15, 2022. The claimant contended that she sustained an

“additional injury or aggravation to her right shoulder” on March 15, 2022.

The claimant testified on direct examination:

Q. What happened in March of 2022?

A. I started back doing like a lot of working overtime. I was doing a lot of work, you know, doing overtime, and – like the 16-hour days, several days in a row, 16 hours. And that day, I had a wheelchair, yes. And when I went back there to do my wheelchair, I felt it. It was hurting real bad that day. So when I went home, I called in the next day, and I told them – I called in to dispatch, and I told them that I wanted to call in sick because my shoulder was hurting....

Q. Can you tell the judge if there was a difference between your problems with your right shoulder in March of '22 and back in September of the year before?

A. I wasn't able to lift my arm to put my shirt on this time. It was more pain. It was worse than the first time.

The respondents' attorney cross-examined the claimant:

Q. You also told me in the deposition that on March 15<sup>th</sup> you felt a pop when you were opening a shield to let people in. Is that right?

A. Yes.

Q. You didn't report it right then because you thought it was just a pain, and it would go away. Is that right?

A. Yes. That's correct.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on March 29, 2022. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was March 15, 2022 and that the employer was notified of same on March 29, 2022. The claimant appeared to write on the Form AR-N that she injured her “Right left shoulder” and that the cause of injury was “Swelling and hard to raise up.”

An MRI of the claimant's right shoulder was taken on March 31, 2022 with the following impression:

1. Mild distal supraspinatus tendinosis with questionable tiny focal full-thickness tear of the distal anterior leading edge of the supraspinatus tendon insertion.
2. Sublabral foramen versus SLAP tear.
3. Small glenohumeral joint effusion.
4. Mild degenerative arthrosis of the acromioclavicular joint.
5. Small amount of fluid in the subacromial subdeltoid bursa which may indicate mild bursitis.

The impression of Clint Bearden, PA-C on April 5, 2022 was "1. Glenoid labral tear, right initial encounter," "2. Right shoulder pain," and "3. Sprain of right shoulder."

An x-ray of the claimant's right shoulder was taken on April 7, 2022 with the findings and impression, "Irregularity of the greater and lesser tuberosities is seen, most likely sequelae of underlying rotator cuff degeneration/tear. Subacromial spurring is noted."

Dr. Lawrence O'Malley reported on June 30, 2022:

Erica Bearfield is a 47 y.o. female patient seen today as a follow up patient for workman's Comp evaluation of right shoulder pain. She works at Rock region Metro and has been there for the last 17 half years. She normally drives the city bus. This involves her steering the bus, opening closing doors and packaging wheelchairs for passengers. She initially began experiencing shoulder pain in September of 2021. There is no known injury at that time. She was having laterally based shoulder pain and some neck pain. She went to Concentra where physical therapy was prescribed and she had an intramuscular steroid injection. Her pain did improve but never completely went away from that episode. Then starting Around March 15<sup>th</sup> she had [an] increase in her

shoulder pain which was worse than it was back in September. She did well 1 round of physical therapy and saw a provider at Concentra where an MRI was ordered. After MRI was completed she was placed on light duty with no use of the right shoulder [and no bus driving]. Since March her pain [has] been anterior and laterally based. [Has] been worse with any lifting or overhead activity....

Patient states that when she [returned] to work at full duty she had an increase in pain. It has been difficult to complete her job as a driver....

IMAGING: Radiographs right shoulder ordered and interpreted in clinic today: Overall normal bony alignment. No significant abnormalities noted.

Outside MRI reviewed and interpreted today: Shows some mild cuff tendinosis but no frank rotator cuff tear.

Dr. O'Malley gave the following impression: "Erica Bearfield is a 47 y.o. female with right shoulder pain secondary to overuse with biceps and rotator cuff tendinitis. PLAN: Patient has not had any lasting improvement from conservative therapy. We discussed surgical intervention as a treatment option and she wishes to proceed with surgery."

On July 6, 2022, a Claims Specialist corresponded with Rita Vaughn, RN, Orthopaedic Workers' Compensation Liaison, UAMS: "Can you please ask Dr. O'Malley to address if the major cause of Erica's need for treatment is work related?" Dr. O'Malley replied on July 6, 2022, "No I can't say that greater than 51% of the current issues are due to her work. Thanks."

Dr. O'Malley performed surgery on July 26, 2022: "1. Right shoulder arthroscopy with arthroscopic biceps tenodesis. 2. Posterior labral repair. 3. Extensive debridement intra-articularly and also subacromial space. 4.

Subacromial decompression.” The post-operative diagnosis was “1. Right shoulder biceps tearing. 2. Subacromial impingement. 3. Posterior labral tear, superior labral tearing.”

The claimant was provided physical therapy following surgery.

Dr. O’Malley performed additional surgery on January 11, 2023: “Right shoulder arthroscopy with lysis of adhesions and manipulation.” The post-operative diagnosis was “Right shoulder acromioclavicular joint arthritis.”

The claimant followed up with Dr. O’Malley on January 26, 2023:

Erica Rochelle Bearfield is a 47 y.o. year old female patient who comes in today 2 weeks out from right shoulder arthroscopy with lysis of adhesions and manipulation under anesthesia. She states she is doing well. She is doing physical therapy at Harris and Renschaw, she is happy with the progress she has made. She is not having any pain. She is ready to return to work. She is a bus driver for the City of Little Rock....  
We will give her a return to work note today with no restrictions....

The claimant testified that she returned to work on or about February 11, 2023.

Dr. O’Malley noted in part on March 13, 2023, “She has made great progress. She is back at work without any issues....We will see her back on an as-needed basis.”

A pre-hearing order was filed on August 2, 2023. The parties stipulated that the respondents “initially accepted this claim as medical-only

and paid some benefits. Respondents now deny claims in their entirety.”

According to the pre-hearing order, the parties agreed to litigate the following issues:

1. Whether Claimant sustained a compensable injury to her right shoulder on 9/3/2021.
2. Are there objective findings of an acute injury on 9/3/2021.
3. Whether Claimant is entitled to reasonable medical and indemnity benefits from the date of onset to a yet undetermined date.
4. Whether Claimant sustained a compensable injury to her right shoulder on 3/15/2022.
5. Are there objective findings of an acute injury on 3/15/2022.
6. Whether Claimant is entitled to reasonable and necessary medical treatment, including two surgeries performed by Dr. Lawrence O'Malley, including out of pocket expense, mileage and reimbursement for private health insurance.
7. Whether Claimant is entitled to Temporary Total Disability (TTD) following her 3/15/2022 injury for approximately 8 months, specific dates to be provided.
8. Attorney's fees. All other issues are reserved.

A hearing was held on September 28, 2023. At that time, the claimant contended that she was entitled to temporary total disability benefits from July 26, 2022 through January 26, 2023. An administrative law judge filed an opinion on October 11, 2023. The administrative law judge found that the claimant proved she sustained a compensable injury on March 15, 2022, but that the claimant did not prove she sustained a compensable injury on September 3, 2021. The administrative law judge awarded medical treatment and temporary total disability benefits. The



respondents appeal to the Full Commission and the claimant cross-appeals.

## II. ADJUDICATION

Act 796 of 1993, as codified at 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 be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(E)(i)(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 she 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).

The Commission must strictly construe the provisions of Act 796 of 1993. Ark. Code Ann. §11-9-704(c)(3)(Repl. 2012). Strict construction

requires that nothing be taken as intended that is not clearly expressed.

*Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001).

The doctrine of strict construction is to use the plain meaning of the language employed. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). In this regard, there is no expressed intent or language in Act 796 which requires an employee to prove that her alleged injury was “acute.”

An administrative law judge found in the present matter, “The Claimant did not prove a compensable rapid and repetitive injury to her right shoulder on September 3, 2021.” Although she has filed a notice of cross-appeal, the claimant asserts in her brief that the Full Commission should affirm the administrative law judge’s opinion. The claimant states in her brief, “If this Commission reverses the ALJ regarding a compensable specific incident injury then claimant argues she alternative (sic) suffered a gradual onset injury with worsening of symptoms.”

The Full Commission affirms the administrative law judge’s finding that the claimant “did not prove a compensable rapid and repetitive injury to her right shoulder on September 3, 2021.” However, the Full Commission also affirms the administrative law judge’s finding that the claimant sustained a compensable injury to her right shoulder on March 15, 2022.

The claimant, who the Commission finds was a credible witness, testified that she became employed as a bus driver for the respondents in 2004. The claimant began suffering from pain in her right shoulder in approximately September 2021. The claimant received conservative medical treatment and was released to return to work on September 21, 2021. The parties stipulated that the employment relationship existed on March 15, 2022. The claimant testified that she right shoulder began hurting while she was performing employment services for the respondents. The claimant agreed on cross-examination that she “felt a pop” in her right shoulder while opening the “COVID shield” which the claimant had described during direct examination.

The record indicates that the claimant reported the injury to the respondents no later than March 29, 2022. An MRI of the claimant’s right shoulder showed abnormalities including a SLAP tear and glenohumeral joint effusion. A physician assistant’s impression on April 5, 2022 was “Glenoid labral tear” and “Sprain of right shoulder.” An x-ray on April 7, 2022 confirmed a tear in the claimant’s right shoulder. The claimant began treating with Dr. O’Malley, who corroborated the claimant’s account of a work-related injury. Dr. O’Malley performed a right shoulder arthroscopy, labral repair, and debridement on July 26, 2022. Dr. O’Malley’s surgical

report included “biceps tearing” and “superior labral tearing.” Dr. O’Malley performed additional surgery on January 11, 2023.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on or about March 15, 2022. In addition, the claimant established a compensable injury by medical evidence supported by objective findings. These objective findings include Dr. O’Malley’s surgical report of “right shoulder biceps tearing,” “labral tear,” and “superior labral tearing.” The claimant proved that these objective medical findings were causally related to the March 15, 2022 accidental injury and were not the result of a pre-existing condition or prior injury.

The Full Commission finds that the medical treatment of record following the March 15, 2022 compensable accidental injury, including surgical treatment provided by Dr. O’Malley, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We recognize Dr. O’Malley’s statement on July 6, 2022, “I can’t say that greater than 51%

of the current issues are due to her work.” Nevertheless, the claimant was not required to prove “major cause” in this case. The claimant was only required to prove that her compensable injury was “a factor” in the need for surgery. See *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The claimant in the present matter indeed proved that the March 15, 2022 compensable injury was at least “a factor” in her need for surgery and was in fact reasonably necessary in connection with the compensable injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder on March 15, 2022. The claimant proved that the medical treatment of record following the compensable injury, including surgery performed by Dr. O’Malley, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that she remained within a healing period and was totally incapacitated from earning wages beginning July 26, 2022 and continuing through January 26, 2023. The claimant therefore proved that she was entitled to temporary total disability benefits beginning July 26, 2022 and continuing through January 26, 2023. See *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The respondents are entitled to an appropriate offset in accordance with Ark. Code Ann. §11-9-411(Repl. 2012).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(1)(Repl. 2012).

IT IS SO ORDERED.

\_\_\_\_\_  
SCOTTY DALE DOUTHIT, Chairman

\_\_\_\_\_  
M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on March 15, 2022.

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external physical harm

to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. §11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). There is no requirement that medical testimony be based solely or expressly on objective findings, only that the record contains supporting objective findings. *Stephens Truck Lines v. Millican*, 58 Ark. App 275, 950 S.W.2d 472 (1972) and *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* 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. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

From the outset, the basis of this claim is spurious at best.

Claimant's Form N, completed by the claimant and submitted on March 29, 2022, describes the claimant's injury as "right left shoulder "[S]welling and hard to raise up." (Resp. Ex. 2, P. 2). There is no mention of a popping sound or tear to the claimant's right shoulder at that point. *Id.* In fact, the claimant never mentioned her shoulder popping to her treating physician, Lawrence O'Malley, during the course of his treatment. Throughout the claimant's treatment, Dr. O'Malley was unable to state within a reasonable degree of medical certainty that the claimant's injury was work related. (Resp. Ex. 1, P. 13).

The ALJ relies on the claimant's statement that she heard a popping noise in her shoulder on March 15, 2022 as the entire basis his ruling that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her shoulder. This, however, is contradictory to the evidence. This statement by the claimant that she heard a popping noise in her shoulder cannot satisfy the requirement of objective medical findings to support an award to the claimant. A claimant's testimony is never uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). A claimant's testimony alone cannot act as



objective findings when they are clearly refuted by a professional medical opinion and the claimant's own prior statements. The evidence is clear that it cannot be stated within a reasonable degree of medical certainty that the claimant suffered a specific incident injury on March 15, 2022 and the ALJ's findings should therefore be reversed.

Accordingly, for the reasons stated above, I respectfully dissent.

---

MICHAEL R. MAYTON, Commissioner