

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H207751**

**JENIFER L. WILLIAMS,
EMPLOYEE**

CLAIMANT

**HOME TO COMMUNITY LIVING, INC.
UNINSURED EMPLOYER**

RESPONDENT

**ARKANSAS WORKERS' COMPENSATION
COMMISSION COMPLIANCE DIVISION,
INS. CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 24, 2024

Hearing before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on July 2, 2024, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Jennifer L. Williams, appeared pro se.

The uninsured respondent was represented by the Honorable Caleb Ben Baumgardner, Sutter & Gillham, PLLC, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed April 5, 2024, the parties agreed to the following stipulations, which they affirmed on the record:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed with the claimant at all relevant times including September 11, 2022, when the claimant allegedly sustained injuries to various parts of her body as the result of an alleged work-related assault.
3. The parties shall exchange wage records and confer as soon as possible and be prepared to stipulate to the claimant's average weekly wage (AWW) and the corresponding indemnity benefit rates **preferably before** or at the hearing.
4. The respondent has controverted this claim in its entirety.

5. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Commission's Exhibit 1 at 1-2; Hearing Transcript at 7-9) (Emphasis in original). At the hearing the parties supplemented these stipulations by agreeing to an AWW of \$510, which corresponds to weekly indemnity rates of \$340 for temporary total disability (TTD), and \$255 for permanent partial disability (PPD) benefits, if the claim is deemed compensable. (Comms'n Ex. 1 at 2; T. 7-9).

Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained compensable injuries within the meaning of the Arkansas' Workers' Compensation Act (the Act) to her various parts of her body as the result of an alleged work-related assault which occurred on September 11, 2022.
2. Whether the claimant's alleged injuries were substantially occasioned by the use of alcohol or other intoxicants; and/or whether the claimant provoked the assault and/or whether the assault was personal, and not work-related, in nature.
3. If the claimant's alleged injuries are deemed compensable, the extent to which she is entitled to medical and indemnity benefits.
4. If the claimant hires an attorney, whether the claimant's attorney is entitled to a controverted fee on these facts.
5. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Comms'n Ex. 1 at 2; T. 7-9).

The claimant contends that on September 11, 2022, she sustained injuries to various parts of her body as the result of an alleged work-related assault. The claimant contends she is entitled to payment of her related, reasonably necessary medical treatment, and to commensurate indemnity benefits as the evidence and Act require. The claimant reserves any and all other issues for future determination and/or litigation. (Comms'n Ex. 1 at 2-3; T. 7-9).

The uninsured respondent, Home to Community Living, Inc. (the uninsured respondent; the respondent; or HCL) contends that although the claimant alleges a work-related incident occurred on or about September 11, 2022, she did not submit paperwork, nor did she report any alleged injury(ies) to HCL until September 14, 2022. The respondent contends the paperwork the claimant submitted to HCL on 9/14/2022 was dated September 12, 2022, and included a discharge summary indicating she had been treated for a facial contusion and could return to work on September 13, 2022. The respondent contends the alleged injury(ies) did not occur at work, and that the claimant cannot meet her burden of proof in demonstrating her injury(ies) is (are) “compensable” within the Act’s definition. The respondent further contends that *if* the claimant’s alleged injury(ies) occurred at work, it (they) was (were) substantially occasioned by the use of alcohol; and/or the claimant provoked the incident that allegedly resulted in her injury(ies) and, therefore, the assault was personal and not work-related in nature. Finally, the respondent reserved the right to supplement its contentions to assert any and all other applicable defenses and arguments upon the completion of necessary investigation and discovery; and it specifically reserved any and all other issue(s) for future determination and/or litigation. (Comms’n Ex. 1 at 3; T. 7-9).

The record herein consists of the hearing transcript, and any and all exhibits contained therein and attached thereto.

STATEMENT OF THE CASE

The claimant, Ms. Jenifer L. Williams (the claimant), is 27 years old. She has a G.E.D. and has been employed in various positions such as a cook and food service worker with different employers caring for elderly and physically/mentally challenged and/or disabled patients. She currently works as a cook at Colonel Glenn Health & Rehab where she began working in May of 2021. Approximately two (2) days after the date of the alleged subject injury – September 11, 2022

(9/11/2022) – the claimant returned to work for the uninsured respondent-employer, HCL, where she continued to work until late October 2022 or early November 2022. In early December 2022 the claimant became associated with HireQuest, a temporary service, through which she obtained a job with the Arkansas Heart Hospital for a period of time. (T. 19-22; 43-47).

On the date of the subject incident, 9/11/2022, the claimant was working the 7 p.m. to 7 a.m. shift at HCL, where her job duties included cooking for, taking food to, and washing clothes for three (3) mentally challenged and/or disabled patients. At about 3-4 a.m., on September 11, 2022, the claimant apparently had been asked to go to a room shared by two (2) male patients to ask that they turn down their music. She testified she was supposed to keep the two (2) patients “apart”, but she apparently was having some difficulty doing so because she called Thomas (Brooks), a supervisor, for assistance. The claimant testified she was sitting in the room writing a required job-related report concerning what the patients were doing, and what she was doing when one of the patients who had behavioral issues (Mr. Jesse Poole) came over to her and started hitting her, punching her in the head and face. She testified Mr. Poole hit her about the head and face five (5) or six (6) times causing bruising, swelling, headaches, and dizziness, that he broke her phone, and she never hit him back. (T. 22-31; 33-36; 37-73).

The claimant testified she called 911 and the police and an ambulance responded to the call. She was sitting in the back of the ambulance when Mr. Thomas Brooks and Mr. Elwood Marks, supervisors and employees of HCL, took pictures of her injuries. The claimant also took pictures of her injuries after the incident, which she gave to HCL. Neither party introduced any pictures of the claimant’s injuries into evidence at the hearing. The claimant testified she did not ride in the ambulance to the hospital because Mr. Brooks told her it would cost \$1,000 if she rode in it, so she rode to the hospital, CHI St. Vincent Infirmiry Medical Center (St. Vincent) in Little Rock, with

Mr. Elwood Marks. She denied refusing to ride in the ambulance, thus allegedly refusing medical care. (T. 23-73).

Following her evaluation and treatment at St. Vincent the claimant initially was diagnosed with: “Facial contusion. Headache-Recurrent; Post concussion syndrome; Recurrent headache.” Respondent’s Exhibit 4 at 1-2). The claimant underwent tests, evaluations, and treatment from September 11, 2022, through November 11, 2022, incurring approximately \$4,000 to \$5,000 in medical bills, which remain unpaid. (RX4 at 1-136; T. 25-73). The health care professionals also provided her medical information concerning post-traumatic stress disorder (PTSD), and post-concussion syndrome. (RX4 at 108-125).

The claimant testified she had no personal relationship with her assailant, Mr. Poole; and she denied the respondent’s allegations she had accused Mr. Poole of homosexual activity, thus allegedly prompting his attack. She also denied she was intoxicated or otherwise impaired, which the respondents allege substantially occasioned the assault and her injuries. It is an undisputed fact the respondent did not require the claimant to undergo any drug or alcohol testing following the subject 9/11/2022 work incident; therefore, the record is devoid of any drug or alcohol test results whatsoever. (T. 32-73; 204-205; Respondent’s Exhibits 1-4).

The claimant testified that her mother, Ms. Marilyn G. Willimas, took her to work on September 10, 2022, the evening before the early morning 9/11/2022 work incident occurred, for the beginning of her 7 p.m. – 7 a.m. shift at HCL. Ms. Marilyn Williams testified in person at the hearing and, under oath, corroborated the claimant’s testimony. (T. 57-58; 74-87). The claimant’s mother in essence testified the claimant showed no evidence of intoxication or impairment when she dropped her off at work on the evening of September 10, 2022, before the beginning of her September 10-11, 2022, 7 p.m. – 7 a.m. shift. (T. 75-87). One of the respondent’s witnesses, Mr.

Leroy Jones, Jr., a former paramour of the claimant, initially testified he had taken the claimant to work in the morning for her shift at HCL on 9/11/2022, the day of the alleged incident, and that she had asked him to stop at a Circle K on the way to work where he alleged she purchased a 24-ounce beer which she was drinking on the way to work and as she got out of the car to go into work. Later, after prompting questions on re-cross examination from the respondent's attorney, Mr. Jones changed the story he told on direct examination and said he took the claimant to work in the evening, not the morning. (T. 88-116).

The respondents called a total four (4) witnesses to testify at the hearing: Mr. Leroy Jones, Jr.; Mr. Thomas Brooks; Mr. Jesse Poole, the assailant; and the uninsured respondent's/HCL's owner, Ms. Rasheema Britt. (T. 159-173). Also, among other documentary evidence the respondent introduced a report dated "Friday, December 30, 2022", almost three (3) months after the date of the subject 9/11/2022 work incident, which they prepared allegedly pursuant to a self-investigation they had undertaken after the 9/11/2022 incident. (Respondents' Exhibit 1 at 1-3). The respondent introduced this report in support of their contentions the assault was substantially occasioned by the claimant's alleged intoxication, and that she allegedly provoked the assault by – again, allegedly – accusing Mr. Poole of homosexual activity, thus rendering it personal and nonwork-related in nature. Each of the respondent's witnesses, whose testimony relevant to this opinion will be discussed as needed in more detail in the "Discussion" section, *infra*, ostensibly testified in support of HCL's purported findings contained in this report. (T. 88-203).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof has established it by a

preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2024 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). *Ark. Code Ann.* Section 11-9-704(c)(3) (2024 Lexis Repl.) states that the ALJ, the Commission, and the courts “shall strictly construe” the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4) (2024 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep’t of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission’s exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant’s or any other witness’s testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission’s

province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). 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's credibility and how much weight to accord 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).

In order to prove a compensable injury as a result of a specific incident the claimant must 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 harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in *Ark. Code Ann.* § 11-9-102(16), establishing the injury; 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) (2024 Lexis Replacement).

Ark. Code Ann. Section 11-9-102(4)(B)(iv)(a) (2024 Lexis Repl.) specifically excludes from the definition of "compensable injury" an injury "substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders." *Ark. Code Ann.* Section 11-9-102(4)(B)(iv)(b) (2024 Lexis Repl.) states: "The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders." And *see, e.g., Rudick v. Unifirst Corp.*, 60 Ark. App. 173, 962 S.W.2d 819 (Ark. App. 1998); *ERC Contractor Yard & Sales, v. Robertson*, 60 Ark. App. 310, 961 S.W.2d 36 (Ark. App. 1998), *aff'd*, 335 Ark. 63, 977 S.W.2d 212 (Ark. 1998).

The Act also specifically excludes from the definition of “compensable injury” an “[i]njury of any active participant in assaults or combats which, although they may occur in the workplace, are the result of nonemployment-related hostility or animus of one, both, or all of the combatants and which assault or combat amounts to a deviation from customary duties,” or an injury that was “inflicted upon the employee at a time when employment services were not being performed.” (Bracketed material added). *Ark. Code Ann.* Section 11-9-102(4)(B)(i), (iii) (2024 Lexis Repl.); and *see, Dorn v. Housing Authority of the City of Pine Bluff*, 2017 Ark. App. 309 (Ark. App. 2017) (Slip Opinion); *Bryan v. Best Western/Coachman’s Inn*, 47 Ark. App. 75, 885 S.W.2d 28 (Ark. App. 1994).

Based on the applicable law as applied to the facts of this case, I find the claimant has met her burden of proof in demonstrating she sustained compensable injuries to her head and face as a result of the undisputed work-related assault of September 11, 2022. I further find the respondent has failed to meet its burden of proof in demonstrating the assault was either substantially occasioned by the use of alcohol, or that the claimant provoked it, allegedly thus rendering it personal and nonwork-related in nature, for the following reasons.

First, there exists such a preponderance of evidence – both in the form of the witnesses’ testimony and the documentary evidence of record – making it abundantly clear that on September 11, 2022, Mr. Jesse Poole, a patient under HCL’s care, assaulted the claimant and hit her about the head and face causing injuries to her head and face that required immediate medical attention, evaluation, and treatment. Indeed, by their witnesses’ own admissions the respondent was aware of the assault on the very morning it occurred, and very soon after it occurred. In fact, Mr. Thomas Brooks, HCL’s community director, testified the claimant called him in the early morning hours telling him about the incident, and that he was at HCL when the police and

ambulance arrived after the claimant called 911. (T. 138-144). Consequently, based on all the credible evidence of record it is beyond reasonable dispute the claimant was injured as a result of Mr. Poole's assault of 9/11/2022, and that this assault occurred within the course and scope of her employment.

Second, there exists grossly insufficient credible evidence of record demonstrating either that the claimant's injuries were substantially occasioned by the use of alcohol, or that she provoked the assault thereby somehow making it personal and nonwork-related in nature. Again, one need only look as far as the testimony of the respondent's own witnesses to conclude – especially in light of the entirety of the credible evidence of record – that the respondent's failed to even meet the burden of proof necessary to raise the rebuttable presumption the claimant's injuries were substantially occasioned by the use of alcohol. *See, Rudick and ERC, supra.*

Mr. Brooks, HCL's community director, testified he was the author of the respondent's "investigative report" dated 12/30/2022; that he did not smell alcohol on the claimant's breath after Mr. Poole assaulted her, nor did he apparently see any signs of intoxication as he testified he never asked the claimant to undergo an alcohol or drug test, nor did he request or cause anyone to conduct such a test. There exists no evidence the police who responded to the claimant's 911 call following the 9/11/2022 incident, or that the health care providers who evaluated and treated her after the incident, were concerned the claimant was or may have been intoxicated or otherwise impaired by alcohol at the time of the incident. (RX4 at 1-36).

Significantly, after having had the opportunity to personally observe Mr. Leroy Jones's demeanor, and to make other relevant personal observations as he testified (including but not limited to his looking at and making eye contact with HCL's owner, Ms. Rasheema Britt, as if to discern her reactions to various parts of his testimony); having had the opportunity to not only

personally hear his testimony, but to read it in the transcript, and to consider it in light of all the other credible evidence of record, I find his testimony to be obviously biased, inconsistent, apparently contrived and, in short, incredible on these facts. (T. 88-203).

Third, specifically concerning the respondent's contention the claimant allegedly provoked a dispute that was nonwork-related in nature, Mr. Brooks, HCL's community director, testified he had no personal knowledge as to whether the claimant had in fact accused Mr. Poole, the mentally challenged/disabled HCL patient who attacked and assaulted her in the early morning hours of 9/11/2022, of engaging in homosexual activity. Moreover, even *if* (T. 123-28; T. 118-54).

Fourth, while I excluded it and did not consider Mr. Poole's proffered testimony in rendering the opinion herein, I found it telling and somewhat desperate – even disingenuous – the respondent's even attempted to elicit the testimony of an admittedly and obviously mentally challenged and/or disabled young man, who obviously did not understand what was going on, and who on more than one (1) occasion looked at HCL's owner, Ms. Britt, in what any reasonable person would interpret to be his attempt to determine her reaction to what he was saying. It proved to be an exercise in futility to subject Mr. Poole to the stress of testifying on direct examination and being cross-examined at a hearing when it was readily apparent to one and all (including, in the end, the respondent's attorney) he was legally incompetent to testify, and appeared to be even fearful of doing so. (T. 155-172).

On the whole, I found the preponderance of the respondent's witnesses' testimony in support of their contentions to be (at least a reasonable trier of fact may reasonably conclude it to be, as I have herein) rather contrived after-the-fact and, consequently, incredible and not well-founded in either law or fact. Perhaps the testimony of the uninsured respondent's owner and

operator, Ms. Rasheema Britt, was the most revealing in this regard. Even though she was not present at the time of the assault which resulted in the claimant's head and face injuries, she testified under oath that based on some vague alleged past interactions and conversations with the claimant she "believes" the claimant was intoxicated at the time of the assault, the occurrence of which is not subject to reasonable dispute. And again, still, the claimant was never asked or required to submit herself to alcohol or drug testing either before or after the subject 9/11/2022 work incident. (T. 173-203).

Therefore, for all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations contained in the prehearing order filed April 5, 2024, which the parties supplemented and affirmed on the record at the hearing, hereby are accepted as facts.
2. The claimant has met her burden of proof in demonstrating she sustained compensable injuries to her head and face directly related to the subject work-related assault of September 11, 2022.
3. The respondents have failed to meet their burden of proof in demonstrating that the statutory provisions of either *Ark. Code Ann.* Sections 11-9-102(4)(B)(iv)(a)-(b), and/or of *Ark. Code Ann. Section* 11-9-102(4)(B)(i) and/or (iii) are applicable on these facts.
4. The claimant is entitled to payment of all her related, reasonably necessary medical bills and related expenses such as mileage.
5. Any issue(s) not specifically addressed herein are reserved for future litigation and/or determination.

AWARD

The respondents hereby are directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. To the extent applicable herein, all accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid

Jenifer L. Williams, AWCC No. H207751

pursuant to *Ark. Code Ann.* Section 11-9-809, and *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett*, 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer*, 358 Ark. 89, 186 S.W.3d 229 (2004).

If they have not already done so, the respondents shall pay the court reporter's invoice within 20 days of their receipt of this opinion.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp