

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300652

LORENA TRUJILLO-TINAJERO, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 13, 2024

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed December 15, 2023. The administrative law judge found that the claimant proved she sustained a compensable injury to her right shoulder. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder.

I. HISTORY

The record indicates that Lorena Tinajero-Trujillo, now age 48, became employed with the respondent, Tyson Poultry, Inc., in January

2015. The parties stipulated that the employment relationship existed “on or about November 30, 2021.” The claimant testified on direct examination:

Q. And on November 30th of 2021, what kind of job were you doing?

A. At that point I was already in a different department. DSI, sorter it is called....

Q. And in the sorter job, what do you do?

A. When you get the chicken breast, it's in the shape of a heart, you trim the edges and then you put it on a separate band....The machine cuts it. We just grab the part from the middle and then it lets it go....

Q. And in the days before November 30th of 2021, had the machine been cutting properly?

A. No. It had been three days since the machine had not been cutting properly and it was challenging to pull the chicken out....

Q. So on November 30th of 2021, what happened?

A. On that day it had been really a tough day. It was tougher than usual. And I was pulling on it when I felt something hot on my shoulder all the way to the elbow. I told my supervisor that I could no longer pull on that and I was just going to let the chicken go and I told my co-workers the same thing. But when they saw that we weren't doing it, the chicken was just going by, they fixed the machine....

Q. After you felt that burning, did you report that?

A. I told the supervisor that my arm was burning a lot.

According to the record, the claimant sought treatment with Dana Thompson, LPN on December 8, 2021: “TM with C/O pain in right elbow. States was sorting chicken and the right elbow started feeling hot and became painful. Started approx. one week ago, but she thought it was just overworked that day and was tired. Slight edema noted to lateral elbow.”

Dana Thompson treated the claimant conservatively for her elbow complaints.

On December 8, 2021, the claimant signed a TEAM MEMBER STATEMENT OF INJURY/ILLNESS. The STATEMENT indicated that the Date of Injury was November 30, 2021, 12:00 p.m. The Details of Injury/Illness indicated, "While sorting chicken started to feel hot on the right elbow."

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on December 8, 2021. The Form AR-N indicated that the Date of Accident was November 30, 2021 and that the employer was notified of same on December 1, 2021. The ACCIDENT INFORMATION section of the Form AR-N indicated that the body part injured was "The right elbow." The claimant appeared to write that she had begun feeling "pain and hot" in her right elbow while working.

The record indicates that the claimant began receiving physical therapy on December 10, 2021. The claimant's occupation was listed as "Sorter Operator Class 3." The claimant complained of pain in her "Upper Extremity" and the following Description ensued: "Discomfort and tension with inflammation of lateral epicondyle; December 1st onset with regular work duties." The History and Physical indicated, "Work Related: Yes."

A physical therapist noted on December 20, 2021, "Stated that the elbow is doing much better although referral of pain from shoulder to the outer arm has gotten worse, due to work duties performed since Friday[.]"

On December 28, 2021, the claimant signed a TEAM MEMBER STATEMENT OF INJURY/ILLNESS. The TEAM MEMBER STATEMENT indicated that the Date of Injury was November 30, 2021. The Details of Injury indicated, "While sorting chicken started to feel hot on the right elbow."

The claimant was examined at Arkansas Occupational Medicine Services on January 5, 2022. Ceth Dawson, PA-C reported at that time:

Ms. Trujillo Tinajero was sortin (sic) chicken and felt like she overworked her elbow and shoulder. Date of injury was on 12/1/2021....

Patient states she gradually started having right elbow pain while working the factory line 11/30/2021 that has remained constant since.

HISTORY OF PRESENT ILLNESS

Lorena's primary problem is pain located in the right elbow. She describes it as throbbing, burning. She considers it to be medium. The problem began on 12/1/2021. Lorena says that it seems to be variable – depending on the activity level. She has noticed that it is made worse by repetitive arm use, exertion.

COMMENTS ON HISTORY OF PRESENT ILLNESS

Ann (sic) interpreter is present. Lorena presents with right elbow pain that began approximately 1 month ago while working and has gradually gotten worse. She states that she does works (sic) on the line doing repetitive arm movements when she begins having pain in her right elbow that radiates up and has occasional tingling in her 4th and 5th fingers. She also reports occasional pain when she wakes up in the morning. She reports seeing the company nurse and treated with stretching exercises and ibuprofen. She has been rotating through different positions at work but has notice (sic) little to no improvement....

Right Shoulder: The shoulder examination is normal.

Right Elbow: Pain to palpation is present over the antecubital fossa. Pain on motion is present over the elbow....

The diagnosis was “1. Injury of ulnar nerve at forearm level, right arm, initial encounter” and “2. Pain in right elbow.” Ceth Dawson assessed “Signs and symptoms consistent with cubital tunnel syndrome....The cause of this problem appears to be related to work activities.” Mr. Dawson returned the claimant to Regular Duty, follow-up in one week.

Ceth Dawson’s diagnosis on January 12, 2022 was “1. Injury of ulnar nerve at forearm level, right arm, subsequent encounter. 2. Lateral epicondylitis, right elbow. 3. Pain in right elbow.” Mr. Dawson provided the claimant with a “forearm strap,” and he returned her to regular work duty.

The claimant informed Dana Thompson on January 26, 2022, “States her pain has gotten worse and it is shooting into her shoulder. 6 sessions of PT ordered. Educated on proper use of forearm strap.”

The claimant treated at Trinity Rehabilitation, Inc. beginning January 28, 2022: “Line worker for Tyson Berry Street plant. Complains of severe Right elbow pain since early December, 2021....Referred for treatment of lateral epicondylitis.” The assessment at that time included, “Therapy exam suggests lateral epicondylitis. I also suspect improper wear/overly aggressive tightening/wearing of the counterforce brace resulting in radial tunnel syndrome and cubital tunnel syndrome type pain complaints.”

Dr. Konstantin V. Berestnev completed a Form AR-3, Physician's Report on February 16, 2022: "Patient states that she gradually started having right elbow pain while working the factory line 11/30/2021 that has remained constant since. Patient states that her right elbow is doing a little better, but she is still having a little bit of pain. Patient has completed 5/6 sessions of physical therapy." Dr. Berestnev diagnosed "1. Injury of ulnar nerve at forearm. 2. Lateral epicondylitis, right elbow. 3. Pain in right elbow." Dr. Berestnev returned the claimant to work with no restrictions on February 16, 2022.

The claimant was also discharged from Trinity Rehabilitation, Inc. on February 16, 2022, at which time it was noted, "Will wear wrist splint until about 2/24/22 before attempting to wean from same to limit chances of recurrent elbow pain."

The claimant returned to Dr. Berestnev on May 20, 2022:

Ms. Trujillo Tinajero was sortin (sic) chicken and felt like she overworked her elbow and shoulder. Date of injury was on 12/01/2021....

Patient states she gradually started having right elbow pain while working the factory line 11/30/2021 that has remained constant since....

Lorena's primary problem is pain located in the right elbow....The problem began on 12/01/21....She feels it is getting worse.

Dr. Berestnev diagnosed "1. Injury of ulnar nerve at forearm level, right arm, subsequent encounter. 2. Pain in right elbow." Dr. Berestnev

assessed, "An interpreter is present. Lorena presents for recheck of right elbow burning in olecranon area....Lorena's recommended work status is Regular Duty."

Dr. Berestnev's diagnosis on June 3, 2022 was "1. Injury of ulnar nerve at forearm level, right arm, subsequent encounter. 2. Pain in right elbow." The claimant informed a nurse practitioner on or about September 27, 2022 that she was suffering from right arm numbness. A Neurological Evaluation/Electrodiagnostic Report was done on December 13, 2022 with the assessment, "Moderate right carpal tunnel syndrome."

Candise Bostedt, RN reported on January 12, 2023:

TM reports to OHS this am to report an injury. Adriana Pena assisted TM in filling out paperwork. Maria Camacho assisted in translating initial complaint of injury. TM states that on 11/30/21 she was working in DSI as a sorter and the new machine was not making cuts correctly. She states, "that day 11/30/2021 the machine was worse because it was too much, and I started feel burn and hot on the right elbow and feel the same through the wrist and up to the shoulder." TM continued by stating, "also felt like pull from inside my arm from the wrist to my elbow and same something pull from my shoulder to my right elbow." TM reports that the issue is from an injury that occurred on 11/30/2021. TM received HMP, PT, and treatment at Conservative Care for this issue. TM was cleared with no further issues mid June. TM has not reported any further issues/injuries/complaints since.

Candise Bostedt noted on February 8, 2023, "TM stated multiple times she did not have pain in her wrist. TM states she has only had pain in her elbow and shoulder."

Dr. Bryan Benafield, Jr. performed a "Right carpal tunnel release" on February 17, 2023. The pre- and post-operative diagnosis was "Right carpal tunnel syndrome."

Dr. Benafield's assessment on March 1, 2023 was "1. Carpal tunnel syndrome of right wrist" and "2. Impingement syndrome of right shoulder region."

Dr. Benafield reported on March 30, 2023:

Patient seen in follow-up on the right arm. She has recovered well from her right carpal tunnel release but is still having some shoulder pain despite doing the exercises I gave her last time. She has pain with abduction forward flexion internal rotation pain at night. We discussed previously doing some x-rays and getting an injection done possibly....

On exam her carpal tunnel incision is well-healed she has great range of motion. On her shoulder she has pain with abduction internal rotation. She has a positive impingement sign positive supersize provocative test positive crossarm. Minimal AC joint tenderness.

X-rays: 3 views right shoulder show questionable osteophyte off the anterior acromion minimal AC joint changes no glenohumeral changes....

After discussion of the risks and benefits, the patient elected to proceed with a Depo-Medrol injection into the right shoulder(s). The injection was for treatment of impingement....

The record indicates that Dr. Benafield performed another right shoulder injection on or about April 2, 2023.

A pre-hearing order was filed on June 1, 2023. According to the pre-hearing order, the claimant contended, "She injured her right elbow and shoulder while pulling chicken apart and is entitled to medical treatment.

Claimant reserves all other issues.” The parties stipulated that the respondents “have controverted the claim in its entirety.” The respondents contended, “Claimant did not sustain a compensable injury as that term is defined by Act 796.”

The parties agreed to litigate the following issues:

1. Whether claimant sustained a compensable injury on or about November 30, 2021.
2. Whether claimant is entitled to medical treatment.

Dr. Benafield reported on or about August 7, 2023:

Patient seen in follow-up for the right shoulder after the MRI. This showed low-grade partial-thickness articular surface tear of the infraspinatus intrasubstance tear of the distal supraspinatus and some degenerative changes of the AC joint and a type II acromion. In March she had a subacromial injection that only gave her 40% improvement for about 2 weeks....

After discussion of the risks and benefits, the patient elected to proceed with a Depo-Medrol injection into the right ac joint(s). The injection was for treatment of arthritis....

I have discussed with the patient through an interpreter regarding her MRI findings. There is nothing I see that needs surgery at the present time. Given the lack of response to the previous injection I think that we should try an AC joint injection. This was explained to the patient she agreed and tolerated it well. We discussed how this makes most of her pain go away it is likely that it will take a distal clavicle excision to make the pain go away and stay away. I will see her back in a month to assess how the injection did.

Dr. Benafield assessed “1. Impingement syndrome of right shoulder region” and “2. Arthritis of acromioclavicular joint.”

Dr. Benafield stated on September 11, 2023, “We will try a month of formal physical therapy to the shoulder and if that does not improve then we are going to have to have a discussion about surgical intervention.”

After a hearing, an administrative law judge filed an opinion on December 15, 2023. The administrative law judge found, among other things, that the claimant proved she sustained a compensable injury. The respondents appeal to the Full Commission.

II. ADJUDICATION

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[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she 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).

An administrative law judge found in the present matter, “3. Claimant has met her burden of proof by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on or about November 30, 2021, and is entitled to reasonable and necessary medical treatment for that injury as recommended by Dr. Robert Benafield.” The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury.

The claimant became employed with the respondents in 2015. The claimant testified that she was a “Sorter,” processing chickens for the respondent-employer. The parties stipulated that the employment relationship existed on or about November 30, 2021. The claimant testified that, while operating a machine for the respondents, she “felt something hot on my shoulder all the way to the elbow....I told the supervisor that my arm was burning a lot.” The claimant began treating with a company nurse on December 8, 2021, who reported only pain in the claimant’s right elbow. A physical therapist reported on December 10, 2021 that the claimant was suffering with pain in her “Upper Extremity.” The physical therapist expressly noted on December 20, 2021 that the pain was radiating “from shoulder to outer arm.”

The claimant began treating at Arkansas Occupational Medicine Services on January 5, 2022. At that time, a physician's assistant reported that that claimant had overworked her elbow "and shoulder" while processing chicken for the respondents. The claimant was treated conservatively. The company nurse reported on January 26, 2022 that the pain was "shooting into her shoulder." Beginning January 12, 2023, Candise Bostedt, RN noted that the claimant was suffering from pain in her right shoulder as the result of an incident occurring November 30, 2021.

Dr. Benafield treated the claimant's right shoulder with injections and assessed "Impingement syndrome of right shoulder region." On August 7, 2023, Dr. Benafield reported that an MRI showed "low-grade partial-thickness articular surface tear of the infraspinatus intrasubstance tear of the distal supraspinatus and some degenerative changes of the AC joint and a type II acromion."

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). 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 it seems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

In the present matter, the Full Commission finds that the claimant was a credible witness. The claimant has been employed with the respondents since 2015 and continues to work for the respondents. The claimant testified that she began feeling a burning “on my shoulder all the way to my elbow” while performing employment services on or about November 30, 2021. When she was allowed to see a physician at Arkansas Occupational Medical Services on January 5, 2022, a physician’s assistant corroborated the claimant’s testimony that she felt a burning in her right shoulder as the result of her Sorter duties for the respondents. The claimant has continued to receive conservative medical treatment as a result of her work-related shoulder complaints.

The Full Commission finds that the claimant proved she sustained a “compensable injury” in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved that she injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on or about November 30, 2021. The claimant also established a compensable injury by medical evidence supported by objective findings, namely Dr. Benafield’s report of a partial-thickness tear in the claimant’s right shoulder. We find that this

partial-thickness tear was causally related to the November 30, 2021 compensable injury and was not the result of a prior injury or pre-existing condition.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder. The claimant proved that the medical treatment of record provided in connection with the claimant's right shoulder injury, including treatment provided by Dr. Benafield, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion. In my *de novo* review of the file, I find that the claimant has failed to prove by a preponderance of

the evidence that she suffered a compensable right shoulder injury on November 30, 2021.

The claimant in this matter alleges that she suffered an injury to her right shoulder when removing a little piece like a nerve from a chicken fillet while working for the respondent employer on November 30, 2021. (Hrng. Tr., P. 8). When the claimant presented to the nurse's station and submitted a Statement of Injury on December 8, 2021, the claimant reported a burning, painful sensation in her right elbow. (Resp. Ex. 2, P. 1). While the claimant's native language is Spanish and the form was in English, an interpreter assisted the claimant in completing her paperwork. (Hrng. Tr., P. 19).

The claimant underwent on-site physical therapy before being sent to Arkansas Occupational Health Center (AOHC) for an evaluation. (Cl. Ex. 1, Pp. 12-14). The claimant was once again assisted by an interpreter and stated that her primary problem was pain in her right elbow. (Resp. Ex. 1, P. 4). PA-C Ceth Dawson fully examined the claimant and noted that her right shoulder was normal. (Resp. Ex. 1, Pp. 4-6).

When the claimant later complained that the pain had gotten worse, PA-C Dawson issued a forearm strap and referred the claimant to physical therapy. (Resp. Ex. 1, Pp. 9-10). At this January 12, 2022 appointment, PA-C Dawson examined the claimant and once again found that her

shoulder was normal. (Resp. Ex. 1, P. 8). The claimant was ultimately released to return to work on February 16, 2022. (Resp. Ex. 1, P. 19)

The claimant later saw Dr. Robert Benafield at Ozark Orthopaedics where, in December of 2022, he performed a physical examination and concluded that the claimant had a good range of motion in her right shoulder and that she did not exhibit any obvious signs of pain. (Cl. Ex. 1, P. 48).

It was not until March 1, 2023, that Dr. Benafield diagnosed the claimant with impingement syndrome in her right shoulder. (Cl. Ex. 1, P. 53). An MRI revealed a “low-grade partial thickness articular surface tear of the infraspinatus intrasubstance tear of the distal supraspinatus and some degenerative changes of the AC joint and a type II acromion.” (Cl. Ex. 1, P. 65-66). Dr. Benafield has opined that the claimant does not need surgery to treat her shoulder. *Id.*

After a hearing on September 25, 2023, an administrative law judge (ALJ) ruled that the claimant has met her burden of proving that she sustained a compensable right shoulder injury on November 30, 2021.

Arkansas Code Annotated section 11-9-102 (4)(A)(i) provides that a compensable injury includes “[a]n accidental injury causing internal or external physical harm to the body. . . An injury is ‘accidental’ only if it is

caused by a specific incident and is identifiable by time and place of occurrence.”

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant 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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the

Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.*

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.

White v. Gregg Agricultural Enterprises, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

In the present case, the claimant did not report any shoulder complaints when she presented to the Tyson facility nurse on November 30, 2021. (Cl. Ex. 1, P. 1). At that time, she stated that she was “sorting chicken and the right elbow started feeling hot and became painful. Started approx. one week ago, but she thought it was just overworked that day and was tired.” *Id.*

Despite numerous encounters with Tyson’s nursing staff regarding her right arm and wrist beginning on December 8, 2021, the claimant did not mention shoulder pain until January 12, 2023, well over two years after the alleged injury. (Cl. Ex. 1, Pp. 1-4). The claimant reported “[d]iscomfort and tension with inflammation of lateral epicondyle” in her History and Physical dated December 10, 2021 (Resp. Ex. 1, P. 1).

Prior to notifying the respondent employer of her alleged shoulder injury, the claimant visited Ozark Orthopedics on September 27, 2022,

where she denied any injuries causing right arm and shoulder pain, stating that her pain only started three days prior to that appointment. (Cl. Ex. 1, P. 20).

On the basis of the medical records alone, it is obvious that the claimant did not suffer a compensable right shoulder injury on November 30, 2021. There is simply no evidence that this issue was mentioned in the days, weeks, or years following her initial complaints of right elbow pain. The claimant's claim should be rejected on this basis alone. However, for the ALJ, this matter came down to a question of the claimant's credibility.

In workers' compensation cases, a decision often rests solely on the credibility of the claimant as a witness. A determination of the weight and credibility of a witness' testimony is exclusively within the province of the Commission. *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989). The Commission has the right to believe or disbelieve the testimony of any witness, and the Commission's decision is entitled to the weight we give a jury verdict. *Tyson Foods, Inc. v. Disheroon*, 26 Ark. App. 145, 761 S.W.2d 617 (1988). Importantly, a claimant's testimony is never uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In his order, the ALJ relies on two points in judging the claimant to be a credible witness: (1) a note from the claimant's second physical therapy

session stating, “nothing was mentioned about her arm and shoulder discomfort this session”, and (2) the fact that the Statement of Injury form was in English while the claimant’s primary language is Spanish. (P. 6; see *a/so* Resp. Ex. 1, P. 3, Resp. Ex. 2, P. 1). This determination is flawed from the outset.

Although Spanish is the claimant’s first language, a translator was present to read the Statement of Injury form to the claimant and to translate that response to nursing staff. (Hrng. Tr., Pp. 19-23). Further, the physical therapy report states that there was “nothing stated regarding arm or shoulder discomfort” during the claimant’s December 13, 2021 session. (Resp. Ex. 1, P. 3).

The ALJ’s findings and assumption that the claimant reported a shoulder injury because of an entry noting that nothing was mentioned about her arm and shoulder during a physical therapy treatment is unfounded speculation. The claimant not mentioning shoulder discomfort during physical therapy is not, itself, evidence of a shoulder injury. There is no evidence in the record supporting this assumption, and the ALJ is substituting his own conjecture for evidence. Speculation and conjecture cannot substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The claimant repeatedly demonstrates that she is not a credible witness. Not only does her self-serving testimony directly contradict the facts in the record, but she has apparently been untruthful to her treating practitioners on multiple occasions. In her testimony, the claimant states that she repeatedly informed Tyson's medical staff that she was suffering from right shoulder pain, and this information never made it into her records. (See Hrng. Tr., Pp. 16-23). This strains credibility.

While a single incident of an error in medical records is not unheard of, it seems unlikely that the same error would occur on numerous occasions while speaking with different practitioners and with different translators. Further, if the claimant did indeed injure her shoulder on November 30, 2021, then she did not give a truthful history to Ozark Orthopaedics in September of 2022 when she reported that she had suffered no injury and that her pain began three days prior. (Cl. Ex. 1, P. 20).

This issue arose again when the claimant informed Tyson nurses that her doctor instructed her to obtain an injection if she was experiencing pain. (Cl. Ex. 1., P. 3). However, after attempting to verify this information with Trinity Rehabilitation and AOHC, Tyson's medical staff determined that the claimant had received no such direction. *Id.* The claimant is not a credible witness, and we must disregard her testimony.

Because the claimant's testimony is unreliable and her statements cannot be trusted, we are left to rely only on the facts found in the medical records in this matter. Those records reflect that the claimant did not so much as mention her right shoulder until September of 2022 and did not inform her employer of any issues regarding her shoulder until January of 2023, well over two years from the date of the alleged injury. The first mention of the claimant's shoulder was to Ozark Orthopaedics, and the claimant stated that her shoulder pain had only begun in September of 2022.

There is simply no evidence that the claimant suffered a right shoulder injury on November 30, 2021.

Accordingly, for the reasons set forth above, I must dissent.

MICHAEL R. MAYTON, Commissioner