

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H009176**

AMANDA L. FEARS, EMPLOYEE

CLAIMANT

**TRAVEL NURSE ACROSS AMERICA, LLC,
EMPLOYER**

RESPONDENT

**STARR INDEMNITY INSURANCE & LIABILITY CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED APRIL 28, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 23rd day of March, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Eddie Walker, Attorney at Law, Fort Smith, Arkansas.

Respondents are represented by James Lloyd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on March 23, 2021, to determine the issue of compensability of a claimed work-related injury. At the time of the hearing, the parties agreed that the sole issue before the Commission was compensability and, if the matter was found to be compensable, the claimant was entitled to temporary total disability (TTD) from November 6, 2020, until December 1, 2020, plus appropriate medical benefits and attorney fees. The parties stipulated at the time of the Pre-hearing Order that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim; that an employer-employee relationship existed on November 5, 2020, the date of the claimed injury; and that the claimant earned sufficient wages to earn a TTD/permanent partial disability (PPD) rate of \$711.00/ \$533.00. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection.

The claimant's and respondents' responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The sole witness consisted of Amanda L. Fears, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on November 5, 2020, the date of the claimed injury. At the time of the claimed injury, the claimant earned sufficient wages to earn a TTD/PPD rate of \$711.00/\$533.00.
3. That the claimant has satisfied the required burden of proof to show that she sustained a compensable work-related injury on November 5, 2020.
4. That the claimant is entitled to TTD from the date of November 6, 2020, until December 1, 2020, appropriate medical benefits, and attorney fees pursuant to Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted one (1) exhibit that was admitted into evidence without objection and consisted of thirty-six (36) pages of medical records.

The claimant was the sole witness and testified that she was an employee of the respondent on November 5, 2020, worked as an operating room nurse performing contract work across the country, and on November 5, 2020, worked at a facility in Little Rock, Arkansas, the University of Arkansas for Medical Sciences (UAMS). (Tr. 5) She testified that besides the operating room, which was her main job, she would go all over the hospital getting patients, lab work, and delivering pathology specimens. If she was not in the operating room, that did not mean that she was not performing her job duties. She worked twelve (12)-hour shifts and would clock in at 6:30 a.m. and work until the shift was over, which would have been at 7:00 p.m., when she would clock out, unless she was on call. (Tr. 6) She would not clock out for lunch or breaks. She was paid for the entire period of time, except for a thirty (30)-minute lunch break that she was expected to take on her own time, but that sometimes she was unable to take the break due to the fact that she was too busy. If she was unable to take a lunch break, she testified, “You grab a snack between surgeries and hope for the best. They keep peanut butter and crackers for us all the time.” (Tr. 7)

On November 5, 2020, the claimant testified she fell down a set of stairs between 8:30 a.m. and 9:00 a.m. (Tr. 7) She had earlier clocked in and was on her way to grab some coffee. UAMS controlled her activities and had the ability to call her back to the operating room since they had her personal cell phone number. (Tr. 8) If she was needed, they would call or text her. If she was called, she would have to immediately turn around and return to the operating room. If she did not stop and return to the operating room immediately, “You would be terminated for abandonment of your patients, and possibly lose your nursing license.” (Tr. 9)

On the day of the incident, the claimant stated that she was going down the first flight of stairs in the hall when her foot caught on something on the step and she fell down quite a few steps face first. She realized she was injured, was limping pretty significantly, and could not use her right arm, and immediately reported the incident. She did not immediately receive medical care, however. (Tr. 10) The respondents required her to contact their workers' compensation company and to decide if she needed medical care. They required her to leave UAMS, where she was working, and go to Chenal Urgent Care, which was a few miles away. Since she was unable to drive, the facility administrator at UAMS assigned a driver to take her to Chenal Urgent Care.

She injured her left shin, left ankle, left foot, right wrist, right hand, right shoulder, and back. The claimant was evaluated at Chenal Urgent Care and was sent for x-rays. She was placed on a lifting restriction of no more than fifteen (15) pounds. (Tr. 11) Due to the fact that the respondent required her to be able to lift eighty (80) pounds, she was unable to return to work. The claimant testified she returned to Chenal Urgent Care on November 9, 2020, when she was then placed on a twenty-five (25) pound lifting restriction, which was still below the limit required by the respondents. The claimant again returned to Chenal Urgent Care on November 16, 2020, still complaining about her knees, lower extremities, right wrist, shoulder, and also pain in her mid and lower back. (Tr. 12) She was again not allowed to return to work and ordered to undergo two (2) more weeks of physical therapy, which ended on December 1, 2020. She did not work between the incident of November 5, 2020, and December 1, 2020. The claimant also testified she could not perform her job with a fifteen (15) or twenty-five (25) pound weight restriction. (Tr. 13)

After December 1, 2020, the claimant returned to work, this time in Phoenix, Arizona. While working in Phoenix, her symptoms flared up and she received an MRI (Tr. 14) The claimant testified she did not have another accident that caused the flare-up and that she had only engaged in the normal activities of daily living.

Under cross examination, the claimant testified she did not have any prior injuries to her wrist. (Tr. 15) In regard to her regular job duties, she testified that,

We get patients ready for surgery, we take them to the operating room, and we move them from one bed to the other. They go to sleep and we operate. I run errands for basically the team, so I'm getting heavy instruments, pins, equipment, whatever they need, the surgeons may need. When we're done with surgery, we move the patient from the OR table back to their bed, then we take them to recovery, then we come back and clean every-thing and get ready for another surgery. We run specimens to Pathology, we have to go take blood down to the lab, we have to go pick up blood, we have to go to Radiology and pick up x-rays. We have quite a few responsibilities.

The claimant admitted that at the time of the accident, she was not directly treating a patient and was not taking any specimens to the lab or transporting medical equipment. (Tr. 16) She was getting a cup of coffee.

Under examination by the Commission, the claimant testified that she had her cell phone on her when she fell. (Tr. 17)

The claimant submitted a packet of medical records, consisting of thirty-six (36) pages, that was admitted into the record without objection. On November 5, 2020, the claimant presented to Chenal Urgent Care, with the report providing that the claimant fell down the stairs while working at UAMS. The claimant stated that she fell forward using her right hand/arm to brace her fall. Additionally, she stated that her bilateral knees and legs hit the concrete stairs simultaneously, with her left knee and lower leg worse than the right. She was using an ice pack prior to arrival at Chenal Urgent Care. X-rays were

taken of the right wrist and forearm, along with the left tibia and fibula. The diagnosis provided for a contusion of the right and left knees, a contusion of the left lower leg and a sprain of the right wrist. The claimant was placed on a fifteen (15) pound weight limit for pulling or pushing. (Cl. Ex. 1, P. 1 -14)

The claimant returned to Chenal Urgent Care on November 9, 2020. The report provided it was a follow-up visit with the claimant presenting with constant, but at times worse, joint pain of the top, back, and front of the right shoulder, right axilla, right upper arm, proximal, middle and distal aspect of the right forearm, right wrist, left knee, left kneecap, left lower leg, anterior aspect of the right lower leg, and medial aspect of the right lower leg. The report also described an additional complaint of constant but sometimes worse pain of the posterior, medial, and anterior aspect of the right wrist, and lateral aspect of the left lower leg. Physical therapy was ordered, with the claimant being placed on a weight restriction of twenty-five (25) pounds pushing or pulling. (Cl. Ex. 1, P. 15 – 20)

The claimant returned to Chenal Urgent Care for a final visit on November 16, 2020. Under diagnosis, the report provided that the claimant suffered from a strain of unspecified muscles of the right shoulder and right arm, strain of muscle and tendon of the back wall of the thorax, and also an unspecified sprain of the right wrist. The report went on to provide that the claimant was fit for duty without restrictions as of November 23, 2020. (Cl. Ex. 1, P. 21 – 25)

The claimant also provided reports of physical therapy on February 5, 2021. The report provided that the claimant fell on some stairs at the end of October. She started having swelling in her left ankle, went to see Dr. Maddox, who then referred her for an

MRI, which confirmed an old ligament tear from a fall in October and that the claimant suffered from synovitis and tenosynovitis of her foot. The report further provided that the claimant had subjective and objective deficits that could be addressed by physical therapy. (Cl. Ex. 1, P. 26 – 33) The claimant returned to physical therapy on February 16, 2021, with the report providing that the claimant was able to complete the therapy without increased pain. (Cl. Ex. 1, P. 34, 35)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the issue of compensability of the claimant's injuries, she has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

There is no disagreement that the claimant was involved in an incident where she fell down some stairs while clocked in seeking a cup of coffee. At the time of this occurrence, the claimant was employed by the respondent as a traveling nurse and working at UAMS in Little Rock. The question of compensability in this case involves whether the injury was within the time and space boundaries of her employment and whether the claimant was carrying out the respondents' purpose or advancing the respondents' interest directly or indirectly.

The claimant worked twelve (12)-hour shifts, clocking in at 6:30 a.m. and working until she clocked out at 7:00 p.m., with thirty (30) minutes allowed for lunch. She did not clock out for lunch or breaks. She testified on some days she was unable to take a normal thirty (30)-minute lunch break. Although her job primarily consisted of working in the operating room, it also entailed traversing the entire hospital and picking up and delivering patients, lab work, x-rays, blood, and pathology specimens. She carried her personal cell phone with her at all times and worked at the beck-and-call of the hospital. If they needed her at any time after clocking in, she was expected to return to the operating room. Failure to do so could result in termination and even the loss of her nursing license.

It is undisputed that on the day of the accident, the claimant slipped and fell while going downstairs for coffee, suffering various injuries to her right shoulder, arm, and wrist as well her legs and back. She reported the injuries immediately while at UAMS, and her respondent-employer opted to have her treated at Chenal Urgent Care a few miles down the road on the day of the accident. She was initially placed on a weight limit of fifteen (15) pounds and later upped to a weight limit of twenty-five (25) pounds for pushing and pulling, with both limitations significantly below her job requirement of being able to lift eighty (80) pounds. Chenal Urgent Care opined that the claimant could return to work full duty as of November 23, 2020, and on December 1, 2020, the claimant did in fact return to work for the respondents in Phoenix, Arizona.

Under the Arkansas workers' compensation law, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and

conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, 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 and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here, the medical records and the testimony of the claimant clearly establish objective findings of injuries. "Objective findings" are based on observable criteria perceived by someone other than the claimant. Continental Exp., Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). Additionally, the evidence established a clear causal connection between the incident, which consisted of the fall down the stairs, and the resulting injury. Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on 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. Hail v. Pitman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962). The claimant clearly satisfied these requirements.

A compensable injury is one that was the result of an accident that arose in the course of the employment and that grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987). Here, the ultimate issue is simply whether or not the claimant was providing employment services at the time she was injured under Ark. Code Ann. § 11-9-102(4)(A)(i). The term “employment services” has been interpreted as something that is generally required by an employer. The test is whether the injury occurred within the time and space boundaries of employment and whether the claimant was carrying out the employer’s purposes or advancing the employer’s interest directly or indirectly. Here, the claimant had clocked in and was on call between the hours of 6:30 a.m. and 7:00 p.m. and did not clock out for breaks or meals. She carried her personal cell phone with her so that the hospital could contact her at any time she was needed back in the operating room, which was not her only job, but her primary one.

The present matter is analogous to another case that involved UAMS, University of Arkansas for Medical Sciences v. Hines, 2019 Ark. App. 557, 590 S.W.3d 183 (2019). In Hines, the claimant worked for UAMS as a surgical services patient-unit coordinator, working from the front desk of the unit. The claimant’s normal shift was from 2:00 p.m. to 10:30 p.m. She was required to clock in when she arrived and clock out when she left. She had two (2) non-scheduled fifteen (15)-minute breaks and a thirty (30)-minute lunch break. She testified that, “Because of the nature of my position at the front desk, there is

no scheduled time because there's cases and there's emergencies and there's traumas, so I have to fit in a break where I can, if I can." She usually combined her break with her lunch to take just one (1) break. On the day of the claimant's injury, she was in the process of taking a break, talking to her granddaughter on the phone, while leaving the floor which she worked on. She did not clock out for the break and after taking approximately ten (10) to fifteen (15) steps from the elevator, she slipped and fell, injuring herself. The Commission held and the Court of Appeals affirmed that the claimant was within the time and place boundaries of her employment, that she was paid for her time, and that even though she was not at her designated workstation, she was on the jobsite when she sustained her injury. Additionally, the claimant was required to leave her break and return to work if she was needed to assist with an emergency or if a trauma occurred, a fact situation very similar to the one currently before the Commission.

In the present matter, the claimant worked over the entire hospital, never clocked out from 6:30 a.m. to 7:00 p.m., and took her breaks and lunch when and if she could work them in. She was on call from the time she clocked in until she clocked out in the evenings and could be discharged and even lose her license if she failed to return when called. One of the essential functions of the claimant's position was to be onsite waiting for an emergency or trauma when needed. Here, it is found that the claimant's injuries occurred within the time and space boundaries of her employment and she was carrying out the respondent-employer's purpose and advancing its interest directly or indirectly. It could easily be argued that the respondent-employer would likely lose its contract for supplying traveling nurses to UAMS if the nurses were not required to show up when a trauma or an emergency occurred.

After weighing the available evidence in the case at bar, there is no alternative but to find that the claimant has satisfied the required burden of proof to show by a preponderance of the evidence that she suffered a work-related injury that is compensable under the Arkansas Workers' Compensation Act. Consequently, she is entitled to reasonable medical, TTD from the dates previously agreed upon by the parties, and the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge