

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H501091

KRISTI HILL, Employee	CLAIMANT
INCITE REHAB, LLC, Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED NOVEMBER 12, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 20, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 20, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on February 7, 2025.

At the time of the hearing, the parties agreed to stipulate that claimant earned an average weekly wage of \$940.96, which would entitle her to compensation at the rates of \$627.00 for total disability benefits and \$470.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to right shoulder on February 7, 2025.
2. Related medical.
3. Temporary total disability benefits from date last paid through a date yet to be determined.
4. Respondent's entitlement to a credit for benefits paid prior to denial of claim and for short-term disability benefits paid.
5. Attorney's fee.

The claimant contends "that she sustained a compensable injury to her right shoulder on February 7, 2025 and was provided authorized medical treatment from that date until on or about May 29, 2025. The Claimant contends that she is entitled to temporary total disability benefits from when they stopped until a date yet to be determined, as well as additional medical treatment." Claimant contends that since Respondent is controverting this claim in its entirety, his attorney is entitled to a fee on all indemnity benefits.

The respondents contend "that while this claim was initially accepted as compensable, based on documentation received, the claimant did not suffer a compensable injury under the Arkansas Workers' Compensation Act. In light of this, it is Respondents' position that Claimant is not entitled to benefits associated with this claim.

Alternatively, in the event compensability is found, benefits were paid to the claimant through 9/21/25, and they should be entitled to a credit for benefits paid prior to denial of the claim. Additionally, the claimant received short-term disability benefits and Respondent may have a credit for those benefits paid in the event compensability is found in this matter.”

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 20, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on February 7, 2025.

FACTUAL BACKGROUND

Claimant has been employed as a physical therapist assistant for respondent and its predecessors for more than 30 years. Her job duties required her to transfer patients; standing balance activities; gait training; and therapeutic exercise. Claimant considered her job to be physically demanding because many of the patients were

partially paralyzed and non-weight-bearing with their lower extremities which required helping them stand, walk and transfer to devices.

Claimant testified that on February 7, 2025, she was assisting a patient by moving the footplate on his chair. As she took a step to the right, she hit the patient's foot, causing her to lose her balance and start falling to the right. She testified that she fell towards a window frame with her right arm.

Q So you tried to grab the wall with your left hand because you were falling to the right?

A Yes.

Q And then you hit something with your right shoulder?

A Yes.

Q And what was it that you hit?

A The outside of my right shoulder.

Q What part of the building did you hit?

A The sheetrock, the frame of the windowsill.

The beginning of this fall can be seen on the video submitted into evidence by the respondent. The video shows claimant falling to her right but does not show her striking a windowsill with her right shoulder.

Claimant testified that after this incident she had a burning pain in her right shoulder and reported it to her supervisor. After she attempted to work for a few minutes she informed her supervisor that she believed she had really injured herself and needed medical attention. Claimant talked to someone in human resources and was sent for medical treatment with Dr. Terry Clark at Mercy Clinic on February 7.

Dr. Clark ordered an x-ray of claimant's right shoulder which showed no acute findings. Although his report states that bruising was not present during his examination, he diagnosed claimant's condition as a contusion and sprain of the right shoulder. He prescribed the use of a sling; ice; and over-the-counter medication. He also indicated that claimant had work restrictions of no lifting/pulling/pushing over 10 lbs. and no overhead work.

Claimant returned to Dr. Clark on February 17, 2025, and indicated that her pain was variable depending on the activity. Dr. Clark prescribed physical therapy three times a week for two weeks. In his report of March 3, 2025, Dr. Clark noted that claimant had not yet started physical therapy and again indicated that physical therapy was appropriate.

On March 18, 2025, claimant returned to see Dr. Clark who noted that claimant did not feel that her pain was improving, and he ordered an MR arthrogram of her right shoulder. According to Dr. Clark's report of April 7, 2025, the MRI revealed a full-thickness tear of the supraspinatus tendon, and he referred claimant for an orthopedic evaluation.

Claimant was seen by Dr. Jonathan Tobey, an orthopedic surgeon, on April 30, 2025. He reviewed the MRI scan and interpreted it as showing a SLAP tear with no obvious rotator cuff tear. He further noted that although the radiologist interpreted the MRI as showing a full-thickness tear of the supraspinatus, he disagreed with that assessment. Dr. Tobey ordered physical therapy; the use of medications; and restricted claimant's use of her right shoulder for six weeks.

When claimant's condition did not improve, Dr. Tobey recommended surgery. This surgery was performed on September 4, 2025. Dr. Tobey's operative report of that date indicates that his post-operative diagnosis included: right shoulder SLAP tear; AC arthrosis; subacromial impingement; incomplete supraspinatus tear; and glenohumeral synovitis.

Respondent initially accepted this claim as compensable but after further investigation, denied the claim by letter dated May 29, 2025. Claimant has filed this claim contending that she suffered a compensable injury to her right shoulder on February 7, 2025. She seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her right shoulder on February 7, 2025. Claimant's claim is for a specific injury, identifiable by time and place of occurrence.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability of the aggravation. *Hickman v. Kellogg, Brown and Root*, 372 Ark. 501, 27 S.W. 3d 591 (2008), citing *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W. 3d 160 (2007).

Establishing a compensable injury in the form of an aggravation would require medical evidence supported by objective findings establishing an injury. A.C.A. §11-9-102(4)(D). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

The evidence in this case indicates that claimant has a history of right shoulder problems dating back to 2023. In 2023 the claimant was attempting to jump across a small creek when she slipped. In order to keep herself from hitting the ground, she had both arms extended and struck the ground with her arms. Subsequent to this incident, claimant sought medical treatment from Dr. Steve Belinga, a neurologist. Dr. Belinga initially believed that claimant's complaints were related to her hands and ordered an EMG/NCV study. Those tests were read as being within normal limits. Nevertheless, Dr. Belinga still indicated that it was most likely that claimant suffered from carpal tunnel syndrome and cubital tunnel syndrome. Dr. Belinga eventually recommended that claimant see an orthopedist for injections and she apparently underwent injections from Dr. Smithson at BH Orthopedic Clinic. Claimant returned to Dr. Smithson on November 28, 2023, and reported complete relief of numbness and tingling. Dr. Smithson also noted that claimant was still having aching pain in her shoulder area. Notably, just a few

days after her visit with Dr. Smithson and what she reported complete relief of numbness and tingling, she was again seen by Dr. Belinga who noted that claimant had been placed on steroids recently and that was the only relief she was receiving. There is no indication that Dr. Belinga was aware that claimant had seen Dr. Smithson a few days earlier and her report of complete relief of numbness and tingling.

At this point, there is a gap between the last medical visit with Dr. Belinga on December 4, 2023, and an MRI scan of claimant's bilateral shoulders on December 10, 2024, some two months prior to February 7, 2025. Claimant testified that the MRI scan of her bilateral shoulders was recommended by her primary treating physician.

A follow-up visit after the MRI scan in December 2024 was scheduled with Samantha Chandler-Herbert, a nurse practitioner at the Choctaw Nation Medical Center, for March 31, 2025. Prior to that follow-up evaluation, the incident on February 7, 2025, occurred and claimant was evaluated by Dr. Clark on at least four occasions prior to the visit with Chandler-Herbert.

As previously noted, claimant eventually underwent a second MRI scan on her right shoulder as ordered by Dr. Clark. Thereafter, she was referred to Dr. Tobey for orthopedic evaluation and he performed surgery on the claimant's right shoulder. Dr. Tobey's primary diagnosis from the surgery involved a right shoulder SLAP tear.

Following claimant's second MRI scan, respondent had various medical records, including both MRI scans, reviewed by Dr. Shane McAlister, a radiologist. Dr. McAlister opined that after reviewing both the December 2024 MRI scan and the MRI scan taken after February 7 that the findings were the same with no evidence of any acute traumatic injury. Specifically, Dr. McAlister stated:

After reviewing these records and the submitted diagnostic imaging, I do not see any evidence of any acute traumatic injury of the right shoulder from the fall of 2-7-2025, but rather evidence of old pathology that was well seen on the December 2024 right shoulder MRI scan. The findings do correlate with the physical examination findings of Dr. Tobey on his office visit of 4-30-2025.

Notably, Dr. McAlister is the only treating physician who has reviewed both MRI scans. In fact, there is insufficient evidence that claimant's treating physicians after February 7, 2025, were even aware of claimant's prior right shoulder complaints and the December 2024 right shoulder MRI scan. Although claimant testified that she reported to both Dr. Clark and Dr. Tobey that she had prior right shoulder complaints and had undergone an MRI scan, none of the medical records from either Dr. Clark nor Dr. Tobey mention these prior complaints or the prior MRI scan. In short, I find no evidence that either of these physicians was aware of those prior complaints and as a result, neither of those physicians reviewed both MRI scans.

As previously noted, in order to establish a compensable injury, claimant has the burden of meeting all definitions of a compensable injury. This includes medical evidence supported by objective findings. Here, according to the opinion of Dr. McAlister, the objective findings on the April 3, 2025, MRI scan are the same findings that were present on the December 10, 2024, MRI scan. Given that Dr. McAlister is the only physician who has evaluated both pre and post February 7, 2025, MRI scans, I find that his opinion is credible and entitled to great weight. Accordingly, I find that claimant has failed to offer medical evidence supported by objective findings establishing injury to her right shoulder on February 7, 2025.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on February 7, 2025. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$607.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE