BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H406363

LUTHER G. JONES,
EMPLOYEE **CLAIMANT**

INTERSTATE GROUP, LLC,
EMPLOYER **RESPONDENT**

NATIONAL UNION FIRE INS. CO. - PITT/
SEDGWICK CLAIMS MG'T SERVICES, INC.,
INSURANCE CARRIER/TPA **RESPONDENT**

OPINION FILED JULY 29, 2026

Hearing held on Tuesday, May 5, 2026, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Steven R. McNeely, McNeely Law Firm, Jacksonville, Pulaski County, Arkansas.

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

INTRODUCTION

In the prehearing order filed February 24, 2026, the parties agreed to the following stipulations which they modified and affirmed on the record at the hearing.

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

2. The employee/employer/carrier-TPA relationship existed on July 8, 2024, the date the claimant alleges he sustained gradual-onset compensable injuries to both his right and his left shoulders.

3. The respondents controvert this claim in its entirety.

4. The claimant's average weekly wage (AWW) was $718.00, which corresponds to weekly indemnity rates of $479.00 for temporary total disability (TTD) benefits and $359.00 for permanent partial disability (PPD) benefits.

(Commission Exhibit 1 at 1; Reporter's Hearing Transcript at 4-6) (The parties were able to stipulate to the AWW and compensation rates at the hearing, so this issue was not litigated. Please disregard issue "2" on page 2 of the subject prehearing order, which should be included as a stipulation in the "Stipulation" section on page 1 of the prehearing order.) (Comms'n Ex. 1 at 1-2; T. 4-6).

Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained gradual-onset compensable injuries to both his right and his left shoulders within the meaning of the Arkansas Workers' Compensation Act (the Act) which became evident on or about July 8, 2024.

2. *If* the claimant's alleged right and left shoulder injuries are deemed compensable, whether he is entitled to TTD benefits from May 16, 2025, through a date yet to be determined.

3. *If* the claimant's alleged right and left shoulder injuries are deemed compensable, whether he is entitled to payment of his related, reasonably necessary medical treatment and associated expenses, including but not limited to those associated with his May 14, 2025, right shoulder surgery.

4. *If* the claimant's alleged and left shoulder injuries are deemed compensable, whether and to what extent, if any, his attorney is entitled to a fee based on these facts in accordance with ***Ark. Code Ann.*** Section 11-9-715 (2025 Lexis Supplement).

5. Both parties reserved all other issues for suture determination and/or litigation.

(Comms'n Ex. 1 at 2; T. 4-6).

I inherited this file from another ALJ and, therefore, did not prepare the prehearing order filed February 24, 2026, which sets forth the parties' respective contentions. (Comms'n Ex. 1 at 1-6). But from my reading of the prehearing order it appears the claimant alleges he sustained

gradual-onset compensable injuries to both his right and his left shoulders through rapid, repetitive motion while working with Interstate Group, LLC (Interstate), in Conway, Arkansas, unrolling and cutting aluminum sheets used for the manufacture of semitruck trailer roofs, which injuries became evident on or about May 8, 2025. (Comms'n Ex. 1 at 2). It also appears he contends he is entitled to payment of his related, reasonably necessary medical treatment and related expenses, including but not limited to those associated with his May 16, 2025, right shoulder surgery. [Note: It appears the claimant's right shoulder surgery actually took place on May 14, 2025. (Claimant's Exhibit 1 at 29-32)]. (Bracketed material added). The claimant further contends he is entitled to TTD benefits from May 16, 2025, through a date yet to be determined. Finally, he contends his attorney is entitled to the maximum controverted statutory attorney's fee pursuant to ***Ark. Code Ann.*** Section 11-9-715. (Comms'n Ex. 1 at 2; T. 4-5; 126).

