

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H302552

SARAH SIX PAPP, Employee	CLAIMANT
NORTHWEST MEDICAL CENTER BENTON CO., Employer	RESPONDENT
GALLAGHER BASSETT SERVICES, Carrier	RESPONDENT

OPINION FILED JULY 2, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 5, 2024, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 1, 2023 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on January 20, 2023.
3. The claimant was earning sufficient wages to entitle her to compensation at the maximum rates of \$835.00 for total disability benefits and \$626.00 for permanent

partial disability benefits.

4. Respondents have controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's neck, left shoulder, upper extremities and back on January 20, 2023.

2. Temporary total disability benefits.

3. Medical benefits.

4. Attorney's fee.

At the time of the hearing claimant clarified that she is requesting temporary total disability benefits from January 23, 2023 through a date yet to be determined.

The claimant contends that she sustained job related injuries to her neck, left shoulder, upper extremities and back. She contends that her injuries occurred as a result of the combined effects of her job activities on January 19, 2023 and January 20, 2023. Claimant contends that although the pain started on January 19th, her job duties on January 20th caused her disability. She requests payment of reasonably necessary medical treatment, temporary total disability benefits, and a controverted attorney fee.

The respondents contend that without waiving other defenses, the claimant did not injure herself while in the course and scope of her employment.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 1, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her neck, left shoulder, upper extremities and back on January 19, 2023 and/or January 20, 2023.

FACTUAL BACKGROUND

The claimant has been employed as an emergency room (hereinafter "ER") nurse since September 2021. Claimant testified that she worked a double shift on January 19, 2023 and January 20, 2023. Claimant testified that on January 19, 2023 she had a patient that weighed 347 pounds who needed to be moved in his bed and that her only help was a paramedic.

She also testified that on Friday, January 20, 2023, she and several other nurses and two security guards had to physically restrain a combative psychiatric patient in Room 4 of the ER. Claimant testified that the patient was hitting, kicking, and spitting. She described the patient as belligerent, noncompliant, combative, psychotic, and violent.

Claimant testified that she felt like she had strained something but continued to perform her job duties until time to clock out. She testified at her deposition that at the time she clocked out she had some neck pain, upper back pain, and left upper back pain at the scapula.

Claimant testified as following with regard to Friday night:

Q Tell me what happened Friday night.

A Well, I had left work. I got off shift. We were off shift 18:30. That's when we go through shift change. I don't know exactly what time I clocked out. I clocked out and went home, and I tried to take some ibuprofen, and I tried to take a hot shower, and my symptoms kept getting worse and worse. I kept having more and more pain. At some point Friday night, 1:00/2:00 a.m. I finally dozed off and fell asleep for a little while. And whenever I woke up after two or three hours, I woke up because the pain was so bad I couldn't sleep any-more. I got up and my arm was paralyzed, couldn't lift it. I had no movement in it.

Claimant testified that her symptoms continued to worsen over the weekend and on Monday, January 23, 2023, she called her supervisor, Calley Lanier, at 7:03 a.m. and informed her that she had a "rough shift"; was having pain; and would not be able to work that day. Later that day claimant telephoned her primary care provider's office and stated that she could not raise her left arm, was in excruciating pain, and believed she might need an MRI. She also sought medical treatment from Jaclyn Crowder at Travis Chiropractic for her left shoulder and midback pain.

On January 24, claimant sought medical treatment from Christy Anders, NP. Anders ordered an MRI of the cervical spine which was performed on February 1, 2023 and read as follows:

IMPRESSION:

At the C4-5 level, there is significant worsening since 3 2020, with there now being a moderate left posterolateral disc herniation, as well as there being broad posterior disc bulging/protrusion, mild-to-moderate central canal stenosis.

Broad disc bulging/protrusion at the C5-6 with moderate

central canal stenosis, mild/moderate bilateral foraminal spurring at this level.

On February 22, 2023, claimant was evaluated by Candace Harper, PA in Dr. Larry Armstrong's office. Harper assessed claimant's condition as cervical radiculopathy at C5 and C6; cervical stenosis of spinal canal; cervical spondylosis with radiculopathy; and herniated cervical disc. Subsequently, on March 1, 2023, Dr. Armstrong recommended an anterior cervical discectomy with fusion at C4-5, 5-6, and C-7 levels. This surgery was scheduled for April 14, 2023.

Claimant apparently canceled the surgery the day before it was scheduled and Dr. Armstrong would not reschedule the procedure. Claimant then sought medical treatment from Dr. Jared Seale who agreed with Dr. Armstrong's surgical recommendation.

Claimant has filed this claim contending that she suffered a compensable injury as a result of work activities that occurred on January 19, 2023 and an injury with a combative patient on January 20, 2023. She requests payment of temporary total disability benefits from January 23, 2023 through a date yet to be determined; related medical benefits; and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury as a result of work activities that occurred on January 19, 2023 and an injury with a combative patient on January 20, 2023. Claimant essentially contends that she suffered a specific compensable injury while working for the respondent. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of

occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury while working for respondent. I make this finding regardless of whether claimant's contention is that she suffered an injury on January 19 and/or January 20. Under any contention, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with respondent. I find based upon the evidence that claimant has failed to meet that burden of proof.

First, I note that claimant has a history of complaints involving her neck, back, and shoulder. A report dated July 20, 2007 from Carolyn Dillard notes paravertebral spasms in the cervical spine. In a report dated September 26, 2011, Dillard noted that:

She also presented with arm pain. It is located left arm and right arm. It is described as numbness, acute and tingling.

A Patient Case History form dated February 28, 2017 reflects constant low back pain with frequent neck pain or stiffness, pain between shoulders, shoulder pain and sciatica. In a report dated March 19, 2017, Stefanie Ellis, APN, noted that claimant's

examination was positive for neck and back pain. Because claimant was complaining of dizziness at that time, Ellis ordered an MRI scan of the brain. This MRI was performed on April 21, 2017 and was read as normal with respect to the brain. However, it also noted:

Moderate central disc protrusion at C4-5 indenting sub-arachnoid space and cord. MRI of cervical spine may be of use.

Based on this test result, Ellis did order an MRI scan of the cervical spine which was performed on March 9, 2020. That scan found a small disc protrusion at C4-5 with mild canal stenosis; spondylosis with disc protrusion at C5-6 with canal and biforaminal stenosis; and small right-sided disc protrusion at C6-7 with mild right lateral recess narrowing.

Subsequent records from Ellis indicate that she assessed claimant with chronic neck pain and prescribed Norflex as needed. Claimant was involved in a MVA in April 2021, and she sought medical treatment from the Travis Chiropractic Clinic for complaints of neck, back, and hip pain. Claimant also returned to Ellis for additional treatment and in a report dated April 8, 2021 Ellis noted:

Video visit today for f/u with her mdd with reaction to acute stress (not doing well emotionally, got in to a wreck with being rear ended, flared up her neck pain)..... (Emphasis added.)

Ellis' assessment included chronic neck pain and "Whiplash injury to neck, initial encounter". Ellis continued claimant's prescription for Norflex.

On April 22, 2021, claimant again visited with Ellis by video. In her report of that

date, Ellis again noted that claimant's neck pain had worsened following the MVA and that "last night has actually increased her lower back pain doing super man on the bounce ball, low back strain, LLE with numbness and tingling...." Ellis prescribed claimant a muscle relaxer for severe pain.

Claimant underwent a lumbar MRI scan on May 7, 2021 which revealed a central right lateral protrusion at L4-5 with degenerative changes. Claimant continued to receive treatment at Travis Chiropractic and from Ellis. In a report dated July 15, 2021, Ellis stated:

She has had chronic neck pain. She has had MRI in the past. Patient states her Norflex seems to work the best for this problem.

When claimant's chronic neck pain continued, Ellis in a report dated December 12, 2021 referred claimant to a pain clinic. Claimant was seen by Dr. Brian Goodman, Pain Management, on February 8, 2022. He noted that claimant's neck extension was limited approximately 10%; neck flexion limited by approximately 50%; right neck rotation limited by approximately 10%; and left neck rotation limited by approximately 10%. His diagnosis of claimant included cervical radiculopathy left C8 and cervical spondylosis. He did not feel that a surgical referral was necessary but instead recommended cervical steroid injections; home exercises; continued use of medication; and no activity restrictions. Claimant chose not to undergo the cervical steroid injections, but instead continued to see Ellis for chronic neck pain and refills of Norflex for that condition.

Clearly, claimant had an extensive history of chronic neck pain prior to January 19, 2023. However, a claimant may suffer a compensable injury if a pre-existing condition is

aggravated by a work-related injury.

After her alleged injury with respondent, claimant underwent another cervical MRI scan on February 1, 2023. The MRI report states:

At the C4-5 level, there is significant worsening since 3 2020, with there now being a moderate left posterolateral disc herniation, as well as there being broad posterior disc bulging/protrusion, mild-to-moderate central canal stenosis.

Broad disc bulging/protrusion at the C5-6 with moderate central canal stenosis, mild/moderate bilateral foraminal spurring at this level.

As previously noted, claimant eventually came under the care of Dr. Seale who has recommended surgery on claimant's cervical spine. In a letter dated August 23, 2023, he stated that he had reviewed claimant's cervical MRIs from 2020 and 2023. It is his opinion that the 2023 cervical MRI scan shows disc protrusions at C4-5 and C6-7 which did not exist on the MRI from 2020. He then indicates that based on the onset of claimant's symptoms after January 20, 2023, which did not exist prior to that date, that the disc protrusions occurred during a work-related injury and resulted in her current symptoms and need for surgery. Dr. Seale reiterated this opinion after being provided with chiropractic records from 2021 and at his deposition.

However, Dr. Seale's opinion regarding causation is based upon the history of injury given to him by claimant. Dr. Seale describes himself as a patient's advocate and with respect to claimant stated – "That was my gut, but I'm also biased toward the patient, as always, as I should be." Certainly one would expect a physician to believe their patient and advocate for them with respect to medical matters. However, this advocacy does

not extend to the issue of causation to the extent that it requires a weighing of the totality of the evidence and credibility of witnesses. That is a function of the Commission.

After my observation of claimant's demeanor at the hearing and after consideration of her testimony, I do not find the claimant's testimony to be credible. To the contrary, I found her testimony to be evasive, argumentative, and contradictory at times.

One example of this involves whether claimant had complaints involving her left scapula prior to January 20, 2023. At her deposition claimant was asked about her symptoms on January 20, 2023.

Q Where?

A Neck, back. So upper back, central upper back, behind my left scapula.

Q Had you had any of those symptoms prior to this incident on January the 20th?

A Not the pain in my - - behind my scapula, not there. I had not had that before. That was new.

Claimant was again asked about prior scapula pain at the hearing.

Q Do you recall telling me when I took your deposition on October the 31st of last year, we talked about your neck and upper back pain and all that kind of stuff and you said you had this problem after 1/20, after January 20th.

A Uh-huh.

Q "I felt like I had strained something. I had pain and some kind of throbbing going on."

"Where"

"Neck and back. So upper back, central upper back, behind my left scapula."

And I said, "Had you had any of these symptoms prior to the incident on January the 20th?"

And you said, "Not the pain in my - - behind my scapula. Not there. I had never had that before. It was new."

A That is correct.

Q That is correct and it is your testimony you have never had left scapula pain before?

A And it shows on the MRI.

Q Answer my question. Did you tell me that you never had any left scapula pain before January 20, 2023?

A I had never had pain in my infraspinatus and supraspinatus that shows up on the MRI from February the 9th of 2023. I never had that pain before.

Q You never had the pain in your left scapula before, correct?

A I had never had the pain that was related to acute edema that was diagnosed on February the 9th of 2023. I never had that pain before.

Q On October the 31st, we were talking about what your problems were after whatever this date is in January of 2023 and we talked about the fact that you felt at that time neck, back, upper back, central back, central upper back, behind my left scapula, and I asked you the following question: "Had you had any of those symptoms prior to this incident on January the 20th?"

A The answer would be yes.

Q Why did you tell me then that you have not had the pain behind your scapula? "I had not had that before. That was new."

A You are misinterpreting me right here, right here in this moment. I just want you to understand that you are

misinterpreting exactly as I said it. I have had some pain, some stiffness in certain parts in the past, but the pain that I felt behind my left scapula, which shows up as a new and acute injury due to the acute inflammation, so that is proven. It is new and acute proven on that MRI. That pain I had not had - -

Thus, at her deposition claimant clearly indicated that she had not had any pain behind her left scapula before but that it was a new symptom after January 20, 2023. However, at the hearing claimant attempts to parse that testimony and state that any pain behind her left scapula was new because it was proven on an MRI.

This testimony is significant when one considers the chiropractic report submitted by respondent dated June 9, 2021. That medical report contains the following notation:

L scapular region “stabbing”

This chiropractic report from June 9, 2021 would contradict claimant’s deposition testimony that she had never had any left scapular pain. Therefore, claimant attempted to distinguish one type of left scapular pain from another in her testimony at the deposition and at the hearing. However, claimant was even unwilling to admit that the “L scapular region” even refers to left as opposed to something altogether different.

Q Have you seen this report from your chiropractor from June 9, 2021, which appears at Respondents’ Page 55?

A I don’t know. You would have to show it to me.

Q Okay. Let me show it to you. Why don’t you read this part right over here under nursing notes.

A (Witness reading document.)

Q What does that say?

A I don't know. I am trying to make it out what this actually says. Something movement. Overall addition. Something of - - something region stabbing. I don't know.

Q Left scapular region stabbing; is that what it says?

A I don't think that that actually says left.

Q Okay. Well, what do you think that L stands for?

A Could be a lot of things.

Q What else could it be other than left?

A I think that says improvement. I think you are mistaken.

Clearly the handwritten chiropractic notation does indicate that claimant had some improvement overall. However, it also indicates the left scapular region. Claimant's inability to even admit that the "L" likely stands for left strains credibility given the fact that claimant is a nurse.

Another example of evasion occurred in discussing the history claimant gave to her treating physicians beginning on January 23. The following questioning took place on cross examination:

Q Well, go back to this - - I am going to wind up introducing the entire deposition, but you told me when I took your deposition you didn't have any pain until after the 20th.

A I had soreness. Excruciating pain began on the 20th as well as the loss of function. I no longer had function of my left arm after the PM hours of the 20th. My left arm became weak and I was no longer able to use the left hand as I lost the motor control.

Q Well, that was a very specific incident. That happened right after this. Why didn't you tell your chiropractor when you saw him on the 23rd? You didn't mention the incident on the

20th with a combative patient at all. You said that you had been lifting some heavy patients. Why did you not tell your chiropractor about this combative patient that you had to wrestle with?

A I had very specific patients that I got on the 19th that I carried their - - I had the same patients on the 20th. The exact, same patients, if you go back in history, it will prove that I had the same patients on the 19th and 20th, as well as the documented event that happened on the 20th.

Instead of answering the question as to why she did not report a specific incident to her chiropractor when she saw him on January 23rd, claimant instead indicated that she had the same patients on the 20th as she had on the 19th. Her answer was not responsive to the question and is another example of her testimony being evasive.

In addition, I note that there are many contradictions in claimant's testimony and the remaining evidence. For instance, in describing the incident with the combative patient on January 20, 2023, claimant indicated that she participated in returning the combative patient to the ER room from which she had escaped.

Second security guard – his name is Darrell, younger healthier in nature. When that happened, there was myself, Kim, Lindsey Long, Jerica, were all somewhere close. We get up and attempt to help get this patient and return her back to her room. (Emphasis added.)

In addition, at the hearing claimant also described this event as follows:

I was walking towards this event and as I walked towards this, I helped to restrain the patient and put the patient back to the psychiatric treatment room. (Emphasis added.)

Claimant's testimony that she helped restrain the claimant and return her to the

examination room is contradicted by the testimony of two co-workers, Darrell Robinson and Mike Carney. According to their testimony, they were the individuals who subdued the patient and took her back to the examination room. Darrell Robinson testified as follows:

And he [Mark Carney] stated that a patient was leaving out that was kind of combative. So I went one direction and he went the other and I stopped the patient, grabbed her, and he helped and we took her to ER 4..... At that time, only I stopped her. I grabbed her upper torso. He grabbed her lower torso, lower legs, limbs, and we took her to the room.

Likewise, Mike Carney, a security officer for the respondent, testified as follows regarding this incident:

A young woman who was standing at approximately ER 12 was screaming obscenities at the nursing staff when I arrived. when I arrived she turned and began to apply some obscenities to me, told me to stay away from her, and was very much physically out of control, turned around and ran from me, so I followed her. She was a lot faster than me because I'm older. She turned left, and I thought she was going to go out the ambulance doors, which sometimes that happens, but she didn't. She turned left again and ran right into Darrell, my boss. Darrell put his arms around her. She was kicking him, so I ran to try to grab her legs and she kicked me in the left foreleg, which I'm used to having collateral damage sometimes when people are physically out of control, but I did get a hold of her legs. We took her into a safe room, laid her down, and six of the nursing staff came in the room and began to put the restraints on her. When she was restrained, Darrell and I left.

Carney was subsequently specifically asked whether any of the nursing staff helped restrain the claimant to get her back into the examination room.

Q While you and Darrell had this lady in a bearhug, - -

A Yes.

Q - - were any of the nurses there helping you restrain her, or was it just you and Darrell?

A My recollection is Darrell and I took the girl into the room and laid her down. I don't recall any nurse or any other personnel grabbing a hold of that individual. There was nothing left to grab a hold of. You know, he had the upper body, I had her legs.

Q And you took her and laid her - -

A Laid her down.

Q - - on the bed and stayed there until she was strapped down?

A Correct.

Thus, while there was clearly an incident in which a combative patient had to be subdued and returned to an examination room, claimant has given the impression that she participated in subduing the patient and taking her back into the examination room. According to the testimony of Carney and Robinson, they were the individuals who subdued the patient and carried her into the examination room. The only thing the nurses did was apply the restraints. This is not to suggest that applying the restrains in this situation would have been a simple task or that claimant could not have been injured while applying the restraints. However, claimant's testimony exaggerates her participation in the subduing of the patient and returning her to the examination room.

I also believe it is important to note that claimant testified that she had immediate symptoms. At her deposition claimant testified as follows:

Q When did you first notice any symptoms?

A Immediately.

Likewise, at the hearing claimant testified as follows:

Q Now, let's talk about January the 20th. Did your condition, did your physical condition as far as you could tell, change any after your experience with the combative patient as compared to your condition on January 19?

A Yes, sir. It was immediately noticed.

Q When you say immediately, what do you mean immediately?

A I mean in our world, within a few minutes or so. Then I felt sore. I didn't understand that I had an acute, severe injury. And whether that be from adrenaline, whether that be from, you know, whatever endorphins that I had at that time after having that experience with that combative patient, it wasn't known to me immediately that it was something that was that severe.

Q So when do you believe the injury occurred?

A On Friday, January the 20th.

Q When on Friday, January the 20th?

A It would have been Friday afternoon. I only had a couple, two or three hours left on my shift. I knew that I was injured. I knew that I was hurting. (Emphasis added.)

Despite testifying that she knew something was wrong immediately while restraining the combative patient, and that she knew that she had an injury, claimant did not mention any injury to anyone in the supervisory capacity before clocking out. It should also be noted at this point that during the deposition of Calley Lanier, claimant's supervisor, a discussion occurred regarding an Event Reporting System or ERS. Lanier

was asked about how that system worked.

Q And tell us a little bit about what that is and how it works.

A That is where a hospital personnel can go in and put in an event that happened. And then - - yeah. Go ahead.

Q What would cause hospital personnel to file such a report?

A Any number of things. If someone were to get hurt; if there was some kind of altercation; if there was mismanagement of meds; or if a bed rail wasn't working or something. I mean any kind of things that go wrong.

Notably, no ERS was completed regarding the incident of January 20, 2023. However, as Lanier noted, the filing of an ERS was not limited to supervisors but they can be filed by any employee such as the claimant.

Q And as far as the ERS is concerned, if Sarah Six Papp was an RN in the emergency room department on Friday, January the 20th, and an incident occurred in which she was involved, either as the nurse in charge of the patient or as a member of the emergency room staff that she thought resulted in something untoward happening either to herself, to the patient, to another member of the staff, could she have filed an ERS?

A Yes.

Q If a person injured themselves at work, would they have the ability to file their own ERS?

A Yes.

Thus, claimant has testified that she knew immediately that she had been injured and had symptoms. Despite that, she did not report the injury to anyone in a supervisory capacity on January 20 and did not file an ERS report.

Claimant did not discuss any physical problems with anyone in a supervisory capacity at the respondent until Monday morning, January 23. Again, despite having testified that she knew that she had been injured immediately, claimant still did not report a work-related injury to her supervisor, Calley Lanier. Instead, she simply informed Lanier that she had a “rough shift” and would not be available to cover her shifts. Claimant admitted at the hearing that she did not mention any specific injury to Lanier.

Q So did you at some point report to somebody in a supervisory capacity with Northwest Medical Center that you felt like you had a condition that had been caused by your work?

A Yes, sir.

Q And when did that happen?

A It was on Monday, July 23, 2023 and my supervisor comes on shift at 0700 and I made a phone call at 0703 to contact her and let her know.

Q What I am asking you - - I am not asking you why you told her whatever you told her. All I am asking you is what did you tell her?

A I told her that I was hurt; that we had a very rough shift on Friday and that after I had gotten home, that my symptoms continued to get worse. And that I had suffered all weekend and that she needed to find someone to cover my upcoming shifts.

Q Now, we took Ms. Lanier’s deposition and I came away with the impression that you did not report a specific injury. Is that correct or incorrect?

A That is correct.

Q And why did you not report a specific injury?

A There are so many events that take place in one shift's

amount of time, let alone two shifts. I worked back-to-back on the Thursday and Friday, the 19th and the 20th. And from those two shifts, I went to work one day and I left completely different. My health was fine. I did my job without any delay, without any help, and my life changed in an instant in the same day.

Q Now, which day are we talking about?

A January the 20th.

Q Okay. From reading information that the Respondents have submitted into evidence, it appears that you basically didn't know what was going on. Is that right or wrong? when you reported this to Calley Lanier, did you know what your problem was?

A No, I didn't know. No one would know - -

Q So after you talked to Ms. Lanier, what happened? I mean as far as your - - did you make it clear to her that you wanted to file a workers' comp claim?

A Yes.

Q And when you say yes, what did you tell her that in your mind should have caused her to know that you wanted to file a workers' comp claim?

A I told her that there were - - that we had had a very rough shift on Friday and she had asked - - she said, "Well, what is going on? What is going on?"

And I gave her my symptoms and I told her it just continued to get worse and worse throughout the evening and of course, over the weekend.

She had - - she had mentioned that - - she said, "Do you know exactly what caused it?"

And I said, "At this time, no." I said, "I am in such severe pain, I can't hardly think." I did tell her that. I did tell her that I would think about it and at that time I was

just trying to seek help. I mean medically, I need help.

Q So if you were asked by somebody in a supervisory capacity if you knew what caused it, why would you say, "I will think about it," if you knew what caused it?

A Well, I told her we had a rough shift, but she didn't ask very many questions as far as that goes. I mean she immediately - - she immediately just said, "Well, let me get back with you on it." And I said, "Okay."

Likewise, on cross-examination, claimant testified as follows:

Q Okay. So you are denying that you told Calley Lanier on the 23rd at this very precise time that you recall that you called her, you remember the exact minute that you called her, but you don't remember what you told her?

A I discussed that earlier.

Q Okay. You didn't tell her about the combative patient; correct?

A I told her that we had a rough shift.

Q Okay. You didn't tell her about the combative patient. You didn't tell her about what you told the chiropractor about lifting heavy patients.

A Well, that phone call would have been prior to me having that chiropractic visit.

Q Okay. According to the chiropractor's records, which is at Page 71 of our exhibits, there appears the following: "Thursday at work as a nurse. She was pulling around a lot on dead weight patients. Since then, the pain started."

Is that when your pain started that you are now contending began as a result of the incident with the combative patient?

A I had some soreness on the 19th. The excruciating pain in which I have suffered and endured with since January the 20th was a result of that event on January the 20th.

Q Okay. So you admit that you did not tell Calley Lanier about the incident with the combative patient?

A I did not go into details with Calley Lanier.

Q "Yes" or "no"?

A No. No, sir.

Q Okay. You did not tell Calley Lanier specifically about lifting heavy patients on Thursday?

A No, sir.

Q You just said a rough shift and you didn't say which date?

A That is correct.

Again, claimant has testified that she immediately knew that she had been injured, yet she does not report a specific injury to Lanier on January 23, but instead simply indicates that she had a rough shift. In fact, claimant acknowledges that Lanier asked her if she knew what caused it and claimant responded "no" and said that she would think about it. When asked why if she knew what had caused it she would indicate that she would think about it, claimant simply responded that Lanier didn't ask very many questions. However, Lanier specifically asked the claimant of what had caused her problems and claimant indicated that she did not know and would have to think about it.

Claimant was again asked about her failure to report this incident on cross examination.

Q So this was an unusual occurrence [restraining a combative patient], and yet you didn't tell anybody about it?

A Kim Meyers reported it under the Event Reporting System, underneath an ERS because of the level - - the level that it was taken to, so an ERS was filed that day under the patient's primary nurse, who was Kim Meyers, who was also present in the room.

Q So we have this unusual event, the extraordinary event, and yet you don't tell anybody about it when you are saying something is wrong with my shoulder?

A It is not everyday that you get spit in the face by a patient, no, sir.

Q Memorable?

A Memorable, being spit in the face is quite memorable.

Q And if you had related your problem to this incident, don't you think you would have told somebody about this incident rather than I had a rough shift or I was dragging around an overweight patient the day before?

A We vent to our fellow nurses. It is how we cope. It is how we are able to maintain our own sanity. And yet still go back the next day and perform the exact, same job duties with the exact, same work restraints with the exact, same, you know, normal mindset to be able to do that kind of job everyday. We vent to our fellow nurses.

Notably, claimant again did not answer the question as to why she did not report this memorable incident rather than simply indicating that she had a rough shift; instead, she simply explained how nurses vent to each other. This answer is not responsive to the question as to why claimant did not relate her problem to this memorable incident.

With respect to this issue, I note that Calley Lanier in her deposition testimony testified as follows:

My recollection is she reached out and said she didn't know what had happened. And I felt sorry for her because of her arm, but she didn't know what had happened. She thought

maybe - - I don't want to misspeak. I don't recall, but I do know she didn't know what happened.

And then she said she had to lift a really heavy patient that was dead weight and that might have been it.

Lanier also testified that as a result of this conversation with claimant she wrote an e-mail dated January 25, 2023 to various individuals at respondent setting forth the conversation. According to Lanier's testimony, her e-mail would be an accurate reflection of her conversation with claimant in January 2023. In that e-mail, Lanier stated:

I have an RN in our Bentonville ED that called me Monday morning 1/23 to tell me that she would potentially be out Tuesday and Wednesday due to her not being able to lift her left arm. She states that she doesn't understand what happened and she did nothing so she can't figure out why her arm was in pain and she couldn't lift it.

Finally, there are various histories given by claimant to her medical providers. In a medical report dated January 23, 2023, electronically created by Francisco Porras, he related a phone conversation with claimant as follows:

Patient states she can not raise her left arm up, is in excruciating pain. Does not know if she hurt it at work or what happened. Patient believes she may need an mri. (Emphasis added.)

Shortly thereafter, claimant had a telephone conversation with Theron Likens, a licensed practical nurse. Her report states as follows:

Received call on red phone and pt has hurt her arm at work. And she can't lift it. Informed to go to ER.

On that same date a consultation form was completed with the following history:

Thursday at work as a nurse she was pulling around a lot on dead weight patients. Since then the pain started.

Also on January 23, 2023, claimant was seen by Jacqueline Crowder at Travis Chiropractic with the following history:

Thursday at work as a nurse. She was pulling around a lot on dead weight patients since then the pain started.

Thursday at work, as a nurse, the patient had to lift on two different patients that were dead weight and lift them to move them. Since then, her mid-back and her left shoulder pain have gotten worse. Her left arm feels heavy and she can only lift it to less than shoulder level without pain. She can use her right arm to lift her arm above her head.

Finally, on January 24, 2023, claimant was seen by Nurse Practitioner Christy Anders. Her report of that date contains the following history:

Patient presents with left shoulder arm pain that began approximately 3 days ago while she was at work. She denies any known injury but while at work developed left arm pain 3 days ago. (Emphasis added.)

Again, according to claimant's testimony she knew that she had immediate pain and had injured herself as a result of the incident with the combative patient on January 20, 2023. However, claimant did not mention that incident to any of these medical providers on January 23 or January 24.

Furthermore, with respect to lifting heavy patients on January 19, claimant specifically testified at the hearing that she did not suffer an injury on January 19.

Q So do you think you got injured on January the 20th or on January the 19th?

A January the 20th.

Q So you say that - - well, so you are telling us now that you did have some pain on the 19th, but that was just due to what nurses do all the time?

A There is some type of soreness that we get from doing our jobs. There is some type of - - you know, sometimes it feels like we have some sort of strain, whatnot, just from repetitive movements or from lifting that day, most nurses can tell you that that is a daily occurrence.

Q On January 19, did you believe you had sustained any kind of injury during the course of your employment on that date? On that date is what I'm asking you. I am not asking you to reflect as of today. I am saying on that day, did you think you had sustained any injury?

A I don't believe I sustained a true injury on the 19th, no, sir. (Emphasis added.)

In summary, there is no question that on January 20, 2023 a combative patient was restrained in the ER of respondent. The question is whether claimant has proven that she suffered a compensable injury as a result of that incident. Dr. Seale's opinion that claimant's current symptoms and need for surgery is causally related to an injury which occurred on January 20, 2023 is dependent upon her credibility that the events occurred as she related them to Dr. Seale. For the reasons discussed herein, I do not find the claimant's testimony to be credible. To the contrary, I found her answers to be contradictory, evasive, and non responsive. Claimant has testified that she had immediate pain while helping restrain a combative patient and knew that she had been injured. Despite that testimony, claimant did not report it to anyone in a supervisory capacity on January 20. Nor did claimant complete an ERS report which she could have

done to report an injury as a result of that incident. Even when claimant telephoned her supervisor, Calley Lanier, on Monday, January 23, claimant did not report an injury to her. Instead, she indicated that she had had a “rough shift” and would not be able to work. According to the claimant herself, Lanier asked her what had caused her problems and instead of mentioning this incident where she knew that she had been immediately injured, claimant instead indicated that she did not know what had caused her injury and that she would have to think about it. Likewise, claimant did not mention this incident to the medical providers on January 23, but instead mentioned having moved heavy patients. However, she has also testified that she was not injured on January 19.

Perhaps claimant’s statement to Lanier that she did not know what had caused her problem and would have to think about it is the most accurate description of this case. Claimant did work two shifts on January 19 and January 20. On January 23, 2023, she sought medical treatment for various complaints including her cervical spine. However, claimant has the burden of proving by a preponderance of the credible evidence of record that she suffered a compensable injury as a result of her job duties with the respondent on January 19 and/or January 20. Here, according to claimant’s own testimony she did not suffer an injury on January 19. Furthermore, for reasons previously discussed, I do not find that claimant suffered a compensable injury on January 20. Her actions and statements do not support such a finding. While claimant has testified that she did not do anything after leaving work on January 20 until her symptoms began, one has to find claimant’s testimony credible to accept this as a fact. For reasons discussed herein, I do not find the claimant’s testimony credible to support a finding of compensability.

The final issue for consideration involves claimant’s contention that a camera was

present in ER Room 4 on the date of this incident and video footage exists of the incident but was not properly maintained by the respondent and therefore constitutes spoliation and creates a presumption that the content of that video footage would be adverse to the respondent. First, I note that there is no evidence that any such recording ever existed. While there is testimony that a camera was present in Room ER 4, the evidence indicates that that camera was for surveillance only and did not record. Testifying by deposition was Mike Carney, a security officer for the respondent. Carney testified that a camera is in Room ER 4, but it is not a recording system. He testified that they are only able to sit in an office and watch a patient, but are not allowed to film patients. Likewise, also testifying by deposition was Billy Lindsey, the Director of Plant Operations at Northwest Health in Bentonville. Lindsey testified that he was responsible for all maintenance, environmental care, security and safety in the facility. Lindsey testified that in January 2023 there were some cameras in operation; however, they were only for surveillance. The camera in Room 4 did not record activities.

Q So is it your testimony that on January 20th, 2023, this facility did not have a recorder that recorded activities in Room 4?

A Correct.

Lindsey went on to state that since that time they have upgraded their cameras and that recordings are now made in common areas such as the parking lot and hallway. However, Lindsey testified that even now cameras do not record in holding rooms or in the emergency rooms themselves. According to Lindsey, these recordings are not made in order to ensure patient confidentiality. When asked why someone would think that

there is a recording, Lindsey responded that people see a camera and assume that it is recording.

Based upon this testimony and the lack of any credible evidence indicating that a recording ever existed, I find no merit to claimant's contention that respondents are guilty of spoliation of evidence.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury on January 19 and/or 20, 2023. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$780.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE