

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H204393**

SHIRLEY A. SANFORD, EMPLOYEE

CLAIMANT

**ARKANSAS BLDG. SRVS., LLC
EMPLOYER**

RESPONDENT

**ACCIDENT FUND INSURANCE CO.,
CARRIER/THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JULY 10, 2024

Hearing before Administrative Law Judge, Steven Porch, on June 12, 2024, in Little Rock, Arkansas.

Claimant was represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Ms. Karen McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on June 12, 2024. A prehearing telephone conference took place on March 19, 2024. A prehearing order was entered on that date and subsequently entered into evidence, with amendments by the parties, as Commission Exhibit 1. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The Claimant allegedly sustained a compensable injury to her left leg, knee, hip, shoulder, and spine on August 4, 2020.
3. Respondents have controverted this claim in its entirety.

4. Claimant's average weekly wage of \$127.77, entitles her to a temporary total disability rate of \$85.00, and a permanent partial disability rate of \$85.00.¹

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether the claim is barred by the Statute of Limitations.
2. Whether Claimant sustained compensable injuries to her left leg, knee, hip, shoulder, and spine by specific incident.
3. Whether Claimant is entitled to any reasonable and necessary medical treatment.²
4. Whether Claimant is entitled to temporary total disability benefits from August 5, 2020, to a date yet to be determined.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that she has sustained compensable injuries to her left leg, hips, spine, and shoulders on August 4, 2020. Claimant contends she is entitled to payment of temporary disability benefits. Claimant further claims entitlement to medical treatment. These matters are controverted for purposes of an attorney fee.

Claimant's attorney respectfully request that any attorney's fee owed by Claimant on controverted benefits, paid by award or otherwise, be deducted from Claimant's benefits and paid directly to Claimant's attorney by separate check; and that any Commission Order direct the

¹ The parties stipulated and the Commission approved Claimant's average weekly wage, temporary total disability benefits, and permanent partial disability benefits on the hearing date.

² Claimant, at the hearing, wanted to request medical treatment and it was made an issue. The original issue listed as number three in the March 19, 2024, Prehearing Order, "What Compensable injury/injuries were sustained?" is properly merged under issue number two since that is where that determination would be made.

respondent to make payment of any attorney's fee in this manner.

Respondents' Contentions: Respondents contend that the Claimant only worked for Respondent Employer for three weeks from May 14, 2020, through June 5, 2020. The Claimant last worked for Respondent/Employer on June 5, 2020. The Claimant was assigned by Respondent/Employer to clean at the Tyson plant in Maumelle. The Claimant was upset with Tyson due to an outbreak of Covid 19 at the plant while she worked there. The Claimant and her granddaughter made threats against Tyson. On June 5, 2020, Tyson insisted the Claimant be removed from their property. Claimant refused a position with Respondent/Employer at another facility. The Claimant was terminated for insubordination and gross misconduct. The Claimant left threatening voicemails with Respondent/Employer since being removed from the Tyson facility.

The Claimant did not make a credible report of injury while employed by Respondent/Employer. The AR-C filed by the Claimant was not accepted until June 17, 2022, more than two years after her last date of employment and thus more than the two years after any work-related injury could have occurred. Accordingly, the claim is barred by the statute of limitations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven by the preponderance of the evidence that her claim was filed within the statute of limitations. Therefore, her claim is barred by the statute of limitations.

4. Moreover, the Claimant has also not proven by the preponderance of the evidence that she sustained a compensable injury arising out of and through the course of employment.
5. Based on my finding that 1.) the statute of limitations has passed before the filing of her claim, and 2.) that her alleged injuries did not arise out of and through the course of employment, the remaining issues of reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of twenty-six pages, Claimant's Exhibit 2, documents from Commission's file, pleadings, and correspondence, consisting of five pages, Respondents' Exhibit 1, Medical Records, that consist of twenty-five pages, Respondents' Exhibit 2, Non-Medical Documents, consisting of eleven pages, and Commission Exhibit 1, Pre-Hearing Order, that consists of five pages. Forms AR-C and AR-1 blue-backed and made a part of this record. The Claimant, Shirley Sanford, and Michael Christopher Fairfield, the Chief Executive Officer for Respondent/Employer, were the only two witnesses testifying in the full hearing.

Claimant was a traveling custodian for the Respondent/Employer. Respondent/Employer would send the Claimant out on different cleaning assignments for different business/companies. The Claimant testified that on August 4, 2020, while performing assigned cleaning duties at the Tyson plant located in Maumelle, Arkansas, she slipped and fell injuring her left leg, knee, hip, shoulder, and spine. The Claimant testified that she reported her injury to Tyson management but not to the Respondent/Employer. The Claimant testified that Tyson made a report of her injury. The Claimant further testified that she believed that Tyson would report the incident to

Respondent/Employer. No evidence was presented showing that such a communication was ever made to Respondent/Employer regarding Claimant's August 4, 2020, alleged injuries.

Despite Claimant's testimony, the Respondents argue that the Claimant did not work for Respondent Employer on August 4, 2020. According to Mr. Fairfield, CEO for Respondent/Employer, the Claimant was hired by Respondent/Employer on May 5, 2020, and was terminated on June 6, 2020, for insubordination. Claimant's last day of actual work was on June 3, 2020. Claimant denied being terminated on that date and insisted that she was still employed by the Respondent/Employer on August 4, 2020, despite presenting no documentary evidence to counter Respondent/Employer's business records, i.e. Claimant's personnel file.

Claimant's filings are all consistent with her alleged injury date of August 4, 2020. For example, Claimant filed her Form AR-C on June 10, 2022, but it was rejected by the Commission for not including an incident date. The Form AR-C was finally accepted and filed by the Commission on June 17, 2022. According to the accepted and filed Form AR-C, Claimant stated that the date of injury was August 4, 2020. A Form AR-1 was filed on June 27, 2022, also purporting the date of injury as August 4, 2020. Despite this, Claimant has not produced any pay stubs or other affirming documentation that demonstrated that she was still working for Respondent/Employer on August 4, 2020, the date of her injury.

Adjudication

A. Whether the Claim is barred by the Statute of Limitations.

Standards. Under the pertinent part of Ark. Code Ann. §11-9-702(a)(1) (Repl. 2012) it reads:

“A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two years from the date of the compensable injury...”.

The burden rests on Claimant to prove that her claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), she must prove this by a preponderance of the evidence. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Discussion. I find by the preponderance of the evidence that the Claimant has failed to prove that her claim was timely filed. According to the testimony of Mr. Fairfield, Claimant’s last day of employment was June 6, 2020. Mr. Fairfield, as Chief Executive Officer for Respondent/Employer, relied on business records, i.e. Claimant’s personnel file, that listed her start date as May 5, 2020, and her termination date as June 6, 2020. See Respondents’ Exhibit 2, p. 4-5. Respondent/Employer’s time keeping report shows Claimant’s last day of actual work as June 3, 2020. See Respondents’ Exhibit 2, p. 8.

Despite Respondents’ documentary evidence and aside from Claimant’s testimony, she did not present any evidence that demonstrated she was working for Respondent/Employer on August 4, 2020. For Example, Claimant did not produce any pay stubs demonstrating she was still receiving remuneration from Respondent/Employer for services on August 4, 2020, despite being asked in a June 13, 2023, deposition, by Respondents’ counsel, to make copies of her pay stubs. See Transcript p. 54, line 7 – p. 55, line 25. The Claimant after being reminded at the hearing of the pay stub request, via deposition, denied that she was ever asked to bring her pay stubs. See Transcript p. 55, lines 16 - 25. I don’t find her testimony credible. Respondents made a clear contention, months before the full hearing, that Claimant did not work for Respondent/Employer on August 4, 2020. Claimant has the burden to prove she was employed at the time of her injuries.

Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The Claimant has not met her burden of proof. Thus, I find by the preponderance of the evidence that Claimant's last day of employment with Respondent/Employer was on June 6, 2020.

For clarity, this finding means any injuries sustained by Claimant while working for Respondent/Employer could not have occurred after June 6, 2020. Accepting Claimant's alleged injuries, at best, as occurring no later than June 6, 2020, means she has failed to file her claim within the two-year statute of limitations. Claimant's Form AR-C was filed on June 17, 2022, eleven days past the statute of limitations deadline. See Respondents Exhibit 2, p. 9. Even if I accepted the date the Form AR-C was rejected, June 10, 2022, it still would be past the two-year statute of limitations deadline by four days. Thus, I find that Claimant has failed to prove by the preponderance of the evidence that she filed her claim within the two-year statute of limitations. However, in the alternative, taking what the Claimant said as true that she was employed with Respondent/Employer on August 4, 2020, then there would not be a statute of limitations violation. Thus, I feel the analysis should go further into compensability.

B. Whether Claimant sustained compensable injuries to her left leg, knee, hip, shoulder, and spine by specific incident.

To determine compensability, I find Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), applies to the analysis of Claimant's alleged injuries, and it defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that

cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Again, this standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Discussion. I find the Claimant has not proven by the preponderance of the evidence that she sustained a compensable injury arising out of and through the course of employment. As mentioned above, the Claimant has the burden to prove she was employed at the time of her injuries. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Respondent/Employer’s business records make clear that Claimant was hired May 5, 2020, and was terminated due to insubordination on June 6, 2020. See Respondents Ex. 2, p. 4-5. The

Respondent/Employer's timekeeping report reveals Claimant's last actual day of work was June 3, 2020. See Respondents' Ex. 2, p. 8. The Claimant maintains that she was injured on August 4, 2020. However, Claimant has produced no pay stubs or bank records showing she was still receiving payment for services rendered by Respondent/Employer. Thus, Claimant has not proven by the preponderance of the evidence that she sustained a compensable injury arising out of and through the course of employment. Therefore, her claim must fail.

MISCELLANEOUS ISSUES

Based on my previous findings that 1.) the statute of limitations has passed before the filing of her claim, and 2.) no compensability since the alleged injuries did not arise out of and through the course of her employment, the remaining issues regarding reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge