

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H303140

JULIE MOORE, EMPLOYEE

CLAIMANT

GREENBRIER NURSING & REHAB CNTR., EMPLOYER

RESPONDENT

**INDEMNITY INS. CO. OF N. AMERICA, CARRIER/
ESIS, INC., TPA**

RESPONDENT

OPINION FILED 3 DECEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 4 September 2024 in Little Rock, Arkansas.

Rainwater Holt & Sexton, Ms. Laura Beth York, appeared for the claimant.

Newkirk & Jones, Mr. Eric Newkirk, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 4 September 2024 in Little Rock, Arkansas, after the parties participated in a prehearing telephone conference on 28 May 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on the day of the conference.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/TPA relationship existed at all relevant times, including on 29 April 2023.
3. The respondents have controverted this claim in its entirety.

The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant sustained a compensable injury to her back/spine and right hip¹ by specific incident on 29 April 2023.
2. Whether the claimant is entitled to medical and indemnity benefits associated with a compensable injury.
3. The applicable average weekly wage should the claimant be found to have sustained a compensable injury.²
4. Whether the claimant is entitled to an attorney's fee.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated into the Prehearing Order. In her prehearing questionnaire, the claimant contended that she sustained a compensable injury while transporting a very heavy patient in a rolling bed that was very difficult to control, causing pain in her lower back, hip, and buttocks. She subsequently obtained an MRI scan that showed disc bulges in her lumbar spine. She clarified, however, through counsel at the beginning of the hearing that she was not transporting a patient in the bed. Rather, she was attempting to swap out the patient's broken bed for another when she injured herself. She contends that she suffered a compensable injury in the course and scope of her employment and is, therefore, entitled to the accompanying benefits.

The respondents, on the other hand, contend that the claimant cannot establish a compensable injury occurring on 29 April 2023. They assert that no one witnessed an injury-causing incident on 29 April 2023 because no incident occurred. Alternatively, the respondents contend that they are entitled to any offsets available under applicable law.

¹ The Prehearing Order included only a compensable injury to the claimant's back/spine. The issue of whether the claimant also sustained a compensable injury to her right hip was added without objection at the outset of the hearing. See TR at 12.

² The Prehearing Order anticipated the parties agreeing on an average weekly wage, but at the time of the hearing, it was agreed that the applicable wage amount would, instead, be an Issue litigated at the hearing. See TR at 10, 12.

Several WITNESSES testified at the hearing. The claimant testified on her own behalf. The respondents called Ms. Becky Wheeler (the nurse training the claimant on 29 April 2023), Ms. Amanda Ivy (the charge nurse on 29 April 2023), and Ms. Shannon Casey (a Human Resources (HR) officer for the respondent-employer).

The EVIDENCE considered in this claim consisted of the hearing testimony along with the following EXHIBITS: Commission's Exhibit No 1 (the Prehearing Order), Claimant's Exhibit No 1 (four index pages and 80 pages of medical records), Claimant's Exhibit No 2 (an index page and 39 pages of text message print-outs), and Claimant's Exhibit No 3 (two pages of facility work/shift scheduling sheets (highlighting was included in the originals)); Respondents' Exhibit No 1 (an index page and 64 pages of non-medical records) and Respondents' Exhibit No 2 (an index page and 33 pages of medical records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously-noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that she suffered compensable injuries to her back/spin or hip by specific incident.
4. The claimant, thus, failed to prove by a preponderance of the evidence that she is entitled to the benefits sought.
5. The issue of determining the claimant's average weekly wage is moot.
6. The claimant failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee.

III. HEARING TESTIMONY

Claimant Julie Moore

The claimant testified that 29 April 2023 was her first shift working as a trainee nursing assistant at the respondent-employer' nursing home. She was assigned to the night shift with Ms. Becky Wheeler as her trainer. Some time into the shift, the two were made aware of a broken footboard at the end of one of a patient's beds.

According to the claimant, she and Ms. Wheeler moved the patient from the bed and placed her in a chair using a Hoyer Lift. She then stated that Ms. Wheeler stayed with the patient while she was responsible for moving the empty bed down to another hallway and bringing back a new bed to replace the first one. She testified that the bed was difficult to keep rolling straight down the hallway and that she ran the bed into the nurse's station by accident.

So I took the bed out of the room. Well, me and Becky, actually, got it out of the room. I started down the hallway... Come to find out, when I started moving the bed, the bed was like moving sideways and I couldn't keep it straight. So I guess, you could say, I fought with the bed up until I got to the nurse's station. I couldn't roll the bed straight. It was like—I don't know how to describe it. The whole bed was broke, like broke down. I don't know how to describe that. It just wouldn't roll straight. It wouldn't cooperate; so I fought with the bed and I ended up hitting the nurse's station. The bed squirreled, like I said, it was hard to control. I didn't see anybody on the floor or I'd asked for help, but I didn't see anybody.

When I hit—except there was a nurse or I have to assume she was a nurse. I don't really know what she was at the nurse's station, because it was my first night, I don't know names and faces yet. I hit the nurse's station. She asked me was I okay. I said, "No." We were talking about—briefly about, you know, "Sorry I hit the nurse's station. I didn't mean to."

[TR at 33-34.]

The claimant explained that the layout of the facility was like a wheel, with the nurse's station at the center and the hallways with patient rooms like spokes running from the center of the wheel. When the bed hit the nurse's station, "it stopped. When a bed hits a solid thing, it stops, apparently." [TR at 40.]

The claimant realized at that time that she felt a burning sensation in her buttocks. The claimant described some dialogue back-and-forth with the nurse at the station before going on about moving the empty bed down the hall:

The nurse said, "Are you okay?" I said, "No, something's wrong," and I said, "Well, what do I do with the bed?" 'Cause, then, I thought you know, "Hey, this all is gonna stop." Her, assuming she's a nurse, you know, we're going to figure something out, 'cause I shouldn't have had this pain. 'Cause I didn't—I'd never had it before. I didn't know how to describe it. I said, stinging at first, but then, I told her it was like a burning, like you pulled something. You know, that's what I was thinking, you know. Anyway, she said she didn't know what to do with the bed. I told her I was to take it to 300 Hall. She said, "Then that's what you need to do." So I finished taking it down to 300 Hall, still fighting with it, still arguing with it. I get it down as far as I can. I don't know, someone come told me, "Becky needs that bed now." So I go to the room, try to move the bed.

[TR at 40-41.]

When she arrived at the replacement bed, the claimant testified:

I get in there. I think, I unlock it. I can't move it. When I pulled on it, thinking it's unlocked, I pulled on it, and then, I realized, "Oh no, I'm in trouble," 'cause then, I start getting a throbbing in my back and in my right side. So I don't know what's going on. I'm like, "Oh, hang on. No, I'm stopping." And so I left that room and I went and got Becky. I said "Becky, I can't move the bed. Something is wrong with my back. I hit the nurse's station." I tried to explain it to her. But during this time, there was a lot of commotion going on in this room, because when I went in there, we had realized... Unbeknownst to me, there was a emergency going on with a resident in the other bed. And so there was a lot of commotion in there. It's called a diabetic emergency... So there was a lot of people in there and I was trying to explain to Becky what happened. She's like, "where's the bed?" I said, "I didn't get it out of the other room," – the new bed, "out of the other room, because I couldn't move it."

[TR at 41-43.]

After getting the patient's bed replaced, the claimant stated that she went back to the nurse's station where she described squatting down "to you know, a squat position and we were talking about me getting hurt, they said, "Well, it's probably just pulled muscles that you haven't used." Which I thought, "Okay, you know, that sounds logical. Yeah, I was fighting with the bed." [TR at 45.] The claimant then said that she was unable to get up

until the others had left the station. She had to brace against an empty chair to help raise into a standing position. The claimant did not recall any further discussion of the incident through her shift that night.

The claimant testified that after her shift, she went home and to bed. She woke up in pain and had to have her husband's help to first get out of bed and then to get up from the toilet. At some point thereafter, she began a text thread with Ms. Shannon Casey, her HR contact. See Claimant's Exhibit No 2.

After some discussion with Ms. Casey and others, the claimant eventually presented for covered treatment at ARCare on 4 May 2023. She returned for additional treatment on 8 May 2023. The claimant was not happy with the treatment had received up to that point, so she sought treatment with Baptist Urgent Care. She stated that she wanted to be referred to an orthopedic provider, but that was denied. She learned that her claim was being denied around that time, so she continued to seek treatment on her own.

On 12 October 2023, the claimant underwent an MRI scan of her lumbar spine that revealed some disc protrusion at L3-4. She stated that she sometimes feels tingling or numbness in her buttocks and hip. An MRI of her hip was performed on 9 November 2023 that revealed, "a couple of tears and from what I've read, I need—my understanding of what I read, I need a full hip." [TR at 64.] She said that Dr. Adam Smith then performed some hip injections that were not of significant benefit and eventually recommended surgery.

The claimant denied previously seeing a doctor for a back or hip injury. She acknowledged a serious motor vehicle accident in the late 1980s that caused her to be ejected from the vehicle, but she could not remember what injuries she sustained. She also discussed a previous injury to her toe and trouble with her right leg and knee that she related possibly to sciatica. The claimant stated that she underwent a nerve conduction

study, some therapy, and some form of radiofrequency treatment for her leg/knee trouble. She also noted dealing with Plantar Fasciitis while working as an EMT for Pafford in the past. But, again, she denied any previous low back or right hip injuries.

On cross examination the claimant stated that her work for the respondent-employer consisted of a day of orientation and her first shift on 29 April 2023. She acknowledged that her employment was probationary during that time. She also acknowledged receiving treatment in 2018 for right leg neuropathy, but denied any hip injury or back problems prior to the incident at issue in this claim.

A: It seemed like the whole bed had issues.

Q: Okay. And that's what led you to hit the nurse's station, right?

A: Yes.

Q: And that's when everything kind of changed, is that correct?

A: Yes.

Q: You knew, then, you had hurt yourself, when you hit that nurse's station?

A: Yes.

Q: That was the first time up until that—at any point, that you knew that you had anything wrong with your low back or your hip or anything of that region, is that right?

A: Correct.

[TR at 89-90.]

The claimant acknowledged that in her deposition she described the employee that she spoke with at the nurse's station as the charge nurse. The respondents' counsel asked about discrepancies in the claimant's testimony:

Q: And then, you indicated that you went down the hall and tried to get this other bed and that you were having such pain and discomfort that you had to go get Becky to come help you?

A: Yes.

Q: Do you recall telling me different at the deposition that you, actually, were in that room and you were hurting so bad that you had to have them go get Becky to come help you?

A: I did try to get somebody to go and after a period of time, I got tired of waiting; so I went and got Becky.

Q: Okay. So where you told me on page 37 of your deposition that, "She came and helped me and said, 'What's wrong,' I can't even move this one, this bed." You're saying that was after you went and got her instead of her coming to you?

A: Yes.

Q: And you said that you complained to the nurse that you had hurt your back?

A: I did.

[TR at 91.] She went on to say that she complained about injuring her back at least three times that night. Discussing the time she spent dealing with the beds, she said that it could have been one or three or ten minutes while the patient was waiting for a replacement bed to be brought in.

Q: The whole time this resident is in that Hoyer Lift waiting for you to return with that bed, right?

A: Correct.

[TR at 93.] When asked why the replacement bed would not have been brought to the patient's room first, the claimant stated that she was only doing what she was told by Ms. Wheeler.

The claimant testified that Ms. Wheeler definitely saw her walking with an altered gait and that she was aware of her injury after hitting the nurse's station with the bed. When asked why she did not report running the bed into the nurse's station as the cause of her injury when texting with Ms. Casey, the claimant responded, "Well, I figured she'd call me and set up a conversation for me to come in and fill out paperwork and stuff." [TR at 96.] She also acknowledged, however, that she did not mention hitting the nurse's station when filling out the Form AR-N, *Employee's Notice of Injury*. See Respondents' Exhibit No 1.

Her cross examination continued with the claimant acknowledging that the Form AR-C, *Claim for Compensation*, that she filled out did not mention a collision with the nurse's station or an injury to her hip. The claimant stated that she told her medical providers about the nurse's station incident. But when confronted with records stating, "Moving bed, the patient in it," she said that the doctor must have committed an error because those were not her words. [TR at 99; See Respondents' Exhibit No 2 at 23.]

Q: Okay. And it says, "She noticed pain the next day." Do you see that?

A: Yes.

Q: You didn't say anything in here about hurting yourself that night or having pain that night or hitting the nurse's station, did you?

A: No.

Q: Let's go to the next time. Maybe you told the next doctor, then...

About midway down and it says in the history of present illness—can you read what it says right there starting with “the patient denies?”

A: Where at?

Q: “Patient denies...”

A: “Patient denies any specific injury. I just know it happened sometime between 3:00 and 7:00 a.m., but I'm not sure what exactly happened or when it was. It was my first day on the job. I was train...”

[TR at 100.]

...

Q: That's okay. So you told them you didn't know when it occurred, what happened, and you had no specific injury. Is that what you told them?

A: No.

Q: So this is wrong?

A: It's kinda wrong.

[TR at 101.] After some further disagreements on what was reported in the records and what the claimant actually said, the testimony returned to when she was first pushing the bed down the hallway.

Q: And this was unlike any other bed you've ever pushed before, is that fair to say?

A: I don't know how to answer that.

Q: Well, it just seems like you're trying to say—my understanding of it, you're trying to say you need a total hip replacement now, because of an event, where you're simply pushing a bed down a hallway. And you're saying it's so out of control that you hurt yourself to the point that you got to have a hip replacement now. Is that your testimony?

A: I don't know how to answer that one.

[TR at 104-105.]

On redirect examination the claimant noted that some of her initial paperwork included a report of an injury to her hip. On recross examination the claimant restated that she knew that she was injured as soon as the bed hit the nurse's station and that she told the nurse at the station and Ms. Wheeler about her injury.

Respondents' Witness Ms. Becky Wheeler

Ms. Wheeler testified that she is a Certified Nursing Assistant and Medication Aide Certified. She was the claimant's trainer on the night in question. Her testimony on the night's events differed significantly from the claimant's:

A: ...the nurse came and said, the resident had broken her footboard off her bed, 'cause she slides down and pushes it. So we went and got—we went down 300 Hall together, we got a new bed, took it down to 100 Hall—

Q: And you say “we”?

A: Yes.

Q: You and Ms. Moore?

A: Me and Julie... she was pushing, I was pulling, because the beds are awkward; so they're long; so two people is normally how we do that. We took the new bed down the hall. [The patient was transferred to the new bed.] I was changing her and getting this lift sheet from under her and Julie said, I will take the old bed down to the end of the hall,” and I said, “No, wait on me.” And I came out and she was already pushing the old bed towards the nurse's station and that's when I stopped her and said, “We do these together.”

...

Q: Okay. Did she indicate in any way, shape, or fashion that she was hurt?

A: No.

Q: Why was it so important for you to be with her?

A: Because I'm a trainer. We don't allow—we don't allow trainees to be alone at— [trainees] are not allowed to be alone during their training period.

Q: And how long does that training period last?

A: Three days.

[TR at 114.]

Ms. Wheeler went on to testify that, training requirements aside, using two people to move beds makes maneuvering them less awkward. She said that the claimant made no complaints to her about pain or discomfort during their shift together and that she did not notice the claimant limping or otherwise acting as if she was injured or uncomfortable. She also took issue with the claimant's version of the “diabetic emergency” happening in the room with the broken footboard. That other patient, she explained, would complain of having low blood sugar when she wanted chocolate milk. A nurse noticed the broken footboard when taking the chocolate milk to the other patient and *then* requested that they switch out the beds, she testified.

On cross examination, Ms. Wheeler addressed the general awkwardness of moving patient beds around.

Q: Okay. Now, you admitted that the beds in question were very difficult to move, is that correct?

A: It's just because they're long. They roll fine, it's just they're awkward, because they're long.

Q: Okay.

A: I mean, they're beds.

Q: Okay. And the bed in question that night, was it difficult to move?

A: No.

[TR at 122-123.]

Explaining more about the bed needing to be replaced, the witness testified that the footboard was knocked loose by the patient sliding down in the bed and using the board to kick herself back up in the bed. The footboard being broken did not mean that the undercarriage of the bed was damaged or mean that it was more difficult to maneuver.

Respondents' Witness Amanda Ivy

Ms. Ivy testified that she was working as the charge nurse on 29 April 2023. She did not recall the claimant striking the nurse's station with a bed or indicating in any way that she had been injured. She said that Ms. Casey was the first to ask anything about the claimant alleging an injury, and she reported that she was not aware of anything.

Respondents' Witness Ms. Shannon Casey

Ms. Casey testified that she works in HR for the respondent-employer. She confirmed that 29 April 2023 was the claimant's first assigned shift at the facility and that she was a probationary employee at the time, who was not guaranteed work hours or a set schedule during the probationary period. She explained that the work schedules in evidence represented what the claimant and others would have likely covered if the claimant had continued her work at the facility.

Claimant on Rebuttal

The claimant testified again at the end of the proceedings to dispute Ms. Ivy being the nurse who was seated at the nursing station when she ran into it with the bed. She said that she couldn't recall whom was there at that time, but doubted that it was Ms. Ivy.

Medical and Documentary Evidence

The claimant presented to ARCare on 4 May 2023 and received an off-work note excusing her absence from work until 8 May 2023. Right shoulder and right hip pain were noted. See Claimant's Exhibit № 1 at 2. The clinic note from that visit, in part, states:

Patient reports she was bending, stooping and twisting and moving [a] bed the patient in it and that she noticed pain the next day.

See Respondents' Exhibit № 2 at 23.

According to another ARCare return-to-work note, she was seen again 8 May 2023 with continued pain in her right shoulder and hip and low back pain. She was to return to work the following day with sedentary restrictions "until evaluated by ortho." See Claimant's Exhibit № 1 at 3.

On 15 May 2023, the claimant was seen by Dustin Van Pelt, P.A., at a Baptist Urgent Care clinic. That visit note provides:

Now wanting a second opinion from a different facility. Report injury occurred on 04/29/2023, "I was moving bed out of a room and then moved it down to another hall. A little bit later I was squatting down and I thought to myself that I couldn't get back up. The next day I was so sore and couldn't hardly get out of bed. It was my first day training so I didn't want [to] leave that night because I didn't want to get fired." Patient denies any specific injury. "I just know it happened sometime between 3:00 a.m. to 7:00 a.m. But I am not sure what exactly happened or when."

Id. at 4. She was diagnosed with right side sciatica and referred to physical therapy and orthopedics for a possible SI Joint Radio Frequency Ablation. *Id.* at 5, 6.

The claimant returned to the urgent clinic on 23 May 2023 complaining of no improvement in her pain and of her referrals not being set up through her employer's workers' compensation carrier. *Id.* at 8.

On 22 June 2023, the claimant presented to Conway Orthopedic & Sports Medicine Center (COSMC). She reported right buttock pain after moving a "broken and very difficult to maneuver" bed down a hallway and "that she did not fall or suffer a specific injury but began experiencing pain when she stood up from the forward flexed position she had been pushing the bed down the hallway." *Id.* at 12. X-ray imaging from the visit revealed:

... moderate to severe L5-S1 disc height loss, large anterior and lateral osteophytes L3 with small anterior osteophytes at L5. No acute abnormality or fracture. Slight loss of lumbar lordosis.

AP pelvis and lateral view of the right hip obtained today in clinic show normal bony alignment, well-maintained femoral acetabular cartilage intervals. Normal soft tissues.

Id. at 15. The impression was stated as Lumbar Spondylosis and Right Lumbar Radiculopathy.

The claimant made an initial visit to a pain management provider on 18 August 2023, and lumbar epidural steroid injections were ordered. *Id.* at 22.

On 24 August 2023, the claimant returned to COSMC, where a lumbar MRI was again recommended to evaluate for right sided foraminal stenosis. *Id.* at 27.

After presenting to OrthoArkansas on 18 September 2023, a lumbar MRI scan was recommended again. That scan was performed on 12 October 2023 and revealed some degenerative changes. *Id.* at 37. The notes from her follow-up with OrthoArkansas on 16 October 2023 provide:

She has some disc protrusion and lateral recess stenosis worse at L5-S1 on the left. I do not see any acute objective injury on the right side that would really explain her symptoms. She has some lateral recess narrowing and a little foraminal narrowing at L5-S1 on the right.

... I do not see an obvious objective injury in her spine. She keeps telling me that her pain is really in her hip and she thinks her hip is the issue.

She was then referred to Dr. Adam Smith for a hip exam and recommended for a transforaminal steroid injection. *Id.* at 41.

The claimant first saw Dr. Smith on 26 October 2023, and he assessed persistent right hip pain with likely abductor tear. Another MRI was recommended. *Id.* at 45.

An MRI scan of the claimant's hip was performed on 9 November 2023, and Dr. Smith discussed the findings with the claimant that day:

MRI was reviewed and does show arthritic change in the hip with loss of the joint space and subchondral sclerosis as well as degenerative labral tearing. She does have some partial tears of her proximal hamstrings and abductors.

Assessment: Right hip osteoarthritis.

Id. at 50.

On 29 February 2024, the claimant returned to Dr. Smith for additional treatment options. They discussed scheduling surgery after she quit smoking for at least two weeks.

Dr. Smith noted:

With regards to whether or not this could be related to a work accident I cannot say with certainty but she does state that she was not having pain before [29 April 2023] and only started having pain afterwards so it is likely that at least contributed somewhat.

Id. at 54.

The text messages between the claimant and Ms. Casey show that the claimant first sent a message late in the afternoon of Sunday, 30 April 2023, saying that she was sore, having trouble moving, and felt like she pulled something. See Claimant's Exhibit № 2. The exchange continues with the claimant stating on Tuesday, 2 May 2023, "I think it's from pushing and pulling on the bed a resident broke and fighting it to get down the hall." She went on to state that, "the other bed didn't want to roll either, it took Becky and I to get it

down the hall and into the room.” Subsequent messages were about seeking treatment and coordinating care.

IV. ADJUDICATION

The stipulated facts, as agreed during the prehearing conference, are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. The Claimant Failed to Prove by a Preponderance of the Evidence That She Suffered a Compensable Injury by Specific Incident.

Under Arkansas’ Workers’ Compensation laws, a worker has the burden of proving by a preponderance of the evidence that she sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Causation does not need to be established by objective findings when the objective medical evidence establishes that an injury exists and other nonmedical evidence shows that it is more likely than not that the injury was caused by an incident in the workplace. *Bean v. Reynolds Consumer Prods.*, 2022 Ark. App 276, 646 S.W.3d 655, 2022 Ark. App. LEXIS 276, citing *Wal-Mart Stores, Inc. v. VanWagner*, *supra*.

The claimant alleges that her injury occurred by specific incident. The claimant must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) that the injury arose during the course of employment; (2) that the injury caused an actual harm that required medical attention; (3) that objective findings

support the medical evidence; and (4) that the injury was caused by a particular incident, identifiable in time and place. See *Cossey v. G. A. Thomas Racing Stable*, 2009 Ark. App. 666, 344 S.W.3d 684. A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962).

A claimant's testimony is never considered uncontroverted. See *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. See *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.*

Here, the claimant alleges that she injured her back/spine and hip when an empty bed she was pushing down a hallway ran into a nurse's station and suddenly stopped. Her version of the events leading up to and after her being with the bed at the nurse's station vary greatly from those relayed by the two other witnesses who were there that night. The claimant clearly testified that she injured herself *when the bed she was pushing hit the nurse's station, that she was immediately aware of her injury or injuries*, and that she spoke about injuring herself immediately after it happened and then again later.

The workplace forms she completed and the notes from her doctor visits, however, make no mention of her being injured by crashing an out-of-control bed into a nurse's station. Instead, she consistently relayed, more generally, that she seemed to have hurt herself at some point when she was moving patient beds. Those later reports do not reflect her describing a particular incident the mechanism of injury being a collision with a nursing station.

I do not find that the claimant proved by a preponderance of the evidence that she suffered a compensable injury by way of pushing a bed into a nurse's station. Nor do I find the claimant's testimony to be credible.

The claimant's testimony and the evidence are filled with inconsistencies. First, she seems to claim that the first bed was either very difficult to move or, alternatively, moving wildly out of control and in such a way that it impacted the nursing station with enough jarring force that she injured her back, her shoulders, and her hip. She described pushing it "hunkered down" and with "some momentum." But when asked plainly how she and the bed could have been "so out of control that you hurt yourself to the point that you got to have a hip replacement now," she unconvincingly responded, "I don't know how to answer that one."

Also, the claimant testified that she was unsure about whom she spoke with at the nurse's station after supposedly running into it with a bed, saying that she assumed the person could have been a nurse, but because it was her first night, she didn't know "names and faces" yet [TR at 34]. She then acknowledged, however, that at her deposition she said that the night's charge nurse was the person she spoke with. Ms. Ivy credibly testified that she was the charge nurse that night, that she never saw the claimant run a bed into the nurse's station, and that the claimant never spoke to her about any injury.

Similarly, the claimant testified at the hearing that when she couldn't get the replacement bed to move, she went looking for Ms. Wheeler's help. But she acknowledged that at her deposition she testified that she had asked others to go find Ms. Wheeler for her because she was in pain. It's unclear exactly when or to whom she attributed a statement about "Becky needs that bed now," but that is another uncorroborated exchange that does not fall neatly into her supposed timeline.

The claimant testified that she spoke about injuring herself with Ms. Wheeler and others at least three times- when she hit the station, when she first told Ms. Wheeler she needed help with the second bed, and when they all gathered afterwards at the nursing station. Ms. Wheeler testified credibly that the claimant did not make any report or an injury or appear injured at any point during their shift together. None of the claimant's supposed reports of injuries or discussions of injuries were corroborated. The claimant's version of the first conversation with Ms. Wheeler is also suspect, in that she testified that Ms. Wheeler left the bedside of a patient in a "diabetic emergency" to retrieve and bring another bed into an already crowded room with "a lot of commotion" and "a lot of people in there." It would strain a common sense of patient care priorities to accept that occurring during a patient care emergency.

Ms. Wheeler's testimony and version of events, conversely, seems credible. She explained that they first learned about the bed being broken after another nurse delivered chocolate milk to a patient who said her blood sugar felt low. The claimant was supposed to stay with Ms. Wheeler throughout the shift, and they both brought a replacement bed to the room before lifting the patient away from the broken bed. After the beds were exchanged, the claimant started to move the broken bed and was stopped by Ms. Wheeler without any apparent incident. To Ms. Wheeler's knowledge, and to that of Ms. Ivy, the shift continued on unremarkably. Again, a common sense approach to replacing a broken

bed for a bed-bound patient tracks with Ms. Wheeler's version of events, where they first brought over a bed to replace the broken one.

The claimant attributed her story about the bed hitting the nurse's station not appearing in the medical records to error on the part of her providers. She suggested the same for a note indicating that she was injured while wheeling a bed with a patient in it.

Finally, even if the claimant could provide credible evidence to meet her burden on the incident actually happening, she failed to present objective findings of an injury. See *Hall, supra*.

In short, the claimant failed to provide a preponderance of evidence in support of her version of how she suffered compensable injuries to her back/spine or hip by specific incident. Her claim must fail for that reason.

B. The Issue of the Applicable Average Weekly Wage is Moot.

Having found that the claimant failed to meet her burden on proving that a compensable injury was sustained, determining her average weekly wage for the purpose of benefits is moot.

C. The Claimant Failed to Prove by a Preponderance of the Evidence that She is Entitled to an Attorney's Fee.

For the reasons explained above, the claimant has failed to prove that she is entitled to an attorney's fee.

V. ORDER

Consistent with the above Findings of Fact and Conclusions of Law, this claim for initial benefits is DENIED AND DISMISSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE