

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H303648

CONTESSA L. ALLISON,
EMPLOYEE

CLAIMANT

SOUTHEAST ARKANSAS HUMAN
DEVELOPMENT CENTER, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 30, 2025

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

Claimant appeared *pro se*.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 29, 2025. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she sustained a compensable injury to her right or left shoulder which was caused by rapid repetitive motion. The claimant therefore did not prove that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(Repl. 2012).

I. HISTORY

Contessa Allison, now age 54, testified that she had been employed in 2015 as a cafeteria worker at University of Arkansas at Monticello. Ms. Allison testified that she had been employed at UAM as a stir fry cook, which work “required a lot of repetition, stirring, stirring. And eventually I started havin’ soreness in my shoulder.” The claimant testified that she received medical treatment for her right shoulder.

The claimant testified that she became employed with the respondents, Southeast Arkansas Human Development Center, in March 2020. The claimant testified, “I was a residential assistant where I worked directly with clients in the unit of 15 men....Part of your duties is you do the kitchen, which includes doin’ all the laundry for the 15 men. And then you also have to clean the kitchen and all of that, and as well as take care of your clients and whatever they need.”

The claimant testified that she sustained a work-related injury to her right leg while employed with the respondents in September 2020. The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on October 1, 2020. The ACCIDENT INFORMATION section of the Form AR-N indicated that an accident occurred on September 14, 2020: “Employee was chasing a client who was running off. She pulled her right hamstring.” The record indicates that the claimant returned to work for the respondents on or about October 20, 2020.

Dr. Ethan Schock reported on April 2, 2021:

Ms. Allison is here today with her Worker's Compensation nurse case manager for consideration of her right lower extremity pain and swelling.

I reviewed her records which date back to September 2020.

She was apparently running and felt some discomfort and swelling in her right lower extremity. She was diagnosed with anterior knee pain. She has had some physical therapy, oral anti-inflammatory medication and was, about a month ago released to go back to 12-hour shifts....

In November 2020 she had an MRI. This study is reviewed and suggest generalized changes about the knee consistent with osteoarthritis....

PLAN: Structurally, she is intact....

I believe she has reached maximal medical improvement with respect to her right knee work-related incident of September 2020. I believe her symptoms are related to preexistent osteoarthritis with no demonstrable new injury associated with the September 2020 event. She is released and has no further restrictions or limitations with respect to her September 2020 work-related incident.

Dr. Schock assessed "Right knee osteoarthritis" and "Strain of hamstring tendon."

Dr. Joe Wharton noted on April 13, 2021, "Pt presents for visit for Workmen's Comp. follow-up. She is still hurting in her right knee. Her work has moved her back up to 12 hour shifts. Her knee is hurting worse....We will send her to Good Hope prosthetics for a knee brace to help safely manage her daily activities at work."

An administrative law judge examined the *pro se* claimant:

Q. Specifically, when did you start having problems with your right and/or your left shoulders?

A. That was starting around April, May goin' on into there around that time....in 2021....

Q. You're claiming this was a gradual onset injury to both your right and your left shoulders.

A. Mm-hmm....I was always in the kitchen.

Q. Okay.

A. And that required you to do the laundry....You got thick jeans. You got all – you got all this heavy stuff you pullin' out of these little – you only one washing machine and one dryer and you –

Q. Were these industrial size washing machines?

A. No.

Q. And dryers?

A. No. Regular ones you have in your house....

Q. But that's what you were doing at the time you noticed pain in your right and left shoulders?

A. Yes, 'cause I was constantly in there – in the kitchen every night, night after night after night....

Q. But there was no specific incident where you were pulling anything out of the dryer or anything like that where you heard a pop or fell on your shoulder or had any injury that happened specifically? This all was gradual and just came on a little bit at a time?

A. Repetition of con – of doin' that kitchen, 'cause you're not – you're not only doin' the – the laundry....I'm constantly using my arms for everything. Everything I do is puttin' pressure on my arms.

Q. So don't let me mischaracterize your testimony. You tell me if I've got this right. What you're saying is the gradual pain started and continued to get worse over a period of time. Is that right?

A. Yes.

Q. And what you believe caused it is washing the clothes and putting the clothes in the washer, taking them out and putting them in the dryer, taking them out. Did you have to fold the clothes as well?

A. I had to fold 'em, and eventually they started having – where we had to put 'em away....

Q. What were the job duties you were performing when you felt the pain in your right and left shoulders other than the washing and the drying of the clothes?

A. When I had to start puttin' them up, the clothes up....why I really felt the pain was when I had to start puttin' the clothes up, then they had those closets that were floor to ceiling.

Dr. Wharton noted on May 28, 2021, "I have been seeing her for a workman's comp injury. This has concluded as she has been referred to orthopedics. She has problems with her right shoulder which she says is a previous injury sustained some years ago. She thinks is rotator cuff involved." Dr. Wharton's assessment included "1. Right shoulder pain, unspecified chronicity....X-ray of the right shoulder showed degenerative changes at the AC and at the glenoid."

X-rays of the claimant's right shoulder were taken on May 28, 2021 with the following findings:

There is mild degenerative spurring at the AC joint and distal acromion. The proximal humerus and glenohumeral joint are unremarkable. There is no evidence for acute fracture or periosteal reaction. No lytic or sclerotic lesion. The surrounding soft tissues are unremarkable.
IMPRESSION: Mild degenerative spurring at the AC joint and acromion. No acute osseous abnormality.

The parties stipulated that the employment relationship existed at all pertinent times, including August 26, 2021, "when the claimant alleges she became disabled as a direct result of alleged 'compensable' gradual onset injuries to both her right and left shoulders." The claimant testified that she reported the alleged gradual-onset injury on September 25, 2021.

The record indicates that the respondents terminated the claimant's employment effective September 26, 2021. The NOTICE OF DISCIPLINARY ACTION included the following cause: "Contessa has displayed a consistent pattern of failure to comply with workplace policies, rules, job-related standards as well as a reasonable work-related instructions (sic). She consistently refuses instructions given by her Supervisor, placing unnecessary stress and additional work load on all staff in the unit in which she works."

Dr. Wharton noted on October 11, 2021, "Pt here with continued right shoulder pain, not improv (sic) over prior exam." Dr. Wharton assessed "1. Right shoulder pain, unspecified chronicity." X-rays of the claimant's right shoulder were taken on October 11, 2021 with the following findings:

No fractures or dislocations.
Mild degenerative changes of the acromioclavicular joint.
No erosions. No radiopaque foreign body.
IMPRESSION: 1. No acute findings.

Dr. Wharton's assessment on December 9, 2021 was "1. Right shoulder pain, unspecified chronicity," "2. Rotator cuff arthropathy of right shoulder," and "3. Morbid obesity due to excess calories." Dr. Wharton noted that the claimant "underwent a subacromial space injection."

The claimant treated at Mainline Health Systems, Inc. on July 21, 2022. An APRN reported at that time:

1. Left shoulder pain patient thinks it is in her rotator cuff area, reaching is a problem has been going on for 7-8 months gets better and then gets worse again, also look at her right ankle she twisted it 2 months ago and it is still sore....

52 y/o female in clinic with c/o pain in multiple joints, she is c/o left shoulder pain and right ankle pain. She sprained right ankle several weeks ago and continues to cause her pain....She reports that both of her shoulders hurt her, she believes it was from her job, pain started after she had worked for years folding clothes, she is c/o knee pain also. Her left shoulder and right ankle are her main concerns today, right shoulder has been evaluated, was to have MRI but she canceled appt.

The APRN's assessment included "1. Left shoulder pain, unspecified chronicity."

X-rays of the claimant's left shoulder were taken on July 21, 2022 with the following findings:

The humeral head appears normally aligned within the glenoid, with detailed evaluation limited by lack of axillary or transscapular wide view. No fracture visualized. Joint spaces are maintained. Visualized portions of the lung are unremarkable.

IMPRESSION

Unremarkable left shoulder radiographs. No acute osseous abnormality.

The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on June 6, 2023. The claimant wrote in the ACCIDENT INFORMATION section of the Form AR-C that the Date of Accident was August 26, 2021.

The claimant described the cause of injury and part of body injured:

The cause of the injury to my (left) shoulder/rotator cuff is due to repetitive use, stemming gradually from months of

continuous laundry and cleaning duties. These duties include doing laundry (sic) for 15 client (sic), mopping, lifting and bathing clients, wiping down entire kitchen. I am also experiencing the same rotator cuff issues in my (right) shoulder at the same time as the left.

Casondra Jones, Assistant Personnel Manager, Human Resources, signed a WITNESS STATEMENT on June 15, 2023: "There is no record of former employee, Contessa Allison, reporting a work-related injury to her shoulders."

A pre-hearing order was filed on September 20, 2024. According to the text of the pre-hearing order, the claimant contended, "The claimant contends her claim is not barred by the applicable S/L. Furthermore, she contends she has sustained gradual onset 'compensable' injuries to either or both her right and left shoulder(s); that she is entitled to both medical and indemnity benefits; and, if she retains one, her attorney is entitled to a controverted fee."

The parties stipulated that the respondents "controvert this claim in its entirety." The respondents contended, "The respondents contend that on June 8, 2023, the claimant reported having allegedly sustained a gradual onset injury(ies) to her right and/or left shoulder(s) that she further alleged resulted in her inability to work as of August 26, 2021, which the respondents controverted. The respondent contends the claimant cannot establish she sustained either a specific incident or a gradual onset injury to

either or both her right and/or left shoulder(s) on or before August 26, 2021; or that she sustained any gradual onset injury whatsoever arising out of [and] in the course of her employment caused by both rapid and repetitive motion. The respondent further contends the claimant cannot establish she has timely filed her claim. Therefore, the respondent contends the applicable S/L now bars the claimant's claim for benefits. The respondent further contends the claimant cannot meet her burden of proof pursuant to the Act in establishing her alleged injury(ies) is (are) the major cause of any disability or need for treatment. Alternatively, the respondent contends that if the claimant's alleged injury(ies is (are) deemed compensable claim was compensable (sic), it cannot be deemed liable for the payment of any responsible (sic) for disability, medical, indemnity, and/or disability benefits prior to the date the claimant reported her alleged injury(ies) to her employer. Finally, the respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of any and all appropriate and necessary investigation and discovery."

The parties agreed to litigate the following issues:

1. Whether this claim is barred by the applicable statute of limitations (S/L).
2. If the claim is not barred by the applicable S/L, whether the claimant sustained "compensable" gradual onset injuries within the meaning of the Arkansas' Workers' Compensation Act (the Act) to her right and/or left shoulder(s) that culminated in disability on or about August 26, 2021.

3. If the claimant's alleged injury(ies) is (are) deemed compensable, the extent to which she is entitled to medical and indemnity benefits.
4. If the claimant retains an attorney in this matter, whether her attorney is entitled to a controverted fee on these facts.
5. The parties specifically reserve any and all other issues for future litigation and/or determination.

A hearing was held on October 31, 2024. An administrative law judge examined the claimant:

Q. Is there anything I haven't asked you about your right and your left shoulder injury allegations that you think I should have asked you or that you would like to put into the record at this time?

A. It's just that – like I said, it's – just that repetition, 'cause, like I said, I was workin' by myself with one other person. I was in the kitchen pretty much every night doin' that job. And then, like I said, when they added the puttin' the clothes, that's when it got worse, the overstretchin' of my arm, and then I was like – I was – it was to the point where I could – 'cause I had to do it over. It wasn't just – you – you – you do – I got 15 clients so I gotta put 15 clothes away – so I'm doin' it 30 times openin' and closin' that thing overstretchin' myself. And then with the clothes you just constantly all this foldin'. I mean, it's not like it was just a little – a little load of clothes. It's a lot.

Q. Sure. I understand.

A. And then pullin' and stuff, you know, with that old washin' machine stuff gets stuck around there and you're stretchin' and pullin'. It was just a combination of all that, you know. And then you have to mop, then you got these big industrial mops pullin' on your shoulders and stuff. They got in – you gotta wipe all this wipin' down and – and it was – it was a lot. And then you gotta deal with your clients that you gotta lift....Everything I did is – is shoulder work.

The respondents' attorney cross-examined the claimant:

Q. So you had a variety of tasks, didn't you?

A. Yes.

Q. You did not do one particular task the entire shift?

A. No....

Q. But I want to make it clear you did not do laundry duties the entire 12-hour shift. You had other things that you did during the 12 hours.

A. Yes, but that – yeah, I had other things....

Q. So you're working with a washer and dryer that most of us have in our home?

A. Mm-hmm....

Q. Can you recall about how long it takes for a wash cycle and a dry cycle?

A. For wash and dry? It could be upwards to 30 or 40 minutes or in between maybe....

Q. You just had to load the machine and put the detergent in and turn it on, correct?

A. Correct.

Q. And then after the cycle's complete, then you take the clothing out and put it in the dryer and turn it on?

A. Mm-hmm....

Q. So I want to make sure I'm understanding the work that you did at the Human Development Center. You were running the washer and dryer five or six loads during your shift.

A. Mm-hmm.

Q. Would that be during the 12-hour shift?

A. Yes, other than when I – nothin' changed. I had to still do – even though we was comin' in at 6:00, I still had to do the kitchen, you know.

An administrative law judge filed an opinion on January 29, 2025.

The administrative law judge found that the statute of limitations did not bar the claim. The respondents do not appeal that finding and in fact ask that the Full Commission affirm the administrative law judge's opinion. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The claimant appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
 - (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
 - (a) Caused by rapid repetitive motion.

In analyzing whether an injury is caused by rapid repetitive motion, the standard is a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998).

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)(ii)(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). For

injuries falling within the definition of compensable injury under subdivision (4)(A)(ii), the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4)(E)(ii)(Repl. 2012). “Major cause” means more than fifty percent (50%) of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

An administrative law judge found in the present matter, “5. The claimant has failed to meet her burden of proof in demonstrating her job duties at HDC constitute either rapid-repetitive motion, and/or that they were the ‘major cause’ of her right and left shoulder pain/problems.” The administrative law judge erred as a matter of law. The claimant had the burden of proving that her “alleged compensable injury,” not her “job duties,” was the major cause of her disability or need for treatment. See Ark. Code Ann. §11-9-102(4)(E)(ii)(Repl. 2012); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998). See also *Crudup v. Regal Ware*, 69 Ark. App. 206, 11 S.W.3d 567 (2000). Nevertheless, the Full Commission has the duty to decide the case *de novo* and we are not bound by the characterization of evidence adopted by an administrative law judge. *Tyson Foods, Inc. v. Watkins*, 37 Ark. App. 230, 792 S.W.2d 348 (1990).

The Full Commission finds in the present matter that the claimant did not prove she sustained a compensable injury to her left shoulder or right shoulder as a result of rapid repetitive motion. As we have discussed, the claimant first complained of right shoulder pain in 2015 while working as a cook for another employer. The claimant became employed with the respondents, Southeast Arkansas Human Development Center, in about March 2020. The claimant testified that she provided residential services to 15 clients, which work included laundry and kitchen duties. The respondents provided benefits related to a right lower extremity injury sustained by the claimant in September 2020. A physician stated in April 2021, "I believe she has reached maximal medical improvement with respect to her right knee work-related incident of September 2020."

The claimant testified that she began suffering from right and left shoulder problems in about April 2021. The claimant testified that these symptoms were related to her work for the respondents in the kitchen and laundry areas. The claimant testified that she was washing "thick" jeans. The claimant described her duties of washing clothes, placing them in the dryer and removing them, and then folding the clothes. Dr. Wharton reported in May 2021 that the claimant was suffering from right shoulder pain "which she says is *a previous injury sustained some years ago* [emphasis supplied]." Dr. Wharton was obviously referring to the injury

sustained by the claimant in 2015 while she was employed in the UAM cafeteria.

The respondents terminated the claimant's employment effective September 26, 2021. The record does not indicate that the termination of the claimant's employment was related to the alleged compensable injuries; instead, the respondents asserted that the claimant failed to comply with workplace policies, rules, and job-related standards.

The claimant treated at Mainline Health Systems on July 21, 2022. The claimant reported that she suffered from bilateral shoulder pain as a result of "folding clothes." The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on June 6, 2023. The claimant alleged in the Form AR-C that she suffered from bilateral shoulder problems as a result of "months of laundry and cleaning duties." The claimant testified at hearing that she suffered from shoulder pain as a result of working in the respondents' laundry and kitchen areas.

The Full Commission finds that the claimant did not prove she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(Repl. 2012). The claimant did not prove by a preponderance of the evidence that she sustained an injury causing internal or external physical harm to her left or right shoulder which arose out of and in the course of employment or was caused by rapid repetitive motion. Even if the

claimant's work for the respondents in the area of kitchen and laundry was repetitive, the claimant did not prove that these allegedly repetitive tasks were performed rapidly. *See Malone, supra*. The claimant also did not establish a compensable injury supported by objective findings. The x-rays of the claimant's right shoulder taken May 28, 2021 and October 11, 2021 revealed mild degenerative changes and cannot be interpreted as demonstrating a compensable injury caused by rapid repetitive motion. The x-ray of the claimant's left shoulder taken July 21, 2022 was reported to be "Unremarkable" and likewise cannot be interpreted as establishing a compensable injury by medical evidence supported by objective findings. Finally, the claimant did not prove by a preponderance of the evidence that the alleged compensable injury was the major cause of the alleged disability or need for treatment. *See Ark. Code Ann. §11-9-102(4)(E)(ii)(Repl. 2012); Medlin, supra*.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(Repl. 2012) *et seq.* This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner