

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H401851**

GLORIA YVONNE TACKETT, EMPLOYEE

CLAIMANT

**PINNACLE PLACE MEMORY CARE,
EMPLOYER**

RESPONDENT

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

RESPONDENT

OPINION FILED SEPTEMBER 9, 2024

Hearing before Administrative Law Judge, Steven Porch, on July 24, 2024, in Little Rock, Arkansas.

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

Respondents were represented by Mr. James Arnold II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on July 24, 2024. A prehearing telephone conference took place on June 4, 2024. A prehearing order was entered on that date and subsequently entered into evidence, with amendments by the parties, as Commission Exhibit 1. The parties' stipulations are set forth.

STIPULATIONS

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer/employee/carrier relationship existed among the parties on December 25, 2023, when Claimant allegedly sustained a compensable injury to her right shoulder.
3. Respondents have controverted this claim in its entirety.

4. Claimant's average weekly wage of \$900, entitles her to a temporary total disability rate of \$600, and a permanent partial disability rate of \$450.¹

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained compensable injuries to her right shoulder by specific incident.
2. Whether Claimant is entitled to any reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from December 26, 2023, to a date yet to be determined.
4. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that she sustained compensable injuries to her right shoulder due to involvement with a physically aggressive patient. Claimant contends entitlement to payment of temporary disability benefits from approximately December 25, 2023, and continuing through a date yet to be determined. It appears that Respondents may have paid some benefits through approximately December 12, 2024, at which time Claimant was notified of the Respondents controversion of the claim. Medical expenses have been incurred by Claimant. The claim has been controverted for purposes of an attorney's fee.

Respondents' Contentions: Respondents contend, without waiving any other defenses, the MRI taken on January 19, 2024, reports exclusively chronic findings.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven by the preponderance of the evidence that she sustained compensable injuries to her right shoulder by specific incident nor through the course of employment.
4. Based on my finding that 1.) Claimant did not sustain an injury by specific incident, and 2.) nor did her injury arise out of and through the course of employment, the remaining issues of reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of 111 pages, Respondents' Exhibit 1, correspondence and questionnaire, that consist of 4 pages, Respondents' Exhibit 2, medical records, consisting of 154 pages, and Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages. Forms AR-C and AR-1 blue-backed and made a part of this record. The Claimant was the only witness testifying in the full hearing.

Claimant was employed as a nurse for the Respondent/Employer. On December 25, 2023, Claimant was attempting to break up a fight between two patients. Claimant, in her effort to break up the fight was punched, kicked, and choked by one of the patients. This altercation resulted in alleged rotator cuff tears to her right shoulder. The Claimant reported this injury to Respondent/Employer the same day. The Claimant has not worked for Respondent/Employer since

that December 25, 2023, incident. However, on April 5, 2024, she accepted a job at Blossoms of West Dixon Nursing Home.

Despite not working for the Respondent/Employer from December 25, 2023, through April 5, 2024, Claimant did receive some medical treatment through the ER at Baptist Medical Center (“Baptist”) and later at the Concentra Medical Center (“Concentra”). The Claimant went to the emergency room at Baptist on December 26, 2023. There the doctor noted that the Claimant had tenderness in her right shoulder. Claimant’s Exhibit 1, page 6. Claimant received an x-ray to her right shoulder that found no acute fracture or dislocation. However, osteoarthritis was present in the glenohumeral and AC joint. Claimant’s Exhibit 1, page 8. Claimant’s final diagnosis from her ER visit was a strain to her lower back and to her shoulder. Claimant’s Exhibit 1, page 17. Claimant received a Toradol injection and was released.

Respondent/Employer next sent Claimant to Concentra on January 3, 2024. There, Dr. Clint Bearden, Physician Assistant, assessed the Claimant as having a right rotator cuff tear and suspected it was an infraspinatus tear. Claimant’s Exhibit 1, page 21. The Claimant was allowed to return to work on January 3, 2024, with restrictions, i.e. no reaching above shoulders or activities that would involve physical altercations. Claimant’s Exhibit 1, page 26. Claimant also underwent physical therapy. Claimant’s Exhibit 1, pages 27 – 28. Dr. Bearden ordered an MRI at Chenal MRI for Claimant on January 19, 2024. Claimant’s Exhibit 1, pages 40 – 41. This MRI report shows a complete full thickness tear of the supraspinatus tendon with approximately 5.5 cm of retraction just proximal to the glenoid. Claimant’s Exhibit 1, pages 40 – 41. The report also shows a complete full-thickness tear of the infraspinatus tendon with approximately 5 cm of retraction. Claimant’s Exhibit 1, pages 40 – 41. Both tears are age indeterminate and suggestive of chronicity based on the associated moderate supraspinatus and the severe infraspinatus muscular atrophy.

Claimant's Exhibit 1, pages 40 – 41. The report also revealed a mild subscapularis tendinosis with low-grade partial thickness articular surface tear of the subscapularis tendon and a tear with retraction of the long head of the bicep's tendon. Claimant's Exhibit 1, pages 40 – 41. There were also degenerative tears of the superior, anterior, and inferior labrum muscular atrophy. Claimant's Exhibit 1, pages 40 – 41.

Claimant has had previous injuries to her right shoulder. While working for the Arkansas Department of Correction, Wrightsville Unit, Claimant injured her right shoulder when she attempted to catch a medication box falling from a cart. Respondents' Exhibit 2, page 35. Claimant underwent an MRI at Chenal MRI on March 10, 2016. The report shows that Claimant had a near complete tear of her supraspinatus with a few intact anterior leading fibers. Respondents' Exhibit 2, page 46. The tear continues posteriorly into the conjoined tendon and infraspinatus as a moderate grade articular surface tear with approximately 2.5 cm medial retraction of the articular fibers. Respondents' Exhibit 2, page 46. She also had minimal atrophy of the supraspinatus muscle fiber. Respondents' Exhibit 2, page 46. The report further reveals the intra-articular portion of the long head of the bicep's tendon also appear significantly degenerated and torn with longitudinal split tear extending into the vessel groove. Respondents' Exhibit 2, page 46. The report also shows multiple degenerative changes. Respondents' Exhibit 2, page 46.

The Claimant also received an MRI from Arkansas Specialty MRI Center on March 29, 2016, due to a fall that she claims reinjured her right shoulder. Respondents' Exhibit 2, page 53. The fall took place after her right shoulder injury involving the medication box. This MRI report found a large full-thickness tear of the supraspinatus and infraspinatus tendons with musculotendinous retraction and large gaps. Respondents' Exhibit 2, page 53. The report also noted there may be some mild atrophy. The report further revealed a concern for a focal

longitudinal split tear in the bicipital tendon at the level of the proximal humeral diaphysis. Respondents' Exhibit 2, page 53. The report finally noted tendinopathy of the subscapularis tendon and biceps anchor. Respondents' Exhibit 2, page 53.

Dr. Theodore Hronas, Board Certified Radiologist, reviewed three MRIs and radiographs previously mentioned in this opinion. Respondents' Exhibit 2, pages 150-151. Dr. Hronas summarized this report in Respondents' Exhibit 2, pages 151 -152, and found that the:

“...initial MRI exams of the right shoulder demonstrate evidence of a tear of the distal supraspinatus tendon that progressed significantly in a short period of time, with findings of complete tears of both the supraspinatus and infraspinatus tendons on March 29, 2016. The most recent MRI exam on the right shoulder, 01/19/2024, demonstrates severe osteoarthritic change of the right glenohumeral joint with extensive bone remodeling and chronic tears and severe muscle atrophy of both the supraspinatus and infraspinatus tendons as described. This degree of osteoarthritic change and the chronic tendons tears with severe muscle atrophy takes years to develop. There is no reactive joint effusion, edema, or any objective findings of an acute or recent injury of the right shoulder.”

Dr. Hronas also reviewed radiographs of Claimant's right shoulder that were taken on January 3, 2024, approximately one week after the date of the injury. Respondents Exhibit 2, page 151. The radiographs revealed a severe osteoarthritic change of the right shoulder with abnormal superior subluxation of the humeral head resulting in loss of the normal subacromial space. Respondents Exhibit 2, page 151. Dr. Hronas opined that the loss of the subacromial space is pathognomonic for a chronic rotator cuff tear. Respondents Exhibit 2, page 151. Dr. Hronas also noted a right humeral head bone remodeling, sclerosis, and subchondral cystic formation present within the glenoid. Respondents Exhibit 2, page 151. Dr. Hronas further noted the shortening of the distal right clavical related to chronic osteolysis. Respondents Exhibit 2, page 151. There was no evidence of an acute fracture or dislocation. Respondents Exhibit 2, page 151. Dr. Hronas also stated that in his review findings were made within a reasonable degree of medical certainty.

Respondents' Exhibit 2, page 151-152. Moreover, Claimant testified that she has never had surgery on her right shoulder to repair the tendon tears. Transcript, page 17, lines 9-23.

Adjudication

A. Whether Claimant sustained compensable injuries to her right shoulder by specific incident.

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

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

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

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

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

Discussion. I find the Claimant has not proven by the preponderance of the evidence that she sustained compensable injuries to right shoulder 1.) by specific incident, nor 2.) arising out of and through the course of employment. Claimant has injured her right shoulder twice before. First when she worked at the Wrightsville prison and a medicine box fell and she attempted to catch it thereby injuring her right shoulder. Transcript, page 23, lines 22 – 25, thru page 24, lines 1 – 4. As previously mentioned, Claimant underwent an MRI at Chenal MRI on March 10, 2016. The MRI report shows that Claimant had a near complete tear of her supraspinatus with a few intact anterior leading fibers. Respondents' Exhibit 2, page 46. The tear continued posteriorly into the conjoined tendon and infraspinatus as a moderate grade articular surface tear with approximately 2.5 cm medial retraction of the articular fibers. Respondents' Exhibit 2, page 46. She also had minimal atrophy of the supraspinatus muscle fiber. Respondents' Exhibit 2, page 46. The report further reveals the intra-articular portion of the long head of the bicep's tendon also appear significantly degenerated and torn with longitudinal split tear extending into the vessel groove. Respondents' Exhibit 2, page 46. The report also shows multiple degenerative changes. Respondents' Exhibit 2, page 46.

The Claimant then fell and reinjured her right shoulder a few weeks after her initial injury to that same shoulder attempting to catch a medication box. Claimant received another MRI for this injury from Arkansas Specialty MRI Center on March 29, 2016. Respondents' Exhibit 2, page 53. Again, as mentioned earlier, this MRI report found a large full-thickness tear of the supraspinatus and infraspinatus tendons with musculotendinous retraction and large gaps. Respondents' Exhibit 2, page 53. The report also noted there may be some mild atrophy and a concern for a focal longitudinal split tear in the bicipital tendon at the level of the proximal humeral diaphysis. Respondents' Exhibit 2, page 53. The report also revealed tendinopathy of the subscapularis tendon and biceps anchor. Respondents' Exhibit 2, page 53.

The Claimant never underwent corrective surgery for these injuries to her right shoulder. Transcript, page 17, lines 9-23. When Claimant allegedly injured herself on December 25, 2023, while attempting to break up two patients fighting, she underwent an MRI on January 19, 2024. This MRI report shows a complete full thickness tear of the supraspinatus tendon with approximately 5.5 cm of retraction just proximal to the glenoid. Claimant's Exhibit 1, pages 40 – 41. The report also shows a complete full-thickness tear of the infraspinatus tendon with approximately 5 cm of retraction. Claimant's Exhibit 1, pages 40 – 41. Both tears are age indeterminate and suggestive of chronicity based on the associated moderate supraspinatus and the severe infraspinatus muscular atrophy. Claimant's Exhibit 1, pages 40 – 41. The report also revealed a mild subscapularis tendinosis with low-grade partial thickness articular surface tear of the subscapularis tendon and a tear with retraction of the long head of the bicep's tendon. Claimant's Exhibit 1, pages 40 – 41. There were also degenerative tears of the superior, anterior, and inferior labrum. muscular atrophy. Claimant's Exhibit 1, pages 40 – 41.

Based on these reports, the Claimant has sustained numerous tears to her right shoulder, all without surgery. The alleged December 25, 2023, work-related injury appears strikingly like the injuries that occurred in 2016. This necessitates the need for a medical comparison. Dr. Theodore Hronas, Board Certified Radiologist, gave that comparison and reviewed three MRIs and radiographs previously mentioned in this opinion. Respondents' Exhibit 2, pages 150-151. Dr. Hronas summarized his report in Respondents' Exhibit 2, pages 151 -152, and found that:

“This degree of osteoarthritic change and the chronic tendons tears with severe muscle atrophy takes years to develop. There is no reactive joint effusion, edema, or any objective findings of an acute or recent injury of the right shoulder.”

Dr. Hronas further stated that his findings were made within a reasonable degree of medical certainty. Respondents' Exhibit 2, page 151-152. I credit Dr. Hronas report. His report made clear that Claimant's alleged work-related injury could not have occurred on December 25, 2023, but stated that her injuries would have taken “years to develop.” Moreover, his report concludes the matter by stating that there were no ‘reactive joint effusion, edema, or any objective findings of an acute or recent injury of the right shoulder.’ Thus, Claimant's alleged December 25, 2023, work-related altercation could not have been the specific incident that caused her right shoulder injuries. Moreover, considering Dr. Hronas report that Claimant's injuries would have taken years to develop it is also clear that Claimant's injuries did not arise out of the course of employment with Respondent/Employer. We were not dealing with recent or new injuries but old injuries. Injuries, according to Claimant's own testimony, she has never had surgery to repair. Transcript, page 17, lines 9-23. It is Claimant's responsibility to prove that she was injured by specific incident and during the course and scope of her employment. She has failed to do so. Thus again, Claimant has not proven by the preponderance of the evidence that she sustained a compensable injury by

specific incident or arising out of and through the scope of employment. Therefore, her claim must fail.

MISCELLANEOUS ISSUES

Based on my previous findings that 1.) Claimant did not sustain an injury by specific incident, and 2.) nor did her injury arise out of and through the course of employment, the remaining issues regarding reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CONCLUSION

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

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge