BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H304338 & H402579

BETTY CERVANTES, EMPLOYEE **CLAIMANT**

FACTORY CONNECTION LLC, EMPLOYER **RESPONDENT**

TRAVELERS PROPERTY AND CASUALTY OF AMERICA/TRAVELERS INDEMNITY COMPANY (THE), INSURANCE CARRIER/TPA **RESPONDENT**

OPINION FILED JULY 9, 2025

Hearing before Administrative Law Judge, James D. Kennedy, on the 21ST day of May, 2025, in Mountain Home, Arkansas.

Claimant is represented by Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

Respondent is represented by Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 21st day of May, 2025, and the parties agreed at the time of the hearing to narrow and clarify the issues and to only litigate the claim of June 27th, 2023, claim H304338. The 2024 claim was reserved at the time of the hearing. The issues before the Commission at the time of the hearing were the compensability of claimant's alleged injuries to her right knee on June 27, 2023, medical treatment for the injury, TTD from the date of injury to April 29, 2024, and attorney fees. All other issues were reserved.

The parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the claim and due to only the June 27th claim being litigated, the parties further stipulated that the employer/carrier/employee relationship existed on June 27th, 2023, the date the claimant alleged she sustained the compensable injuries to her right knee, and that she earned an average weekly wage sufficient to entitled her to the

maximum compensation rates for temporary total disability and permanent partial disability. The employer controverted the claim in its entirety. A copy of the Pre-hearing order was marked "Commission Exhibit 1" and made part of the record without objection.

The claimant's and respondent's contentions were all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. Since at the time of the hearing, the parties agreed to only litigate the injury alleged on June 27, 2023, the relevant contentions applicable to this hearing by the parties are that the claimant contended she sustained a work injury to her right knee on or about June 27, 2023, and the respondents contended that the claimant did not sustain injuries per statutory definition and that there was no medical evidence of an injury, as alleged by the claimant. The witnesses consisted of the claimant, Elizabeth Cervantes, and Sarah Stanford, the HR person for the respondents. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on June 27th, 2023.
3. The claimant earned an average weekly wage sufficient to entitle her to the maximum compensation rates for temporary total disability and permanent partial disability.

4. That the claimant has failed to satisfy the required burden of proof by a preponderance of the credible evidence that she suffered a compensable work-related injury to her right knee on June 27th, 2023.
5. That, consequently, all other issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of all the parties were admitted into the record without objection. The claimant submitted medical records that were admitted without objection. The respondents also submitted medical and non-medical exhibits along with a video, which were all admitted without objection. The claimant was the first witness to testify. She testified that she worked at Factory Connection and got hurt on the job back in June of 2023, while working as the store manager. She testified that she was in charge of hiring, putting out freight, processing freight, making sure everything was put out on the floor, and training employees on the cash register, along with taking care of the customers. She worked a regular forty-hour week, but at times worked seven days a week. She performed administrative work as well as physical labor. (Tr. 9 - 11) At the time of her injury, she was training a new employee on the cash register. She was standing by the new employee when she stepped away to give a customer change and her foot hit the side of the mat she was standing on. She tripped over the mat, which was about an inch thick, and her foot went out and her knee went in. She could see her knee starting to swell, but she continued to work because she was the only one at work that day. She reported the injury to Alicia Ross, her district

manager, who instructed her to report it to HR. The claimant went on to testify that she did not want to report it because she was the sole income for her household. She then contacted Sarah Stanford, who put her in contact with the insurance company. She felt that she injured the meniscus of her right knee. (Tr. 12 – 14)

The claimant admitted she had previous issues with the meniscus of her right knee. Prior to the incident, she stated she was not having problems with the right knee. She had previously tripped over a camera cord at work and had injured her meniscus. She did not report the incident because her husband was suffering from a spinal cord injury and was temporarily unable to walk. She testified she did inform Alicia about her surgery and took two days off from work, which were her regular scheduled days off for the meniscus repair. She had previously injured her meniscus while working for Subway back in 2008, where she slipped on a wet floor. All the problems were with her right knee. She was not having problems performing her job. (Tr. 15, 16)

She talked to the adjuster and told him she had already set up a doctor's appointment with the doctor who had previously treated her knee in 2022, and she did this after she heard her knee pop, and the swelling began. "I called them, because I was like, I think I re-tore my meniscus." "I told them I didn't want to report it if it was just my meniscus, because it's preexisting." She was glad when Alicia instructed her to report it because it was worse than just a meniscus tear. "It was - - I tore cartilage on my kneecap, and I've never had issues with the cartilage on my kneecap, and that was way more severe than just a basic two-day resting where I would recover quickly from a meniscus repair." She continued to work but stated the environment became too much for her to continue. "I was physically able to work." She had surgery in August after they had time

to regrow her cells to be transplanted to her kneecap. She returned to work two weeks after the surgery. (Tr. 17 – 19) She went on to state that she was doing much better. "I had another surgery not that long ago because my knee just didn't heal correctly from the second - - from the previous one, so I just had surgery like over a month ago, which did help." (Tr. 21)

Under cross examination, the claimant was questioned if she went to see the doctor who she first treated with at Knox Orthopedics, and did she tell the doctor she was injured at work. Her response was "I don't remember. I don't recall." She admitted to not reviewing her medical records. She was then asked whether her medical records of July the 12th, 2023, provided that the symptoms began as a result of a gradual and insidious onset and her having chronic knee pain. "Do you remember telling your doctor that? She responded, "No. I remember we had a discussion about that in 2022, but I do not recall him - - us having a discussion of that when I went to go see him for this incident that happened on June 27, 2024." She did not know why those statements would appear in her medical record, but did admit she had one surgery on her right knee in 2023. (Tr. 21, 22)

The claimant admitted going to see her PCP, Dr. Pritchard, when she injured her knee after she tripped over the cord and stated that Dr. Pritchard referred her to Dr. Franklin. Because of her insurance, they had to wait to obtain approval for an MRI. She then testified that Dr. Pritchard of Knox Orthopedics performed the surgery in October of 2022. (Tr. 23) The claimant was questioned about her medical record from Knox Orthopedics dated July 12th, 2023, and which provided the claimant believed her knee was struck from the side. The claimant responded, "I did not tell him that." She denied

her knee ever being struck from the side, and responded “My foot struck the mat from the side.” The claimant agreed her knee was not struck from the side and stated that “I hit my foot against the mat, and I tripped over it, the way it happened, my knee went in.” She also denied her knee being struck from the side prior to the surgery on the right knee in 2022, stating that she tripped over a blue cable cord. She stated the doctor must have misunderstood what she said. “I’ve never said that my knee was struck from the side, because that would be false.” (Tr. 24, 25)

The claimant was questioned about her diagnosis of medial meniscal degeneration and lateral femoral condyle chondromalacia. She responded that she did not understand what that meant but went on to state that she knew that her meniscus “wasn’t well.” (Tr. 26) The claimant further testified she did talk to Sarah Stanford and told her what happened at work and was aware that there was a video of the incident, stating “There’s cameras everywhere.” When asked if she had viewed the video, the claimant stated that when she went back to look at the video, it was deleted. She also testified that two customers and Steven heard her scream at the time of her injury, but she did not remember who the customers were, and she was no longer in touch with Steven. (Tr. 27, 28) At this point the claimant rested.

The respondents then called Sarah Stanford, who is employed as the HR Director for the respondent, Factory Connection LLC. Ms. Stanford will have been employed by the respondent for 14 years in August. She testified the claimant had reported injuries multiple times. “The first, I believe, was the June 27th incident, where she knocked her foot against the mat, and then the second was in August of 2024, I believe.” On the June 27th reporting with her knee, “She stated that she knocked her foot against the register

mat and that she felt her knee turn inward. She also stated that she had a preexisting condition, and she had not wanted to report it initially, but her district manager had her do so anyway." She went on to state there was video that captured the incident involving Ms. Cervantes and she was able to capture and preserve it and that it was the video that was part of the evidence. She also admitted that she took notes of the conversation with the claimant and the notes stated it was a preexisting condition, her foot hit the side of the mat, and right knee turned inward. She felt a tear in her right knee and called her treating doctor for a follow-up appointment on the 12th. The claimant stated that the injury was work-related due to a preexisting condition. Ms. Stanford went on to testify that she did this while on the phone with the claimant, as she always did in similar situations. (Tr. 29 – 31) She also testified the claimant never reported that she struck her knee from the side. (Tr. 32)

Under cross examination, Ms. Standford was asked how she knew the video that she reviewed was what the claimant reported, and her response was "I looked at the time that she reported it, and I looked at the day." She agreed that she did see her foot hit against the mat. (Tr. 33)

The claimant was then recalled for rebuttal testimony. The claimant was shown the notes by Ms. Stanford and asked if she ever told Ms. Stanford the injury, she reported was not work related and she denied making the statement. She went on to state she told her that she had spoken to Alicia, who had told her to call HR and tell them what happened. "So, I let her know that I was training an employee, that when I turned around to come forward, my foot hit the mat, and when it hit the mat, I felt a pop, and my knee went inward, and I went sideways, and the gentleman went out to try to catch me." I did

tell her I didn't want to report it because I thought at the time that it was my meniscus, which was a preexisting condition. (Tr.34) She went on to testify she had spoken to the adjuster and had let him know it wasn't just her meniscus and "I would like to pursue it to try to get medical care if it was something severe. And it ended up being something more than just my meniscus." (Tr. 35)

The first evidence introduced into the record without objection will be the claimant's medical evidence consisting of 18 pages. A note from Knox Orthopedics dated July 12, 2023, provided that the claimant presented for an evaluation of right knee pain on the inside of the knee. "Symptoms began as a result of a gradual and insidious onset and having chronic knee pain. The pain is acute and aching." Under plan, the report provided for a right knee internal derangement. "I scoped this knee in October 2022, she had a complex tear of the posterior body and horn of the medial meniscus. She got complete relief from the first surgery. About two weeks ago, she sustained another buckling accident, I believe her knee was struck from the side, and now she again has mechanical symptoms like clicking, catching, locking. Tried to deal with this on her own couple of weeks, but it continues to get worse." (Cl. Ex. 5, P. 1)

The claimant returned to Knox Orthopedics on July 31, 2023, for an MRI. The report provided for a fraying at the free edge of the medical meniscus with truncation at the body and stated the medial collateral ligament was normal. There was "no evidence of lateral meniscal tear." Under impression, the report provided for medial meniscal degeneration and lateral femoral condyle chondromalacia. (Cl. Ex. 5, P. 2) The claimant then returned to Knox Orthopedics again on August 8, 2023. The report provided that the claimant was suffering from right lateral femoral condyle chondromalacia which had

become quite disabling for the claimant. The claimant stated that she would like to proceed to surgery. The report provided that the claimant had a knee arthroscopy in 2008, and another arthroscopy with a meniscectomy in October of 2022, along with other unrelated procedures. (Cl. Ex. 5, P. 3, 4) The discharge document provided that the claimant could walk and bear weight on the leg that received the surgery. (Cl. Ex. 5, P. 5, 6) The operating note of August 23, 2023, by Doctor Franklin, provided that the claimant was found to have had a large unstable, contained, focal chondral defect in the lateral femoral condyle, plus multiple loose osteochondral bodies, a high-grade chondromalacia in the weightbearing lateral tibial plateau, and a small partial tear of the lateral meniscal root as well. (Cl. Ex. 5, P. 7 - 12)

The claimant returned to Knox Orthopedics on September 14, 2023, and Doctor Franklin, provided that the visit was a post-op right knee follow up. The report provided the claimant still suffered from some pain located anteriorly over the knee, and that he would provide a corticosteroid injection to see how she responded. (Cl. Ex. 5, P. 13, 14) The claimant returned again to Knox Orthopedics and Doctor Franklin on December 14, 2023, and that report provided the claimant was miserable, and was again ready for surgery. (Cl. Ex. 5, P.15) A report provided that the claimant was evaluated on January 10, 2024, and had been placed on the surgery schedule for autologous chondrocyte implantation of February 14, but the surgery was going to need to be rescheduled due to a family event for the claimant, and consequently, the procedure was just canceled. (Cl. Ex. 5, P. 16)

It appears that another surgery was performed by Doctor Franklin on August 8, 2024, for a right knee chondral defect of the lateral femoral condyle, with a postoperative

diagnosis of a right chondral defect of the lateral femoral condyle and right chondral defect of the trochlea and a right knee medial meniscus tear at the horizontal, junction of the posterior body/horn. (C. Ex. 5, P. 17, 18)

Respondents introduced 21 pages of medical records without objection. The initial report was dated September 23, 2022, from Knox Orthopedics and Doctor Franklin, and provided for a right medial meniscus tear of the right knee. The report further provided that the claimant had not been successful in conservative care of the right knee and surgery was performed on October,12, 2022. (Resp. Ex. 4A, P. 1 – 3) The claimant returned to Doctor Franklin on July 12, 2023, and presented with right knee medial joint tenderness, with guarding due to pain with no joint space narrowing. The report went on to provide for internal right knee derangement. (Resp. Ex. 4A, P. 4 – 5) The evidence provided the claimant returned to see Doctor Franklin on August 8, 2023, and was provided surgery at the Baxter Regional Medical Center, as described supra. (Resp. Ex. 4A, P. 7 – 12)

A radiology report dated April 22, 2024, and provided by Dr. Jamie Pritchard, provided the claimant had a mature bony skeleton and a slight indication for a narrowed joint space in the medial knee and that this was unchanged from previous films. There was no evidence for an acute injury of fracture. (Resp. Ex. 4A, P. 13) Additionally the operative report dated August 8, 2024, regarding the surgery on the day before, was also introduced and was discussed above in the evidence of the claimant. (Resp. Ex. 4A, P. 14, 15)

Finally, the last medical evidence introduced by the respondents was an Orthopedic Surgery Peer Review Report by Gotham City Orthopedics dated November

20, 2024. The report provided that a Board-Certified Orthopedic Surgeon, Doctor Sean Lager, had been requested to review the claimant's medical file. He stated that no doctor/patient relationship had been established. He provided in his report that the claimant and been involved in two work related incidents, the one dated June 27, 2023, where the claimant was stepping down from the ladder, and stepped hard causing some right knee pain, and the one dated April 13, 2024 where the claimant was standing at a cash register and her flip flop caught on the edge of a mat causing her to slip but not fall. He opined in his report that based upon the medical records reviewed, the diagnosis indicated a pre-existing condition in regard to the medial meniscus degeneration and lateral femoral condyle chondromalacia. (Resp. Ex. 4A, P. 16 – 21)

The respondents also introduced two pages of non-medical evidence that was introduced into evidence without objection. The first document consisted of notes taken by the HR person from a phone interview with the claimant and provided that the claimant had stated that she had a pre-existing condition, and her foot hit the side of a mat and her right knee turned inward and she felt that the injury was work related. (Resp. Ex. 4 B, P. 1)

A DVD of the claimant working behind the cash register and stepping on and off the mat was admitted into evidence without objection. The video, which was reviewed multiple times, was dated June 27, 2023. The video showed the claimant and another individual, a male and who appeared to be the person being trained, working behind the cash register. There was a mat on the floor. It appeared there were other shoppers in the facility at the time of the video. The claimant stepped on and off the mat multiple times and there was nothing that showed the claimant tripping, falling, grabbing her knee,

or acting like she suffered a sudden onset of pain. She did touch and briefly rub her right knee at one point. Nothing appeared in the video that showed that the claimant's right knee was struck from the side. Towards the end of the video, another person, who appeared to possibly be a new co-worker, appeared behind the cash register. No interaction was observed with the new person behind the counter and cash register regarding the claimant's knee. There is no evidence of anyone going to assist the claimant due to any type of physical problem. The claimant continued to move fluidly on and off the low mat behind the cash register. Although the video appears to be slightly sped up, due to the method of filming or storage, the claimant appeared to ambulate well with a fluid gait and solid stance. (Resp. Ex. 4B, P. 2)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the injury to her right knee under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her 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. Cavananugh'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).

From the medical reports submitted by both the claimant and the respondents, it appears the claimant clearly suffered from significant conditions and issues involving her

right knee prior to the alleged incident involving her knee. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 864 (1990); Conway Convalescent Center v. Murphee, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W2d 550 (1996). The employer takes the employee as it finds him or her. See Murphee*, supra*.

The medical evidence provided that the claimant presented to Knox Orthopedics on July 12, 2023, for evaluation of right knee pain on the inside of her knee and the report provided that the claimant's "Symptoms began as a result of a gradual and insidious onset and having chronic knee pain." The report went on to provide that the knee had been scoped in October of 2022, where a complex tear of the posterior body and horn of the medial meniscus were found and the claimant obtained complete relief from the surgery. The report also provided that the attending physician believed that the claimant's knee was struck from the side. An MRI on July 31, 2023, provided for a fraying of the free edge of the medial meniscus but there was "no evidence of lateral meniscus tear." A later report dated August 8, 2023, provided that the claimant was suffering from medial meniscal degeneration and lateral femoral condyle chondromalacia which had become quite disabling for the claimant.

The medical evidence provided that the claimant had previously had a knee arthroscopy in 2008, another arthroscopy with a meniscectomy in October of 2022, along with the surgery of her right knee on August 23, 2023, by Dr. Franklin. Dr. Franklin opined that claimant was found to have a large unstable, contained, focal, chondral defect in the

lateral femoral condyle, plus multiple loose osteochondral bodies and a high-grade chondromalacia in the weight bearing lateral tibial plateau, and a small partial tear of the lateral meniscal root as well. It appears that the last surgery occurred on August 8, 2024. A radiology report dated April 22, 2024, provided there was no evidence of an acute injury or fracture involving the right knee. It is also noted that the independent medical review by Doctor Sean Lager provided that in his opinion, based upon the medical evidence reviewed, the diagnosis indicated a pre-existing condition in regard to medial meniscus degeneration and lateral condyle chondromalacia.

A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in A.C.A. 11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present matter, it is understandable why the claimant may have initially stated that the problem with her right knee was pre-existing due to the previous surgeries and the need for her to maintain employment, since her husband was unable to work at the time. However, with that said, a compensable injury is one that was the result of an accident that arose in the course of her employment. See Moore v. Darling Store Fixtures,23 Ark. App. 21, 432 S.W2d 496 (1987). Here, the video of the incident that was introduced into the record was viewed multiple times and showed the claimant stepping on and off a very low mat. There is nothing in the video to show that the claimant suffered any type of injury, or pain, due to hitting her foot on the side of the low mat on the floor behind the cash register, or due to being hit on the side of her knee, although it was noted that she did briefly rub her right knee at one point. The video showed no one near her responding to an incident involving the claimant where she appeared injured. Further, the treating physicians did not attribute the claimant's right knee problem to her hitting her foot on the side of the mat. It was opined that the claimant was suffering from "internal right knee derangement."

Consequently, based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has failed to satisfy the requirements to show that the claimed right knee injury of June 27, 2023, is in fact work related and compensable under the Arkansas Workers' Compensation Act.

After reviewing all of the evidence, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof by a preponderance of the evidence that the claimant suffered a compensable work-related injury to her right knee on June 27, 2023. Consequently, all

remaining issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge