BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM No. H600020

MARIA ORTIZ GOMEZ, EMPLOYEE	**CLAIMANT**
SUSHI CAFÉ WEST, LLC, EMPLOYER	**RESPONDENT**
EMPLOYERS PREFERRED INS. CO., CARRIER	**RESPONDENT**

OPINION FILED 15 SEPTEMBER 2026

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 17 June 2026 in Little Rock, Arkansas.

The claimant was represented by Mr. Mark Alan Peoples.

Ledbetter, Cogbill, Arnold & Harrison, Ms. Erin Rambo, represented the respondents.

I. STATEMENT OF THE CASE

A Prehearing Order was filed on 19 May 2026 and admitted to the record as Commission's Exhibit № 1.

STIPULATIONS

Consistent with the Prehearing Order, the parties agreed to the following Stipulations:

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

2. The employee/employer/carrier relationship existed on 18 October 2025, when the claimant sustained alleged injuries by specific incident to her right hip, right arm, neck, and back.

3. The respondents have controverted this claim in its entirety.

ISSUES TO BE LITIGATED AT HEARING

After an amendment at the hearing, the parties agreed to litigate the following:

1. Whether the claimant sustained compensable injuries by specific incident to her back and neck.[1]

2. Whether the claimant provided timely notice of a workplace injury to the respondents.

3. Whether the claimant is entitled to medical benefits associated with a compensable injury.

4. What was the claimant's average weekly wage?

5. Whether the claimant is entitled to temporary total disability (TTD) benefits from 18 October 2025 to a date yet to be determined.

6. Whether the claimant's attorney is entitled to a fee.

All other issues are reserved.

CONTENTIONS

The parties' Contentions were set out in their respective Prehearing Questionnaire Responses and amended at the hearing to read:

> **Claimant:** Claimant contends that she sustained a work-related injury to her back and neck on or about 18 October 2025. Claimant contends she is entitled to TTD from date of injury until yet-to-be determined dates in the future. Claimant also contends she is also entitled to medical treatment relative to her work injuries. The respondents have controverted this claim in its entirety; and counsel is entitled to a maximum statutory fee.
>
> All other issues are reserved.
>
> **Respondent:** Respondents contend claimant's alleged injuries do not meet the requirements as to compensability under Act 796 of 1993. Respondents also contend that claimant failed to timely notify respondent employer of a work-related injury that she alleges occurred on 18 October 2025.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witnesses, observing their demeanor, I make the following Findings of Fact and Conclusions of Law under Ark. Code Ann. § 11-9-704:

[1] The claimant reserved the question of compensability her alleged injuries relating to right hip and right arm.

1. The Commission has jurisdiction over these claims.

2. The Stipulations as set forth above are reasonable and are hereby accepted.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries by specific incident to her back and neck.

4. Because the claimant has failed to meet her burden on compensability, the other issues in this claim are moot and will not be addressed in this Opinion.

III. ADJUDICATION

The stipulated facts as outlined above are reasonable and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

SUMMARY OF THE EVIDENCE

Two witnesses testified: the claimant and Maricel Suniega, the respondents-employer's general manager. Mr. Nicolas Durand, a certified Spanish-language interpreter in the State of Arkansas served as the interpreter for the claimant pursuant to 11 CAR § 25-116(a)(1). The record consists of the hearing transcript, which includes following exhibits: Commission's Exhibit № 1 (the 19 May 2026 Prehearing Order), Claimant's Exhibit № 1 (one index page and 18 pages of medical records), Respondents' Exhibit № 1

(one index page and 7 pages of medical records), Respondents' Exhibit № 2 (one index page and 39 pages of non-medical records), and Respondents' Exhibit № 3 (the transcript of the claimant's 23 April 2026 deposition).

Claimant's Testimony

The claimant is 57 years old. She believes that she stopped attending elementary school in Mexico around the 4th grade. [*Id*. at 8.] She stated that she had been employed by Sushi Café for about 12 years when her alleged accident occurred. She worked as a dishwasher. According to her testimony, she was earning $13 per hour during that time. But she acknowledges that her payroll records reflect only $11 per hour. [TR at 14.]

She testified that on 18 October 2025, she slipped and fell while walking out of the kitchen to get a glass of water. She fell on her back and her side, hitting a wall on her way to the floor. She recalled her "whole body was hurting," and that everything between her neck and her lower back hurt after the fall. [Resp. Ex. № 3 at 22.] After a few moments on the floor, she was helped up by some other employees. "Yeah. They wanted to, you know, help me out, but I just said to let me be there for a little bit because I was kind of dizzy, like things were dark." [TR at 16.]

She believed that one of her coworkers told Ms. Suniega about the incident. But the respondents did not reach out to her after the fall for additional information or to offer medical evaluation or treatment. And the claimant did not reach out to Ms. Suniega to inquire about the same. The claimant continued working without complaint until 8 December 2025. She testified that on that day she lifted a bucket full of dishes and immediately began experiencing pains that were reminiscent of her fall. She testified that she had actually been working in pain since the fall but that, "it was manageable before. It was manageable, but then after that day, that's when I was hurting more, and I had to go to the hospital because I couldn't take it." [Resp. Ex. № 3 at 25.] The pain that day was the

same as right after she fell, but it did not get better with time. She was not scheduled to work on the following day. On the morning of 10 December 2025, she presented to Arkansas Heart Hospital's emergency department for treatment. She informed Ms. Suniega via text message that she would not be in for work, and she sent a photo of a physician note excusing her from work between 10 December 2025 and 15 December 2025. [TR at 18; Cl. Ex. № 1 at 1.] The full text of her message was admitted into evidence. It reads:

> Good morning Maricel, just wanted to let you know that I won't be able to go to work because I went to the hospital. Since the day I fell at work, my back and neck have been hurting, and on Monday when I worked, lifting the dish tub to put it in to wash it hurt even more. I thought the pain would go away, but I couldn't stand it anymore, so I went to the hospital today. I'll send you a picture of the [off-work note] they gave me at the hospital to give to you all, and they gave me steroids to see if that helps me get better so I can come back to work on Monday.

[Resp. Ex. № 2 at 36.] She sent a photo of the off-work note immediately after that text.

The claimant said that she has not returned to work since that visit to the emergency department.[2] She explained:

> A: Because first, when I told Maricel, she said, you know, "Just take a few other days to get better."
> Q: Okay.
> A: And then later, because I went back to the doctor because I was still not well.
> Q: How are you feeling today, how – how is your hip, how is your back?
> A: I'm still bad.
> Q: Can you give us some more detail about what – how your back and your hip are doing?
> A: Well, I mean, it's the pain. I can't bend, I can't squat, and there's – you know, there's a pain on the neck.
> Q: Are you able to stand for long periods of time?
> A: No, just a short period of time. I will stand, and then it will hurt.

[2] Later in her testimony, the claimant acknowledged working an additional three hours on 15 December 2025 that she did not recall. [TR at 32.]

[TR at 18-19.] She denied being able to perform her job duties in her current condition. The respondents, however, did not terminate her employment for her not being scheduled to work. Discussing her not returning to work on cross-examination, she explained:

> Q: Okay. So why did you not talk to Maricel about having someone help you out in doing the heavy lifting?
> A: Because she never called and asked about it – that I couldn't work, but she never said, you know, anything about coming back. And I have the message.
> Q: So you – so you said to Maricel that you could no longer work, is that what you're saying?
> A: I told her that I wasn't doing well, that I couldn't go to work because of the pain, and that if, you know, if I were to get better, if I could go back to work, and she never answered.
> Q: Okay. And those text messages of – of what you're saying are in the records [Resp. Ex. № 2 at 32-39] for the judge to see. What I'm trying to get at is that you were the one who ultimately made –
> A: Yes, I have the messages.
> Q: But you were the one who ultimately made the decision to not go back to work because of your pain, correct?
> A: Because I couldn't.
> Q: But you were the one who's saying that, there's no doctor who told [you that] you were not able to work anymore, correct?
> A: Because you know, they say that – that I can go back, but I can't have an MRI. And the bills that I have are for the –

[TR at 35-36.]

The claimant acknowledged on cross-examination that a medical record from 17 December 2025 included a report of her saying that she had experienced neck and back pain for 10 days; but she denied giving that history. She stated that, instead, she had explained her initial fall and reinjury after lifting the dish bucket.

> Q: Can you tell the judge, please, what you're alleging happened on December 8 when you lifted a dish tub and further hurt yourself?
> A: That I got hurt more when I lift that tub, and that I hurt, you know, myself again. That's why I went to the doctor.

[TR at 21.] She acknowledged some additional confusion in the records about when she was first hurt. When asked about why she did not seek medical treatment immediately after her fall, she answered, "… I was taking pills for the – for the pain, I mean, you know, like

Tylenol and things like that, and then I was just putting the dishes little by little before and that was something that I was able – that I was able to do." [TR at 25.]

The claimant discussed the discrepancy in her reported earnings from check stubs and her actual take-home pay. She explained that she was paid $11 per hour by way of regular payroll, and she would receive additional cash to bring her wage up to $450 per week.

> Q: … for two weeks you were paid $735.53. Do you deny that?
> A: But they will also pay me in cash.
> Q: Okay. So you're saying that you were making tips in addition to whatever you were paid through these pay stubs.
> A: No. It was the – They will give me an extra $250 to make it up so that it will be $450 a week.
> Q: Do you have any evidence of these extra payments of $250?
> A: Maricel knows. Maricel knows how much she was paying me. […] From the beginning, I said that they paid me 11 an hour on the check, but they give me some cash so – to make it up to 13 an hour.

[TR at 28-29.] She later explained that long-time employees had always been paid with wages split between regular payroll and cash; but she believed that newer employees were paid only through regular payroll without additional cash payments.

Maricel Suniega

Ms. Suniega testified that she manages several restaurants on behalf of the respondent-employer and that she was considered the claimant's supervisor. She said that the claimant does not speak English; and she does not speak Spanish. They communicated exclusively through text messages, either with in-message translation apps or via a family member texting on the claimant's behalf in English. And she confirmed that her last communication with the claimant was via text message on 27 December 2025.

She denied that the claimant's wage was $13 an hour. She was clear that she did not pay the claimant any cash in addition to her payroll wage.

> Q: Okay. So you never recall giving her any cash in addition to what she was making through her checks, correct.

A: Through me, no.
Q: Okay. Do you recall anyone at Sushi Café paying her cash?
A: I can only speak for me.

[TR at45-46.]

She said that she was not aware of the claimant alleging a fall at work until the claimant texted her on 10 December 2025. She said that she was certain that she had not been told about any fall; and that line of questioning led back to the wage discrepancy:

Q: Is your certainty that she never – or that no one ever reported her fall to you until [10 December 2025]?
A: Yes.
Q: Is your certainty the same as your certainty that – that she wasn't paid in cash?
A: Yes.
Q: Okay. That same level of certainty?
A: That's for me to speak for myself, yes.
Q: Okay, all right. Do you deny that she was paid in cash?
A: By me?
Q: By anyone at Sushi Café.
A: I can't speak for other[s]. I can only speak for me.

[TR at 54.]

Medical and Documentary Evidence

An off-work note from her emergency department visit at Arkansas Heart Hospital excused the claimant from work for 10 December 2025 through 15 December 2025. [Cl. Ex. № 1.] She then presented to another emergency department on 17 December 2025. The note from that visit included, in part, the following:

History source: Patient, daughter, interpreter.
Arrival mode: Private vehicle
History limitation: Language barrier.
Additional information: Chief complaint form Nursing Triage Note: … c/o neck and back since last Monday. Was seen at AHH and was given Rx but the pain is not getting better

HPI
The patient presents with back pain. The onset was 10 days ago. The course/duration of symptoms is constant. The location where the incident occurred was at home. Location: Thoracic lumbar. Radiating pain: back of the neck. The character of symptoms is sharp and achy. The degree at onset was

> moderate. The degree at present is moderate. There are exacerbating factors including movement, bending over, standing, walking, sitting, and changing position. The relieving factor is none. Risk factors consist of hypertension. Prior episodes: occasional. Therapy today: prescription medications including Diclofenac 75mg p.o. twice daily, cyclobenzaprine 10 mg p.o. 3 times daily. See nurses notes and seen at Encore in Benton on Wednesday 12/10/2025. States she had CT scans and was told they were negative […] Additional history: emergency department visits: 2 visits over the last week.
> . . .
>
> MEDICAL DECISION MAKING
> Differential Diagnosis: Back pain, lumbar strain, degenerative disc disease, chronic back pain, thoracic strain.
> Rationale: Patient presents with pain from her neck down to lower back since the 8th of this month after she bent over to pick up a heavy box and felt pain. She was seen at Encore ER on the 10th and underwent CT of her cervical, thoracic, and lumbar spine and diagnosed with a muscle strain. Given Rx for Diclofenac 75 mg and Flexeril 10 mg and told to follow up with her doctor if pain does not improve. She went back to work today and feels that her pain worsened. She denies any fever, CP, SOB […] Patient given an IM shot of Decadron and Valium with improvement of pain. I advised her to continue taking Diclofenac and discontinue Flexeril. Will send with a Rx for Valium and information to establish care with a PCP for follow up and referral if needed. Strict ED return precautions given. Patient verbalized understanding and agreement with this plan. She is being discharged in stable condition.
> . . .
>
> IMPRESSION AND PLAN
> Diagnosis: Muscle strain of upper back
> Strain of muscle, fascia and tendon of lower back, initial encounter

[Cl. Ex. № 1 at 4.] She was given a note that day excusing her from work until 19 December 2025. [*Id.* at 6.]

The claimant presented to Divine Mercy Health Center clinic on 30 December 2025 to establish care. The record from that visit includes, in part, the following:

> HPI
> 57 is here to establish care. Pt had fallen at work in early November injuring her back. She was seen at Heart Hospital 12/11/25 – had negative Xrays and was told she needs an MRI (she ahs not yet gotten MRI). Pt was seen 12/19/25 at SVI for same – Rx'ed Diazepam 5 mg #15 tabs and this is offering some relief but minimal. Standing and sitting are very painful. Pain has increased since initial injury. She has some radicular pain from L[umbar] Spine to Buttock [right side greater than left side]. No loss of bowel/bladder.

PMHx
Back Pain

PSHx
Knee arthroplasty
. . .

ASSESSMENT
Thoracic back sprain […]
Lumbar sprain […]
Neck sprain […]

PLAN
I will send for MRI of C/T/L Spine. Consented family with price and contacted SERA.
Diclofenac and Diazepam are only minimally helping. We will try Toradol and Flexeril.
Advised to use heath therapy for back.
Avoid heavy lifting.
Return in 1 month for primary care labs and f/u.

[*Id.* at 14.]

The claimant then sought emergency care again on 1 February 2026. The note from that visit includes, in part, the following:

HISTORY
Chief Complaint: Back Pain
Maria Gomez is a 57 y.o. female, presents to the emergency department today with complaints of posterior neck pain that radiates down to her lower back and tingling in her bilateral feet since a fall that occurred in early November. She states she was seen at Encore ED on 11/10 and had CT imaging. Reports she was prescribed muscle relaxers that are not improving her pain.
The history is provided by the patient and a relative.
. . .

CLINICAL IMPRESSIONS
Neck Pain

Problems Addressed: Neck pain: acute illness or injury with systemic symptoms.
. . .

ASSESSMENT/PLAN
Patient presents to the ED with complaint of worsening neck pain over the past few months. She does not have any overt weakness but has had just more radicular type pain. CT scan showed no acute findings or degenerative

> changes. She has had mild improvement with muscle relaxants but do not last long as she would like. I will change her from Flexeril to tizanidine as well as giving her a round of gabapentin. She will also be given PCP and neurosurgical follow-up information upon discharge.
> …

[*Id*. at 16.] A cervical spine CT scan report also dated 1 February 2026 revealed "[n]o evidence of acute cervical spine injury or significant degenerative change." [Resp. Ex. № 1 at 6.]

The respondents provided the claimant's payroll records that showed her regularly clocking approximately 60 hours per pay period at a rate of $11 per hour. [Resp. Ex № 2.] They also provided several screenshots of text messages between the claimant and Ms. Suniega. The 10 December 2025 exchange mentioned in the testimony[3] is included. The claimant describes her injury as relating to "since the day I fell at work…." The off-work note from Arkansas Heart Hospital was forwarded to Ms. Suniega in that exchange. On 17 December 2025, the claimant wrote, "Good afternoon Maricel. I will not be able to make it in today. The pain has not gone away, the drs said I am going to need an MRI done." Ms. Suniega responded, "Ok." [*Id*. at 38.] The last exchange was:

Ms. Suniega: Are we ever going back to work?

Claimant: Good evening Maricel, I don't know if you can wait for me until they tell me on Tuesday the 30th. I have another appointment to see if I'm improving with the inflammation in my back and neck so that I can go back to work. I also wanted to see if they are going to pay me and help with the doctor because that's where I got hurt the day I fell. [*Id*. at 39.]

[3] See pages 4-5, *supra*.

DISCUSSION

The claimant has failed to prove by a preponderance of the evidence that She sustained a compensable injury by specific incident to her back and neck. Because she has failed to meet her burden on the threshold issue of compensability, the other issues in this litigation moot. Accordingly, those additional issues will not be addressed below.

To prove a compensable injury by specific incident, the claimant must establish four (4) factors by a preponderance of the evidence: (1) that the injuries arose out of and in the course of her employment; (2) that the injuries caused internal or external harm to the body that required medical services or resulted in disability or death; (3) that the injuries are established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) that the injuries were caused by a specific incident identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). 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)(i). 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). If a claimant fails to establish by a preponderance of the evidence *any* of the requirements for establishing a compensable injury, compensation must be denied. *Mikel, supra.*

"Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). The requirement that a compensable injury must be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The claimant was a pleasant witness. And while she attempted to explain the inconsistencies in her story in a sincere manner, she failed to provide the credible evidence that was required to sustain her claim of compensable injuries. Her timeline is filled with inconsistencies and credibility gaps that compel me to find that she did not sustain a compensable injury to her back or neck.

The claimant can point to no documentary evidence that supports *any* notion of her falling at work until her 10 December 2025 emergency department visit and subsequent text message exchange with Ms. Suniega. That is nearly two months after the date of her alleged slip-and-fall; and she presented no records of the actual evaluation or treatment provided at that hospital visit. The first medical notes in the record after her alleged fall are from 17 December 2025, and those records clearly relay her report at the time of having been injured at home— not at work as she now alleges. When a reference to a workplace fall does appear in a medical record from 30 December 2025, it states that she reported a fall in *early November*, not the 18 October 2025 she has claimed in this litigation. The claimant's story for how she was hurt and when she was hurt is simply too inconsistent and too contradicted by the available documentary evidence to find it more likely than not that she sustained a compensable injury by specific incident as she has alleged in this claim. Given the evidence before me in this claim, finding that the claimant's back and neck conditions arose out of a work-related incident occurring on or about 18 October 2025 would require engaging in speculation and conjecture; and that I cannot do. *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979). Because she cannot meet her burden on compensability, the other issues in this litigation are moot and will not be addressed in this Opinion.

IV. CONCLUSION

As outlined in the Findings of Fact and Conclusions of Law above, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. Accordingly, this claim for initial benefits is denied and dismissed.

SO ORDERED.

_____
JAYO. HOWE
ADMINISTRATIVE LAW JUDGE