

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H501091

KRISTI HILL,  
EMPLOYEE

CLAIMANT

INCITE REHAB, LLC,  
EMPLOYER

RESPONDENT

CCMSI,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 15, 2026

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

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

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed November 12, 2025. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she was entitled to reasonably necessary medical treatment, including surgery performed by Dr. Tobey. The claimant proved that she was entitled to temporary total disability benefits beginning February 8, 2025 until a date yet to be determined.

I. HISTORY

Kristi Hill, now age 58, testified that she had been employed with the respondents, Incite Rehab, LLC. The claimant testified on direct examination:

Q. How long had you been employed there?

A. At Ashton Place, for 20 years. Incite, since 2011.

Q. So was Ashton Place and in the year 2025 Incite, was that all part of the same employment or was that separate employment or what?

A. Just a different rehab company, Incite, in 2011.

Q. So you were doing the same work all that time?

A. Yes, sir.

Q. And Incite came in and took over your predecessor employer?

A. Yes.

Q. What were your job duties?

A. Transferring patients, standing balance activities, gait training, and therapeutic exercise.

The claimant testified that she had suffered from bilateral arm pain after "I jumped a little ditch in a creek and I slipped. I didn't fall and hit the ground, but my hands just kind of hit the bank...And probably a week later is when the pain started and it was just aggravating pain."

Dr. Steve-Felix Belinga noted in September 2023 that the claimant was complaining of "burning, stabbing, pain, and weakness on both of her hands/arms." A Neurography & Electromyography Report indicated, "Unremarkable NCV of the Bilateral Upper & Lower Extremities[.] Unremarkable EMG of the Right Upper & Lower Extremities[.]"

Dr. Belinga reported in October 2023, "Patient most likely has CTS and CuTS, made worse after her recent fall. EMG/NCV was WNL....She was placed on steroids recently and that is the only relief she gets."

Dr. Kaleb Brent Smithson reported in November 2023, "Kristi R Hill returns today for follow-up after carpal tunnel injections. Reports complete relief of numbness and tingling....She is still having some aching pain localized to the shoulder region."

An MRI of the claimant's right shoulder was taken on December 10, 2024:

Reason for Exam: Degenerative joint disease, shoulders....  
COMPARISON: Radiographs November 14, 2024....  
IMPRESSION: 1. Early, mild acromioclavicular joint degenerative changes. There is fluid and debris/synovial thickening in the subacromial/subdeltoid bursa. The fluid is compatible with bursitis if there has been no recent injection.  
2. Supraspinatus tendinosis with a few small foci of suspected chronic, low-grade partial tearing and scarring. There are also a few thin, low-grade partial-thickness tears along the medial insertion/articular surface of the infraspinatus tendon.  
3. Chondromalacia along the right glenohumeral joint, with small spurs along the margins of the glenoid. There is a small to moderate right glenohumeral joint effusion.  
4. Degeneration of the labrum, with a least degenerative fraying.  
5. Nonspecific pericapsular edema along the superior aspect of the right glenohumeral joint, with edema along the rotator interval. There is no thickening of the joint capsule.  
6. Several bulky, right axillary lymph nodes, nonspecific. Correlate with the patients history (any history of a recent illness? History of malignancy?).

The parties stipulated that the employment relationship existed on February 7, 2025. The claimant testified on direct examination:

Q. Did anything unusual happen to you on February 7<sup>th</sup> of 2025 in the course of your employment? Did you have an accident?

A. Yes.

Q. Tell us about the accident.

A. My patient was in a power chair and they have the foot plate and I moved his foot plate to put his feet on the floor and I took a step to the right and at the same time he had placed his left foot out blocking my step, so I started losing my balance and falling to the right.

Q. And where did you fall to?

A. The window next to where I was working on the mat, by the mat[.]...

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 is 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....

Q. So after this incident, how long did you work following that incident?

A. Less than 10 minutes....I tried to continue my job. I tried to shake it off and I was walking that lady and I was trying to pull her chair and my arm just kept burning and burning....

Q. At some point did your arm get worse or did it just stay the same or what?

A. It got worse. It got worse in the next few minutes. And then when I was trying to continue my job is when I realized that I can't do this.

Q. And who sent you to the doctor?

A. My human resource lady when I called her.

According to the record, Dr. Terry Clark examined the claimant at Occupational Medicine-Fort Smith on February 7, 2025:

Kristi tripped over a patient's foot hitting the window and wall with right shoulder....

Kristi's primary problem is pain located in the right scapula, right shoulder. She describes it as stabbing, aching. The problem began on 2/7/2025. Kristi says that it seems to be constant. She has noticed that it is made worse by letting arm hang, moving shoulder. Her pain level is 5. She fell into the wall, striking the lateral aspect of the right shoulder....

Right Shoulder: Bruising is not present. A deformity is not present. TTP laterally and posteriorly, over the lateral edge of the scapula,

Decreased ROM on abduction, Negative empty can....

IMAGING STUDIES

XRAY – Right Shoulder; No acute findings.

Dr. Clark diagnosed “1. Contusion of right shoulder, initial encounter” and “2. Unspecified sprain of right shoulder joint, initial encounter[.]” Dr. Clark stated, “The cause of this problem is related to work activities....Kristi's recommended work status is Restricted Duty. The effective date for this work status is 2/7/2025.”

The claimant testified that she did not return to work for the respondents after February 7, 2025. The record contains an Orthopedic Surgery Outpatient Note dated March 31, 2025:

57-year-old female here for eval bilateral shoulders. She reports pain for about 2 years after she was trying to jump a creek and slipped and landed on her hands. She did not have pain for a couple days but then started having pain in both her shoulders....She also reports catching and clicking of the shoulders....She had MRIs in December but reports she had an injury at work in February and [is] seeing workman's comp for that on her right shoulder. And [is] supposed to have an MRI arthrogram on Thursday regarding that. Her worker's comp provider started her in physical therapy but she reports that is only making her pain worse. She has not had any

injections and only gone to couple of physical therapy appointments.  
X-rays show downsloping acromion[.]...

An APRN assessed “Bilateral shoulder pain,” “Rotator cuff tear on the right, degenerative,” “Degenerative labral tear on the right,” and “Labral tear on the left.” The APRN noted, “she is seeing worker’s comp for her right shoulder and getting an MRI arthrogram Thursday. I discussed she would need to follow up with worker’s comp and proceed with their recommendations. As we can not take over a worker’s comp issue. We will see her back PRN.”

The claimant followed up with Dr. Clark on April 7, 2025:

Kristi tripped over a patient’s foot hitting the window and wall with right shoulder....  
The problem began on 2/7/2025....MRI (4/3/2025) shows a full-thickness tear of the supraspinatus tendon....

Dr. Clark’s diagnosis on April 7, 2025 was “1. Complete rotator cuff tear or rupture of right shoulder, (supraspinatus)[.]...The cause of this problem is related to work activities....Kristi’s recommended work status is Restricted Duty. The effective date for this work status is 4/7/2025.”

Dr. Jonathan Lane Tobey examined the claimant on April 30, 2025:

57-year-old female presents for initial evaluation of her right shoulder. She works at a physical therapy clinic and had a fall on 2/7/2025 while trying to hold the patient resulting in her hitting the wall. [She] has had significant right shoulder pain since that time. This is a Worker’s Comp. injury. Patient states she is only having 1 or 2 sessions of physical therapy. She has not had any previous injections in the shoulder. She

had an MR arthrogram demonstrating a rotator cuff tear and was referred to the orthopedic clinic....

**Imaging:** Right shoulder radiographs reviewed and interpreted by myself are negative for acute fracture or significant degenerative change.

Right shoulder MR arthrogram reviewed and interpreted by myself demonstrates significant fluid extravasation through the rotator interval. There is significant signal around the superior labrum consistent with a SLAP tear. No obvious rotator cuff tear. Of note the radiology report demonstrates full-thickness tear of the supraspinatus. I disagree with this assessment as this appears to be the rotator interval and not the rotator cuff tendon....

Patient's history and exam is consistent with a SLAP tear of her right shoulder as well as biceps tendinitis and subacromial impingement. I do not see an obvious rotator cuff tear nor does her exam appear consistent with rotator cuff tear. I recommend patient starting in physical therapy for range of motion and strengthening....Patient was given a work note for no lifting greater than 10 pounds or overhead activities on the right upper extremity.

Dr. Tobey diagnosed "Acute pain of right shoulder," "Superior glenoid labrum lesion of right shoulder, initial encounter," and "Biceps tendinitis of right shoulder."

The record contains a Physical Therapy Evaluation dated May 6, 2025. The "Objective" portion of the Physical Therapy Evaluation, which was based on Right Shoulder Palpation, indicated "Abnormal: Muscle." The claimant was provided a program of physical therapy visits.

Dr. Shane McAlister corresponded with Nichole Sanders on May 15, 2025 and stated in part:

You have asked me to review medical records and diagnostic imaging on Ms. Kristi Hill (dob 03/16/1968) and provide you with a written report of the findings contained therein....

The first office visit record submitted is dated 2-7-2025 and is from Occupational Medicine clinic. Here, Ms. Hill saw Dr. Terry Clark for right shoulder pain complaints after reporting a trip and fall incident at work that day. She reportedly tripped over a patient's foot and hit her right side laterally against a wall. Her pain location was noted to be the lateral aspect of her right scapula. On physical examination she was tender along the lateral edge of the right scapula. No bruising was found. Plain films of the right shoulder were obtained and interpreted as no acute traumatic injury. She was diagnosed with a contusion and sprain and prescribed Tylenol and Advil. Sprains/contusions are diagnosed with patient pain complaints, but no objective finding of tissue damage....

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 Mr. Tobey on his office visit of 4-30-2025 (I do not see that he was made aware of the older injuries, medical care sought or the diagnostic imaging of both shoulders).. Correlation with the office visits after the fall in the creek two years before should help clarify her bilateral shoulder symptom that led to the MRI scans of both shoulders in December 2024....

A claims specialist corresponded with the claimant on May 29, 2025:

CCMSI administers the Workers' Compensation program for **Incite Rehab, LLC.**

We have investigated the claim and have determined that your claim does not meet the criteria for a compensable work injury under the Act. Therefore your claim will be respectfully denied.

**If you have group insurance, you may file this letter with them to cover the medical charges that are not covered under workers' comp.**

A physical therapist noted on June 6, 2025, "Pt reports that she was informed today that her ortho appt has been cancelled by Workman's Comp and she has been dropped from Workman's comp but unsure why. Pt reports she is trying to get in contact with Workman's comp currently."

The respondent-employer's Director of Human Resources corresponded with the claimant on July 28, 2025:

I am in receipt of a note from your provider, Jonathan Lane Tobey, MD, stating that you "may return to work with lifting no more than 10 pounds on the right upper extremity and no overhead activities right upper extremity." As you know, your position as a Physical Therapist Assistant requires that, as an essential function of your position, you move and lift patients in an amount exceeding the restriction provided by your provider. There is not a reasonable accommodation available that would allow you to perform the essential functions of your position with the restriction you currently have. Accordingly, you are not eligible to return to your position at this time and, thus, your position with Incite Rehab is terminated immediately.

A pre-hearing order was filed on August 20, 2025. The claimant contended 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." The claimant contended that "since Respondent is controverting this claim in its entirety, his attorney is entitled to a fee on all indemnity benefits."

The respondents contended 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.”

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. Respondents’ entitlement to a credit for benefits paid prior to denial of claim and for short-term disability benefits paid.
5. Attorney’s fee.

Dr. Tobey performed surgery on September 4, 2025: “Right shoulder arthroscopic long head biceps tenodesis[.] Right shoulder arthroscopic distal clavicle excision[.] Right shoulder arthroscopic extensive debridement including superior labral tear, anterior labral tear, extensive glenohumeral synovitis, subacromial bursal tissue, anterior inferior edge of the acromion.” Dr. Tobey reported the following Findings at Surgery:

Right shoulder diagnostic arthroscopy demonstrated extensive glenohumeral synovitis. Large unstable superior labrum tear with extension into the anterior labrum. No subscapularis tear. No loose bodies in the axillary recess. Posterior labrum intact. Glenohumeral cartilage intact. Lipstick lesion long of the biceps tendon. No articular sided supraspinatus or posterior cuff tear. Subacromial space with extensive subacromial bursal tissue. No bursal sided cuff tear. Small anterior-inferior hooking acromion[.]

After a hearing, an administrative law judge filed an opinion on November 12, 2025. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:
- (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the

voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

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)(Repl. 2012). 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).

An administrative law judge found in the present matter, “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.” The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right shoulder.

The claimant testified that she had been employed with the respondent-employer’s predecessor for 20 years and then the respondents since 2011. The claimant testified that she had previously suffered from bilateral arm pain after she “jumped in a little ditch in a creek and I slipped.” Subsequent electrodiagnostic testing was normal. An MRI of the claimant’s right shoulder in December 2024 showed degenerative changes which included low-grade partial-thickness tears and fraying.

The parties stipulated that the employment relationship existed on February 7, 2025. The claimant testified that she sustained a work-related accidental injury that date. The claimant testified that she slipped, fell, and hit the outside of her right shoulder on the frame of a windowsill. The claimant, who the Full Commission finds was a credible witness, testified that her condition quickly worsened and that the respondent-employer's Human Resources manager directed her to seek medical treatment.

The claimant received authorized medical treatment from an occupational physician, Dr. Clark, beginning February 7, 2025. Dr. Clark diagnosed "1. Contusion of right shoulder" and "2. Unspecified sprain of right shoulder joint." The Arkansas Court of Appeals has held on several occasions that a contusion is an objective medical finding. See *Northwest Ark. Cmty. Coll. v. Migliori*, 2018 Ark. App. 286, 549 S.W.3d 399. See also *Ellis v. J.D. & Billy Hines Trucking, Inc.*, 104 Ark. App. 118, 289 S.W.3d 497 (2008), citing *Parson v. Ark. Methodist Hosp.*, 103 Ark. App. 178, 287 S.W.3d 645 (2008).

The Full Commission finds in the present matter that Dr. Clark's diagnosis of "Contusion of right shoulder" was an objective medical finding which was not within the claimant's voluntary control. There were other objective medical findings in the record which established a compensable injury. Based on an MRI taken April 3, 2025, Dr. Clark reported "a full-

thickness tear of the supraspinatus tendon.” Dr. Clark’s diagnosis on April 7, 2025 was “1. Complete rotator cuff tear or rupture of right shoulder.” On April 30, 2025, Dr. Tobey diagnosed the objective finding of “Superior glenoid labrum lesion of right shoulder, initial encounter.” A physical therapist also evaluated the claimant on May 6, 2025, and, based on Right Shoulder Palpation, reported “Abnormal: Muscle.” We find that the physical therapist’s physical notation of an abnormal muscle was an objective medical finding which could not come under the claimant’s voluntary control. Finally, as we have noted, Dr. Tobey performed surgery on September 4, 2025. Dr. Tobey’s Findings at Surgery included a “Large unstable superior labrum tear with extension into the anterior labrum.” The treating surgeon’s report of a large unstable superior labrum tear was another objective medical finding establishing a compensable injury.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012) *et seq.* The claimant proved that she sustained an accidental injury causing physical harm to the right shoulder. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that she injury was caused by a specific incident and was identifiable by time and place of occurrence

on February 7, 2025. The claimant also established a compensable injury by medical evidence supported by objective medical findings which could not come within the claimant's voluntary control. These objective medical findings included contusion of the right shoulder, full-thickness tear of the supraspinatus tendon, rotator cuff tear or rupture of right shoulder, superior labrum glenoid lesion of the right shoulder, abnormal muscle, and large unstable superior labrum tear. The Full Commission finds that these objective medical findings were causally related to the February 7, 2025 compensable injury and were not the result of a prior nonwork-related injury or pre-existing condition.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury. The claimant proved that the medical treatment of record provided on and after February 7, 2025, including surgery performed by Tobey, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that she remained within a healing period and was totally incapacitated from earning wages beginning February 8, 2025. The Full Commission therefore finds that the claimant proved she was entitled to temporary total disability benefits beginning February 8, 2025 until a date yet to be determined. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The

respondents are entitled to a credit for temporary total disability benefits already paid. The respondents are also entitled to an appropriate credit in accordance with Ark. Code Ann. §11-9-411(Repl. 2012). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

#### DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on February 8, 2025.

Arkansas Code Annotated section 11-9-102 (4)(A)(i) provides that a compensable injury includes "[a]n accidental injury causing internal or external physical harm to the body. . . An injury is 'accidental' only if it is

caused by a specific incident and is identifiable by time and place of occurrence.”

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant 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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the

Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* 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. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

In the present case, the claimant has failed to meet her burden of proving that she suffered a compensable injury, due to her extensive history of degenerative shoulder findings. After her 2023 fall while jumping across a creek, the claimant sought treatment with Dr. Steve-Felix Belinga, who noted in September 2023 that the claimant was complaining of “burning, stabbing, pain, and weakness on both of her hands/arms.” The claimant reported “aching pain localized to the shoulder region” to Dr. Kaleb Smithson in November 2023. On December 10, 2024, the claimant underwent an MRI of her right shoulder, which revealed, among other things, degenerative joint disease of the shoulders, “fluid and debris/synovial thickening in the subacromial/subdeltoid bursa,” low-grade partial thickness tears of the infraspinatus tendon, degeneration of the labrum with degenerative fraying.

Further, the respondent sought the opinion of Dr. Shane McAlister, a radiologist, regarding the claimant's medical records, including both MRIs.

Dr. McAlister opined as follows:

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.

There is no evidence in the record beyond the claimant's own self-serving testimony that her treating physicians for her 2025 injury, Dr. Terry Clark or Dr. Jonathan Tobey were aware of this medical history, which inherently renders their findings incomplete. In fact, Dr. McAlister opines that he believes Drs. Clark and Tobey were not provided with the claimant's earlier imaging, which could potentially alter the claimant's future care. Dr. McAlister's report contains the only evidence of a practitioner reviewing the claimant's entire history prior to issuing an opinion. For this reason, Dr. McAlister's report is entitled to greater weight than those of Dr. Clark and Dr. Tobey who lacked key information regarding the claimant's prior injury. It is clear from the record that there was no difference between the

claimant's December 10, 2024 and April 3, 2025 MRIs and the claimant's alleged right shoulder injury and subsequent surgery are not supported by the weight of the credible evidence.

Accordingly, for the reasons stated above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner