

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H301211

WESLEY C. GIVENS,  
EMPLOYEE

CLAIMANT

J.E.L. ENTERPRISES, LLC, d/b/a PLANT  
SERVICES OF NORTH LITTLE ROCK,  
EMPLOYER

RESPONDENT

AUTO OWNERS INSURANCE COMPANY,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 21, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 8, 2024. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding. The Full Commission finds that the claimant was not performing employment services at a time when the alleged physical injuries were inflicted.

I. HISTORY

Wesley Craig Givens, now age 63, testified that he became employed with the respondents, Plant Services, in 2016. Mr. Givens described his job for the respondent-employer: “It was to maintain and take care of plants in offices, homes, buildings, help install plants, pull out bad plants, unload trucks.”

The record includes a series of Plant Services “Daily Logs” apparently submitted by the claimant beginning July 20, 2022. The Daily Logs included listings of an Account, Time-In, Time-Out, Start Mileage, and End Mileage. The record indicates that the last Daily Log submitted by the claimant was dated December 6, 2022.

The parties stipulated that the employment relationship existed at all pertinent times, including December 15, 2022. The claimant testified on direct examination:

Q. What was going to be your route on December 15<sup>th</sup>, 2022?

A. I was starting at Park Plaza doing the plants there, then I was gonna leave Park Plaza and go to Corky’s on Bowman, and then I was going to Farm Bureau, and then I was going to Parker Lexus right around the corner....

Q. Now, where was the first place that you stopped on December 15<sup>th</sup>, 2022.

A. Park Plaza....I have a little wagon, and I have a – a container, a plastic container that I fill up with water, and I had to take it out to the car, unload, put everything away, then I have to come back into the office to sign out because you have – it was the last thing you did. Then I went out to the car, got into the car, filled out my time at the mall that was on my clipboard, and I pulled out going towards Markham.

Q. Okay. Now, were you in a company car or were you in your own personal vehicle?

A. No, I was in a company car.

Q. Who owns that car?

A. JEL Enterprise Plant Service.

Q. And where were you headed?

A. I was headed to Corky's on Bowman.

Q. Were you headed to Corky's to eat lunch or were you headed to Corky's to take care of their plants?

A. To do their plants. I had to be there – I had to be there before 10:00 or 10:15 to give me enough time, 'cause people start coming in at 10:30.

Q. Okay. What happened on that route?

A. I pulled out and made a right turn onto West Markham. I came up to a red light and I stopped. I was in the second lane going west. The light was red. A lady pulled up in the turn lane, and she rolled down the window and she yelled. I had to open my window and ask her what she needed, and she said, "I'm runnin' late. Can I make a turn in front of you?" I looked to the right and I looked to the left and behind me, and there was nobody coming, so I said, "Sure, go ahead." So I let her go in front of me. After she had met the turn, I had just started hittin' the gas and all of a sudden I saw this person coming to me from the far left lane, and she had turn – I thought she was going through and she just all of a sudden swerved her car and came right at me....I was facing west, and I got spun around and I was then facing east....

Q. What happened to your body on the inside of that vehicle when the collision occurred?

A. I – she hit me on the driver's door and the back seat doors. I held onto the steering wheel and I hit the passenger door. I slung across – I hit on the console, the stuff that I had on the seat, and I hit the door on the other side....

Q. Did anyone other than the paramedics and the police officers come to the scene of the accident that you know of?

A. Um, Jane Lanning and Wanda Yarber, they came and cleaned out the car.

Q. At the scene of the accident?

A. Aft – yes. After I had been taken to the – to the hospital.

Q. Okay. How did Jane know that you'd been in an accident?

A. I sent – we have a group text between Jane, Teresa and myself, and I sent her a text.

Q. Okay. What did you have inside that vehicle?

A. I had my water equipment. I had bought groceries and my groceries were in the car, because the one paramedic brought an orange back 'cause it was my breakfast.

Q. Did you have your paperwork that you would fill out to turn in –

A. Yes.

Q. – for your –

A. All my – all my daily log paperwork was in the car. I had stuff in the doors, this and that, and stuff got wet.

Q. Okay. So the Daily Log that was in your vehicle that you fill out to show where you've been –

A. Correct.

Q. – was no longer in your possession?

A. No....

Q. So you never made it to Corky's?

A. No.

A Metro EMS Ambulance Patient Care Record dated December 15, 2022 indicated that an ambulance was On Scene at approximately 9:58 a.m.:

62 y/o m cc of neck pain. Pt was involved in a two car MVC. Pt was a restrained driver of a small SUV. Pt was struck on the driver side causing moderate damage to the car. The Pt stated that he was driving around 30mph. Pt stated that his neck hurts. Pt had no other complaints or obvious injuries. Pt had all SMC's intact. A C-collar was placed on the Pt. The Pt was assisted and secured to the cot. Treatment and assessment times are approx. Pt was transported to SVI LR. Pt care turned over the ER staff.

An x-ray of the claimant's left shoulder was taken on December 15, 2022 with the findings, "No fracture is identified. No dislocation is identified. No arthritis is noted. No suspicious periosteal reaction or unexpected foreign body is seen." A CT of the claimant's cervical spine was taken on December 15, 2022 with the impression, "There is some degenerative

change of the cervical spine but no fracture or subluxation.” A CT of the claimant’s lumbar spine was taken on December 15, 2022 with the impression, “Advanced degenerative change of the lumbar spine as discussed above but no fracture or subluxation.”

An emergency physician diagnosed “Cervical sprain” on December 15, 2022 and it was noted, “The patient presents following motor vehicle collision. The onset was just prior to arrival. The Collision was passenger side impact. The patient was the driver....Location: back. The degree of pain is minimal.” The claimant was discharged to Home and was prescribed medication. The claimant testified that he did not return to work for any employer after the December 15, 2022 motor vehicle accident.

The respondents’ attorney cross-examined the claimant:

Q. Now you’ve confirmed with your attorney that you never reported – formally reported a workers’ compensation claim with Jane Lanning.

A. No.

Q. Okay. And you never asked Jane Lanning or the workers’ comp carrier to provide any type of medical; you did that on your own.

A. Correct.

Q. Okay. Now you, of course, went to the emergency room by ambulance after the accident?

A. Yes....

Q. Jane and Wanda also came to the emergency room at St. Vincent’s, correct?

A. Yes....

Q. Did you tell Jane and Wanda that you were done for the day and you were going home?

A. Not that I remember.

Q. Okay. Could you have said that to them at that time?

A. I might've but I cannot remember it.

Q. Okay. You just don't remember?

A. I don't remember....

Q. Now let's talk about your route with Park Plaza Mall. You were there [on] December 15?

A. Yes.

Q. Okay. I don't think anybody's disputing that you were there at Park Plaza Mall on December 15, just for the record, and you had serviced that account and had completed your work there when the accident happened.

A. Yes.

The claimant was transported via ambulance to Baptist Health Medical Center on December 19, 2022. The claimant complained of Generalized Weakness and Abdominal Pain. Physical examination at that time showed "Right arm diffuse tenderness and swelling." An MRI of the claimant's cervical spine was taken on December 19, 2022:

1. There is no acute displaced fracture or gross malalignment. There is mild endplate stress response across the C5-6 level again without acute displaced fracture.
2. There are degenerative changes across the C5-6 level with mild canal narrowing but no cord compromise. There is moderate to severe right foraminal narrowing.
3. There is bulging with mild canal narrowing at the C6-7 level without cord compromise. There is mild to moderate bilateral foraminal narrowing left greater than right.

A CT of the claimant's neck was taken on December 19, 2022 and the findings included, "MARROW: There is no pathologic marrow signal intensity. There is mild endplate stress response and edema across the C5-6 level without acute displaced fracture." It was reported on December 19, 2022 that the CT of the claimant's cervical spine showed "No evidence

of acute fracture or subluxation.” A CT of the claimant’s head showed “No acute intracranial abnormality.” An x-ray of the claimant’s right humerus showed “No fracture.” The claimant was diagnosed with “Motor vehicle collision, initial encounter. Strain of right shoulder, initial encounter.”

A note was written at Parker Cadillac on January 18, 2023 indicating, “We have not seen Wes Givens with The Plant Services for the month of December, taking care of the plants.”

An x-ray of the claimant’s cervical spine was taken at Cabot Emergency Hospital on January 26, 2023 with the impression, “Slightly limited exam despite swimmer’s view. Degenerative disc disease is seen at C5-C6. No definite vertebral body compression fracture. Straightening of normal cervical lordosis may be secondary to muscle spasm.”

An MRI of the claimant’s right shoulder was also taken on January 26, 2023, with the following impression:

1. No fracture or dislocation of the right shoulder.
2. Osteoarthritis of the acromioclavicular and glenohumeral joints noted.

Additionally, an x-ray of the claimant’s lumbar spine was taken on January 26, 2023 with the following impression:

1. Minimal superior endplate height loss with slight anterior wedging at L1, L2, and L3. No posterior cortex height loss or evidence of any retropulsion.
2. Mild posterior disc height loss at L2/L3 and L5/S1 along with L4/L5 and L5/S1 facet hypertrophy.
3. Trace levoscoliosis. No significant listhesis.

An MRI of the claimant's brain was taken on February 3, 2023, with the following impression:

1. Multiple T2 and FLAIR hyperintense foci in bilateral frontal, parietal, parieto-occipital white matter and pons, suggestive of UBOs (unidentified bright object) non-specific lacunes. Periventricular white matter hyperintensity. These can be seen in patients with chronic small vessel ischemic disease or can be seen in patient with headaches. Please correlate clinically.
2. Mild cerebral and cerebellar atrophy.
3. Partially empty Sella.
4. Mild tortuosity of the cavernous portions of both the internal carotid arteries.
5. Incidental note is made of minimal mucosal thickening in bilateral mastoid air cells.
6. Mild mucosal thickening in ethmoid air cells and maxillary sinuses.

An MRI of the claimant's right shoulder was taken on February 3, 2023:

HISTORY: Patient was involved in a motor vehicle accident on 12/15/2022....

- IMPRESSION: 1. Partial tear involving the subscapularis tendon.
2. Partial tear involving the supraspinatus tendon.
  3. Mild to moderate tendinosis involving the rest of the supraspinatus tendon.
  4. Tendinosis of infraspinatus tendon.
  5. Suspicious tear involving the posterior-superior labrum. However, please correlate clinically as lack of significant diffusion limits evaluation of the labrum.
  6. Mild thickening of the inferior gleno-humeral ligament, with hyperintense signal. This can be due to edema or can be due to adhesive capsulitis. Please correlate clinically.
  7. Mild fluid in subacromial – subdeltoid and subcoracoid bursae and also along the biceps tendon.



8. Hyperintense signal involving the biceps tendon, suggestive of biceps tendinosis.
9. Moderate changes of osteoarthritis in the gleno-humeral joint.
10. Mild synovial effusion.
11. Moderate degenerative changes in the acromio-clavicular joint, with hypertrophic spurs.
12. Subtle altered marrow signal intensity along the articular margins of the acromio-clavicular joint. This can represent degenerative or traumatic edema.
13. Mild lateral downsloping of the acromion.
14. Subtle hyperintense signal involving the infraspinatus muscle. This can represent mild contusion/edema.

An MRI of the claimant's lumbar spine on February 3, 2023 showed abnormalities including a herniation of the L3-4 disc.

A physician's assistant performed a right shoulder steroid injection on February 3, 2023.

The record indicates that Dr. Chandrakanth Boddu performed a cervical epidural injection and lumbosacral epidural injection on February 10, 2023.

Dr. Boddu informed the claimant on February 13, 2023, "I am writing concerning your care and treatment that has been provided thus far. It is my belief the injury you sustained was proximately caused by the motor vehicle accident occurring on December 15, 2022."

Dr. Boddu performed a "Cervical and lumbar radiofrequency ablation of medial branch" on February 23, 2023.

Dr. Boddu performed right shoulder surgery on or about March 31, 2023: “1. Debridement of synovitis. 2. Debridement of subacromial bursa. 3. Debridement of the cuff tear. 4. Subacromial decompression. 5. Acromioclavicular joint distal clavicle excision.” The post-operative diagnosis was “1. Synovitis. 2. Subacromial bursitis. 3. Possible partial-thickness cuff tear on the bursal surface. 4. Impingement syndrome. 5. Posttraumatic acromioclavicular joint injury.”

A pre-hearing order was filed on August 2, 2023. According to the pre-hearing order, the claimant contended, “The claimant contends that on December 15, 2022, he was involved in a motor vehicle accident (MVA) within the course and scope of his employment. The claimant contends he was driving his employer’s vehicle when the MVA occurred, and he sustained injuries to his head, neck/cervical spine, lower back/lumbar spine, right shoulder, and right knee as a result of the subject MVA. The claimant further contends the respondent-employer, J.E.L. Enterprises (JEL), first refused to file a claim, so the claimant filed a Form AR-C on February 23, 2023, and thereafter the respondents denied the claim in its entirety. The claimant contends he was forced to obtain his own medical treatment which included an MRI of his lumbar spine which revealed disc herniations at L3-4, L4-5, L5-S1; an MRI to his right shoulder which revealed tears; an MRI of his brain which revealed a diffuse traumatic brain injury; and an MRI of his

cervical spine which revealed a disc herniation at C5-6. The claimant contends he has undergone a rhizotomy for his cervical spine and his lumbar spine injuries; an arthroscopic surgery to his right shoulder; he has been diagnosed as having post-concussion syndrome; and his doctor has recommended he undergo an anterior cervical discectomy and fusion (ACDF) at C5-6, all as a direct result of the subject MVA. Therefore, the claimant contends he is entitled to payment of his medical and related expenses; to TTD benefits from December 16, 2022, through a date yet to be determined; and that his attorney is entitled to a controverted attorney's fee. The claimant reserves the right to plead further upon the completion of necessary and appropriate investigation and discovery; and specifically reserves any and all other issues for future determination and/or litigation."

The parties stipulated that the respondents "have controverted this claim in its entirety." The respondents contended that the claimant "was not performing 'employment services' at the time of the subject MVA. The respondents further contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating he sustained any compensable injuries within the course and scope of his employment with JEL. The respondents reserve the right to plead further upon the completion of necessary and appropriate investigation and discovery; and specifically reserve any and all other issues for future determination and/or litigation."

The parties agreed to litigate the following issues:

1. Whether the claimant sustained compensable injuries within the meaning of the Arkansas Workers' Compensation Act (the Act) to his head, neck/cervical spine, lower back/lumbar spine, right shoulder, and right knee, on December 15, 2022.
2. If the claimant's alleged injuries are deemed compensable, to extent to which he is entitled to medical and indemnity benefits.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

Dr. Boddu performed low back surgery on August 17, 2023: "L3-4 and L4-5 central canal and bilateral lateral recess decompression." The post-operative diagnosis was "L3-4 and L4-5 stenosis. MRI shows L3-4 mild to moderate bilateral lateral recess stenosis and mild central canal stenosis; the L4-5 shows moderate bilateral lateral recess stenosis and moderate central canal stenosis."

A hearing was held on October 10, 2023. The respondents' attorney examined the company owner, Jane Ellen Lanning:

- Q. From a personal standpoint, how would you describe your relationship with Wesley Givens over the past 30 to 35 years?
- A. We've been the best of friends....
- Q. Now I want to talk about Mr. Givens' route. Are those reflected on the Daily Log sheets?
- A. Yes, they are....
- Q. Did you ever receive any Daily Log sheets after December 6?
- A. No.
- Q. Did you turn in all of the Daily Log sheets to my law firm office?

A. Yes....

Q. Have you ever seen the Daily Log sheets after December 6?

A. I have not....

Q. Did you have a conversation at the hospital with Mr. Givens?

A. Yes....

Q. And did Mr. Givens make any statement about where he had been or where he was going or what his activities were?

A. He said – he said that he was leaving Park Plaza to go home and out of nowhere boom, this lady just hit him....

Q. You don't know whether he intended to stop anywhere before he went home?

A. I have no idea.

Q. Okay. He didn't say anything about going to work any additional accounts, did he?

A. No.

Q. Okay. Now, you're familiar with the Daily Logs and the route that Mr. Givens normally did on days when he serviced the mall. Is that right?

A. Yes.

Q. Okay. And when you looked at these, were you able to see that the West Little Rock accounts were before the mall?

A. Yeah.

An administrative law judge filed an opinion on January 8, 2024. The administrative law judge found, among other things, that the claimant failed to prove he sustained a compensable injury. The administrative law judge therefore denied the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

(A) "Compensable injury" means:

(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[.]...

(B) “Compensable injury” does not include:

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed[.]

An employee is performing employment services when he is doing something that is generally required by his employer. *Dairy Farmers of America v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (2007). The Arkansas Court of Appeals uses the same test to determine whether an employee is performing employment services as it does when determining whether an employee is acting within the course and scope of employment. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer’s purpose directly or indirectly. *Id.*

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence, not whether there is substantial

evidence to support an administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990). The Full 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 it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

An administrative law judge found in the present matter, "2. The claimant has failed to meet his burden of proof in demonstrating he was engaged in the performance of employment services at the time of the subject December 15, 2022, MVA." The Full Commission finds that the alleged physical injuries on December 15, 2022 were inflicted upon the claimant at a time when employment services were not being performed.

The claimant testified that he became employed with the respondents, Plant Services, in 2016. The claimant testified that his job basically entailed maintaining and caring for plants in various locations. As

we have discussed, the record includes a series of Plant Services “Daily Logs” which the claimant apparently compiled for the period beginning July 20, 2022. Illustrative of these Daily Logs is an entry dated August 9 where the claimant appeared to have logged that he serviced plants at Corky’s Ribs & BBQ in West Little Rock for approximately 18 minutes before traveling to Park Plaza Mall for employment duties at that location. There were no Daily Logs demonstrating that the claimant ever began his work duties at Park Plaza Mall before proceeding to Corky’s in West Little Rock.

The parties stipulated that the employment relationship existed on December 15, 2022. The claimant testified that he was working for the respondents that day at Park Plaza before driving to Corky’s in West Little Rock. The claimant testified that he had finished his duties at Park Plaza and proceeded to drive on West Markham toward Corky’s restaurant, when his car was struck on the passenger side by another vehicle. The claimant testified that his Daily Log to corroborate his testimony with regard to December 15, 2022 was not available because “stuff got wet.” Based on the evidence before us, the Full Commission finds that the claimant was not a credible witness. We instead find credible the testimony of the owner/operator for Plant Services, Jane Ellen Lanning. Ms. Lanning testified that the claimant informed her the December 15, 2022 motor vehicle accident occurred while “he was leaving Park Plaza to go home.”



Ms. Lanning testified that the claimant was not driving to another work location such as Corky's at the time of the accident, and that she never saw a Daily Log corroborating the claimant's testimony. The Full Commission does not find credible the claimant's assertion that the December 15, 2022 Daily Log was essentially ruined, destroyed, or no longer in his possession as a result of the accident.

We recognize that a claimant may be performing employment services if the employer requires him to travel from jobsite to jobsite as part of his work. See *Moncus v. Billingsley Logging*, 366 Ark. 383, 235 S.W.3d 877 (2006). In the present case, however, the evidence does not demonstrate that the employer required or directed the claimant to travel from Park Plaza to Corky's or any other location at the time of the accident on December 15, 2022. Instead, we again find credible Jane Ellen Lanning's testimony that the claimant had finished his work for the day at the time the accident occurred. The critical inquiry in accordance with Act 796 is whether the claimant was performing employment services *when the injury occurred*. See *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007), citing *Moncus, supra*. The Commission is bound to examine the activity the claimant was engaged in *at the time of the accident* in determining whether or not he was performing employment services. *Hill v. LDA Leasing*, 2010 Ark. App. 271, 374 S.W.3d 268 (2010). In the

present matter, the evidence does not demonstrate that the claimant was performing employment services at the time of the December 15, 2022 motor vehicle accident.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. The Full Commission finds that the claimant was not performing employment services at the time of the December 15, 2022 motor vehicle accident. This claim is therefore respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The ALJ found that the Claimant failed to prove, by a preponderance of the evidence, that he was engaged in the performance of employment services at a time when the alleged physical injuries were inflicted on December 15, 2022 and that the Claimant has failed to meet his burden of proof in demonstrating he sustained a compensable injury to his lumbar

spine, cervical spine, right shoulder and right knee. I disagree, I would rule in favor of the Claimant as having been engaged in performing employment services and sustaining a compensable injury to his right shoulder.

An employee is performing employment services when he is doing something that is generally required by his employer. *Dairy Farmers of America v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905. The Arkansas Court of Appeals uses the same test to determine whether an employee is performing employment services as it does when determining whether an employee is acting within the course and scope of employment. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). The test is whether the injury occurred within the time and space boundaries of the employment when the employee was carrying out the employer's purpose directly or indirectly. *Id.*

For the case at hand, Claimant was assigned to work at Park Plaza Mall, Corky's Barbeque, and a line of Parker car dealerships. Claimant admitted that in the past he has serviced the areas west of Little Rock first and then journeyed to Park Plaza Mall. However, there is nothing in the record that states Claimant performed employment services in that order on the date of the accident. Claimant stated in the hearing that he serviced the plants at Park Plaza Mall and was journeying to Corkey's Barbeque when the accident occurred. Further, a fellow co-worker, Teresa Bailey, testified

at the hearing that Claimant would normally go to the Park Plaza Mall and then to Corky's Barbeque. The Claimant presented as a credible witness in the hearing and provided credible testimony that his work at Corky's Barbeque was part of his normal job duties and a benefit to the Respondent.

Therefore, I believe Claimant was performing employment services at the time of the accident on December 15, 2022.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (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 Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

Claimant sustained a compensable injury to his right shoulder. Claimant was in a motor vehicle accident on December 15, 2022 in the course and scope of his employment. Claimant was diagnosed with the

objective findings of a shoulder strain, and multiple tears in ligaments of the Claimant's right shoulder as viewed by X-Ray and MRI. This injury caused internal or external harm to his body which required medical services in the form of injections and right rotator cuff tear surgery. Further, Dr. Chandrakanth opined that Claimant's injuries resulted from the December 15, 2022 motor vehicle accident by letter on February 13, 2023. The credible evidence supports the conclusion that this injury was caused by the motor vehicle accident on December 15, 2022, I would rule in favor of the Claimant as having sustained a compensable injury to his right shoulder.

Therefore, I would rule that the Claimant has proved by a preponderance of the evidence that he was performing employment services for Respondent and sustained a compensable injury to his right shoulder.

For the foregoing reasons, I dissent with the majority opinion.

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M. SCOTT WILLHITE, Commissioner