

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE No H102436**

**VALERIE WHITE, EMPLOYEE**

**CLAIMANT**

**DESHA COUNTY JUDGE, EMPLOYER**

**RESPONDENT**

**AAC, CARRIER/TPA**

**RESPONDENT**

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**OPINION FILED 21 MAY 2024**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 22 February 2024 in McGehee, Arkansas.

Mr. Mark Peoples appeared for the claimant.

Mr. Jason Ryburn, of the Ryburn Law Firm, appeared for the respondents.

**I. STATEMENT OF THE CASE**

The above-captioned case was heard on 22 February 2024 in McGehee, Arkansas, after the parties participated in a prehearing telephone conference on 12 September 2023. The subsequent Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on the day following the conference. The Order stated the following ISSUES TO BE LITIGATED:

1. Compensability of an injury to the claimant's arm/elbow.
2. Medical benefits.
3. Whether the statute of limitations bars the claims.
4. Attorney's fees.

All other issues are reserved.

The parties' CONTENTIONS, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

The claimant CONTENDS:

That she sustained an injury to her arm/elbow as a compensable consequence of her shoulder injury and that she is entitled to medical treatment related to those injuries. She further contends that her claim is controverted, entitling her attorney to the maximum statutory fees.

The respondents CONTEND:

That the claimant had an accepted shoulder injury. She filed an AR-C on 2 January 2022, was treated, and was released at maximum medical improvement (MMI) on 18 April 2022. The AR-C was dismissed on 1 May 2023. A subsequent AR-C was then filed on 31 July 2023 alleging a compensable consequence in an elbow injury. The statute of limitations bars any claims related or growing out of a 17 November 2020 injury. They further contend<sup>1</sup> that she did not sustain a compensable arm/elbow injury and that all appropriate benefits were paid.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on or about 17 November 2020, at which time the claimant sustained a compensable shoulder injury.
3. The respondents accepted that shoulder injury as compensable.
4. The respondents have controverted this claim as it relates to the alleged arm/elbow injury.
5. The parties stipulated that the applicable weekly compensation rates are \$354.00 for Temporary Total Disability and \$266.00 for Permanent Partial Disability.<sup>2</sup>

The claimant was the sole WITNESS testifying at the hearing.

Admitted into evidence were Commission's Exhibit No 1 (the 13 December 2023 Prehearing Order), Claimant's Exhibit No 1 (12 pages of medical records), and Respondent's

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<sup>1</sup> See TR at 8.

<sup>2</sup> See TR at 6.

Exhibit № 1 (five pages of medical records and seven pages of non-medical records). Both parties submitted post-hearing briefs, which I have blue-backed to the record.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record as a whole and having heard testimony from the witness, observing her 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 her alleged arm/elbow injuries are compensable injuries.
4. The claimant failed to prove by a preponderance of the evidence that her alleged arm/elbow injuries are a compensable consequence of her accepted shoulder injury.
5. Because the claimant failed to prove a compensable claim, whether she met her burden in proving that the filing was timely is moot. I am, therefore, declining to address the statute of limitations issue.
6. Consistent with these findings, the claimant failed to prove by a preponderance of the evidence that she is entitled to the requested benefits and associated attorney's fee.

## **III. HEARING TESTIMONY & MEDICAL EVIDENCE**

### *Claimant Valerie White*

The claimant is a 61-year-old female who was working at the Desha County Courthouse's Tax Collector's Office on or about 17 November 2020 when she fell down some stairs. She was helped up and taken to the McGehee Family Clinic, where she reported being seen by Dr. Pierce. According to the claimant, her right shoulder was hurting at the time, and she was having difficulty moving it. She filed a workers' compensation claim, which the respondents accepted, and she eventually underwent right shoulder surgery in March of 2021. [TR at 9-11.]

According to the claimant, she began having right elbow pain in June or July of 2022. She said that a request for a nerve conduction study was not approved by the respondents. A nerve conduction study was eventually performed in January of 2023. [TR at 13-14.] She testified that she had not benefited from any of the prescribed medications and that her elbow was still causing her problems at the time of the hearing. The claimant testified further that she wanted to “get it looked at further,” and that another provider ordered an MRI, but she left those records at home. [TR at 15.] “He did an MRI, but he did it on my neck, thinking there was some type of, I guess, nerve or whatever deal with the spine or whatever, but like I said, I don’t remember what the results was; but I’m still dealing with this problem.” *Id.*

The claimant stated that she experiences discomfort, numbness, and tingling that mostly bothers her while working at a computer. [TR at 16.]

On cross examination, the claimant explained that she underwent two shoulder procedures, a rotator cuff repair and a manipulation under anesthesia. She acknowledged a physician released her at MMI with no impairment on 18 April 2022 [Resp. Ex. № 1 at 5] but said that she “didn’t quite understand it” because she still had issues with her shoulder. She also confirmed that she had returned to work at full duty. [TR at 18.]

The claimant agreed that her 26 January 2022 Form C only listed a “right shoulder” injury [Resp. Ex. № 1 at 7] but took issue with clinic notes from 20 November 2020 [Resp. Ex. № 1 at 1] that indicated her reporting some right elbow pain radiating down to her wrist in the days just after her fall. [TR at 20-22.] She acknowledged a 2020 X-ray report with a negative finding for her right elbow and testified that “elbow pain [was] going down [her] arm, that existed in 2020....” [TR at 24.]

That exchange continued:

Q: Okay. And so, it's—I believe, earlier, you testified that it started in 2022, this right elbow to the arm pain, but now that you've reviewed these records, it may have started in 2020, is that right?

A: That's correct, but what I'm saying—okay, what I'm saying, okay, yes, during 2020 is when I fell. Like I say, I was in so much pain during that time, it was that right arm. You call it shoulder, arm, elbow, but it was that right side.

*Id.*

The claimant went on to explain that at the time of the filing of her 31 July 2023 Form C [Resp. Ex. № 1 at 11], her elbow was hurting. "... I know in my terms, not medical, my elbow it hurts. It goes down to numb. I go numb three fingers. My right hand three, four, and five, the fingers." [TR at 26.] She acknowledged a right wrist diagnosis of carpal tunnel syndrome but could not say whether her complained-of symptoms were due to the carpal tunnel problems. "I wouldn't have an idea. I don't know. I don't know anything about the carpal tunnel," she said. *Id.*

The claimant's cross examination went on with several questions around what the claimant felt in her hand, wrist, and elbow versus what was in the medical notes and what was included in her Workers' Compensation filings. And she confirmed that the respondents had not been responsible for the billing of her doctors visits for her hands, wrist, or elbow. [TR at 27-32.] Her cross examination closed with, "Do you know of—has any doctor found something in your elbow that they can point to and say, "This is what's wrong with our elbow"? She responded, "No, no. No, not that, no." [TR at 34.] Her testimony concluded shortly afterwards.

### *Medical Evidence*

In support of her claim, Ms. White submitted some clinic notes and a neurography and electromyography (EMG) report. [Cl. Ex. № 1.] A 16 December 2022 note reflects in the HPI section that she was having some numbness in her hands after "her hands started out being

cold then the numbness came on.” The note also states that “ibuprofen doesn’t help her hands.” The provided portions of that clinic note do not include an impression, diagnosis, or plan.

The 5 January 2023 neurography and EMG report notes an onset of right-hand numbness, tingling, and weakness onset in June or July of 2022 and concluded that she has “mild carpal tunnel on right side.”

The submitted portion of a clinic note from her 20 February 2023 visit does not include an impression, diagnosis, or plan, but lists her complaint as follows:

Has been doing good. Has had surgery twice on her shoulder and is still having trouble. Has trouble raising her arm. She does exercises at home. She works at the tax collector’s office. Has had NCV EMG bilateral uppers. When she wakes up in the morning her arms hurt. Takes ibuprofen for pain. Says that her right arm aches from the shoulder down to the elbow. Has not had an MRI of her neck. Is having lots of pain and she rates it at a 5 or 6.

She presented to the same clinic again on 4 May 2023, complaining that her fingers were staying cold and hurting worse, with the left hand feeling colder than the right. The note states that she reported still having problems with her shoulder and needing to do more strengthening exercises. The plan from that visit included prescribing Procardia for her hand, wearing gloves at work to keep her hands warm, and doing shoulder exercises.

Among the records submitted to the record by the respondents were a clinic note from 20 November 2020 that reflected some arm and elbow pain, but an X-ray report that same day showed no remarkable pathology of the right elbow. [Resp. Ex. No 1.] Clinic notes subsequent to her shoulder surgery show that she received an injection in her right shoulder on 31 March 2022 and that on 18 April 2022 she was found to be stable and reassured that she “had a full recovery with no restrictions.”

The respondents also submitted copies of her 26 January 2022 Form AR-C that only indicated a right shoulder injury, a 1 May 2023 Order dismissing her claim without

prejudice (and noting that she did not oppose that dismissal at the time, according to a 14 March 2023 email to the Commission), and her 31 July 2023 Form AR-C that indicated “elbow problems as a compensable consequence of shoulder injury.”

#### 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 witness and observing his or her 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 HER ALLEGED ARM/ELBOW INJURIES ARE COMPENSABLE INJURIES.

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 specific 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 injuries were the result of a specific incident—namely the 17 November 2020 fall. 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. *Cossey v. G. A. Thomas Racing Stable*, 2009 Ark. App. 666,5, 344 S.W.3d 684, 689. 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).

The claimant, however, offers little evidence to support a claim for a compensable injury to her elbow or arm. She testified generally that she has “problems” with her elbow and that she experienced some numbness into her fingers. The scant medical notes that she provides in support of her claim date from more than two years after her fall, only mention some arm soreness in passing, and seem to focus on her complaints of her hands feeling cold and numb. Indeed, the only note that ultimately addresses a plan for care primarily relates to addressing the concerns about her hands—not her elbow. The EMG report, which concludes mild right side carpal tunnel, states that her hand symptoms did not start until June or July of 2022. The claimant made no effort to link her carpal tunnel diagnosis to the fall. And she reports that she experiences trouble with her hand feeling cold and numb while working on her computer, which would be consistent with carpal tunnel problems.

The record lacks credible evidence that would tie her more recent elbow or arm complaints to her fall back in 2020, and the claimant does not offer other credible testimony to support a finding that any arm or elbow problems are attributable to the workplace incident in 2020. Accordingly, I do not find that the claimant has proven by a preponderance of the evidence that she suffered a compensable injury to her arm or elbow.



B. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HER ALLEGED ARM/ELBOW INJURIES ARE A COMPENSABLE CONSEQUENCE OF HER ACCEPTED SHOULDER INJURY.

In affirming the Commission's finding of a compensable consequence in another case, the Court recently explained:

Arkansas Code Annotated section 11-9-508(a) (Repl. 2012) requires an employer to provide an injured employee such medical services as may be reasonably necessary in connection with the injury received by the employee. When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. For this rule to apply, the basic test is whether there is a causal connection between the injury and the consequences of such. The burden is on the employee to establish the necessary causal connection. Whether a causal connection exists between two episodes is a question of fact for the Commission.

*Nucor Yamato Steel Co. v. Echols*, 2023 Ark. App. 43, 660 S.W.3d 341, 2023 Ark. App. LEXIS 58 (internal citations omitted).

In that case, the claimant worked in steel production and claimed that he suffered an injury to his left shoulder as a result of favoring it in the course of his labors after surgical repair of an accepted and surgically repaired rotator cuff tear to his right shoulder. In affirming that award, the Court noted credible medical evidence of the claimant's "overusing" his left side and objective findings consistent with that overuse and the resultant injury.

Here, I do not find that the claimant met her burden of proving by a preponderance of the evidence that she suffered arm or elbow injuries as a natural and compensable consequence of her accepted shoulder injury. The facts here are clearly different from those considered in *Nucor*. Instead of making a logical connection between an injury related to her accepted shoulder injury, the claimant simply suggests that because she fell in 2020 and experienced a compensable right shoulder injury, any other problems or symptoms with her right arm must also be connected to that shoulder injury. She fails, however, to

advance credible evidence of a causal connection between the two. Her claim for benefits for injuries alleged as compensable consequences of her accepted shoulder injury must, therefore, fail.

**C. THE STATUTE OF LIMITATIONS ISSUE IS MOOT.**

On July 31, 2023, the claimant filed her Form C stating that she “developed elbow problems as a compensable consequence of shoulder injury.” The respondents contend, among other things, that this filing was not timely. In facing a challenge on the statute of limitations, the claimant must prove that she timely made her filing within the applicable period for filing a claim for benefits. *Wynne v. Liberty Trailer & Death & Permanent Total Disability Trust Fund*, 2021 Ark. App. 374, 636 S.W.3d 348, 2021 Ark. App. LEXIS 394. Because the claimant failed to prove a compensable injury, I am not addressing whether her claim was timely filed.

**D. BECAUSE NO BENEFITS ARE BEING AWARDED, THE CLAIMANT IS NOT ENTITLED TO AN ATTORNEY’S FEE.**

Consistent with the findings above, the claimant has not met her burden of proving by a preponderance of the evidence that she is entitled to benefits that would entitle her to an award of an attorney’s fee.

**V. ORDER**

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

**IT IS SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE