

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H306528

MALAK HUSSIAN, EMPLOYEE

CLAIMANT

VS.

BEAUTY SENSATIONS, EMPLOYER

RESPONDENT

OPINION FILED SEPTEMBER 18, 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 13th day of August 2024, in Little Rock, Arkansas.

Claimant is Pro Se.

Respondent, who was uninsured at the time of the claimed work-related incident was represented by Randy Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 13th day of August 2024. At the time of the hearing, the primary issue before the Commission was whether the claimant suffered a compensable work-related injury to her left shoulder and lower back and if the injury was determined to be work related, the issue of reasonable and necessary medical treatment. The claimant was also asking for temporary total disability.

The respondent contended that the claimant did not sustain an injury within the course and scope of her employment at Beauty Sensations. The respondent further contended that a settlement was reached prior to obtaining representation by an attorney and the claimant had been paid an amount of money for a release. The claimant contends that she had been injured on August 23, 2023, while stocking on a lower shelf and became dizzy when she stood up due to the extremely hot environment that she was required to

work in, which caused dizziness that resulted in a fall that injured her left shoulder and lower back.

A Prehearing Order dated June 25, 2024, provided that the parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the within claim, and that an employer/employee relationship existed on or about August 23, 2023, the date the claimant contends she suffered a work-related injury to her left shoulder and lower back.

The Prehearing Order along with 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. The claimant, Ms. Malak Hussian, was the sole witness on behalf of the claimant. Mr. Yongjin Song was the sole witness on behalf of the respondent. From a review of the record as a whole, to include 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 CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That the claimant has failed to satisfy the required burden of proof to show that she sustained a compensable injury to her left shoulder and lower back on August 23, 2023.
3. That consequently, all other issues are moot.

4. 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 the parties and respondents exhibit are made part of the record without objection.

The claimant testified that she initially went to Beauty Sensations, not for the purpose of looking for a job, but to buy merchandise. As she was checking out, she saw a sign that stated they were hiring and she then inquired about employment, talking to a gentleman named Sam. She was later contacted by Mr. Yongjim Song. She was offered the job and trained by Sam. She “would hand merchandise up” and Sam explained that their customers were looking for hair sold as a product placed into various categories. She was then instructed to stock a lower shelf, and she went over and “bent down and stocked the lowest shelf in alignment with the sunset setting on his business.” She felt that it was already hot where she was stocking and one of the workers had her own fan. The next thing that the claimant apparently knew was that she woke up on the floor and she asked if she fell. She was told “No, Malak, you fainted.” (Tr. 15, 16) The claimant then talked about accommodation’s required by the America with Disabilities Act and stated that she felt she was entitled to them, which was no different than if she had cancer. She also stated that she was unable to obtain an attorney due to the fact her employer failed to carry workers’ compensation insurance at the time of her fall. She was offered \$1500.00 by Mr. Youngjim Song, which she did in fact receive, and she was already behind on her bills at the time of the receipt. She went on to testify that she was currently wearing a back brace and had to have some stability to even bend down. She did have

health insurance and was 63 years old at the time of the hearing. She also admitted that she was on various medications prior to her injury while working for the respondent, but not to the degree that she was now. She also admitted that she was currently drawing social security disability. (Tr. 17 – 22)

Under cross examination, the claimant responded that she had about 24 hours of college at UALR and was attending Shorter College last year. She had stopped working 33 years ago after four people invaded her home and blew her children's brains out and she stopped working due to trauma. Her last job before working for the respondent, was about 25 years ago, when she worked for the UAMS Academic Affairs Department in 1998. She also admitted receiving active medical treatment during that period for her depression and mental issues. She testified there was a five-year period after the death of her children where she could not remember anything. (Tr. 23 – 25) She had been treated for post traumatic stress disorder off and on for a number of years after the death of her children. She also admitted to treatment for pain, and that she had been involved in a motor vehicle accident back in 2023, when her neighbor rear ended her, resulting in back and neck issues, and where she received an injection in her neck. She also admitted that she had not worked for an income since her claimed work-related injury but had performed volunteer work for Watershed. She also admitted to submitting job applications for work but had not applied for any in the last few months. She also admitted to a past right shoulder surgery, which was the result of a rotator cuff tear in 2019. Additionally, she admitted to a lower back surgery between her L4 and L5 by Dr. David Bumpass, but stated she was no longer being treated for this. (Tr. 26 – 28) She was also receiving psychiatric treatment by Dr. Raymond Molden, with the last visit being about

September 18, 2023, seeing Dr. Moulden on a regular basis for the purpose of medication refills due to the post traumatic stress disorder. (Tr. 29) The claimant admitted taking Prazosin and Diazepam since the traumatic event involving her children. (Tr.30)

The claimant was also questioned about the medical records providing that she started having pain in her neck and back as far back as 2010, and she responded that she was not certain as to the date. (Tr. 31, 32) The claimant was also questioned about her “chronic back pain” and she responded “well, if you’re mentioning 2010 to 2023, that is considered in the dictionary as chronic.” She did not know how long she suffered from spinal stenosis. (Tr. 33)

The claimant also admitted to an acute myocardial infarction, and congestive heart failure, along with a trauma-induced grand mal seizure. Her rotator cuff tear was due to a seizure resulting from substance abuse. (Tr. 35)

In regard to settling her claim, the claimant stated that Mr. Song had called her. She stated she knew that he was in trouble and that he attempted to resolve it with the \$1500.00. She went on to state that it was not a settlement but that she was accepting assistance in regard to her bills. (Tr. 37, 38)

In regard to the actual incident, the claimant stated she remembered squatting down and placing items on the lower shelf and when she stood up, she became dizzy and that’s when Mr. Sam told her that she had fainted. She remembered hitting her buttocks when she fell. She went on to state that she was asked to sit down for 15 minutes, stayed until her shift was over, drove herself home, and felt that MEMS should have been called. She also stated that she did not have the mind to request medical treatment. She returned to work the next day. (Tr. 43 - 45)

The claimant stated that she had injured her spine in the fall, her shoulder and lower lumbar. (Tr. 53)

The claimant was then allowed to testify on what would amount to direct. She talked about the cowardice of so-called men and businessmen “trying to make my getting help a problem.” She also talked about the horrible traumatic incident involving her children. (Tr. 55, 56) She went on to state that she was being trained on what to do with each type of hair and the various categories the hair would be placed in. She was handing Sam hair samples and knickknack items when she became dizzy after standing up. She had never previously fainted. (Tr. 57)

On recross, the claimant was asked about the video she viewed in the hearing, and she responded that it had been “finagled with, because I bent down to the lower shelf and stocked merchandise on my knees.” (Tr. 60, 61)

The claimant called no additional witness. Mr. Yougjin Song, the owner of Beauty Sensations then testified. He stated that he was a resident of Little Rock and a native of South Korea, who previously had worked at UALR as an assistant professor in the speech department. He admitted not having workers’ compensation insurance in the past but had obtained it due to having several employees. He stated he was not aware of the fact that workers’ compensation was required by the state of Arkansas. (Tr. 64 – 66) He admitted hiring the claimant and stated the claimant could only work 25 hours a week. (Tr. 69) He also admitted the claimant was injured on her second day of work, and that he was not present at the time of the accident. He also testified that the air conditioning was automatically set at 75 degrees. After the claimant’s injury, he was told by Sam that she stayed for several more hours and then went home. She returned to work the next

day. He went on to state that she told him that she had forgotten to take her blood pressure medicine. Additionally, it was over 100 degrees outside and was too cold inside or whatever. (Tr. 70 – 72) He terminated her employment because he thought that the “environment would be too harsh for her. She would not be fit to work in the retail business because, you know, it’s - - it would be difficult.” He also admitted that he had entered into an agreement with the claimant where he would pay her \$1500.00. He had taken a “legal sample form” and prepared the affidavit for the payment of the money. (Tr. 73, 74)

Under cross examination, Mr. Song admitted that he had been in business for about 18 years. (Tr. 78)

In regard to documents entered into the record, medical records from Proper Pain Solutions were admitted as a joint admission. The reports are in reverse chronological order. A report dated March 28, 2024, provided that the claimant presented with right hip and knee pain. The pain started in 2010. “The onset of her pain was not associated with an incident.” “She experiences pain all of the time.” There was an assessment of low back pain, spondylosis with radiculopathy, lumbar, post laminectomy, cervicgia and myalgia, along with right and left knee pain. The claimant had been seen previously at Proper Pain Solutions on February 29, 2024, and also February 1, 2024. The February 1, 2024, report from Proper Pain Solutions provided there had been an 85% improvement of the claimant’s low back pain and that the pain had started in 2010. Additionally, the report provided that the claimant had an altercation with a family member on January 30, 2024. Additionally, the report also provided that the pain started in 2010, and no initiating incident was noted.

The claimant had also presented to Proper Pain Solutions on December 28, 2023, with similar findings, but had received a knee injection on that date. The claimant had previously presented to Proper Pain Solutions on November 27, 2023, and this report provided the claimant had presented with increased neck pain on the left side. Again, the report provided there was not an initiating incident. The claimant had also presented to Proper Pain Solutions on November 2, 2023, with the report providing for increased knee pain, with the report again providing that the pain started in 2010. The claimant previously had presented to Proper Pain Solutions on August 31, 2023. This report provided for increased pain in the neck and left shoulder. Again, the report provided for no initiating incident. The report mentioned that the claimant fell at work about a week earlier and had bruised her right and left arm and had a lot of pain in the left shoulder. A MRI was discussed. (Jt. Ex. 1, P. 1 – 32)

Dr. Senthill K. Raghavan reported on September 14, 2023, that the claimant wanted to discuss an injury to the left shoulder that occurred from a fall at work after fainting. The claimant stated she could not raise her left arm or turn her neck to the right. (Jt. Ex. 1, P. 33 – 37)

A report from the UAMS Orthopedic Spine Clinic dated October 27, 2023, provided that the claimant had presented today for a follow-up after a L4-L5 robotic TLIF on January 26, 2022. The claimant had stated per the report that her pain had initially worsened following her fall but that it now was settled some. (Jt. Ex. 1, P. 38 - 40)

The claimant had presented to Dr. Senthill K. Raghavan on November 11, 2022. This report provided for chronic post-traumatic stress syndrome with congestive heart failure, along with intervertebral disc degeneration. (Jt. Ex. 1, P. 41 – 45)

A report from the Arkansas Psychiatric Clinic on or about September 18, 2023, provided that the claimant was suffering from anxiety and PTSD. (Jt. Ex.1 A)

A letter to the Commission dated May 29, 2024, requesting a subpoena be issued for the work video footage of August 23, 2023, involving the fall by the claimant. (Jt. Ex. 2)

The affidavit that was discussed in the testimony which provided for the payment of \$1500.00 to the claimant was admitted into the record. (Resp. Ex. 1) A letter signed by the claimant and addressed to who it may concern provided that the claimant had withdrawn her Workers' Compensation Claim against Beauty Sensations. (Resp. Ex. 2) A letter that provided the work history of the claimant was also admitted into the record. (Resp. Ex. 3)

Additionally, a proffered exhibit from the claimant which was something akin to a promotional document was proffered which provided for what would be assumed to be some type of possible treatment modality. This exhibit was not found to be admissible. (Clamant Proffer 1) Finally, a short video was viewed which provided that the claimant stood up and then slumped down and this video corresponded with testimony that the claimant had fainted or suffered from Syncope.

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the claimant testified that after stocking product while squatted or on her knees, she fainted after standing up, due to the high temperatures of the work environment, and the fall resulted in an injury to her left shoulder and lower back. In addition, there was testimony that the claimant received \$1500.00 from the respondent for a settlement involving her workers' compensation claim after signing an affidavit of settlement.

In regard to the proposed settlement, A.C.A. 11-9-108 provides that “no agreement to waive his or her right to compensation shall be valid, and no contract, regulation, or device whatsoever shall operate to relieve the employer or carrier in whole or in part, from any liability created by this chapter Consequently, the affidavit does not allow the respondent to enter into a so-called settlement and does not control the outcome of this matter.

However, the claimant still has the burden of proof in regard to the issue of compensability. More specifically, in regard to the issue of compensability, the claimant still has the burden of proving by a preponderance of the evidence, that she is entitled to compensation benefits for the injuries to her left shoulder and low back. 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. Cavanaugh’s, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Under Arkansas Workers’ Compensation law, 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, there is no doubt that the claimant suffered from previous horrific occurrences and psychological trauma in her life which are truly unfathomable and that clearly have had a detrimental effect on her life, prior to the incident in question here. However, even with the prior horrific occurrences, the claimant still must comply with the applicable workers' compensation law and regulations in regard to satisfying the burden of proof for her claim. The injury which the claimant seeks benefits for must be established by medical evidence supported by objective findings and these findings cannot come under the voluntary control of the patient. A.C.A. 11-9-102 (16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here the primary evidence and testimony in regard to the claimant's injuries comes from the claimant. No medical evidence provided that her lower back and left shoulder problems were due to a work-related incident. Many medical records provided that the claimant had suffered from issues involving low back pain and pain in her neck for years. The pain was never associated with a specific incident per the medical reports. There

was some medical that mentioned a work-related fall, but the reports did not specify specifically the cause of the fall or the pain in the lower back and shoulder.

The claimant clearly fainted or suffered from Syncope, the medical term for a brief loss of consciousness that's followed by a quick and full recovery, after a review of the work-related video. This event occurred after the claimant assisted in stocking in a squatted position and then standing. There are no medical reports that connect the event of the claimant's Syncope to a work-related injury. Syncope can occur just by jumping out of bed quickly. Testimony provided and was believable, that although the incident occurred on a hot August day, the air conditioner was automatically set for 75 degrees. Even if the temperature was above 75 degrees, that alone is found to not be significant to satisfy the required issue of proof. It is clear the claimant strongly feels she is entitled to workers' compensation benefits due to her episode of Syncope, but there is no alternative but to apply the Arkansas law in regard to her workers' compensation claim. Consequently, without giving the benefit of the doubt to either party, there is no alternative but to find the claimant has failed to prove by a preponderance of the evidence that she suffered a compensable work - related injury under the Arkansas Workers' Compensation Act. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge