

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H306223**

**LORETTA J. GOSS,
EMPLOYEE**

CLAIMANT

**TEXAS ROADHOUSE,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
CORVEL ENTERPRISE COMP, INC.,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST OCTOBER 21, 2025

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Wednesday, July 23, 2025, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Loretta J. Goss, of Jacksonville, Pulaski County, Arkansas, appeared in person and pro se.

The respondents were represented by the Honorable Rick Behring, Jr., Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed March 7, 2025, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed with the claimant at all relevant times including June 30, 2023, the date the claimant sustained an admittedly "compensable injury" to her head for which the respondents paid both medical and indemnity benefits.
3. The claimant's average weekly wage (AWW) was \$302.93, which is sufficient to entitle her to weekly compensation rates of \$202.00 for temporary total disability (TTD), and \$154.00 for permanent partial disability (PPD) benefits.
4. The respondents controvert only the payment of any additional medical treatment and indemnity benefits.

5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 2; Hearing Transcript at 5-6). Pursuant to the parties' mutual agreement, to be litigated at the hearing were:

1. Whether the claimant sustained a "compensable injury"(ies) within the meaning of the Arkansas Workers' Compensation Act (the Act) to her brain, and/or her neck/cervical spine, and/or her lower back/lumbar spine as a result of the June 30, 2023, work incident.
2. Whether and to what extent, if any, the claimant is entitled to additional medical and/or indemnity benefits.
3. If the claimant hires an attorney to represent her in this matter, whether the claimant's attorney is entitled to a controverted fee on these facts.

(Comms'n Ex. 1 at 2; T. 5-6; 7-8).

On the record and under oath at the hearing the claimant specifically and formally withdrew her allegations that she sustained a brain and/or lumbar spine injury(ies) as a result of the June 30, 2023, work incident. In her own words, the claimant testified she never alleged she sustained a brain or lumbar spine injury, and that, "... my neck is the problem." (T. 10). Therefore, the sole issue litigated was whether the claimant sustained a compensable neck /neck spine injury as a result of the subject June 30, 2023, work-related incident. (T. 9-11; 32).

The record consists of the hearing transcript and any and all exhibits contained therein or attached thereto. The claimant did not introduce any medical records into evidence at the hearing. (T. 5-8).

The claimant contends she sustained a specific-incident "compensable injury" to her neck/cervical spine as a result of the subject June 30, 2023, work incident. She contends she is entitled to any and all applicable benefits, including but not limited to medical and indemnity

benefits. The claimant reserves any and all other issues for future determination and/or litigation. (Comms'n Ex. 1 at 2-3; T. 5-6; 9-11).

The respondents contend the claimant sustained a minor injury to her head/scalp on June 30, 2023, which they accepted as compensable, and for which they paid all appropriate medical and indemnity benefits. They contend that on August 30, 2023, the claimant's treating physician opined she had reached maximum medical improvement (MMI) with no/zero percent (0%) permanent anatomical impairment. The respondents contend they offered the claimant work both throughout her healing period and thereafter; however, instead of choosing to work when she was clearly capable of doing so the claimant voluntarily chose to abandon her job. The respondents contend that since the claimant initially was alleging injuries to her brain, neck, and lower back they agreed to have her evaluated by a second physician, Dr. Barry Baskin. Dr. Baskin ultimately opined there existed no objective medical findings demonstrating the claimant sustained any acute injury(ies) to her brain, and/or her neck, and/or lower back as a result of the June 30, 2023, minor work incident. The respondents contend are not responsible for any additional medical or indemnity benefits as a result of this claim. Consequently, the respondents contend they have paid the claimant all appropriate medical and indemnity medical and indemnity benefits for the obviously minor June 30, 2023, compensable head/scalp injury; and that the claimant cannot meet her burden of proof pursuant to the Act in demonstrating she sustained a "compensable injury"(ies to her brain, and/or neck, and/or lower back. The respondents further contend that the claimant's need for medical treatment, if any, is unrelated to her employment and, instead, her physical problems and need for treatment (if any) are related to a pre-existing and/or degenerative condition and not the result of her employment duties. Alternatively, the respondents contend that if it is determined the claimant sustained a compensable injury(ies) and is entitled to any benefits, pursuant to *Ark. Code Ann.* Section 11-9-411 (2025 Lexis Supplement) they are entitled to a dollar-for-dollar

credit/setoff for all benefits paid to or on the claimant's behalf by her group health insurance, short-term disability (STD), and long-term disability (LTD) carriers, as well as any and all unemployment benefits paid to or on the claimant's behalf. The respondents reserve the right to supplement their contentions and assert any applicable defense(s), and they-reserve any and all other issues for future determination and/or litigation. (Comms'n Ex. 1 at 3-4; T. 5-6; 7-8).

STATEMENT OF THE CASE

The claimant, Ms. Loretta J. Goss (the claimant), was 63 years old at the time of the hearing. At the time of her admittedly compensable head contusion on June 30, 2024, the claimant was working at the Texas Roadhouse restaurant in North Little Rock where her job duties included working in the kitchen area wrapping the silverware in napkins as well as scooping and putting the butter in the containers. She was not a waitress. She started working at Texas Roadhouse on or about October 14, of 2022. (T. at 13).

On the day of her compensable head contusion, June 30, 2023, the claimant was just about to finish her shift and she was cleaning-up her area. She was taking a tray to the dish-washing area to place it on a table so it could be washed. After she placed the tray on the table she "turned around...to come back" and "she just slipped on the concrete floor", and hit her head on the floor. (T. 14; 14-18). She immediately reported the injury to Mr. Jonathan Walsh who felt the "knot" on her head. (T. 17-18). Since her daughter already was there to pick her up from work, her daughter drove her to the St. Vincent Hospital emergency room on Wildwood Road in Sherwood. In the ER the claimant underwent diagnostic testing which she said, "I don't know if it was an X-ray but they did like an EKG [sic; ECG?] or some type of, you know, machine... ." (T. 18-19) (Bracketed material added). After the claimant underwent the diagnostic testing a health care

provider who appears to have been an advance practice nurse (APN) told the claimant she, “could go home and I was okay, so I went home.” (T. 19).

Medical records the respondents submitted into evidence at the hearing revealed the claimant had a previous X-ray on June 6, 2022, to her lumbar spine before her June 30, 2022, slip-and-fall at the Texas Roadhouse. (Respondents’ Exhibit 1 at 12-16). The medical records in evidence also reveal the claimant had undergone diagnosis and treatment related to chronic pain complaints in her lower back/lumbar spine, as well as to her right wrist, her knee, her right shoulder and her neck/cervical spine before her June 30, 2023, slip-and-fall at the Texas Roadhouse. (RX1 at 1-17). Specifically related to her neck/cervical spine, a medical report dated June 6, 2022, states the claimant was evaluated for, “Neck pain, anticipated ACDF. Preop evaluation clinic.” and was, “...consulted for pre operative eval and medical management on primary team’s request”. (RX1 at 12-17). The examining/treating physician’s impression following this June 6, 2022, visit was the claimant had “Generalized osteopenia”, “Bilateral lower joint facet arthritis”, and “Mild sacroiliac joint arthritis.” (RX1 at 17).

On both direct and cross-examination the claimant admitted she had complained of and been treated for both lower back/lumbar spine and neck/cervical spine pain before the June 30, 2023, slip-and-fall incident at the Texas Roadhouse. She also testified she had never undergone any surgery. (T. 20-25; 33-40). The claimant further testified that: she has not tried to find a job nor has she worked since the subject June 30, 2023, slip-and-fall incident; she has grandchildren and she, “just don’t wanna go and work ‘cause I had previous problems with social security and I went without it for nine months” because she was working. (T. 32-33; 38-40). On cross-examination the claimant admitted she had in fact testified in her deposition that while she has not returned to work, she is capable of doing some sort of work.” (T. 40).

A Concentra “Work Activity Status Report” dated August 31, 31, 2023, states, “The claimant can return to work with no restrictions on: 08/31/23. Patient may work their entire shift.” (RX1 at 17). In his narrative report dated April 2, 2024, Dr. Barry Baskin – who had first seen the claimant for evaluation and/or treatment on February 12, 2025 – took a thorough subjective history from the claimant and conducted a physical examination which proved to be normal. In the “Impression” portion of his report Dr. Baskin released him from his care and stated: “Based on my evaluation, she does not have any permanent partial impairment based on her work-related fall of 6/30/23.” (RX1 at 20; 20-21).

DISCUSSION

Burden of Proof, Generally

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 has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2025 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) (2024 Lexis Repl.) states that 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) (2025 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). 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's credibility and how much weight to accord 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).

Compensability, Generally

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, 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) (2025 Lexis Repl.), establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. *Ark. Code Ann.* § 11-9-102(4)(A)(i) (2025 Lexis Repl.). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mickel v. Engineering Speciality Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A thorough – and in this case even a cursory – review of the totality of the evidence clearly and conclusively reveals the claimant has failed to meet her legally required burden of proof in demonstrating she sustained a neck/cervical spine injury as a result of the subject June 30, 2023, work-related slip-and-fall incident. In fact, other than the claimant’s own subjective, self-serving testimony, *there exists absolutely no medical or other evidence whatsoever* the claimant sustained a neck/cervical spine injury as a result of the subject incident. Indeed, the totality of the evidence in the record dispositively demonstrates otherwise and compels the only conclusion that may be reached in this case: the claimant has failed to meet her burden of proof.

First, while the claimant testified she had medical records supporting her claim, she did not produce them to the opposing party, nor did she bring them to the hearing or seek to introduce them into the record. Second, the medical records that were produced and introduced into the hearing record reveal the claimant had complained of and been treated for neck/cervical spine and shoulder (as well as lower back and other pain) – and that she had even been considered for surgery – well prior to the subject June 30, 2023, work incident, that her treating physician attributed to age-related arthritis. (RX1 at 1-17). Third, there exists no medical or other credible evidence whatsoever – and certainly no medical opinion – stating the claimant has sustained a neck/cervical spine injury to her neck as a result of the subject work-related incident. Fourth, Dr. Baskin – a credible orthopedic

physician who is well-known to this Commission – did not opine the claimant sustained any neck/cervical spine injury as a result of her June 30, 2023, slip-and-fall – and instead opined she had sustained no permanent injury and no/zero percent (0%) permanent anatomical impairment whatsoever related to the subject incident. (RX1 at 20-21). Fifth and finally, it is interesting to note that while the claimant admits she is capable of working at this time, she does not want to do so because she is concerned it will adversely affect her ability to draw SSD benefits. (T. 32-33; 38-40).

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. The stipulations to which the parties agreed in the prehearing order filed March 7, 2025, which the claimant specifically and formally amended under oath on the record at the subject hearing, hereby are accepted as facts.
3. The claimant has failed to meet her statutorily-required burden of proof in demonstrating she sustained a “compensable injury” within the Act’s meaning to her neck/cervical spine as a result of the June 30, 2023, work incident.
4. There exists no objective medical findings nor any other sufficient medical or other evidence whatsoever demonstrating the claimant’s neck/cervical spine condition was either caused or aggravated by the subject June 30, 2023, work incident.

Therefore, I am compelled to deny and dismiss this claim with prejudice subject to the claimant’s statutory appeal rights. If they have not already done so the respondents shall pay the court reporter’s invoice in full within twenty (20) days of their receipt of this opinion.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp