

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H107908**

JESSIE D. ELLIS, EMPLOYEE

CLAIMANT

v.

CITY OF CONWAY, EMPLOYER

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE,
WORKERS' COMPENSATION TRUST**

RESPONDENT

OPINION FILED JANUARY 2, 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 26TH day of September 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Eddie H. Walker, Jr., Attorney-at-Law of Fort Smith, Arkansas.

Respondents are represented by Mr. Jarrod S. Parrish, Attorney-at-Law of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 26th day of September, 2023. At the time of the hearing the issues were clarified to be as follows: (1) Compensability of the claimant's claimed closed head injury; (2) Medical in regard to the closed head injury; and (3) attorney's fees. All other issues were reserved, specifically the issue of TTD. The respondents contended a work-related injury was not the major cause of any permanent injury, that the claimant was at maximum medical improvement and that additional medical treatment was not reasonable and necessary. The parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the claim and an employer-employee relationship existed on or about June 17, 2020, when the claimant sustained a compensable work-related injury abrasion to his head above his eye, his left knuckle, and his knee. At the time of the injury, the claimant was earning an average

wage of \$809.95, sufficient for a TTD/PPD rate of \$534.00 / \$401.00, respectively. The claimant reached maximum medical improvement on September 14, 2021, based upon the opinion of one physician. A copy of the Prehearing Order was marked “Commission’s Exhibit 1” and made part of the record without objection.

The claimant’s and respondents’ contentions were all set out in their responses and an amended response to the prehearing questionnaire and made a part of the record without objection. Two (2) witnesses testified at the time of the hearing.

An issue developed involving the transcript and the representatives of the parties were contacted in an attempt to resolve the problems. A phone conference with the party’s representatives was held on the afternoon of December 20, 2023, making them aware of the issues. The parties’ respective representatives worked diligently to resolve the problems, while diligently representing their respective client interests and the administration of justice, and a copy of the correspondence as well as a corrected index of the transcript that was agreed upon by the parties and consequently adopted by the administrative law judge is hereby blue backed and attached to this opinion.

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 Arkansas Code Annotated § 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 relationship existed on or about June 17, 2020, when the claimant sustained a compensable work-related injury abrasion to his head above the eye, his left knuckle, and left knee. At the time, the claimant

earned an average weekly wage of \$800.95 a week, sufficient for a TTD/PPD rate of \$534.00 / \$401.00 per week, respectively.

3. That the claimant has failed to establish a compensable closed head injury with medical evidence supported by objective findings.
4. That consequently, the claimant is not entitled to additional medical and attorney fees at this time.
5. That all other issues are reserved.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order along with the prehearing questionnaires of the parties and the claimant's amended response to the prehearing questionnaire were admitted into the record without objection. The depositions of Dr. Barry Baskin; Tobi Taylor, LPC; Detective Steven Spurgis; and Chief William Tapley were all made part of the record. In addition, the claimant and the respondents submitted medical records along with non-medical records that were admitted without objection. It was also noted that the respondents reserved the right to take the Chief's deposition at the beginning of the hearing.

The initial witness to testify was Olivia Whithead who testified she was the claimant's fiancée and had known him for about eight (8) years. In June of 2020, she was dating the claimant while he worked for the Conway Police Department. She described him at the time as being, "very social, very popular, kept a lot of friends, very public personality" and was an athlete. She became aware that he was involved in an accident while working with the Conway Police Department when he came home with a wound on his head and he seemed lethargic and dazed. Prior to June 16, 2020, he had not

complained of headaches, nausea, or vomiting, and she had never witnessed him vomit. (Tr. 5-7) Since June 16, 2020, she testified he avoided social situations, interactions, and meeting people, and he had not behaved like that prior to the accident. (Tr. 8) In regard to the accident, she stated that prior to the accident, “he would go out and take off with friends, we would be in places where you had to interact with people more.” He was an accomplished video game player but after the accident, his skill level was “completely different.” (Tr. 9)

Under cross-examination, Ms. Whitehead stated that she worked as a barrista and agreed she had never worked in the field of mental health, was not a physician, and was not qualified to issue any type of medical opinion or diagnosis.

The claimant was then called to testify. He stated he was injured while working at the Conway Police Department performing a “vehicle pursuit drill.” We were chasing the suspect who was actually another officer involved in the drill, when the so called suspect stopped his car and started running and the claimant gave chase. He described himself as a big guy, 6’ 5”, and 300 pounds. While chasing the significantly smaller suspect, he reached out to catch him, overextended, and fell, hitting his head on the sidewalk. He then clarified and stated, “I hit the corner of my head on the curb of the sidewalk.” He stated that he felt senseless when he hit the curb, seeing black. “When I was able to open my eyes, it seemed like stars or like TV static almost, and it took me like 10 or 15 seconds to even be able to stand up after I hit my head.” He thought he didn’t actually pass out. (Tr. 11-13) He felt that he had scrapped his arm in an attempt to shield his head. He also admitted he was an offensive linemen when he played football, and had been hit but denied being hit “specifically in the head.” (Tr. 14)

After the incident, he was taken to Baptist Hospital, which was just down the street, by his supervisor, Spurgis, and while in the emergency room, he stated he threw up. He couldn't remember the last time he threw up prior to the accident and denied throwing up within the last month prior to the accident. His supervisor observed him vomiting. He stated that his supervisor agreed in his deposition that he had not observed the claimant throw up while riding around with the claimant in a patrol car prior to the incident. The claimant also admitted that he returned to the hospital because he was "extremely groggy." He returned to the hospital, "because like obviously I was different. I knew something was off. I was sleeping way too much and I felt sick. I felt lethargic, and that's why I felt there was cause for concern, and I went back." He grew up in Conway and knew the city like the back of his hand and after the incident, while patrolling, he would get lost, so he went to see Dr. Johnson. He stated he was getting a lot of calls and eventually his supervisor had to drive. (Tr. 15-18)

He was sent to Dr. Johnson by the Conway Police Department. Prior to the accident, the claimant felt that he did not have any kind of emotional problems and that he was "overtly happy." He admitted that he had grown up in a family household where there was some abuse to his mother and he had volunteered this information to determine if he was suitable to become a Conway police officer because if he wasn't mentally ready, he wanted to be forthcoming. He felt that he did not have any mental problem. He did not try to hide anything from the Conway Police Department in regard to his psychological evaluation. "I felt like I would be the officer that people wanted to see policing, and not the jerks from wherever, so I felt like I could be the good guy, essentially." (T. 19-21) When it was determined he was not able to be a police officer, he stated it was

“devastating” and changed everything. “I mean, just because I was kind of anxious, at the time I was like, you know, when somebody’s following me, but I never had like any solid evidence, so there was like, you know, it was just in the back of my head.” “And then to find out that it’s real, it led to like what else is also, you know, like it just put crazy thoughts in my head, like it just shot my enzymes to new levels that like I still feel the effect of today.” He denied ever being treated for depression or anxiety prior to June 16, 2020. (Tr. 22-23) He stated that he felt he needed additional medical treatment because he still had cognitive issues, like handling keys or smaller things and that he didn’t have this problem earlier. He now has problems with hand/eye coordination and with blurry vision. There are times he feels that he can’t leave the house because he’s convinced he is being watched. He is extremely anxious and depressed at times. He had none of these problems prior to the head injury. Prior to the accident, the claimant stated he was a well above average video game player and “pretty well ranked with almost any competitive game” that he played, but his performance level changed for the worse after the accident. (Tr. 24-25) He currently was employed by Shamrock Foods where he delivers food.

Under cross-examination, the claimant stated he was twenty-five (25) years old, and when asked if he had been knocked unconscious in the incident, he responded, “I can’t say for sure. I can’t do it. Literally it’s like I see ground coming and then it’s black, and then I can’t open my eyes but I’m sitting up.” The claimant did agree that if he had been knocked unconscious, it could be assumed that he would have told the ER doctors when he checked in. The claimant also admitted that he didn’t require any type of stitches or staples or anything above his eyebrow. (Tr. 26-28)

The claimant admitted he had treated with Dr. Baskin after being treated by Dr. Gil Johnson. He admitted Dr. Baskin was the point man in regard to referring the claimant out for tests and evaluations and also agreed that he was open with him about everything he could remember. He also agreed his girlfriend had attended several visits. (Tr. 29-30) He admitted to an episode of Bell's Palsy while in school which caused the right side of his face to droop and consequently one of his eyes is a little lower. (Tr. 31) He also admitted that he could currently drive and drove a moving truck from Arkansas to Arizona where he currently lives, a trip of seventeen (17) to eighteen (18) hours. He also admitted vacationing in Hawaii while still treating with Dr. Baskin and to a driving evaluation with Baptist Rehab. He did not dispute his normal neurological and psychological examinations on his initial ER visit and the CT scan of his head which showed no abnormalities. He also agreed the MRI report of his head and brain were normal. He did not remember a nerve conduction study by Dr. Baskin, but didn't dispute any medical evidence in the packet. He also agreed Dr. Baskin referred him to a specialist for a detailed eye examination, and the exam did not find anything wrong with his eyes. The following questioning then occurred:

Q. So if none of your diagnostic tests show any abnormalities, you will agree with me that we're left to rely on your statements and your reporting to assess your situation and the condition that you're alleging? Do you agree with that?

A. No.

Q. Well, if there are no objective physical findings on the tests that have been run, then we're basically stuck with what you're telling nurses, correct?

A. Oh, I'm sorry. Yeah. (Tr. 34 - 37)

The claimant also admitted seeing Dr. Zolten, a neuropsychologist, for a battery of tests. He was not aware that Dr. Zolten had opined that he had displayed inconsistent

effort and over reporting of psychological symptoms and possible psychological overlay.
(Tr. 38)

The claimant admitted that “on paper” he was making more while working for Shamrock Foods than he was while working as a prospective policeman, and worked the day shift. He also admitted he had returned to the Conway Police Department after the accident and worked for a few days on patrol and then moved to the record department, where he continued until September of 2021. There were no restrictions in regard to the abrasions on his arms or legs and it had healed up in its normal course. (Tr. 39-40)

On redirect, claimant responded okay to the question that the emergency room, along with additional medical records, referred to his injury as a closed head injury as opposed to a brain injury. (Tr. 41) He also admitted the records referred to a concussion and he did not specifically know what was causing his problem. He also agreed that if the medical providers referred to his condition as a closed head injury, that’s what he probably had. (Tr. 42-43)

The deposition of Dr. Barry Baskin was taken on March 9, 2022. Dr. Baskin testified that he had been working as a physical medicine and rehab doctor in Little Rock since July of 1991. The first time he saw the claimant was September 3, 2020. (Cl. Ex. 2, P. 6-7) He stated the claimant had a negative work up and “didn’t really have any significant objective problems, and his exam was not really particularly impressive either. I mean, he had -- I guess he was -- his ability to give a history and to stay on track was - - he was kind of all over the place and -- but, again, his neuro exam was normal. He had a normal gait; he had normal movements, and I just felt like we -- that based on what I saw, which again, there weren’t a lot of hard objective findings, but he complained of not

sleeping well, blurred vision, irritability, and so I felt like we needed to work him up a little bit further.” (Cl. Ex. 2, P. 8) He went on to state that if the claimant had hit the concrete in a really direct way and had a bleed or skull fracture or something that was clearly measurable, he felt that you could see it on the initial scans. However, he felt the complaints were “bothersome enough” the claimant needed to be checked out. He went on to explain that a closed head injury was when somebody had trauma to their head, usually blunt trauma, not penetrating trauma, and you don’t have to have loss of consciousness. A traumatic brain injury is when there was trauma to the head and you have findings on the imaging studies where you might see a skull fracture or a subdural or epidural bleed inside the skull. A concussion is when people essentially have a blow to the head and they have some alteration of their level of consciousness. They may be knocked out and their mental status may be altered in some way. He went ahead and stated, “I think he fell -- it looked -- it sounded like he fell, hit his head, and had a closed head injury without any positive findings on his imaging studies.” (Cl. Ex. 2, P. 9-10) Dr. Baskin agreed a scar above the eyebrow as a result of a fall could be considered objective evidence. (Cl. Ex. 2, P.11) Dr. Baskin also testified there were a lot of symptoms associated with a closed head injury which could include headaches, blurred vision, memory loss, loss of concentration and focus, inability to do things that they could do before without difficulty, and vomiting. (Cl. Ex. 2, P.12)

Dr. Baskin was then questioned about the brain being shaken, and stated a brain could float freely around in the skull which is called a coup-contrecoup injury, and you know it due to a bruise on the brain on the exact opposite point and that was not seen in regard to the claimant and there were no measurable findings. (Cl. Ex. 2, P.13) “I would

think the more mild the trauma, the less likely the outward objective findings would be.” He agreed that MRI’s and EEG’s were not 100% accurate. (Cl. Ex. 2, P.15)

Dr. Baskin referred the claimant to Michelle Cox, a speech language pathologist, who did find evidence of some loss of executive function, so the claimant was then referred to Dr. Magiera-Planey, a neuropsychologist to further check the claimant out. He also stated that he used Dr. Zolten the most. (Cl. Ex. 2, P.16 - 17)

Dr. Baskin was questioned about feeling the claimant should not return to police work. He responded the claimant appeared anxious and depressed at times, and, “Dr. Zolten felt that the claimant had enough emotional overlay that he didn’t think he was safe to go back and be out on patrol carrying a gun.” (Cl. Ex. 2, P.19) He went on to state the two (2) neuropsychologists didn’t think that he had really very much if any, cognitive loss, and his cognition was pretty good. The claimant did seem to manifest more emotional and behavioral things Dr. Baskin felt was likely to affect him returning to work. (Cl. Ex. 2, P.21)

In regard to objective evidence, Dr. Baskin testified he felt that the objective findings came more from Dr. Magiera-Planey and Dr. Zolten’s evaluations. He felt the claimant’s behavior was “just a little off plumb.” He appeared to be “addled.” (Cl. Ex. 2, P.23)

During the examination by the respondent’s attorney, Dr. Baskin was questioned about the mention of an adjustment disorder. He stated that the adjustment disorders he frequently sees with people with a head injury are seen with mixed anxiety or depression. They are not sleeping well. Their mood can be down a bit. (Cl. Ex. 2, P.31) He thought Dr. Zolten said PTSD, but it wasn’t real clear and it alluded to the fact of the claimant’s

home life while growing up. Dr. Magiera-Planey didn't diagnose that and Ms. Taylor, the professional counselor, thought he had more of an adjustment disorder and not PTSD. (Cl. Ex. 2, P.32)

Dr. Baskin was specifically asked, "you are not prepared to state within a reasonable degree of medical certainty Mr. Ellis has an adjustment disorder related to this fall during police training, are you." He responded, "I don't -- I can't say with reasonable medical certainty what it's from." Dr. Baskin also provided he did not think that the claimant had PTSD at all. (Cl. Ex. 2, P.33) He was also asked if the neuropsych testing was removed from the equation in the claimant's case, "is there any objective evidence to establish the presence of traumatic brain injury, closed head injury?" He responded, "None -- not any measurable objective findings." (Cl. Ex. 2, P.35) He described the claimant as addled, and consequently, that was why he ran this by so many people. He described addled as when they would have a conversation in his office, "he would sort of bounce -- he would bounce around, bounce all over the place. He wouldn't stay on track. He doesn't -- this is another thing. I don't know why he has this, but Jessie doesn't make eye contact. You and I, and Mr. Walker and I, can look at each other in the eye, and we've been doing this here for a little while today. Mr. Ellis never looks you in the eye. He's looking around; he doesn't -- he avoids eye contact. As a matter of fact, he will go for almost an entire appointment with his eyes shut." (Cl. Ex. 2, P.36) Dr. Baskin was also questioned about his report where it provided that, "he was on the outside looking in at himself like he was an observer," which was mentioned several times and was unusual. Dr. Baskin agreed there was no objective basis to explain the above phenomenon. He agreed it was hard to determine how much of the claimant's problems

were premorbid versus post-traumatic. (Cl. Ex. 2, P.43-44) He also agreed the CT of the claimant's head early in the claim was normal, the MRI on July 30, 2020, returned normal results, and there were repeated normal neurological exams by various physicians. The eye doctor didn't find any abnormalities, hemorrhages, a detached retina, or evidence of trauma in the eye. X-rays were normal on February 20, 2021, and there was also a normal EEG on February 24, 2021. The following question was then asked:

Q. If someone truly had a traumatic brain injury or closed head injury, would you expect them to have no evidence of any damage to their brain across the spectrum of all those tests and examinations?

A. It would be unusual to have somebody have all those tests and evaluations and not have any positive objective findings. Again, I have seen people that had no findings on scans, and they were clearly -- had had a head injury and had alteration of their level of consciousness, but more times than not, I would say some of those would be positive. You would expect, more times than not, some of those things to be positive than for all of them to be negative. (Ex. 2, P.45-46)

Dr. Baskin stated that Dr. Magiara-Planey didn't find a lot of things wrong either and he agreed that Dr. Zolten's assessment found no neurocognitive deficits based on his battery of tests and didn't find any substantial findings. Emotionally and behaviorally, the claimant did. (Cl. Ex. 2, P.47) Dr. Baskin also stated that in regard to the neuropsych and the psychological counselor and the speech therapy and the two neuropaths together -- I shouldn't say one but both, those things would lead me to believe that he does have some emotional behavioral deficits as a result of this injury, I have essentially labeled him as an adjustment disorder. "Dr. Zolten labeled him differently, and so -- but based on the question you are asking, I would say, yes, the neuropsych reports are probably the thing that led me there more than anything else. However, Dr. Baskin again stated that he could not say with a reasonable degree of medical certainty that the adjustment order was causally related to his work injury, stating that it was not clear to him. (Ex.

2, P.50-51) He agreed with the report note of Counselor Taylor of June 23, 2021, which provided she could not say that the PTSD stemmed from the accident. Dr. Baskin was unable to identify any objective evidence supporting the existence of a brain injury or the existence of a mental or psychological or emotional disorder. (Cl. Ex. 2, P.53-54)

Dr. Baskin was again questioned by claimant's attorney and was asked if the claimant hit his head hard enough to have objective evidence of a head injury, would that have been sufficient trauma to cause some shaking of his brain? He responded, "It's possible. It would require speculation on any of our parts, I believe, because we don't have any objective findings to quantify that." In regard to vomiting right after the accident, that, "further indicates that he had a pretty significant trauma to the head." (Cl.Ex.2, P.58-59)

The respondent's attorney then questioned Dr. Baskin and asked if he could state within a reasonable degree of medical certainty that there was movement of the claimant's brain at the time of the accident, and Dr. Baskin responded he could not. He also again agreed that there was no determination of bruising of the brain and that he could not say with a reasonable degree of medical certainty that the emotional or behavioral injuries were related to the accident and that findings of such would be subjective. (Cl. Ex.2, P.60-63)

The deposition of Tobi Taylor, LPC, taken on April 4, 2023, approximately a little over a year after the deposition of Dr. Baskin, was also introduced into the record. The initial questioning was by the attorney for the claimant. Ms. Taylor testified she was a Licensed Professional Counselor who does a mix of therapeutic approaches which include trauma therapy and cognitive behavior therapy and she works with a full age

range of people. She admitted she had provided therapy to the claimant and believed the claimant performed his original testing at their facility for the Conway Police Department. (Cl. Ex.3, P.5) She understood he required therapy following a training accident. Intake information provided he had hit his head on the curb and had headaches, visual disturbances, and aphasia. He reported confusion, loss of his sense of direction, frequent unwarranted mood changes, anger issues, and sleep disturbance issues.

Based upon the initial intake information, she stated she gave the claimant a diagnosis of adjustment disorder with mixed anxiety and depressed mood, which was a DSM criteria. She stated an adjustment disorder criteria would be within the last six (6) to twelve (12) months after he had a life event or an experience that brought on the changes in his mood and personality. There were qualifiers to an adjustment disorder, and based upon the information the claimant provided, he was experiencing depressive episodes and anxiety symptoms which was why he was given a mixed diagnosis. No testing was given at the time in order to determine or make the diagnosis. The only testing at that time was the original testing for the Conway Police Department. She also stated that she did a Post-Traumatic Stress Disorder rule out which means that upon further examination and time spent with him she was going to start looking for trauma-associated symptoms, stating she did not have enough information at the intake to make that diagnosis. She thought the diagnosis was still a possibility, but based upon her time with him, she did not go back and change the diagnosis to post-traumatic stress. She agreed Dr. Baskin had recommended additional testing and treatment of the claimant which was not approved. Her last treatment of the claimant was on September 9, 2021, and it was her opinion the claimant still needed additional treatment. (Cl. Ex.3, P.6 - 9) She stated

she performed EMDR sessions which was a trauma therapy which stands for Eye Movement Desensitization and Reprocessing and she thought the claimant would benefit from having additional sessions. It was evidence based and when asked if he could manipulate the treatment, she stated, "I mean I guess everything could be manipulated." She described that evidence based meant there was evidence to support the efficacy of the treatment and it was objective. (Cl. Ex.3, P.10 -11) She testified that a CBT session (cognitive behavioral therapy) was a way to change your thoughts and behavior. It worked by the therapist asking direct questions in an attempt to get to the target issue and to make people think through their behavioral responses. It helped you be more mindful on the front end to understand where thoughts and behaviors were coming from. She admitted she treated a lot of trauma induced conditions, but when asked if there were any type of validity processing, she responded that the client was the only source of information typically for her. (Cl. Ex.3, P.12-13) She also admitted she had reviewed some psychological testing on the claimant and that testing would include validity checks, but if somebody was telling me, "I'm having these symptoms," then, "I don't have a way to refute that they're having those symptoms." (Cl. Ex.3, P.14) Ms. Taylor stated that in regard to physical manifestations in regard to closed head injuries, again they would be outside of her scope. (Cl. Ex.3, P.16) She was specifically asked, "Is it not important for you to determine what you believe is the triggering event in order to properly provide therapy?" She responded, "No, because I'm treating the symptoms. I'm treating what -- how it shows up in his daily life, because I am not the medical doctor." (Cl. Ex.3, P.18)

Under questioning by the respondent's attorney, Ms. Taylor testified that she was not providing an opinion the claimant had suffered a traumatic brain injury, "because I am

not qualified to do so.” (Cl. Ex.3, P.34) She also agreed she was not opining that the claimant had any permanent restrictions or limitations because, “There’s no way I could be.” (Cl. Ex.3, P.45) She could not say with any degree of medical certainty that he had a PTSD diagnosis associated with the accident. (Cl. Ex.3, P.48) She agreed she based her opinions and her treatment model for the claimant on what he had told her. (Cl. Ex.3, P.50) She also had no evidence to rebut the statement by Dr. Zolten that the claimant had no cognitive deficits, stating, “I don’t test for a cognitive deficit.” She performs no testing on her own. (Cl. Ex.3, P.53-54) What the claimant can or can’t do involving work is ultimately based upon what the claimant is telling her. (Cl. Ex.3, P.62 - 63) She was then asked the following questions:

Q, Okay. This adjustment disorder with depression, anxiety, panic attacks, you are not providing an opinion that this is causally related to him tripping and falling, with a reasonable degree of certainty, are you?

A. I can only respond to what he -- the information that he gave me and the information that I have in his record.

Q. Okay.

A. And you say that the time of the intake he met the diagnostic criteria for adjustment disorder mixed.

Q. Okay. But you’re not providing a causation opinion as to what has caused --

A. My only opinion is that he reports to me that all of these symptoms were either started or magnified post-accident.

Q. Okay. And that’s not really an opinion; it’s a --

A. It’s a reporting of what he --

Q. -- repetition of what he said. Right?

A. Yes. Uh-huh.

Q. Okay. So, ultimately he's in control as far as what the diagnosis is based on what he reports to you as a clinical professional.

A. Yes. (Cl. Ex.3, P. 63 - 64)

The deposition of Detective Steven Spurgis was also made part of the record without objection. Detective Spurgis admitted he was the claimant's training officer and recalled the claimant being involved in an incident at work on June 17, 2020, while working together that involved a fall. He remembered seeing an abrasion on the claimant's head. He stated the claimant did not appear any different immediately after the fall, but became nauseous and sick while at the hospital, where they waited to be checked out. He agreed the claimant had not complained about being nauseous and sick prior to the accident. He felt that the claimant seemed fine his first couple of shifts after the accident. He also testified that the claimant was grading poorly prior to the accident and that he was concerned about the claimant being able to perform the duties of a patrol officer. (Cl. Ex. 5)

The deposition of Chief William Tapley was also entered into the record without objection. He admitted knowing the claimant but stated he was not the Chief of Police when the claimant was hired. The claimant was given a conditional offer when hired and had to take a psychological evaluation and a drug test. After the injury, the claimant was given a limited-duty job, which would not have happened unless someone in the Conway Police Department made the determination that he had sustained a job-related injury. He had no, "idea about his injuries or his diagnosis." The Chief agreed that he made the decision to terminate the claimant's employment. Based upon the claimant's file, he felt the claimant would not have been released to patrol on his own. Chief Tapley testified that there was an extensive training period which lasted about eight (8) months in the

process of becoming a patrolman and the candidate was constantly being evaluated. He also stated there was no mention of physical limitations by the claimant during their conversation involving the claimant's termination. (Cl. Ex. 6)

Claimant's Exhibit One which consisted primarily of medical records was made part of the record without objection and consisted of 159 pages plus a four-page index. It provided that the claimant was seen by Dr. Gil Johnson on December 18, 2019, related to ptosis of the right eye. The claimant obtained a preemployment psychological screening on December 19, 2019, which provided that the test and interview did not reflect emotional or behavioral traits that are associated with psychological disorders or chronic emotional or maladjustment, or which would preclude certification as a law enforcement officer. (Cl. Ex. 1, P. 1 – 5)

Emergency room medical reports of June 17, 2020, were also part of this exhibit. An abrasion of the left eyebrow, left hand, and right lower extremity were noted on the visit diagnosis. The arrival complaint referred to a hand injury. The report provided that the claimant arrived ambulatory with a steady gait and was cooperative with no acute distress. His pupils were of equal size and he responded briskly. He denied loss of consciousness. In regard to the claimant's emesis, the report provided there had been some nausea but after emesis on arrival to the emergency room, the nausea resolved. The claimant had denied any significant headache, and no numbness, weakness, nor vision change was noted. Under neurological, the report provided that the claimant was oriented to person, place, and time. The assessment mentioned the abrasions and the emesis, but stated there was now no nausea and the claimant was neurologically intact

on exam. It was also noted that the discharge information provided for multiple types of head wounds and warned about obtaining help if vomiting occurs. (Cl. Ex. 1, P. 6 - 30)

The claimant returned to the Conway ER at Baptist Health a few days later and the report provided he had started to have a dull headache, had worked a shift Friday, and was having a hard time concentrating with confusion during his shift and was having difficulty navigating around the city. A closed head injury on the initial encounter was referred to. The CT of the head provided for no evidence of an acute or subacute intracranial hemorrhage. (Cl. Ex. 1, P. 31 – 47)

On June 22, 2020, the claimant presented to the clinic of Dr. Johnson. Under impression, the report provided for closed head trauma with a contusion to the frontal/parietal skull, posttraumatic headache, nausea and vomiting related to the head trauma, with a slightly altered mental status related to a head trauma, and currently stable. The claimant returned to work with restrictions. (Cl. Ex. 1, P 47 - 49) A follow up note dated June 24, 2020, provided that the claimant still had some posttraumatic headache. (Cl. Ex. 1, P. 50, 51) The claimant again returned to Dr. Johnson on June 29, 2020, and the report provided that the claimant was not at maximum medical “benefits”, was not complaining of headaches, and had slight memory issues. (Cl. Ex. 1, P. 52, 53) The claimant again returned to Dr. Johnson on July 7, 2020, and the report provided for continued improvement with no headaches and normal gait and speech. (Cl Ex. 1, P 54, 55) The claimant made another visit to the office of Dr. Johnson on July 27, 2020, stating his headaches had returned and he had noticed a change in his memory. The report provided that an MRI was indicated. (Cl Ex. 1, P. 56, 57)

An MRI was performed on July 30, 2020, which provided that there was a normal brain. The claimant then returned to Dr. Johnson on July 31, 2020. The report provided the claimant had not reached MMI and was still suffering symptoms most likely related to post concussive syndrome. (Cl. Ex. 1, P. 58 – 62)

The claimant was referred by Dr. Johnson to Dr. Barry Baskin on September 3, 2020, for an evaluation of a closed head injury. The report provided that the claimant had a “fairly normal neuro exam.” (Cl. Ex. 1, P. 63 – 65) A report from Dr. Baskin dated September 11, 2020, provided the claimant could return to work with modifications and was suffering from post concussion syndrome with little difficulty thinking, and moderate difficulty with memory. (Cl. Ex. 1, P. 66 - 72)

The claimant again returned to Dr. Baskin on October 1, 2020. (Cl. Ex. 1. P. 73 – 76) The evaluation by Dr. Baskin on October 6, 2020, provided the claimant had a mild closed head injury on June 17, 2020. Speech therapy had noted some loss of executive function and memory deficits. The eye examination was negative. Right sided clumsiness was noted. Continued speech therapy with Michelle Cox was recommended. (Cl. Ex. 1, P. 77 – 79)

A neuropsychological exam dated November 13, 2020, by Renne Magiera-Planney, Ph. D., provided that the claimant would have difficulty returning to many of his previous duties as a police officer. He was suffering from mild impairments in his expressive language skills, with mild impairments in his comprehension. He was diagnosed with Acquired Cognitive disorder. (Cl. Ex. 1, P. 80 – 83) The claimant then returned to Dr. Baskin on December 1, 2020. Dr. Baskin stated “I have a hard time based on this gentlemen’s ability to give accurate history knowing what his functional status was

prior to the injuries.” (Cl. Ex. 1, P. 84 – 86) The claimant again returned to Dr. Baskin on January 5, 2021, and was seen by a speech-language pathologist on January 7, 2021. The EEG report of February 25, 2021, was normal. (Cl. Ex. 1, P. 87 – 90) The claimant continued to be seen by a speech language pathologist. (Cl. Ex. 1, P. 91 – 96)

On April 12, 2021, the claimant was again evaluated by Dr. Baskin. He again opined that the claimant was suffering from a closed head injury on June 17, 2020, and stated he felt he was suffering from cognitive deficits. He also mentioned unreliable actions that reflected on the claimant’s neurocognitive and psychological functioning. (Cl. Ex. 1, P. 97 – 98) The claimant’s last day of speech therapy appeared to be May 3, 2021. (Cl. Ex. 1, P. 100, 101) He continued to be seen by Dr. Baskin.

A report by Tobi Taylor, LPC, provided they discussed the claimant’s lack of trust in his memory and his continued headaches, visual disturbances, aphasia, and confusion. (Cl. Ex. 1, P. 106 – 109) The claimant continued seeing Dr. Baskin with the report of June 23, 2021, providing that his neuro psych in the past was always normal and that Dr. Zolten had felt that the claimant had given some inconsistent effort and that he had PTSD. (Cl. Ex. 1, P. 110 – 112)

The claimant returned to Dr. Baskin on August 16, 2021, for an evaluation. A vacation trip by the claimant to Hawaii was mentioned. The possibility of sleep apnea was also mentioned due to the claimant’s large size. (Cl. Ex. 1, P. 118, 119) On September 14, 2021, Dr. Baskin, using the AMA Guides to the Evaluation of Permanent Impairment 4th Edition, turning to the chapter on the nervous system on page 142 and in reviewing the mental status impairments and table 3 emotional and behavioral impairments, felt that the claimant presented with a mild limitation of some but not all

social and interpersonal daily functioning. He further stated he could only rank him on one of the tables, and he thought that emotional or behavioral impairments were the biggest issue and then opined that the claimant was at MMI with a 14% permanent partial impairment rating, and recommended a vocational rehabilitation evaluation and counseling. (Cl. Ex.1, P. 123 – 125)

The claimant presented as a new patient to the Tilley Family Clinic on February 14, 2022. He provided he had difficulty comprehending what he read and reported depression, along with blurry vision. (Cl. Ex. 1, P. 126 – 135) On January 25, 2023, the claimant then presented to Bridgette Rene Boyer, PA. The claimant was attempting to establish care in the state of Arizona. The report provided the claimant stated he had difficulty concentrating with trouble falling a sleep. He mentioned that he was being treated for a workers' compensation injury but that he had not seen a neurologist. The report referred to a closed traumatic brain injury with a loss of consciousness of thirty minutes or less. (Cl. Ex. 1, P. 136 – 146) The claimant then presented to Dr. Harpreet Kaur Sandu on May 31, 2023, for a neurology office visit. The report referred to a history of a generalized anxiety disorder. In addition, the report referred to the claimant thinking that his psychological issues were contributing to his cognitive issues and referred to a head injury in 2020. (Cl. Ex. 1, P. 147 - 152)

A neuropsychological evaluation report by Danny Rosenbaum, PhD dated, July 21, provided the claimant presented as alert, oriented, friendly, forth coming, and motivated. The report provided that the claimant's immediate memory fell in the low average range, his list learning was in the average range, and his story memory was low average. However, his delayed List and story memory increased to the above average

range, which suggested that the claimant was able to retain as well as increase information after a delayed period of time. His impaired performance on the attention subtest most likely had some negative affect on other subtests. The reading test provided that the claimant was at the high school grade level which was appropriate. His below average visuospatial and language scores were most likely affected by selected slowed processing, attention, and fatigue. (Cl. Ex. 1, P. 153 – 159)

Thirty-five (35) pages of non-medical evidence with a one page index was introduced by the claimant and admitted without objection and made part of the record. (Cl. Ex. 4) This included the eligibility requirements for the Conway Police department and an autobiography of the claimant which provided that the claimant had grown up in the home of his mother and there was not a lot of money to go around. He had helped build three homes while in high school and had played football. (Cl. Ex. 4, 1-3) It appeared the claimant was a high school graduate with a weighted GPA of 2.49. (Cl. Ex. 4, PP. 5-6) The background investigation for employment at the Conway Police Department by Lt. Glen Cooper provided that the claimant's character references that had been provided by the claimant plus one that was not listed, all had exemplary comments in regard to the claimant. The report provided that the claimant was big, strong, nice, compassionate, and level headed, with knee problems from football and bells palsy was also mentioned. (Cl. Ex. 4, PP. 7-31) A letter from Chief Tapley, dated September 29, 2021, provided that the claimant was being released from his employment during his probationary period, consistent with the guidelines and procedures of the City's Employee Handbook. (Cl. Ex. 4, P. 35)

The respondents submitted fourteen (14) pages of medical records without objection. A CT scan of the head of the claimant was taken on June 20, 2020, when the claimant presented with the complaint of head trauma and headache. The report provided there was no evidence of an acute or subacute intracranial hemorrhage, no fracture, and no significant abnormality. The claimant received an MRI on July 30, 2020, which provided his brain was normal with the report signed by Dr. Gil Johnson. (Resp. Ex. 1, P. 1-3)

An evaluation by Dr. Barry Baskin dated December 17, 2020, provided that the claimant received a neuropsych evaluation by Dr. Mageira-Planey, who felt that additional neuropsych testing would be of value in this case. In addition, the report provided there were no objective findings with regard to imaging studies or neurologic pathology. It further provided that they were going to attempt to obtain a neuropsych assessment from Dr. Zolten. (Resp. Ex. 1, P. 4)

A progress note from an occupational therapist dated January 7, 2021, provided the claimant demonstrated excellent reaction time with poor depth perception but during the road assessment, his depth perception did not impair his driving and he demonstrated the fitness to operate a vehicle. (Resp. Ex. 1, P. 5) A report from the Little Rock Eye Clinic and Dr. Jennifer Doyle dated February 10, 2021, provided the claimant's optic nerve and macula were within normal limits but that he had some changes in his left eye. The report also referred to a traumatic brain injury/closed head injury but stated, "Fortunately I do not see any afferent damage." The report went on to provide that from an ocular standpoint, she did not see any permanent damage. (Resp. Ex. 1, PP. 6-7)

Dr. Baskin made an EEG referral on February 1, 2021. (Resp. Ex. 1, P. 8) A report by Dr. Krishna Mylavarapu, dated February 25, 2021, provided that the EEG of the claimant was normal. (Resp. Ex. 1, P. 9) Finally, a report from Dr. Zolten dated April 2, 2021, mentioned that the claimant was referred by Dr. Baskin and provided that the claimant had stated he continued to have problems dropping items and manipulating his hands. The claimant was administered various tests and under impression, the report stated the claimant had a history of mild traumatic brain injury with post concussive symptoms. Current tests results were reported to not be overly reliable due to evidence of both inconsistent effort and over-reporting of psychological symptoms. In general, the report provided there were no overt deficits in the claimant's neurocognitive profile, with the exception of poor visual construction skills and the related incidental visual memory. (Resp. Ex. 1, PP. 10-14)

Respondents also submitted one hundred twenty-one (120) pages of non-medical records which included one hundred fifteen (115) pages of the claimant's field training observation reports and evaluations where it appeared that the claimant had multiple "not acceptable" reviews in multiple areas in regard to daily observation reports, but that he was improving his score as time went on. (Resp. Ex. 2, PP. 4-119) An exit interview provided the claimant had refused to sign it. (Resp. Ex. 2, P. 120)

A letter addressed to Carol Worley by Dr. Barry Baskin dated February 5, 2022, provided that the claimant's case was a complicated one. It stated the claimant "sustained a closed head injury on the job as a rookie Conway Police Department officer on June 17, 2020." "He had a closed head injury without any significant hemorrhages, skull fracture, or significant objective findings on the imaging studies." Dr. Baskin also stated

that a normal neuro exam is not uncommon with a patient with a traumatic brain injury, post-concussion syndrome, or disorders of consciousness (DOI). It was mentioned that Dr. Zolten felt the claimant's results were not entirely reliable but felt that the claimant may have gone back to work too soon and developed PTSD symptoms. Dr. Baskin provided that "the onset of these symptoms, in my opinion, are related to his work injury." "You question my impairment rating from September 14, 2021. You noted that your review of the CT and MRI along with the EEG that was done failed to show any objective findings to support that. Again, this is not uncommon. A large number of patients who have sustained a traumatic brain injury have normal objective findings. Dr. Baskin opined that the claimant had a 9% rating using table 3 on page 142 of the AMA Guides to the Evaluation of Permanent Impairment 4th Edition.

DISCUSSION AND ADJUDICATION OF ISSUES

The employee has the burden of proving a compensable injury. *Carman V. Haworth Inc.*, 74 Ark. App. 55, 45 S.W. 3d 408 (2001) A compensable injury must be established by medical evidence supported by objective findings. Arkansas Code Annotated §11-9-102(4)(D). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(I). 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).

The claimant was injured while chasing a “suspect” and fell while performing a vehicle pursuit drill. The claimant suffered a compensable work-related abrasion to his head above the eye, his left knuckle, and left knee. The claimant testified he hit his head on a concrete curb during the fall which resulted in a closed head injury, causing him to act differently after the accident. He stated he was sleeping more, felt sick, and was lethargic. He threw up in the ER. He had grown up in the city of Conway, knew the city well, and now was getting lost. He had developed cognitive issues and also issues handling small items with his hands. He no longer was an accomplished video game player and had times when he was anxious, depressed, or angry, unlike prior to the accident.

The claimant was primarily treated by Dr. Baskin, who first saw the claimant on September 3, 2020, and stated the claimant had a negative work up with no measurable findings and with no objective evidence that establish a closed head injury. The early CT of the claimant’s head was normal as was the MRI of July 30, 2020. There were reported normal neurological exams by various physicians. The claimant’s eyes were examined by a specialist and no abnormalities or hemorrhages were found. An EEG was normal. Dr. Baskin stated that Dr. Magiaro-Planey didn’t find a lot of things wrong and Dr. Zolten assessed no neurocognitive deficits. Dr. Baskin felt that the neuropsych reports led him to believe the accident could have caused an adjustment disorder, but he could not say with a reasonable degree of medical certainty that the adjustment disorder was causally related to the work injury.

Neuropsychological testing standing alone is not sufficient evidence of a brain injury. There must be objective evidence of such an injury. *Watson v. Tayco Inc.*, 79 Ark.

App. 250, 86 S.W.3d 18 (2002). Although Dr. Baskin agreed that the abrasion over the eye could be an objective finding, he clearly stated there were no objective findings that a closed head injury was related to the work incident. The ER report provided for a chief complaint of a fall with an initial diagnosis of a closed head injury and with an abrasion of the left eyebrow noted. Later, the same report mentioned the arrival complaint was a hand injury and further stated that the claimant denied losing consciousness. The report provided the claimant was oriented during the initial thirty (30) minute observation in the emergency room, with steady gait, no acute distress, and his pupils were of equal size with a brisk left and right pupil reaction, a favorable sign. The report did mention vomiting but stated that the nausea had resolved and the claimant was neurologically intact.

The claimant seemed like a very likeable young man and the evidence provided he had fought through some obstacles along the way. It appeared Dr. Baskin, who appeared to direct the treatment for the claimant, had a genuine concern for him and consequently made numerous referrals and the claimant was seen by numerous health care providers. At points, the medical reports were somewhat confusing because it appeared different types of health care providers used some medical and legal terms somewhat differently. One of the issues that the health care providers seemed to face was that there was no baseline to compare the claimant's actions before and after the work related incident. The emergency room report provided that the claimant's nausea resolved itself after the claimant had vomited. A report of an abrasion over the claimant's eye by itself is not a sufficient objective finding to provide for a closed head injury when initial reviews of the claimant's systems were negative, and even the claimant's pupil eye exam in the emergency room showed an equal brisk response of both eyes instead of a

slow response. Follow-up objective testing was negative. Speculation and conjecture cannot substitute for credible evidence. *Liarmatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). It is also 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).

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to establish a compensable closed head injury with medical evidence supported by objective findings and that, consequently, the claimant is not entitled to additional medical treatment and attorney's fees at this time. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge