

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H407461

TIMOTEO VALDOVINOS, Employee	CLAIMANT
ARK OPCO HOLDINGS, LLC, Employer	RESPONDENT
GREAT AMERICAN INS. CO., Carrier	RESPONDENT

OPINION FILED JUNE 4, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 7, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 22, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed among the parties on February 12, 2024.

At the time of the hearing, the parties agreed to stipulate that claimant earned sufficient wages to be entitled to compensation at the rates of \$534.00 for total disability benefits and \$401.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's cervical spine, head and whole body on February 12, 2024.
2. Related medical.
3. Temporary total disability benefits from May 1, 2024, through a date yet to be determined.
4. Attorney's fee.
5. Notice.

At the time of the hearing, claimant clarified that his request of compensability involves his cervical spine, head, and bilateral ears. He is requesting temporary total disability benefits from May 26, 2024, through a date yet to be determined.

The claimant contends he sustained a compensable injury to his cervical spine, head, and bilateral ears on February 12, 2024, while working for Ark OpCo Holding LLC in Rogers, Arkansas, when he was attacked by a patient. He contends he is owed medical benefits in addition to temporary total disability benefits from May 1, 2024, to a date yet to be determined. Due to controversion of entitled benefits, respondents are obligated to pay one-half of the claimant's attorney's fee.

The respondents are not aware of any evidence of the alleged February 12, 2024 work injury. No notice was given to respondents until a Form AR-C was filed on 11/14/24 which listed a head and cervical injury. If the claimant has been treated by a

medical professional, he has withheld those medical reports from respondents beyond the allotted time for respondents to determine their position. No attorney's fee is owed, therefore, and none should be awarded because this claim has not been controverted per A.C.A. §11-9-715(2)(B)(iii).

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 22, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle him to compensation at the rates of \$534.00 for total disability benefits and \$401.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered compensable injuries to his cervical spine, head, or bilateral ears on February 12, 2024.

FACTUAL BACKGROUND

Claimant is a 43-year-old man who began working for respondent as a CNA in October 2023. His job duties included helping residents with activities of daily life such

as bathing; feeding; changing clothes; changing diapers; and any other assistance needed. He testified that on average he worked 32 hours per week.

Claimant testified that on February 12, 2024, he was working in the Lock Down area which was short-staffed. He testified that at some point he was only CNA present in that area when a resident he believed to be named Jim went into the room of a bedridden patient. He informed Jim that he could not be in the room “And before I knew it, I was on the floor. He was on top of me and he kind of hit me twice while I was on the floor. He was on top of me. *** I stood up and tried to get away from Jim. And Jim is a big guy. He took off his shoe, put it on his fist like a boxing glove, and ran at me and hit me in the head. I literally felt my brain hit the back of the skull.” Claimant testified that his back, head, and neck hit the floor during this altercation.

Claimant stated that he reported this incident to a charge nurse and wrote a statement but there was no follow-up from respondent. On February 13, 2024, claimant sought medical treatment from Mercy Clinic with a complaint of headache, double vision, and dizziness. Claimant underwent a CT of the head which revealed no bleeding. He was diagnosed with a headache, dizziness, and a concussion. The report also states that claimant has a traumatic tympanic membrane perforation of his right ear which was noted on October 3, 2022. Claimant was given an off work note for February 13-14.

On February 20, 2024, claimant was seen by his PCP, Dr. Archer at Mercy Clinic for a follow-up for headache complaints. Dr. Archer diagnosed claimant’s condition as a concussion without loss of consciousness and a perforation of the tympanic membrane. He referred claimant for an evaluation with an ENT.

On May 4, 2024, claimant was evaluated at the emergency department at Mercy for complaints of headaches. CT scans of the cervical spine and of the head were read as showing no evidence of acute injury. Claimant was released to return to work on May 6, 2024, and was instructed to see his PCP, Dr. Archer.

Claimant returned to Dr. Archer on May 20, 2024, and in addition to complaining of headaches, he also complained of bilateral tinnitus. Dr. Archer stated that claimant suffered from perforation of both tympanic membranes and referred him to audiology.

Claimant eventually came under the care of Dr. Kevin Lollar, an ENT specialist. His initial evaluation with Dr. Lollar occurred on September 16, 2024. Dr. Lollar had the following impression and plan for treatment.

1. Central perforation of tympanic membrane, left ear. Observation.
2. Other otitis externs, left ear, medical management with medication.
3. Tinnitus, bilateral. Observation of both ears and an audiogram ordered.

Claimant's next visit with Dr. Lollar occurred on October 3, 2024, at which time Dr. Lollar stated that claimant's left ear drainage had resolved with the use of medication. He also noted that the audiogram revealed hearing loss in both ears and recommended a hearing aid evaluation.

On November 20, 2024, Dr. Lollar performed a right bioDesin tympanoplasty for the right tympanic membrane perforation. In a follow-up report dated March 10, 2025, Dr. Lollar indicated that the procedure had not been effective and a new procedure would be scheduled. According to claimant's testimony, he underwent another procedure by Dr. Vaughn in April 2025. That medical report was not submitted into the record.

Claimant has filed this claim contending that he suffered compensable injuries to his neck, head, and bilateral ears on February 12, 2024. He requests payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered compensable injuries to his neck, head, and bilateral ears on February 12, 2024, when he was knocked down and struck in the head by a resident. Claimant's claim is for a specific incident, identifiable by time and place of occurrence.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving a compensable injury.

As previously noted, claimant testified that on February 12, 2024, he informed a resident that he could not be in the room of another resident. At that point, the resident

knocked him to the ground and then proceeded to strike claimant in the head with his shoe that he had put on his fist.

Claimant testified that he reported this incident to a charge nurse as required by respondent and was instructed to write a statement regarding the incident. Claimant contends that he wrote this statement on a blank sheet of paper. Significantly, claimant does not know the name of the charge nurse to whom he reported and no written statement was introduced into the record.

The only other person to whom claimant allegedly reported the incident was an individual named “Ryan”. Claimant testified that sometime in March, which would have been at least two weeks after the incident, he had a discussion with Ryan and notified him of his medical treatment. Claimant believes that Ryan is part of management. Notably, claimant was not even sure of Ryan’s first name.

Q Earlier you said Ryan. Is it Ryan or Brian?

A Brian.

Q Okay. And this meeting you had with Brian occurred –

A I take back what I said. It is Ryan.

Q It is Ryan?

A Yes, with an R.

Claimant apparently did not discuss this incident with anyone else at respondent, other than an unnamed charge nurse and an individual apparently named Ryan at least two weeks after the incident occurred.

Claimant initially sought medical treatment on February 13 from Dr. Rupali Paradkar, and he admittedly did attribute his complaints to an incident at work the day before. However, with respect to the traumatic tympanic membrane, the medical reports states that it was first noted on October 3, 2022. In fact, claimant admitted that he had

the right ear perforation since childhood. I also note that the report of that date does not mention any issues with tinnitus or loss of hearing. Nor are there any objective findings noted at that time.

On February 20, 2024, claimant was seen by his PCP, Dr. Archer who noted that claimant had a large hole in his right tympanic membrane since childhood. Dr. Archer did not indicate that this condition had been aggravated by a work-related incident. On May 4, 2024, claimant was seen at the Mercy emergency room by Dr. Hugh Jackson. Again, there is no mention of tinnitus or loss of hearing. At that visit, claimant underwent CT scans of the head and cervical spine. Both of these scans were read as showing no evidence of injury.

On May 24, 2024, claimant returned to Dr. Archer and for the first time mentioned bilateral tinnitus. This is confirmed in Dr. Archer's office note of March 10, 2025, in which he states that tinnitus was first brought up by claimant on May 24, 2024. Thus, complaints of tinnitus were not made by claimant until more than three months after this alleged injury.

When claimant sought medical treatment from Dr. Lollar on September 16, 2024, he gave a history of an injury in January 2024 which caused a concussion and some ear trauma. Dr. Lollar noted that since that time claimant's hearing had been decreased and that he had no prior history. This is incorrect since claimant has had a perforated tympanic membrane in his right ear since childhood. In addition, at the time of the next visit with Dr. Lollar on October 3, 2024, claimant indicated that he had an ear infection at age nine "after which time he has had some decrease in hearing on that side." Thus, claimant had had a prior history of hearing loss.

It should also be noted that claimant had continued to work at respondent performing his regular job duties since February 12, 2024. That changed on May 26, 2024, not because of claimant's physical condition, but because of a tornado. On May 26, 2024, a tornado struck Rogers and respondent's facility. Respondent's facility in Rogers was damaged and uninhabitable, resulting in the residents moving to other facilities. Employees of the Rogers facility were given the option of transferring to respondent's facility in Eureka Springs. Claimant testified that he chose not to transfer to Eureka Springs due to his health and the drive over to Eureka. Claimant has not worked for respondent or any other employer since May 26, 2024, even though he was continuing to perform his regular job duties with respondent until the tornado. Other than time he missed work due to medical visits, there is no indication that claimant has been taken off work by his physicians since May 26, 2024, or has been given any restrictions.

Q Have your doctors given you any restrictions or limitations?

A I don't think so.

In summary, I note that claimant contends that he reported the incident on the day in question to an unnamed charge nurse. Claimant did not have any other conversations with a representative of respondent until some time in March when he apparently discussed his medical treatment with someone name Ryan who he believes is in management. I also note that CT scans of the claimant's head and neck have been read as showing no acute injury. With respect to the bilateral ears, I note that claimant has suffered from a perforated tympanic membrane of his right ear since childhood and according to the history contained in Dr. Lollar's medical report of October 3, 2024, claimant had a decrease in hearing since an ear infection at age nine. Furthermore,

there were no complaints of tinnitus or loss of hearing until May 24, 2024, more than three months after the alleged injury.

Based on the foregoing, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his head, neck, or bilateral ears while working for respondent on February 12, 2024.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his head, neck or bilateral ears while working for respondent on February 12, 2024. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$689.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE