

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H200280**

**BILLY L. EALY, EMPLOYEE**

**CLAIMANT**

**VS.**

**ARKANSAS STATE POLICE (COMPANY A), EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
CARRIER, TPA**

**RESPONDENT**

**OPINION FILED JUNE 25, 2024**

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of May 2024, in Mountain Home, Arkansas.

Claimant is represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by Charles McLemore, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 15th day of May 2024. At the time of the hearing, the parties agreed that the issues were as follows: (1) Compensability of

injuries to the right hip, groin, and lower back as the result of a specific injury and gradual onset; (2) Reasonable and necessary medical treatment for the injuries; (3) Entitlement to past due TTD benefits; (4) Disability rating; (5) Attorney fees; (6) with all other issues were reserved.

The respondents contended the claimant did not sustain compensable injuries while employed by the Arkansas State Police. The claimant applied for FMLA leave and completed the necessary FMLA paperwork and did not indicate that he had sustained any work-related injuries.

A Prehearing Order dated July 11th, 2023, provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and an employer/employee/carrier relationship existed on or about July 1<sup>st</sup>, 2020, when the claimant contended that he sustained injuries to his right hip, groin, and lower back that was the result of a gradual onset. Further, the Order provided that the employer/employee/carrier relationship existed until on or about December 31, 2021, and that the claimant's average weekly wage was \$1112.36 with a TTD/PPD rate of \$711.00/\$533.00 respectively. The respondents controverted the claim in its entirety.

The Prehearing Order and the claimant's and respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses were Sergeant Seyfried Lewis; Amie Ealy, the wife of the claimant; Billy Ealy, the claimant; and Major Stacie Rhoads who was called by the respondents. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witnesses, the following

findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee/carrier relationship existed on July 1st, 2020, and at all relevant times.
3. That the memorandums prepared by Stacie Rhoads are found to be admissible.
4. That the claimant has failed to satisfy the required burden of proof to show that he sustained a work-related injury on the specific date of July 1, 2020.
5. The claimant has also failed to satisfy the required burden of proof to show that he sustained a gradual onset injury to his right hip, groin, and lower back.
6. That consequently, all other issues are moot.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties plus a letter addressed to the administrative law judge, were made part of the record without objection. The joint exhibit of the claimant and respondent was admitted into the record without objection. The claimant submitted two exhibits that were admitted without objection. The respondents submitted two exhibits and exhibit one which

consisted of medical was admitted without objection. Respondent's Exhibit Two, which consisted of documentary evidence was admitted into evidence, with the exception of the admission of the memorandums prepared by Major Stacie Rhoads, which were objected to, and the matter was taken under advisement at the time of the hearing, and the admissibility will be discussed below.

Sergeant Seyfried Lewis, who retired on July 1, 2019, as the post sergeant with Troop A of the Highway Patrol Division of the Arkansas State Police after almost 35 years, was the first witness. Sergeant Lewis was the claimant's supervisor and served as the claimant's post sergeant, working with the claimant in Faulkner County. (Tr. 11, 12) He testified that in their line of duty, they carried about 60 pounds of gear, which included the leather gear, a weapon, vest, taser, and boots, which could get pretty heavy throughout the day. He encouraged guys to come in and take a load off, due to the fact he knew from personal experience that these items could wear you down. In regard to the claimant, he worked ten years for the highway patrol division and then went on to work for the Criminal Investigation Division, hereinafter referred to as the CID, as a polygraph examiner. (Tr. 13, 14) Sergeant Lewis left the highway patrol in 2019, but prior to that would see the claimant in the hallway and he did notice that he walked a little different. "Even when we were working highway patrol, I could see a difference in how he was moving or how he was doing things then." He even recommended "You might want to look into getting into CID." (Tr. 15, 16) He also mentioned that a trooper would assist motorists, such as pushing cars off of the roadway and sometimes lifting heavy debris out of the roadway. (Tr. 17)

Under cross examination, Sergeant Lewis admitted the claimant never reported a workers' compensation injury to him and that he was familiar with the process of reporting work related injuries. He also admitted the claimant transferred out of the Highway Patrol Division to CID on December 2, 2013, which would have ended the period where the claimant worked under him, but that he did see him after that. In regard to the gear worn by a trooper, Sergeant Lewis testified he had actually weighed it. (Tr. 19 – 21)

The second witness called to testify was the claimant's wife, Amie Ealy. They had been married 20 years and had gone to grade school through high school together. She saw him on a daily basis, while the claimant served as a trooper and guessed that the equipment weighed 50 to 55 pounds. She noticed the claimant was having more difficulty walking and was also having difficulty moving his foot to the gas while driving. He was having more and more pain while he worked as a trooper and this continued when he transferred to CID. (Tr. 24 – 26) He started taking over the counter medication such as ibuprofen. (Tr. 27) They became aware the claimant had multiple sclerosis in March of 2022, after he retired in January of that year. Even as a polygraph examiner, he had to travel a lot in a car. She also stated he had three surgeries in regard to his right hip. (Tr. 28, 29)

Under cross examination, Ms. Ealy admitted she had been married more than 20 years to the claimant and had "noticed him having pains and stuff from the very beginning, and he was having problems early on." She went on to clarify that she meant since he started with the State Police, wearing that belt. (Tr. 32) In regard to the multiple sclerosis diagnosis, she noticed that it was taking him longer to get something

out in regard to his speech prior to that date. The last time she saw him wearing his belt and gear was probably prior to him going to CID. She was asked if that had been ten years ago, and she responded she was not sure. (Tr. 33, 34)

The claimant was then called to testify. He was 44 years old at the time of the hearing and was with the Arkansas State Police for 18 years and 4 months, with ten of those years as a trooper. He then transferred to CID as a polygraph examiner. He agreed with the statement as to the weight of the gun belt that Sergeant Lewis testified to. (Tr. 41, 42) "With that heavy gun belt, you know, I mean the first time you put it on, I mean, it just bears down on your hips and your lower back. And it's just a struggle to get through the day, but I toughed it out kind of thing." (Tr. 43) The claimant also testified that he was not having symptoms of MS prior to his retirement. He went on to state that "With this right hip, it just catches. It just gets like locked up. It locks up on me. It just makes it tough to walk, better then that, even run. Something that I had to do a lot of times, and it just got so painful that I couldn't do it anymore. That's why I had to retire." (Tr. 44) He denied asking Dr. Newbern to write a letter for him. While working as an investigator with CID, he would spend a lot of time on his feet, performing search warrants and looking for evidence. (Tr. 45)

In regard to his hip surgeries, the first one involved bone removal of two large pieces, and after that, he received injections. He was then referred to Dr. Newbern. He felt that the heaviest item he had to move while working were mattresses, and scooting refrigerators, freezers, or couches. In regard to the memorandums from Major Stacie Rhoads, he thought it was the policy of the Arkansas State Police for him to sign them to show that he was there, and if he didn't sign them, he was not there. Before January

18, 2022, he felt he had not had any conferences with Major Rhoads. He thought she did ask him about the shooting range because he had trouble getting off the ground. (Tr. 46 - 49) He also felt he started suffering the symptoms of multiple sclerosis several months after the total hip replacement, when he was no longer working for the Arkansas state police. The claimant had not worked anywhere since leaving the state police. He did not remember a specific injury. "It was all gradual." (Tr. 50)

Under cross examination, the claimant testified that while working for the highway patrol, he would get up and put his uniform on along with his belt, and then go out on patrol, making traffic stops, and working accidents. (Tr. 52) He thought he worked for Sergeant Lewis in Faulkner County between the years 2006 to 2008 or 2009. (Tr. 53) He was sure of the weight of the vest he wore. (Tr. 56) He thought the belt and gear weighed around 55 pounds. (Tr. 57) He agreed that he left the Highway Patrol on December 2, 2013, to work as a polygraph operator with CID. (Tr. 59) He also agreed that after December 2, 2013, he no longer wore patrolmen's gear. (Tr. 61) He probably participated in one search warrant every two weeks. (Tr. 65) He would go to the firing range about every three months for training. There was an incident when he used the butt of his rifle to get up because his right hip had really given out. (Tr. 69) He also remembered telling Dr. Bowman, his family doctor, in regard to a report dated October 16, 2019, about shoulder pain, but stated that he did not know anything about the hip problems. He remembered being taken off performing the fitness test. (Tr. 70, 71)

The following questioning then occurred:

Q: "I've heard you testify that there was not a specific injury to your hip, that it's just a gradual event; is that correct?"

A: "Yes, I remember saying that, but I mean, it's gradual onset with this hip because of the gun belt".

Q. "Okay. So, there's not one particular day. It's not the gun range. It's not any other day. It's - -"

A. "No."

Q. "- - over time?"

A. "Yeah. Over time."

Q. "Did you ever report an injury to your hip to work?"

A. "No, I did not."

Q. "I was not at your deposition. Mr. Montgomery took your deposition, and you told him that as well: correct?"

A. "That's correct." (Tr. 71, 72)

The claimant went on to testify that Dr. Newbern performed his hip replacement but denied having a conversation with Dr. Newbern about his job duties or requesting that Dr. Newbern write a letter on his behalf. He admitted telling Dr. Newbern he was a state trooper. (Tr. 77)

On redirect, the claimant agreed that he had to push cars out of the way in the past and also had to do a lot of "heavy stuff" to get things out of a car. He additionally had to do a lot of sitting and spent a lot of time on his feet while working for the CID. (Tr. 78 - 80)



On recross, the claimant denied being trained on the method to file a workers' compensation claim and denied ever previously filing one. He admitted that after he left the highway patrol, he went to work for CID, and that Stacey Rhoads was his supervisor. He also admitted that he had filed for a medical disability retirement, which he was receiving, and he claimed a total hip replacement, but nothing else. He had been receiving his medical disability retirement since the date of his retirement. (Tr. 83 - 86)

At this point, the claimant rested, and the respondents called Major Stacie Rhoads, who testified that she had worked for the Arkansas State Police for 26 years, and currently oversaw the Criminal Investigation Division, where the claimant had worked, and at one point was his supervisor. She had known the claimant since 2003, when he began working for the State Police. (Tr. 89) She had worked for the highway patrol division in the past for three years and consequently was familiar with the vest and other equipment since she had worn them. She went on to state that they had recently tested the duty belt fully adorned with all the equipment and it weighed 15 pounds and the ballistics vest currently weighed under six, but it had changed over the years. (Tr. 90, 91) In CID, they don't wear big duty belts. She was not aware of the claimant ever reporting a workers' compensation claim. (Tr. 92) She admitted her concerns about the claimant's physical well-being after she had observed him on the firing range. She did not see him suffer an accident or fall, but he did appear to have difficulty walking, and she observed him having to steady himself with his rifle when he finished firing, and thought he was having hand-eye coordination issues and having difficulty with the magazine exchange drills. She testified she prepared the report on

May 24, 2020, three days after the training incident. (Tr. 93 – 96) In regard to a workers' compensation poster, she testified there was one in the copy room. (Tr. 97) She also testified they received the claimant's resignation letter on November 19, 2021, and he retired at the end of 2021. She prepared a memorandum based on the claimant's worker's compensation claim he filed, and the memorandum was dated January 18<sup>th</sup>, 2022. (Tr. 99)

The parties submitted as a joint exhibit the claimant's deposition where the claimant was asked about an injury that occurred sometime in 2020 and he testified, "Well, the thing about it is that I - - the gun belt is sitting heavy on my hips, on my right hip, and it just kind of got to where I couldn't, you know, perform the job correctly, and it's just sitting on my hips and that's - - that's the injury. I mean it just kind of wore, wore me out, wore down my hip and that's all I can think of." The claimant stated that the gun belt and the items in it weighed "about 50 pounds." "It took probably three or four years to notice that my hip couldn't really take it." He couldn't remember when it started. (Jt. Ex. 1, P. 18, 19) He thought that he had transferred to CID maybe in 2014. (Jt. Ex. 1, P. 22) He further testified that Lieutenant Stacy Rhoads noticed he was having difficulty on the range and that it was her idea to send him to the doctor. Prior to his total hip by Dr. Gordan Newbern, he had two earlier surgeries by Dr. Jimmy Tucker who attempted to repair his hip. (Jt. Ex. 1, P. 27, 28) Claimant was questioned if he ever told anyone at the State Police prior to his first surgery that his hip problem might be related to the job he had performed over the years, and he responded "No. I did not." He never returned to work after the first surgery in December of 2020. (Jt. Ex. 1, P. 30) The deposition contained two exhibits, with the first one being the Arkansas Form N which stated "The

employee stated that his right hip started giving him trouble. The employee stated that his supervisor noticed he was having trouble.”

The deposition also included a Report of Injury from “Company Nurse” that provided that the injury occurred to the claimant’s hip at work, and that he could not provide a time or what he was doing at the time of the injury.

Claimant submitted the deposition of Dr. David Newbern taken on May 19, 2023, which was admitted without objection. Besides the doctor’s Curriculum Vitae, the deposition contained 28 pages of medical records and a medical article. Dr. Newbern testified that he worked as an orthopedic surgeon, mainly working with hip and knee replacements. The claimant was first treated by Dr. Jimmy Tucker, and it appeared he was initially seen by Dr. Newbern on June 18<sup>th</sup>, 2021, after the two surgeries by Dr. Tucker. It was apparent the claimant had a fragment of extra bone that had grown in the front portion of his hip called a heterotopic bone and it was thought that this was possibly the source of his pain and Dr. Tucker requested that he evaluate the claimant. At the time, it appeared that the extra bone could easily be pinching and hitting the anterior aspect of his hip joint causing the source of pain, and there was some discussion of performing an arthroscopic procedure to remove the bone, but after the discussion, it was decided that maybe the quickest way to get the most amount of improvement would be the route of a hip replacement. “Since he had shown a tendency to form extra or heterotopic bone around his hip, we arranged to have a pretreatment with a low dose radiation treatment to prevent that from happening again.” (Cl. Ex. 1, P. 8, 9) “Many times muscle or traumatized tissue will undergo a transformation instead of the staying in the tissue form that it is previously.” (Cl. Ex. 1, P. 10) The surgery was

performed on August 9, 2021, and it was determined at the time of the surgery that there was some arthritis in the joint. (Cl. Ex. 1, P. 12, 13))

The claimant returned for follow ups and on the October 7, 2021, visit, it was noted that he had a quite abnormal gait. He was able to stand but only with a very great effort. His leg was shaking and trembling, with profound weakness and difficulty ambulating noted. (Cl. Ex. 1, P. 16) An encounter with the claimant also occurred on November 18<sup>th</sup>, 2021. That report provided that the claimant's range of internal rotation was zero degrees, with his external rotation being 50 degrees. His gait was unstable with trembling and weakness, and he ambulated with a cane. Consequently, a MRI was ordered and an EMG nerve conduction study by Dr. Kimay was obtained. The EMG was ordered due to the fact we did not have an understanding or explanation for the claimant's neurological function. The EMG by Dr. Kimay showed an abnormal cord signal at the C2/3 disc. A follow up MRI of the brain and cervical spine was then recommended. There was suspicion of a demyelinating disease. The MRI of the lumbar spine was performed, and it was remarkable for moderate foraminal stenosis on the right side of L4/5, with no other significant findings. (Cl. Ex. 1, P. 17 – 22)

In regard to the hip surgery, Dr. Newbern, felt the claimant had recovered to a point. The claimant was still having more pain than would normally be expected and his recovery from the hip replacement was not as good as normally expected. (Cl. Ex. 1, P. 23) Dr. Newburn initially saw the claimant on June 14<sup>th</sup>, 2021, two months prior to the surgery on August 9<sup>th</sup>, 2021. Dr. Newbern thought the patient and his wife asked him to write the "To whom it may concern" letter which is page 22 of the medical exhibit. (Cl. Ex. 1, P. 26, 27). He obtained the information about the claimant's physical job from

talking with the claimant, who felt the belt with the equipment that he needed to carry, pressed on his hip. "I said that, you know, at least more than 50 percent of these stress and strains of work had compounded his current disability." Dr. Newbern agreed that the information for his "To whom it may concern" letter was provided by the claimant and his wife. (Cl. Ex. 1, P. 28 -30)

Under cross examination, Dr. Newbern admitted to the importance of history in regard to a patient. (Cl. Ex. 1, P. 33) He opined that "I guess, to kind of dive into that, I think he's got issues with his hip, and then I think he also has issues with what I think they've diagnosed as multiple sclerosis, and that - - those two different things are causing trouble. But, yeah, both of those issues are going to make it harder for him to do day-in/day-out work." (Cl. Ex. 1, P. 35) "We still don't know why he's having such trouble, so it's - - I think it's complicated." (Cl. Ex. 1, P. 36)

Dr. Newbern was also questioned about the labral tear in regard to the initial surgeries, and he opined a labral tear is a lot of times due to an overuse phenomenon, but can also be from an injury, or both. (Cl. Ex. 1, P. 39, 40)

An operative note dated December 2, 2020, by Dr. James Tucker, provided that surgery was performed on the right labrum due to a tearing of the labrum, after 12 weeks of conservative care. (Cl. Ex. 2, P. 1, 2) The claimant returned to Dr. Tucker on April 13, 2021, 6 weeks postop, in regard to the resection of the right hip labral tear. X-rays showed a well-maintained joint space. Physical therapy continued, and the report provided the claimant would return in 6 weeks. (Cl. Ex. 2, P. 3 – 5) The claimant again returned to Dr. Tucker for an office visit on May 25, 2021, after a diagnostic arthroscopy and open heterotopic ossification resection of the right hip labral tear . The claimant also

returned to Dr. Tucker on May 26, 2021, and June 15, 2021. The claimant was still having issues with the hip with a lot of pain, sometimes going numb throughout the day, which required him to walk with a crutch. The report provided the claimant would be referred to Dr. Newbern. (Cl. Ex. 2, P. 9 - 13)

The claimant was then seen by Physician Assistant, Donna Barron, PA, who worked with Dr. Newbern, in regard to his right hip problems. This visit was 2 weeks post op from a total hip replacement and removal of heterotopic bone. (Cl. Ex. 2. P. 14 – 17) The claimant again returned on October 7, 2021, October 20, 2021, and November 16, 2021. The surgery of August 9, 2021, was referred to and Donna Barron was concerned that the claimant was developing nerve palsy, and the claimant was asked to stay on his walker.

The “To Whom it May Concern” letter, By Dr. Newbern provided it was very likely that the stresses of work contributed to the claimant’s loss of ability and function, and he opined that he believed it was more than 50% likely that the stress and strains of his work, have compounded if not caused his current disability. (Cl. Ex. 2, P. 22)

Claimant returned for an office visit on November 18, and November 29, 2021. The November 18, 2021, report provided that an MRI of the lumbar spine and a MRI of the cervical spine should be obtained and that they would proceed with psoas tendon injections for bursitis. The office visit of November 29, 2021, mentioned the MRI referral. (Cl. Ex. 2, P 23 – 27) It was also noted that a letter dated September 29, 2022, by Dr. Erika Santos Horta, provided that multiple sclerosis affects the central nervous system and not the bones. (Cl. Ex. 2, P. 28)

The respondents also submitted medical records consisting of 26 pages, without objection. The initial medical report by Dr. Gary W. Bowman, dated October 16, 2019, provided that the claimant was suffering acute right shoulder and hip pain that had started one to four weeks earlier. Physical therapy was started and Voltaren was ordered. (Resp. Ex. 1, P. 1 – 3) The claimant returned to Dr. Bowman on August 7, 2020, with pain in the joint of the pelvic region and thigh. An X-ray of the hip provided for degenerative changes of the right hip. (Resp. Ex. 1, P 4 – 6)

The claimant then presented to the Conway Orthopedic and Sports Medicine Center on August 12, 2020, with groin pain, but the report provided that he did not remember a specific injury but stated the pain had gradually increased. The X-ray provided for a possible right hip labral tear and possible right hip femoral acetabular impingement. (Resp. Ex. 1, P, 7, 8) An imaging report dated August 17, 2020, by Dr. Miles Ritter, provided for a small tear involving the anterior superior labrum and a small bony protuberance of the superior lateral femoral head neck junction was also noted. The findings could represent a CAM type femoral acetabular impingement syndrome. (Resp. Ex. 1, P. 9, 10) The claimant then returned to Conway Orthopedic and Sports Medicine on August 19, 2020, and the imaging findings were reviewed and the claimant was referred to Dr. James Tucker. (Resp. Ex. 1, P. 11, 12)

The claimant first presented to Dr. Tucker on September 15, 2020, and the report provided there was no specific injury reported but that the claimant presented with right hip pain and groin pain. (Resp. Ex. 1, P. 13 – 15) A HPI/PMH Form with Dr. Newbern dated June 21, 2021, provided for right hip pain. (Resp. Ex. 1, P. 16, 17) The claimant then saw Dr. Newbern on July 1, 2021, and the assessment provided arthritis as a

consequence of impingement and heterotopic bone formation of the right hip. (Resp. Ex. 1, P. 18 – 20) A medical report from OrthoArkansas dated August 11, 2021, provided that arthritis was a consequence of impingement and heterotopic bone formation about the right hip. The report went on to provide that probably the quickest way to recovery was for a hip replacement with the removal of the overhanging bone. (Resp. Ex. 1, P. 21, 22) The claimant was seen by Donna Barron, PA, who works with Dr. Newbern. The report provided that a psoas tendon injection was discussed, and the claimant's gait was observed as he was leaving. He exhibited right leg fasciculations and shaking of the entire right leg. No right foot slapping was noted but a profound weakness and abnormal gait was observed. (Resp. Ex. 1, P. 23 – 26)

The respondents also submitted 21 pages of documentary evidence, and an objection to the admissibility of the memorandums prepared by Stacie Rhoads was made by the claimant and this issue is discussed below. On December 2, 2013, the claimant transferred from the Highway Patrol Division to the Criminal Investigation Division to become a Polygraph Examiner. (Resp. Ex. 2, P. 1) Work issues were raised in regard to the claimant's actions while employed. (Resp. Ex. 2, P. 2 – 4, and also P. 7, 8)) A memorandum dated May 24, 2020, by Lt. Stacie Rhoads and addressed to Major Mark Hollingsworth, provided that the claimant had to use his rifle to steady himself while getting out of the kneeling position, while at the firing range and that he appeared unsteady on his feet. (Resp. Ex. 2, P. 5, 6) On November 19, 2021, the claimant submitted a letter for his medical retirement. (Resp. Ex. 2, P. 9)



Claimant's filing of the Arkansas Form AR-C provided he had sustained a gradual onset injury to his right hip, groin, and lower back as a result of his job duties and the requirement of wearing a heavy gun and equipment belt. (Resp. Ex. 2, P. 11) The report made by the Company Nurse on July 1, 2020, provided that the right hip injury was work related but the claimant's actual activities at the time of the accident were unknown. The report provided that the claimant could not say what he was doing at the time of the injury. (Resp. Ex. 2, P. 12 - 14) In addition, the Form PECD 1, dated January 19, 2022, which stated that it was to be completed by the employee, provided that the date of the accident was July 1, 2020, at 10:00 a.m. but the claimant was unaware of the location of the accident or what he was doing at the time of the accident. (Resp. Ex. 2, P. 17) The AR – N form also provided that the injury to the right hip occurred on July 1, 2020, at 10:00 a.m., and stated that his right hip started giving him trouble and that his supervisor had noticed it. (Resp. Ex. 2, P. 18, 19)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

The first issue that must be determined is the admissibility of the memorandums prepared by Stacie D. Rhoads dated May 24, 2020, July 30, 2019, and January 18, 2022. The claimant objected to the admissibility of these documents contending among other things that these items were not documents that were kept in the regular course of business. The issue was taken under advisement at the time of the hearing. The law is quite clear that the Workers' Compensation Commission has broad discretion with reference to admission of evidence, and its decision will not be reversed absent a showing of abuse of discretion. Brown v. Alabama Elec. Co., 60 Ark. App. 138, 959 S.W.2d 753 (1998). The Commission is given a great deal of latitude in evidentiary

matters, specifically by A.C.A. 11-9-705(a) which provides that the Commission “shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure.” Additionally, the Commission is directed to “conduct the hearing in a manner as will best ascertain the right of the parties.” See A.C.A. 11-9-705(a) and Clark v. Johnson’s Warehouse Showroom, Inc., 2012 Ark. App. 17, 388 S.W. 3d. The courts have even gone on to provide that the Commission should be more liberal with the admission of evidence, rather than stringent. Coleman v. Pro Transp., Inc., 97 Ark. App. 338, 249 s.W.3d 149 (2007). In the present matter, Ms. Rhoads testified and was available for cross examination. Based upon the above, the memorandums are found to be admissible.

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for his injuries under the Arkansas Workers’ Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann 11-9-704. Wade v. Mr. Cavanaugh’s, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter, the claimant presented to Dr. Bowman on October 16, 2019, and the medical report provided the claimant suffered from pain in his right shoulder and hip which had started one to four weeks earlier. The claimant again saw Dr. Bowman on August 7, 2020, with pain in his pelvic region. A medical report from

Conway Orthopedic and Sports Medicine dated August 12, 2020, provided that the claimant had been suffering groin pain since 2019, but that he did not remember a specific injury. A MRI dated August 17, 2020, showed a small tear of the anterior superior labrum of the right hip and a small bony protuberance along the superior lateral femoral neck head. The first report of record by Dr. Tucker on September 15, 2020, provided that the claimant had suffered right hip pain for over a year but was not aware of a specific injury. It must also be noted that the report from Company Nurse dated January 13, 2022, provided that the claimant did not know what he was doing when the accident occurred.

The claimant testified that he felt that the gun or equipment belt and the equipment he was required to carry pressed on his hip, and the weight of these items were the cause of hip problems over time. In his deposition, he could not remember when the hip pain began but stated, "Well, the thing about it is that I - - the gun belt is setting on my hips, on my right hip, and it just got to where I couldn't, you know, perform the job correctly, and it's just sitting on my hips, and that's - - that's the injury. I mean it just kind of wore, wore me out, wore down my hip and that's all I can think of." He went on to testify that it probably took 3 or 4 years to notice that his hip couldn't take it and he couldn't remember when it started. Testimony about the actual weight of the gun or equipment belt and the equipment carried on it varied between 15 to 60 pounds.

It is also noted that testimony provided that the claimant was diagnosed with Multiple Sclerosis after the date of his retirement. Dr. Horta stated in a letter that Multiple Sclerosis affects the Central Nervous System and not the bones. A suspicion of a demyelinating disease had been previously discussed after claimant's EMG.

Additionally, it is also noted that Dr. Newbern opined in a letter addressed “To whom it may concern” that “I do believe it is more than 50% that the stress and strains of his work, that is the physical requirements, have compounded, if not caused, his current disability” referring to the physical job and the wearing of the heavy gun and equipment belt.

The AR- C Form provided that the claimant had sustained a gradual onset injury to his right hip, groin, and lower back, but the PECD – 1 Form provided that the injury occurred on July 1, 2020, at 10:00 a.m., and the claimant provided he was unsure of the location of its occurrence. The AR – N Form also provided that the claimant stated his right hip started giving him trouble and the date was July 1, 2020. Here, although the claimant at times stated the date of the injury was July 1, 2020, the form provided that the claimant did not remember the location of the injury and he testified that the injury occurred over time, as the result of wearing the gun and equipment belt. The AR - C Form stated the claimant sustained a gradual onset injury. Since the claimant is not contending he suffered a specific injury, he is not required to prove that the injury was the result of an incident that occurred at an identifiable time and place of occurrence. See Mikel v. Engineered Specialty Plastics, 56 Ark. 443, 990 S.W.2d 522 (1997).

The claimant claims that he suffered a gradual onset injury to his right hip, groin, and lower back. A.C.A. 11-9-102(4)(A)(ii) states, in relevant part, that injuries that occur over a period of time and are not the result of a specific incident occurring at an identifiable time and place are not compensable, unless they are caused by rapid repetitive motion. To be awarded benefits for a gradual onset injury, the claimant must prove several things: (1) the injury arose out of and in the course of employment; (2) the

injury caused internal or external physical harm to the body, which required medical services or resulted in death or disability; (3) the injury was caused by rapid repetitive motion; (4) the injury was the major cause of the disability or need for treatment; and (5) the injury was established by objective medical findings. A.C.A. 11-9-102 (4) (D). Also see Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W. 2d 644 (1998) and Hapney v. Rheem Mfg. Co. 342 Ark. 11, 26 S.W.3d 777 (2000). Arkansas courts have set out a two-pronged test for such cases as the matter at bar. The claimant must engage in tasks that are repetitive and the repetitive motion must be rapid. See Malone supra. Arkansas courts have further determined that as a threshold issue, the tasks must be repetitive or the rapidity issue is not reached. Certainly, even repetitive tasks and rapid work, taken alone, will not satisfy the definition. Repetitive tasks must be completed rapidly. It is also noted that a compensable injury must be established by medical evidence supported by objective findings. A.C.A. 11-9-102 (4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. A.C.A. 11-9-102 (16) (A) (i)

In the present matter, there is no question that the claimant, while working as a highway patrolman, carried a gun and equipment belt that weighed somewhere between 15 to nearly 60 pounds, and was employed in a job that that was both dangerous and strenuous at times, while protecting and serving the people of Arkansas. However, the elements of the claimant's work, however difficult, and his claim for an injury to his right hip, groin, and back, do not meet the legal standards set forth by the Arkansas courts for finding that the claimant suffered a gradual onset injury. Tasks that are repetitive must also be completed rapidly and this did not occur in the present

matter before the Commission. Further, although there is the letter from Dr. Newbern that opines that the work was over 50% the cause of the claimant's hip problems, this finding is found to be based primarily upon the statements of the claimant, with no true specific objective findings that the activities of wearing the gun or equipment belt led to the injury of the right hip, groin, and lower back. It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985). Consequently, there is no alternative but to find that the claimant has failed to prove by a preponderance of the evidence that he suffered a compensable gradual onset injury.

Based upon the available evidence in the case at bar, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show that the claimed injury to the right hip, groin, and lower back, is in fact work related and compensable under the Arkansas Workers' Compensation Act. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge