

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H104895

RACHEL BUTLER-GREEN, EMPLOYEE

CLAIMANT

PARKVIEW MAGNET HIGH SCHOOL/LITTLE ROCK
SCHOOL DISTRICT, EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION WCT,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JUNE 28, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Chancie K. Coomer, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa F. Wood, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On March 30, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing telephone conference was held on February 16, 2022. A Prehearing Order was entered on that same day. I have marked said order and the responsive filings of the parties as Commission's Exhibit No. 1.

Stipulations

During the prehearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within Claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times, including on March 12, 2020.

3. The Claimant is entitled to the maximum compensation rates for a 2020 injury.
4. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.

Issues

1. Whether the Claimant sustained compensable injuries to her right arm, shoulder, and neck.
2. Whether the Claimant is entitled to temporary total disability.
3. Whether the Claimant is entitled to reasonable and necessary medical treatment, both of record and future medical treatment.
4. Whether the Claimant is entitled to reimbursement of leave under Ark. Code Ann. §6-17-1308.
5. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant:

Claimant contends that she sustained a compensable injury to her right arm, shoulder and neck on 3/12/2020.

Respondents:

Respondents contend that Claimant did not sustain a compensable injury on 3/12/ 2020 or at any other time while working for Respondent-Employer. There is no injury in the course and scope of employment, and there are no objective findings of an acute injury. Respondents assert that the Commission does not have jurisdiction to determine whether or not Claimant is entitled to benefits under A.C.A. §6-17-1308. This is an issue that should be determined outside of the Workers' Compensation Act. Alternatively, Claimant has the burden of establishing that there was an assault or other violent criminal act and that she has followed the written personnel policies of the School District.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right arm, neck, or right shoulder.
4. The remaining issues have been rendered moot and not addressed herein this Opinion.

Summary of Evidence

The Claimant was the sole witness to testify during the hearing.

The record consists of the hearing transcript of March 30, 2022 and exhibits contained therein. Specifically, the following exhibits are included in the record along with Commission's Exhibit 1; Claimant's Exhibit 1 entails three pages of unauthored statements, nine other pages, and seventy-nine (79) numbered pages of medical records; and Respondents' Hearing Exhibit Index Medical comprises twenty-eight (28) numbered pages was marked as Respondents' Exhibit No. 1.

Testimony

Ms. Rachel Butler-Green/the Claimant

The Claimant is now 52 years of age. She holds a master's degree. The Claimant works for the Little Rock School District (LRSD), at Parkview High School. She has worked for the school district for twenty years. The Claimant has taught at Parkview since 2013. She teaches physical science.

She confirmed there was an incident at work on March 12, 2020, wherein she caught a student cheating. According to the Claimant, she took the student's test, and he became upset because he was aware that this action meant he would receive a zero. The Claimant testified the student started talking and would not be quiet. He got out of his seat and was very upset and became aggressive. The Claimant testified she pressed the button on the wall for security, which is next to the door. She further testified that before security could arrive, the student came to the door, pushed his way out the door, and stormed down the hallway. She testified that security showed up and she explained what happened to them. According to the Claimant, this incident occurred at the end of the day. She testified she talked with administration and went over with them what happened with the student. The Claimant testified that after this incident COVID hit.

Upon further questioning, the Claimant described the student as being a very large football player. She testified that the student has been involved in other incidents. Additionally, the Claimant was asked to go over precisely what happened. Specifically, the Claimant testified:

A Okay. Well, I'll just talk and do it. So I was standing at the door like such. There's a button here, a white button. I pressed the button. My hand was on the door knob. He came towards me and the door, and he pushed to try to get out of the door, and he kind of grabbed it and pulled back, which jarred me and it also pulled my arm, and he went out of the door.

She confirmed that the student was disciplined due to the incident, but this disciplinary action happened much later because they were out of school for the rest of the school year due to COVID. The Claimant testified the security officer's name is, Mr. Simms, but she does not know his first name. She confirmed that she reported the incident to the principal, Mr. James Castleberry, but the assistant principal, Ms. Philicia Bell, handled the situation. She confirmed that medical treatment was offered to her, and she accepted it. According to the Claimant, Mr. Castleberry instructed her to go to the closest Urgent Care. She sought treatment from MedExpress that same

day, after she left work. The Claimant reached out to Mr. Castleberry via email and asked him what she needed to do. He instructed her to contact the secretary, Ms. Hampton, or Officer Bakalekos. The Claimant testified she asked Mr. Castleberry how she was going to do that since school was not in session. According to the Claimant, she did not really get a response from him and there was no way for her to contact anyone.

Regarding the transition due to COVID, the Claimant testified they pivoted to virtual learning, for the remainder of the school year. She testified that they had to figure out how to switch from teaching in person to virtual. She confirmed it was very stressful because they had to watch videos to learn the system. The Claimant also had to help her fourteen-year-old daughter with her schoolwork. She also had to re-write all her lesson plans to accommodate the virtual students. The Claimant testified that she had to make contact with the parents of students who were not able to do online learning. Per the Claimant, students with computers had to be trained on how to use them for the lessons.

With respect to her medical treatment, after going to Urgent Care, the Claimant treated with her primary care physician, Dr. Hodges. She testified she went in with complaints of pain in her right side. The Claimant was referred to an orthopedic specialist to get a better look at what was going on her. She confirmed she did not see her family doctor until June. The Claimant attributed the gap in treatment to the shutdown due to COVID. According to the Claimant, she was told she needed surgery due to her alleged injury. She confirmed she underwent surgery on July 1, 2020. Following her surgery, the Claimant underwent physical therapy treatment for six weeks. Her physical therapy had to be extended because she had difficulty with her range of motion. The Claimant ended up doing a total of approximately twelve weeks of physical therapy.

She testified she did not feel she was a hundred percent healed, but she was running out of time, so she asked her doctor to released her to go back to work. The Claimant could not afford to stay off work. As a result, her doctor agreed to release her to light duty. She confirmed she continues to treat for her shoulder. She has an appointment in April (2022) with Dr. Riley and he is planning to go forward with another surgery. According to the Claimant, she continues with limited range of motion and constant pain. The Claimant testified she has become a left-handed person as opposed to being right-handed. She has two small grandkids, and she has difficulty handling them on her right side. Per the Claimant, she was a stomach sleeper, but now she is unable to do so. The Claimant has pain when working, especially when writing on the chalkboard. She testified that her whole life is totally different now.

The Claimant confirmed she was off work for her shoulder treatment from the summer of 2020 until she went back in November. Upon her turn to work, she followed up with Mr. Castleberry. At that time, he filed a workers' compensation claim. According to the Claimant, she used all her sick leave due to her alleged injury.

She denied that prior to March 12, 2020 she had any treatment on her right shoulder. The Claimant further denied having ever previously complained to a doctor of pain in her shoulder. She verified she has never been involved in any auto accidents or slip and falls. Explicitly, the Claimant denied having been hospitalized for anything, except for when giving birth to her children. The Claimant confirmed she previously underwent surgery on her right knee due to a meniscus tear.

On cross-examination, the Claimant acknowledged her deposition was taken on February 7, 2022. She verified that the incident occurred on Mach 12, 2020, which was the day the entire school district was dismissed because of COVID. She admitted she went to Med Express, and

they did an x-ray of her right shoulder. Additionally, the Claimant confirmed she could not get in to see her primary care physician (PCP), Dr. Hodges, until June 3, 2020 due to the shutdown.

She denied that during her deposition, she admitted she did not tell Dr. Hodges how she hurt herself. Instead, the Claimant testified she told him she did not remember how she got hurt. The Claimant confirmed she also testified in her deposition she told Dr. Riley the same thing, which was she did not remember what caused her pain. As of the date of the hearing, the Claimant confirmed that she was not under any restrictions from a doctor for her right arm.

The Claimant confirmed that she previously testified that she thought they returned to work in person mid-October of 2020. Since that time, she has been working at Parkview. She acknowledged that when she returned to work in October, she was still going through some physical therapy. She admitted Parkview allowed her to leave early if she needed to, and she received her same pay. The Claimant testified she left the last fifteen minutes of class on the days she had physical therapy. This was within reason; therefore, they did not dock her pay. The Claimant confirmed she received short-term disability while she was off. Her medical has been paid by her group health, through the school district.

She confirmed that her visit with Dr. Hodges on June 3, 2020 was for her yearly wellness physical. The Claimant maintained she brought up her shoulder at that visit. She acknowledged that when she saw Dr. Riley on June 16, 2020, she told him she had shoulder pain present for two months. On June 26, 2020, the Claimant returned to Dr. Riley and indicated to him, she had worsening right shoulder pain for the last two months.

On redirect examination, the Claimant testified that she did not attribute her right arm problems to the incident at school until the security guard asked her if it could be related to the

incident. The Claimant confirmed that at that time, she realized how she injured her arm because the guard reminded her of the incident with the student.

The Claimant confirmed on further cross-examination that her conversation with the security guard occurred after her shoulder surgery.

Medical Evidence

On March 12, 2020, the Claimant was seen at the MedExpress in west Little Rock. She came under the care of Dr. Chen Wang. The Claimant's chief complaint included alleged injuries to her neck and shoulder. She reported to Dr. Wang pain in her neck, right arm, and shoulder, along with tingling in the hand. The Claimant told Dr. Wang a student shoved her. He assessed the Claimant with "Strain of muscle, fascia and tendon at neck level." Dr. Wang prescribed medications, which included two tablets of tizanidine three times per day as needed for muscle spasms. He also instructed the Claimant to apply heat and ice as needed. Dr. Wang instructed the Claimant to see her primary care physician if no improvement.

The Claimant saw her primary care physician, Dr. Timothy J. Hodges on June 3, 2020 for her yearly wellness physical. She reported among other things, nighttime pain in her right shoulder, which radiated down her arm. The Claimant confirmed she planned to see a specialist. His assessment included cervical radiculopathy.

An MRI of the Claimant's right shoulder was performed on June 26, 2020. Dr. Michael Kendrick rendered the following impression: "1. Moderate acromioclavicular osteoarthritis. 2. Rotator cuff tendinopathy without discrete tear. 3. Possible subacromial subdeltoid bursitis."

On that same day, the Claimant underwent evaluation by Dr. Clayton Riley due to shoulder pain. Per this clinic note, the Claimant was noted to have worsening right shoulder pain for the past two months. Dr. Riley wrote in relevant part, "She does not remember any injury or specific

onset. She has impingement and a possible rotator cuff tear. We discussed her condition and treatment options.” Dr. Riley reviewed the Claimant’s MRI and confirmed it showed AC joint arthritis, type III acromion, SLAP tear and possible labral tear. The Claimant agreed to proceed with surgery.

Dr. Riley authored an operative note on July 1, 2020. At that time, the Claimant underwent right shoulder surgery by Dr. Riley. Specifically, Dr. Riley reported, in applicable part:

PREOPERATIVE DIAGNOSES:

1. Right shoulder superior labral tear from anterior to posterior.
2. Anterior labral tear.
3. Possible posterior labral tear.
4. Subacromial impingement.
5. Acromioclavicular joint arthritis.

POSTOPERATIVE DIAGNOSES:

1. Right shoulder superior labral tear from anterior to posterior.
2. Anterior labral tear.
3. Possible posterior labral tear.
4. Subacromial impingement.
5. Acromioclavicular joint arthritis

OPERATIVE PROCEDURES:

Right shoulder arthroscopic anterior labral repair, biceps tenotomy, subacromial decompression with acromioplasty, and AC joint resection.

The Claimant saw Dr. Riley for a follow-up visit on July 10, 2020 of her right shoulder arthroscopic labral repair, biceps tenotomy, subacromial decompression with acromioplasty and AC Joint resection. At that time, Dr. Riley gave the Claimant lifting restrictions of no more than five pounds. Dr. Riley referred the Claimant for physical therapy at a frequency of twice a week for six weeks.

On September 8, 2020 the Claimant underwent initial evaluation at Jacksonville Physical Therapy following her right shoulder surgery. It appears the Claimant underwent physical therapy until November 23, 2020.

The Claimant returned for a follow-up visit with Dr. Hodges on November 25, 2020 via telemedicine due to complaints of significant achiness. She had specific complaints of achiness in her shoulder and neck. The Claimant reported having undergone shoulder surgery in July. At that time, she continued in physical therapy for her shoulder. Dr. Hodges assessed the Claimant with neck pain, Hypokalemia, for which he continued meloxicam as needed. His impression was post-op shoulder labral repair other sprain of right shoulder joint subsequent encounter.

The Claimant returned to Dr. Riley on December 28, 2020 for follow-up of her post op labral repair. At that time, the Claimant presented for further evaluation and management. The Claimant continued to wear her sling. She reported that she was still having some pain although it was now 180 days out from surgical intervention. Dr. Riley prescribed medications for her ongoing symptoms of the right shoulder. He also placed the Claimant on a five-pound lifting restriction. Dr. Riley also directed the Claimant to continue with her home exercise program and follow-up with him in eight weeks.

On March 26, 2021 the Claimant returned to Dr. Riley for another follow-up evaluation of her right shoulder. Dr. Riley noted the Claimant was much improved and had continued with home exercises. However, she continues with pain, for which she was given a right glenohumeral injection. Dr. Riley also ordered an MRI of the Claimant's right shoulder to rule out re-tear of her anterior labrum.

Dr. Riley saw the Claimant on May 28, 2021 for follow-up of her shoulder pain on the right glenohumeral joint. The Claimant continued to have some pain in her shoulder, and she had noticed some popping. Dr. Riley stated that her right shoulder MRI images were reviewed, and it appeared to be a normal postoperative MRI although the exam could not rule out a re-tear of the anterior labrum. She was given a right glenohumeral injection during that clinic visit. The

Claimant also noticed right pain and numbness in fingers two through five, which was worse at night. Dr. Riley’s treatment plan included continued observation, and the Claimant wanted to follow-up for reassessment.

Adjudication

A. Compensability of the Right Arm and Neck

In that regard, for the Claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence 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, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the Claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a Claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the Claimant does not establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered*

Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, there is no dispute that on March 12, 2020, the Claimant was engaged in employment duties as a teacher when a disgruntled student shoved her, as he existed the classroom. This incident satisfies the requirement of a specific incident as that statutory term has been interpreted by our courts. The Claimant promptly reported the incident to her supervisor, the principal, Mr. Castleberry. She requested medical treatment and Mr. Castleberry instructed the Claimant to go to an Urgent Care.

At the end of her workday, the Claimant left work and went to MedExpress. However, there were no noted physical injuries to the Claimant's right arm or neck during this medical evaluation or in any of subsequent medical records. Thus, I find that the Claimant has failed to support the existence of a physical injury to her right arm or neck with objective medical findings.

Because I find that the Claimant did not support the existence of her alleged right arm and neck injuries with objective medical findings as required by Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012), I find that the Claimant has failed to prove that she sustained a compensable right arm or shoulder injury.

Of note, I am aware of the current ruling of the Arkansas Court of Appeals regarding what constitutes objective findings in the case of *Melius v. Chapel Ridge Nursing Center, LLC*, 2021 Ark. App. 61, 618 S.W. 3d 410. However, here the medications, physical therapy, and surgery were all treatment modalities ordered and geared for treatment of the Claimant's right shoulder condition.

B. Compensability of Right Shoulder

Here, the Claimant also contends that she sustained an injury to her right shoulder as a result of the March 12, 2020 incident. The Respondents contend that the Claimant did not sustain a compensable injury on March 12, 2020 or at any other time while working for the Respondent-Employer. Respondents have asserted there is no injury in the course of employment, and there are no objective findings of an acute injury.

Following the Claimant's treatment at MedExpress, and her family doctor, Dr. Hodges on June 3, 2020. Ultimately, the Claimant sought treatment for her right shoulder from Dr. Riley. On June 26, 2020, Dr. Riley opined that an MRI of the Claimant's right shoulder demonstrated, "AC joint arthritis, type III acromion, SLAP tear and possible labral tear." On July 1, 2020, Dr. Riley performed "Right shoulder arthroscopic anterior labral repair, biceps tenotomy, subacromial decompression with acromioplasty, and AC joint resection." However, I am unable to find a causal connection between the right shoulder abnormalities revealed on the MRI and the Claimant's work incident of March 12, 2020.

In that regard, the Claimant sought initial medical treatment on the day of the incident, which was March 12, 2020. Following this treatment, the Claimant did not seek any medical attention for her right shoulder for two months. At that point, on June 3, 2020, she saw Dr. Hodges for a wellness visit and complained of right shoulder pain for two months. However, she reported to Dr. Hodges, that there was no injury. Most notably, the Claimant saw Dr. Riley during multiple office visits, but she made no mention of an accident at work. Throughout her treatment with Dr. Riley and following her surgery, the Claimant makes absolutely no assertion of an injury to her shoulder. On cross-examination the Claimant confirmed she testified during her deposition, she did not tell Drs. Hodges and Riley how she injured her right shoulder because she did not remember

what happened to her shoulder. The Claimant's testimony and the medical reports show that she gave a history of "no injury to her shoulder" to both doctors. Also of significance, the Claimant admitted she paid her medical bills with her group health plan that she has through the school district. Such action implies that the Claimant did not relate her right shoulder condition to her work incident.

The Claimant credibly testified on redirect examination that she did not relate her shoulder condition to the incident at work until one day when talking to the security guard, and he mentioned the incident. On recross examination, the Claimant admitted that her conversation with the guard occurred after her shoulder surgery.

I find the Claimant to be sincere in her belief that her work incident with the student caused her right shoulder condition. But any belief, no matter how sincere, is not a substitute for credible evidence. *Graham v. Jenkins Engineering*, 2004 AR Wrk. Comp. LEXIS 79, Claim No. F112391 (Full Commission Opinion filed March 12, 2004). In light of the foregoing, only through speculation and conjecture could I find that Claimant's work-related incident of March 12, 2020 caused her right shoulder condition. However, I cannot engage in speculation and conjecture. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

To summarize, I am compelled to find that Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury to her right shoulder.

Because the Claimant failed to prove she sustained a compensable injury on March 12, 2020 the remaining issues of temporary total disability, reasonable and necessary medical treatment, reimbursement under Ark. Code Ann. §6-17-1308, and an attorney's fee have been rendered moot and discussed in this Opinion.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge