BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H106663

JEFF GOFF,
EMPLOYEE **CLAIMANT**

GARLAND COUNTY SHERIFF'S OFFICE,
EMPLOYER **RESPONDENT**

ARK. ASS'N OF COUNTIES
WORKERS' COMPENSATION TRUST/
AAC RISK MG'T SERVICES, INC.
INS CARRIER/TPA **RESPONDENT**

OPINION AND ORDER FILED JUNE 3, 2022

Hearing before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens on March 4, 2022.

The claimant, Mr. Jeff Goff, of Hot Springs, Garland County, Arkansas, appeared pro se.

The respondents were represented by Mr. Jason Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed December 17, 2021, which was modified on the record at the hearing date only, the parties affirmed the following stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including July 20, 2021, when the claimant alleges he sustained a "compensable injury" in the form of a torn left rotator cuff.

3. The claimant was a volunteer reserve deputy program associated with the Garland County Sheriff's Office. The claimant's average weekly wage (AWW) was the 2021 minimum, which corresponds to weekly compensation rates of $20.00 for temporary total disability (TTD), and $20.00 for permanent partial disability (PPD), benefits.

4. At this time, the claimant is only seeking payment of his medical bills, and any out-of-pocket medical expenses related to his alleged "compensable injury."

5. The respondents controvert this claim in its entirety.

6. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 6-7). Pursuant to the parties' mutual agreement, the issues litigated at the hearing were:

1. Whether the claimant sustained a "compensable injury" within the meaning of the Arkansas Workers' Compensation Act (the Act) on July 20, 2021. Specifically, whether the subject torn left rotator cuff injury occurred at a time when the claimant was performing "employment services"; or was sustained as a result of "horse-play", and/or a preexisting, and/or idiopathic condition.

2. If the claimant's injury is deemed "compensable" within the Act's meaning, the extent to which he is entitled to payment of his medical bills, and any and all other related out-of-pocket medical expenses, including but not limited to Health Savings Account, (HAS) and mileage reimbursement.

3. If the claimant retains an attorney to represent him at the hearing, whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve the right to amend their prehearing questionnaire responses upon the completion of necessary investigation and discovery; and they also reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2, T. 6-7).

The claimant contends that on July 20, 2021, at the Garland County Volunteer Reserve Deputy mandatory training meeting, the group of volunteers was participating in handcuff training at the Garland County Detention Center. The trainer was acting as an aggressive suspect, and as the trainer was being handcuffed, the claimant was backing-up in order to execute an approved kick technic to create distance between himself and the trainer-suspect.

As he was backing-up the claimant lost his footing and fell backwards, landing on his elbow and tearing his left rotator cuff. The claimant contends this is a "compensable injury" within the Act's meaning, and that he is entitled to payment of his medical bills, and reimbursement of any related out-of-pocket expenses, including but not limited to his mileage and HAS payments. The claimant specifically reserves any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 3; T. 6-7; 74).

The respondents contend the claimant did not suffer a "compensable injury" within the Act's meaning. Specifically, the respondents contend the claimant was not performing "employment services" at the time of the alleged accident. Alternatively, the respondents contend the alleged injury was either the result of "horseplay", and/or a preexisting, and/or idiopathic condition. The respondents specifically reserve any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 3 T. 6-7; 74-76).

STATEMENT OF THE CASE

The relevant facts of this case are straight-forward, and I will not belabor them with a long statement of facts. The claimant, Mr. Jeff Goff (the claimant), is 62 years old, who works as a financial services advisor/insurance agent. He also is a former University of Arkansas football player, having played for the Razorbacks in the late 1970s. Through the years, the claimant has performed various physical activities to stay in shape, including martial arts.

In early 2020 the claimant applied for and was accepted as a reserve deputy in the Garland County Sheriff's Reserve Department. In order to be commissioned as a reserve deputy, he was required to complete 20 hours of online classes and one (1) week of hands-on training. He successfully completed these requirements and earned his commission as a reserve deputy

effective sometime in November 2020. As a reserve deputy he is required to work 16 hours a month in any of the available capacities such as patrol, quorum court security, detention, the criminal investigation division (CID), wherever reserve deputy assistance may be required. The reserve deputies meet once a month for additional training in various aspects of law enforcement. (T. 8-9).

On July 20, 2021, the reserve deputies were undergoing training to teach them how to properly and safely handcuff an arrestee. As part of the training the instructor, Lieutenant Scott McDaniel, played the role of the person being arrested. In order to train the reserve deputies as to the various scenarios with which they may be confronted when making an arrest, at various times throughout the training Lt. McDaniel would act as a compliant arrestee, or a non-compliant arrestee who was, in effect, resisting arrest. While the claimant was working with Lt. McDaniel, as the claimant was attempting to handcuff him, Lt. McDaniel resisted arrest. As part of the training the claimant had been taught to put as much distance between the suspect/arrestee and himself, so he used his right leg to "kick", or push, Lt. McDaniel back away from him. As the claimant did so, he fell backwards himself, landing on his elbow and shoulder, allegedly tearing his rotator cuff, which resulted in the subject claim, which the respondents summarily denied. (T. 9-10).

The claimant said the shoulder continued to hurt more and more as time went by. He eventually made his way to an orthopedic surgeon associated with the Conway Regional Health System, Dr. Tom Roberts. On August 27, 2021, Dr. Roberts performed surgery to repair a torn rotator cuff in the claimant's left shoulder. The claimant is not seeking any indemnity benefits, but is only asking the Commission to reimburse him for the amount of money he had to use from an

HSA account to pay for his medical expenses associated with the surgery, as well as any and all out-of-pocket expenses related to the surgery. (T. 10-18; Claimant's Ex. A, Pages 1-19; Claimant's Exhibits B, C, D).

On cross-examination the claimant admitted he had seen a chiropractor for lower back and neck pain before the date of the 7/20/21 work incident, but never for pain related to a torn rotator cuff. The claimant also denied he had sustained any other injuries to his left shoulder which may have resulted in or caused a rotator cuff tear. (T. 10-58; CXA at 1-19).

Lt. Scott McDaniel, the Garland County Sheriff Department Reserve Commander, corroborated the claimant's testimony concerning the way the injury occurred on July 20, 2021. He testified that training sessions like the one in which the claimant was participating on July 20, 2021, were mandatory – meaning that if a reserve deputy missed a training session and did not complete it the reserve deputy was subject to dismissal from the program. He adamantly testified he and the claimant were not engaged in horseplay at the time of the 7/20/2021 incident, but were in fact engaged in mandatory handcuff training. Again, Lt. McDaniel corroborated the claimant's testimony concerning the training, how the incident in question occurred, and how the claimant injured his left arm, elbow, and/or shoulder. Lt. McDaniel said he had never noticed any problems with the claimant's left shoulder, nor had the claimant ever complained of any problesm with his left shoulder before the July 20, 2021, training injury. (T. 60-73).

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 on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2021 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) (2021 Lexis Repl.) requires 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) (2020 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).

1. <u>The claimant has met his burden of proof in demonstrating he was performing "employment services", and was not engaged in "horseplay", at the time of the subject July 20, 2021, training accident</u>.

Ark. Code Ann. Section 11-9-102(4)(B)(iii) (2021 Lexis Repl.) specifically excludes from the definition of "compensable injury" an "injury which was inflicted upon the employee at a time when employment services were not being performed... ." ***Ark. Code Ann.*** Section 11-9-102(4)(B)(i) further excludes as "compensable" injuries any injury(ies) an employee sustains while engaged in horseplay, unless the employee in question is an "innocent bystander."

An employee is performing "employment services" when he or she "is doing something that is *generally required by her employer*." *White v. Georgia-Pacific Corp*., 339 Ark. 474,478, 6 S.W.3d 98, 100 (1999) (Emphasis added). The test our appellate courts have landed upon in determining whether an employee was performing employment-related services at the time of an injury is, "*whether the injury occurred within the time and space boundaries of the employment,*

when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly." *Pifer v. Single Source Trans*., 347 Ark. 851, 69 S.W.3d 1 (2002) (Bracketed material and emphasis added); and *Curtis v. Lemna*, 2013 Ark. App. 646, 430 S.W.3d 180 (Ark. App. 2013). Therefore, the threshold issue to be determined here is whether the claimant has met her burden of proof in demonstrating she was performing employment services within the meaning of the Act at the time of the alleged subject June 9, 2020, incident.

"Employment Services" Exception

Arkansas's "employment services" compensability exception has resulted in a fairly substantial body of case law since our legislature passed Act 796 in 1993. Our appellate courts and the Arkansas Workers' Compensation Commission (the Full Commission) have identified employee activities that advance the employer's interests during the course of a short break or lunch period. For example, our Supreme Court has held that a trip to use the bathroom on the employer's premises is a necessary function and directly or indirectly advances the employer's interests. *Collins v. Excel Specialty Products*, 347 Ark. 811, 69 S.W.3d 14 (2002). The court also has held that an employee is performing employment services while returning from a scheduled break on the employer's property where he was not allowed to leave the property while on break, was not required to clock-out for the break, and was on call while on break. *Wallace v. West Fraser South, Inc*., 365 Ark. 68, 225 S.W.3d 361 (2006). However, our appellate courts have not adopted a bright-line rule holding that an employee who is on a break is per se performing employment services. *Wallace v. West Fraser South, Inc*. *supra*.

For example, in *Shelton v. QualServ & American Cas. Co*., 2013 Ark. App. 469 (Ark. App.

2013), the court found that an employee taking his lunch box to his car midway through his lunch break *was not advancing his employer's interest where he was not required to stay on his employer's premises during lunch*; he was not compensated for his lunch time; and he was not expected to perform any job-related duties during his lunch. In *Robinson v. St. Vincent Infirmary Medical Center*, 88 Ark. App. 168, 196 S.W.3d 508 (Ark. App. 2004), the court concluded that an employee walking from the second floor to the fourth floor to get her lunch during her lunch break was not performing employment services when stepping off the fourth floor elevator, where *the facts indicated that the action of getting her lunch was totally personal in nature, and the employer gleaned no benefit from the employee going to the fourth floor to get her lunch.*

In *Harding v. City of Texarkana*, 62 Ark. App. 137, 970 S.W.2d 303 (Ark. App. 1998), the court held that *a city employee walking from her work area on the third floor to a designated smoking area on the first floor in order to smoke was not performing employment services when she tripped on a rolled up carpet exiting the elevator*. The injured employee argued on appeal that her break advanced her employer's interests by allowing her to relax, which helped her to work more efficiently throughout the rest of her shift. The court concluded, however, that while the break may indirectly advance her employer's interests, it was not inherently necessary for performance of the job that she was hired to do. Likewise, in *McKinney v. Trane Co*., 84 Ark. App. 424, 143 S.W.3d 581 (Ark. App. 2004), the court found that *the injured worker was not performing employment services on the way to a smoke break since he was at that time doing nothing to carry out the employer's purpose and was doing nothing generally required by his employer. See also*, *Haynes v. Ozark Guidance Center, Inc*., 2011 Ark. App. 396, 384 S.W.3d 570 (Ark. App. 2011)

(using similar reasoning to *McKinney* and finding that an office worker was not performing employment services during a smoke break).

On the other hand, Arkansas appellate courts have recognized some circumstances where an employee's responsibilities or actions during a break or lunch sufficiently advanced the employer's interests such that an employee was deemed to be performing employment services even during a short break or lunch break. For example, where an employee is required to take his smoke break within sight of the equipment that he operates, and must end his break early if required for the sake of the equipment, he is performing employment services even during the smoke break. *White v. Georgia-Pacific Corp*., 339 Ark. 474, 6 S.W.3d 98 (1998). Similarly, where the employer provides its food service workers with food for lunch, but the food service workers are required to interrupt their breaks if needed to assist students even during their break, the food service workers are performing employment services during break. *Ray v. University of Arkansas*, 66 Ark. App. 177, 990 S.W.2d 558 (1990).

Where an agency client walks up to a rehabilitation employee already on smoke break, and the two begin to discuss the client's release to work, the employee on smoke break was deemed to be performing employment services. *Kimbell v. Association of Rehab Industry*, 366 Ark. 297, 235 S.W.3d 499 (2006). Where an entire lumber production facility shuts down for breaks, and all the employees were required to take breaks at the same time, our Court of Appeals has held that the simultaneous breaks directly advance the employer's interests so that employees are performing employment services even while on break. *Dearman v. Deltic Timber Corp*., 2010 Ark. App. 87, 377 S.W.3d 301 (Ark. App. 2010).

The court of appeals has held that actions of a retail employee returning her purse to an employer-supplied locker at the end of her break advances her employer's interest by preventing employee theft at the registers. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002); that the actions of an ICU nurse getting breakfast not only for herself, but also for all of the ICU nurses, benefitted her employer by reducing the number of times that the ICU was not fully staffed. *Arkansas Methodist Hospital v. Hampton*, 90 Ark. App. 288, 205 S.W.3d 848 (2005); and that an employee injured while walking to the employee lounge for a break is performing employment services in doing so if the employer generally requires its employees to go to the employee lounge for their breaks. *Wal-Mart Stores, Inc. v. King*, 93 Ark. App. 101, 216 S.W.3d 648 (2005).

Likewise, in *Sweeten v. GGNSC Administrative Services*, Commission File No. G202777 (April 22, 2013), the Full Commission found that an office worker who went from the fifth floor to the first floor to use the restroom, then to buy lunch, was performing employment services when she tripped on a rug getting back into the elevator to return to do some work on the fifth floor before eating her lunch. Citing *Wallace v. West Fraser South*, *supra*., the Commission noted in its majority opinion that the Arkansas Supreme Court has held that an employee who is injured while walking back to his work site after a break is performing employment services. Finally, in *McGhee v. Alma School District*, Commission File No. G209098 (September 19, 2013), the Full Commission found a school secretary was performing employment services while she was returning a drinking glass to the school cafeteria in compliance with a specific school policy requiring all employees to return their drinking glasses to the cafeteria immediately after use.

In a relatively recent decision regarding the "employment services" issue delivered on December 4, 2019, *University of Arkansas for Medical Sciences (UAMS) v. Patricia Hines*, 2019 Ark. App. 557 (Ark. App. 2019), the court affirmed the Full Commission's decision and held the claimant (a surgical-services patient-unit coordinator who worked at the UAMS front desk) was advancing her employer's interest when she slipped and fell after exiting an elevator on the way to take her lunch break. In reaching this conclusion, both the Commission and the court relied primarily on *Ray*, *supra*, finding that since the claimant was required to leave her break and return to work if she was needed to assist with an emergency or trauma case, the "employment services" exception did not prevent a finding of compensability. This job requirement was undisputed and true, since the claimant had in fact been required to return from her lunch break in order to do her part in handling an emergency situation in the past.

In summary, Arkansas's appellate courts have interpreted the term "employment services" as *performing a duty(ies) the employer generally requires, and that benefit the employer in a tangible way*. *Cook,* et al, *supra*. In other words, our appellate courts use the same test to determine whether an employee is engaged in "employment services" at the time of an alleged work incident as they do when determining whether an employee was acting "within the course and scope" of their employment. *Id.* The test is *whether the claimant's alleged injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest directly or indirectly. Id.*

Based on the applicable law as applied to the relevant, admitted, and essentially undisputed facts of this claim, I find the claimant has met his burden of proof in demonstrating he was in fact

engaged in employment services at the time of the subject left shoulder rotator cuff injury. Both the claimant and Lt. McDaniel confirmed the training sessions like the one in which the claimant was injured were in fact "mandatory," and that a reserve deputy could be expelled from the program if they did not complete the required training sessions, or make them up if they missed one. Consequently, there exists no reasonable dispute the claimant was engaged in "employment services" at the time of the subject June 20, 2021, training incident. The deputy reserve program, as well as the training that is required to be provided to each of the commissioned/accepted participants in the program, provides obvious benefits to not only the sheriff's office, but to Garland County and its residents as a whole.

In addition, for all the aforementioned reasons to which both the claimant and Lt. McDaniel testified, it is abundantly clear the claimant was not engaged in "horseplay" at the time of the incident. The evidence conclusively demonstrates the claimant was participating in a vaild, mandatory training exercise at the time of his left shoulder injury.

2. <u>The claimant has met his burden of proof in demonstrating his torn left rotator cuff , for which he underwent surgery on August 27, 2021, was caused by or related to the subject July 20, 2021, training incident</u>.

For any specific-incident injury(ies) to be compensable, the claimant must prove by a preponderance of the evidence that his injury: (1) arose out of and in course of his employment; (2) caused internal or external harm to his body that required medical services; (3) is supported by objective findings, medical evidence, establishing the alleged injury(ies); and (4) was caused by a specific incident identifiable by time and place of occurrence. ***Ark. Code Ann***. § 11-9-102(4);

Cossey v. Gary A. Thomas Racing Stable, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, 687 (Ark. App. 2009). The claimant bears the burden of proving the compensable injury by a preponderance of the credible evidence. ***Ark. Code Ann.*** § 11-9-102(4)(E)(i); and ***Cossey****, supra*.

Moreover, the claimant must prove a causal relationship exists between his employment and the alleged injury(ies). *Wal-Mart Stores, Inc., v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, 953 S.W.2d 907, 909 (Ark. App. 1997). Objective medical evidence is not essential to establish a causal relationship between the work-related accident and the alleged injury(ies) where objective medical evidence exists to prove the existence and extent of the underlying injury(ies), and a preponderance of other nonmedical evidence establishes a causal relationship between the objective injury(ies) and the work-related incident in question. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010).

"Objective findings" are those findings which cannot come under the voluntary control of the patient. ***Ark. Code Ann***. § 11-9-102(16)(A); *Long v. Wal-Mart Stores, Inc*., 98 Ark. App. 70, at 80 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings "specifically exclude such subjective complaints or findings such pain, straight-leg-raising tests, and range-of-motion tests." *Burks v. RIC, Inc*., 2010 Ark. App. 862 (Ark. App. 2010).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork*

Grp., Inc., 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010) (Emphases added.). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury. Vaughn*, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require "new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition"); *Barber, supra* (affirming the Commission's denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added.). In *Mooney*, 2010 Ark. App. 600 at 4-6, 378 S.W.3d at 165-66 (Ark. App. 2010), the court affirmed the Commission's decision denying a back injury claim where the objective evidence of an injury - including muscle spasms, positive EMG test results, and spinal stenosis revealed on an MRI - were all present *both before and after the date of the alleged aggravation injury*. (Emphasis added).

The preponderance of the evidence reveals the claimant more likely than not tore the rotator cuff in his left shoulder as a result of his falling and landing on his left elbow and shoulder while participating in the mandatory handcuff training on July 20, 2021. First, and significantly, both the claimant and Lt. McDaniel were highly credible, knowledgeable, and articulate witnesses. Second, although the claimant had some history of treating with a chiropractor for aches and pains in his neck, lower back, and various joints, the chiropractor's records do not reveal any history of

complaints or treatment that may reasonable be deemed to be related to the claimant's left shoulder, and certainly no complaints that are indicative of a torn rotator cuff in his left shoulder.

Third, while I recognize there are no medical records nor is their any physician's opinion stating the claimant tore the rotator cuff in his left shoulder as a result of the 7/20/2021 work incident, I specifically find that the claimant's credibility, as well as that of Lt. McDaniel, are sufficient to make a reasonable, legal causal connection between the subject work incident and the claimant's left shoulder torn rotator cuff. Quite simply, I believe both the claimant and Lt. McDaniel's testimony to the effect the claimant had never had any notable problems with his left shoulder before the subject incident, nor had he ever complained of any problems with his left shoulder. Consequently, this highly credible testimony that is not contradicted by the medical records is sufficient to allow the claimant to meet his burden of proof on the particular facts of this claim.

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 December 17, 2021, which were modified as to the hearing date only, and which the parties affirmed on the record at the hearing, hereby are accepted as facts.

2. The claimant has met his burden of proof in demonstrating he was engaged in "employment services" at the time of the subject mandatory training incident of July 20, 2021, wherein he sustained a torn rotator cuff in his left shoulder.

3. Moreover, the claimant has met his burden of proof in demonstrating he sustained a "compensable injury" – specifically, a torn rotator cuff in his left shoulder – on the date of the subject incident of July 21, 2021, when he was kicked to the ground while engaged in a specific, mandatory training exercise. There exists absolutely no evidence whatsoever the claimant and

one of the instructors with whom the claimant was training at the time of the incident, were engaged in "horseplay", or that alleged "horseplay" caused or played any part at all in the claimant's torn left rotator cuff injury.

4. I specifically find both the claimant's and his witness's testimony to be highly credible, and to provide the necessary causal connection evidence between the training incident and the torn rotator cuff in the claimant's left shoulder. Although there exists no medical report or physician's opinion specifically stating the claimant's torn left rotator cuff was caused by the subject July 20, 2021, training incident, there likewise exists no evidence whatsoever in the record indicating the claimant had any symptoms of a torn rotator cuff in his left shoulder, or that he had ever sought medical treatment for his left shoulder before the date of the subject July 20, 2021, work-related incident.

5. Therefore, in light of both the claimant's and his witness's credible testimony – and since the record is completely devoid of any medical or other records revealing the claimant had any left shoulder problems before the subject work incident; that he had sought and/or obtained medical treatment relating to a torn rotator cuff in his left shoulder before the date of the subject work incident; or that reveal any other likely, reasonable explanation for the claimant's torn left rotator cuff injury – it would constitute sheer speculation and conjecture to find his left shoulder torn rotator cuff injury was a result of anything but the subject July 21, 2021, work-related incident. See, *Deana, supra*. Even in the absence of medical records between July 20, 2021, and the date of the surgery on August 27, 2021, there exists no medical evidence the claimant had any problems with his left shoulder, or any evidence of a torn left rotator cuff before the July 21, 2021, work incident. The claimant's and his witness's credible testimony provide a legally sufficient causal connection relating the claimant's torn left rotator cuff injury to the July 21, 2021, work incident, the occurrence of which is undisputed.

6. Therefore, the respondents shall pay any and all medical expenses associated with the care and treatment of the claimant's left rotator cuff tear including but not limited to Dr. Roberts's August 27, 2021, surgery, and any and all out-of-pocket expenses, mileage, and any other related, reasonably necessary medical benefits associated with the claimant's July 20, 2021, compensable injury.

AWARD

The respondents are hereby directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid 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 hereby are ordered to pay the court reporter's invoice within ten (10) days of their receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp