

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104895

RACHEL BUTLER-GREEN, EMPLOYEE CLAIMANT

PARKVIEW MAGNET HIGH SCHOOL/LITTLE ROCK
SCHOOL DISTRICT, EMPLOYER RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION WCT,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED MARCH 8, 2023

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

Claimant appeared *pro se*

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative
Law Judge filed June 28, 2022. In said order, the Administrative Law Judge
made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right arm, neck, or right shoulder.

4. The remaining issues have been rendered moot and not addressed herein this Opinion.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the June 28, 2022 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part with but must respectfully dissent in part from the majority opinion. I concur with the majority's finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right arm and to her neck. However, I must dissent from the majority opinion finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence 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, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence preponderates that the claimant's right shoulder injury satisfies the requirements of compensability. The claimant sustained an injury while performing employment services on March 12, 2020. There were objective findings of the injury in the form of a right shoulder superior labral tear as noted in the July 1, 2020, Operative Report. In addition, this injury required medical treatment in the form of a right shoulder arthroscopic anterior labral repair, biceps tenotomy, subacromial decompression with acromioplasty, and AC joint resection.

The issue in this matter is whether the claimant's right shoulder injury was caused by her workplace accident. The claimant initially received treatment for her injuries from Dr. Chen Wang at MedExpress on March 12, 2020. The claimant presented with complaints of "injury to neck, injury to shoulder" and right arm pain. The claimant also reported tingling in her hand. The claimant reported that she was "shoved by student". The claimant was assessed as having "strain of muscle, fascia and tendon at neck level" and prescribed Tizanidine.

During her June 3, 2020, wellness physical at Barg Family Clinic, the claimant reported nighttime pain in the right shoulder to Dr. Timothy Hodges. The claimant also indicated that the pain from her right shoulder radiates down her arm.

The claimant saw Dr. Clayton Riley on June 16, 2020, with the chief complaint of right shoulder pain. Dr. Riley diagnosed the claimant with an “impingement and possibly a rotator cuff tear” and ordered an MRI.

The claimant underwent an MRI on June 26, 2020, which revealed the following:

IMPRESSION:

1. Moderate acromioclavicular osteoarthritis.
2. Rotator cuff tendinopathy without discrete tear.
3. Possible subacromial subdeltoid bursitis.

On July 1, 2020, the claimant underwent a “right shoulder arthroscopic anterior labral repair, biceps tenotomy, subacromial decompression with acromioplasty, and AC joint resection”. The claimant’s post-operative diagnoses were listed as:

1. Right shoulder superior labral tear from anterior to posterior.
2. Anterior labral tear.
3. Possible posterior labral tear.
4. Subacromial impingement.
5. Acromioclavicular joint arthritis.

Although the claimant initially was unsure how her shoulder injury occurred, the record supports a finding that she injured her right shoulder during the workplace incident. The claimant complained of right shoulder pain during her first medical visit following the work incident which was on the same day of the incident.

Also, the mechanism of the injury correlates with the type of injury the claimant suffered to her right shoulder. The claimant described how the incident occurred as follows:

Q Okay. Can you tell me what happened?

A ... He kind of got out of his seat. I pressed the button. We have a button on the wall next to the door to call to the office for security. Before security could arrive, he actually came to the door, and I was at the door, and he pushed me, pushed his way out of the door and stormed down the hallway. ...

Q Okay. So tell me a little about the student. You've described him to me before, but can you describe him? He's kind of ... Is he a big kid or ...

A He's a very ... He's a football player and he's very large. I mean, he's probably six three and close to three hundred pounds. He's still a student there now, a senior this year, and he's aggressive. ...

Q Okay. So will you describe for us the ... you said he pushed you. Can you kind of describe what that motion looked like and how he pushed you?

...

A ... So I was standing at the door like such. There's a button here, a white button. I pressed the button. My hand

was on the doorknob. He came towards me and the door, and he pushed to try to get out of the door, and he kind of grabbed and pulled back, which jarred me, and it also pulled my arm, and he went out of the door.

Additionally, I note that the claimant did not have right shoulder pain prior to her work accident. However, within four months, she had to undergo surgical interventions to repair a labral tear.

Clearly, there is a causal connection between the claimant's work incident and her right shoulder injury.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that she sustained a compensable right shoulder injury.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. Scott Willhite, Commissioner