The respondents contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating he sustained gradual-onset compensable injuries to both his right and his left shoulders on July 8, 2024. The respondents further contend the claimant failed to report his alleged right and left shoulder injuries as the Act requires, and that no work incident on occurred on July 8, 2024. The respondents contend they had no knowledge of any alleged bilateral shoulder injuries until the claimant filed his Form AR-C in this claim on or about February 25, 2025, and therefore, they may not be deemed liable for any medical or TTD benefits before February 25, 2025. Consequently, the respondents contend no work-related event or injuries occurred on July 8, 2024. The respondents contend there exist no objective medical findings supporting the claimant's alleged right and left shoulder injuries of July 8, 2024. Alternatively, they contend that to the extent any objective medical findings do exist with respect to the

claimant's alleged subject right and left shoulder injuries, any such findings are related to preexisting abnormalities and not in any way work-related or causally connected to the alleged subject work incident of July 8, 2024. Also, since the claimant is alleging a gradual onset compensable injury to both his right and left shoulders, the respondents contend the claimant's work duties were not rapid and repetitive in nature, nor are they the "major cause" of his alleged subject injuries; therefore, he cannot meet the Act's requirements to prove his alleged bilateral shoulder injuries are compensable. Finally, and again, alternatively, the respondents contend that if the claimant's alleged subject injuries are deemed compensable, pursuant to ***Ark. Code Ann***. Section 11-9-411 (2025 Lexis Repl.) they are entitled to a dollar-for-dollar offset/credit for any and all health insurance, short-term disability (STD), long-term disability (LTD), as well as any and all unemployment benefits paid to or on the claimant's behalf. (Comms'n Ex. 1 at 2-3; T. 4-6; 126-28).

The record herein consists of the reporter's hearing transcript and any and all exhibits contained therein or attached thereto.

STATEMENT OF THE CASE

The claimant, Luther G. Jones (the claimant), was 61 years old at the time of the hearing. He is a high school graduate and attended John Brown University for a couple of years, but he did not graduate from college. Beginning in 1989 he worked for three (3) years at the Arkansas Department of Corrections as a corrections officer at the Tucker Unit. In around 2001 he moved to Kansas and lived there 23 years. In 2022 he moved back to Arkansas and went to work for a metal fabrication company, SFI, in Conway as a forklift operator. He denied having any shoulder problems at any of these jobs. (T. 9-13).

In around 2024 the claimant went to work with Interstate [a/k/a TrailersPlus], eventually as a roof cutter. He worked a ten (10)-hour shift, five (5) days a week from 5 A.M. to 3:30 P.M., or 6 A.M. to 4:30 P.M. This job required him to unroll large rolls of aluminum coils and to measure and cut the aluminum sheets in lengths of 15, 20, and 30 feet to be used as the roofs of semitruck trailers. The claimant testified these rolls weighed anywhere from 3,000 to 4,000 pounds, and that he would bend from the waist and push the rolls until they unwound from anywhere to 30 to 50 feet depending on the length of the trailer roof they were working on and cutting at the time. He said he probably pushed the coils about 20 times for each coil. Once he had unrolled the aluminum coils the claimant would "get on all fours" and use shears to cut the aluminum sheets in whatever lengths were required for the trailer roofs. He said once he finished cutting the aluminum sheets he would roll the remainder of the coil back up. The claimant testified the shears he used were manual so he had to squeeze them in order to cut the aluminum sheets. He testified he would push the aluminum rolls out using both his shoulders. He said he cut anywhere from 15 to 18 roofs in a day, and that he would push "[m]aybe four" aluminum rolls in an hour. (T. 13-19; 26) (Bracketed material added).

The claimant testified he had been working at Interstate for "a couple of months" when both his right and left shoulders started hurting him. He said the first person he told about his shoulders hurting was Austin, a supervisor. The claimant testified he told Austin his shoulders were hurting and he asked Austin if he could "do light duty, something different", but that Austin told him they didn't "have anybody else to cut the roofs." The claimant described his roof-cutting job as "aggressive" and "physical" and said he noticed the work made his body and his legs "…sore, but

I just thought I was sore." He said he had this conversation with Austin "around July 1st…before the 4th" [of July 2024]. (T. 19-21) (Bracketed material added).

The claimant testified the last day he worked for Interstate was, "July 20-something, 23rd. I can't remember. It was in July." The claimant said he did not quit his job, but he was fired, and he found out he was fired when he tried to see if his work "app" was on his phone, "and it wasn't there, I couldn't get in… ." (T. 21).

The claimant testified he first went to the doctor in either August or September, and that he went to the emergency room (ER) first. He said he went to the doctor because he thought his arms would heal after he stopped working, but that they did not heal. He said by this time his shoulders were hurting him so badly he was unable to lift his hands, to use his hands, or to get cups out of the cabinet. He said he was unable to drive and "was stuck inside the house for about nine weeks" and so he went to the ER. He testified from June, July, August and September of 2024 he was not involved in sports or any other activities that would hurt his shoulders. After a period of conservative treatment, in May of 2025 the claimant underwent surgery on his right shoulder, and he testified he is still having problems with both his shoulders. (T. 21-22).

On cross-examination, the respondents' attorney confronted the claimant with his April 29, 2025, sworn deposition testimony, his Form AR-C, and the prehearing order in which the claimant had always maintained his shoulders started hurting as the result of an alleged work incident that occurred on July 8, 2024. In response the claimant admitted that in his direct examination he had testified his shoulders started hurting before the Fourth of July [of 2024] and that his right and left shoulder pain "wasn't a culmination" but was the result of a specific incident where he was pushing a roll and felt pain. The respondents' attorney further confronted the claimant with the claimant's

own contentions of gradual-onset bilateral shoulder injuries and his testimony at the hearing, and referred him to his sworn deposition testimony which appeared to be different.

On page 29, line 16 of his deposition the claimant had testified he was pushing an aluminum coil some time before July 4, 2024, – that he knew it was some time before July 4 – when he felt sharp pains in his "arms" at a specific moment in time, but that in his testimony at the hearing he was contending he had sustained a gradual injury as the result of rapid, repetitive motion, and that he was hurting after July 4. (T. 27-41; Respondents' Exhibit 2 at 29-32) (Bracketed material added). Later in the hearing when the ALJ asked the claimant whether he was contending his alleged bilateral shoulder injuries were gradual-onset or the result of a specific-incident, the claimant clarified he believed his alleged right and left shoulder injuries were gradual in nature and not the result of a specific incident. (T. 52; 51-54).

The respondents' first witness was Mr. David Austin Black, the supervisor to whom the claimant referred in his direct examination as "Austin." Mr. Black testified he was the claimant's supervisor at Interstate during the time period in question but that he no longer worked for Interstate, he worked for another employer, Clayton's Manufacturing in Conway. Mr. Black explained the claimant initially worked in Interstate's roof line cell, but that he did not stay in that position because of "quality issues and complaints of physical problems." Mr. Black testified the claimant "was having issues climbing up and down the scaffolding, but also having shoulder issues as what was required to run the tools." Concerning what the claimant told him regarding his shoulder pain, Mr. Black testified: "He had said he had prior problems from previous employment in his previous life." (T. 58; 56-58).

Mr. Black went on to testify that in mid-May of 2024 – within two (2) to three (3) weeks of the claimant having started working with Interstate – he moved the claimant to an easier work cell which was the roof-cutting job. Mr. Black testified that "for the most part" the roof-cutting job was not a difficult, demanding, physically challenging job. He said the claimant had quality issues with this job as well which he addressed with him on a number of occasions but that the claimant never mentioned any work-related shoulder problems to him. He said if the claimant would've ever mentioned any work-related shoulder problems to him, he would have reported it to his own supervisor, Mr. Jason Newton. (T. 59-62; Respondents' Exhibit 1 at 11-13).

Mr. Black went on to explain the details concerning how the roof-cutting job was performed. He testified that the aluminum coil are not difficult to unroll, and that employees may even give them a push with either their arm or a leg and that the coils were heavy enough that once they started rolling they would keep rolling by themselves. He directly contradicted the claimant's testimony concerning the physical requirements and difficulty of his job duties, and testified the roof-cutting job was "not a very fast-paced job." He said that in a 10-hour shift an employee like the claimant would spend a total of some 18 minutes pushing-out/unrolling the aluminum sheets, separated by anywhere from 20-30 minutes during which time he would cut the aluminum sheet. He also explained that in between rolling-out the aluminum sheet the claimant performed a variety of other jobs during his shift so he was not required to perform the same type physical motions for the entire duration of his shift. Mr. Black testified that a new aluminum coil may weigh up to 2,000 pounds, not 3,000 to 4,000 pounds as he claimant had testified on direct. (T. 56-80).

The respondents' second witness was Mr. Jason Earl Newton. Like Mr. Black, Mr. Newton also was no longer employed with Interstate, but worked with Clayton Homes and had been employed

there for six (6) months at the time hearing. Mr. Newton testified concerning the quality issues the claimant had while performing the roof-cutting job. He also directly contradicted the claimant's testimony that he had "carried" the aluminum coils on his shoulders at times which Mr. Newton flatly said would be "impossible." Mr. Newton said the aluminum coils are not hard to unroll as a "little bit of weight on them" will start them rolling on their own. Mr. Newton went on to testify the claimant's job was not face-paced, repetitive, and was interrupted by other tasks throughout his shift. He also testified the claimant never apprised him he was injured on the job; he never completed any paperwork on the claimant with respect to an alleged work-related injury; and he would have done so had he ever been aware of any alleged work-related injury. (T. 80-96).

The respondents' third witness was Richard Eldon Asbell, Jr. Mr. Asbell also was no longer employed with Interstate at the time of the hearing, but was self-employed. He had been emplued with Interstate, a/k/a, TrailerPlus, for almost 28 years and was the plant manager. He recalled the claimant coming to work with Interstate in May of 2024. He also testified concerning the specifics of the claimant's job duties and their physical requirements, as well as the quality issues that were documented concerning the claimant's performing the roof-cutting job. He said that in all his time as the plant manager at Interstate there had never been a workers' compensation claim filed as a result of an employee performing the roof-cutting job. He described the job as "the easiest, lightest job in the plant." Mr. Asbell testified he had discussed the claimant's work quality issues with him. He said he was aware the claimant had previously told Mr. Black that he, the claimant, "was almost 60 years old and he had previous shoulder injuries from previous employment and throughout his work" history. He also testified the claimant worked in July 2024 before the Fourth of July holiday, and that he had come back to work after the holiday on July 8, 2024, and worked through the end

of July 2024 as the claimant's time records demonstrate. Mr. Asbell explained that after he had visited with the claimant concerning his work quality issues. He said he had seen the claimant after the claimant left Interstate as the claimant was hanging out with some younger guys around a Dollar Tree store in Conway and "kind of dancing around listening to some music." He said to his knowledge nobody ever told the claimant he was fired. (T. 96-111; RX1 at 6-10; 11-13).

Finally, the respondents fourth witness was Ms. Leslie Marie Schreckhise. Ms. Schreckhise was still employed with Interstate, a/k/a TrailersPlus at the time of the hearing as the human resources (HR) manager. She testified that no work-related injury regarding the claimant had ever been reported to her. She said she had no knowledge of the claimant ever having sustained a work-related injury while he was employed with Interstate. She also the claimant never returned to work after July 31, 2024; that she never heard from him; that "he left" his job at Interstate and he was considered a "no-call-no-show" and, consequently, was terminated effective August 5, 2024. Ms. Schreckhise the next time she ever heard anything about the claimant was when Interstate's workers' compensation carrier called her in February 2025 advising her the claimant had filed a workers' compensation claim. She said this was the first notice she had that the claimant was alleging he had sustained a work-related injury during his short time of employment at Interstate. (T. 111-118).

The claimant's medical records reveal he did not seek treatment for his bilateral shoulder pain until September 19, 2024, when he presented himself to the Conway Regional Hospital emergency room (ER) complaining of pain in both shoulders. The claimant provided a history of "pushing steel rollers that way [sic] approximately 2,000 pounds. Patient manufactures semitruck trailers must remove the steel himself." (Claimant's Exhibit 1 at 1). The claimant apparently was treated

for a short period of time, conservatively, with medication and physical therapy (PT). (CX1 at 2-14).

On December 17, 2024, the claimant presented himself for evaluation and treatment at the Conway Orthopedics & Sports Medicine Center (Conway Orthopedics) where he reported his left shoulder pain was worse and his right, and he provided some new history to the effect, "that when he was going to file a workman's compensation [sic] but was notified he had been terminated." (CX1 at 15). An imaging study of the claimant's left shoulder was interpreted as "demonstrating significant degenerative changes of the acromioclavicular joint and atypical appearance of the greater tuberosity with previous fracture vs sclerosis of the rotator cuff insertion." (CX1 at 17). The examining physician's impression was "bilateral rotator cuff tears, possible", and she recommended intrarticular corticosteroid injections, NSAIDS, and physical therapy, as well as an MRI arthrogram to confirm her preliminary diagnosis. (CX1 at 17).

On April 9, 2025, the claimant underwent MRIs of both his left and right shoulders which were compared with radiographs taken on December 17, 2024. The MRIs revealed degenerative changes in both the claimant's right and left shoulders as well as tears in various tendons of both shoulders. (CX1 at 19-28). The claimant underwent surgery on his right shoulder on May 14, 2025, as well as PT thereafter. (CX1 at 29-47). An Occupational Therapy Reevaluation Summary/Plan of Care dated September 4, 2025, notes in the "Diagnosis" section":

M75.101 Unspecified rotator cuff tear or rupture of right shoulder, not specified as traumatic

…

M66.821 Spontaneous rupture of other tendons, right

upper arm

(CX1 at 58). Other diagnoses on this same page relating to the claimant's right shoulder repeatedly use the words "unspecified" and "not specified as traumatic" throughout the report. (CX1 at 58). In her Southern Medical Group, Inc., summary report dated April 7, 2026, Dr. Chelsea Mann concludes the report by stating:

> **DIAGNOSIS:**
>
> 1. Bilateral shoulder pain and weakness.
>
> **CONCLUSION:**
>
> Based on today's examination and the objective evidence, I believe the claimant should be able to sit, walk, and/or stand for a full workday…I believe the claimant is unable to reach overhead or lift/carry heavy things due to his shoulder pain. Of note, his right shoulder is significantly better after surgery and he is anticipating operative intervention on his left; as such I do not anticipate that these will be life-long limitations.

(CX1 at 65).

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) (2022 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). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947).

App. 2009).

Ark. Code Ann. Section 11-9-704(c)(3) (2022 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) (2022 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). Medical opinions must be stated within a reasonable degree of medical certainty. *Smith-Blair, Inc., v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (Ark. App. 2002).

Compensability

The claimant contended in both in the February 24, 2026, prehearing order and at the hearing he suffered gradual-onset compensable injuries to both his right and his left shoulders as a result of rolling-out aluminum coils at Interstate that resulted in disability as of July 8, 2024. This issue is somewhat confused by the fact that in both his sworn April 29, 2025, deposition testimony (at which time he was represented by another attorney whom the Commission later allowed to withdraw as his attorney of record) and at the subject hearing the claimant appeared to testify that some time before July 4, 2024, he felt pain in his shoulder while he was pushing an aluminum coil at work, although he could never identify a specific date or time of this alleged incident. Also, at the hearing the claimant did not plead or argue his alleged bilateral shoulder injuries were the result of a specific-incident. When the ALJ specifically asked him to clarify the gradual-onset versus specific-incident issue at the hearing, the claimant confirmed he was alleging gradual-onset bilateral shoulder injuries and *not* injuries due to an alleged specific-incident:

> Q. So there was no specific incident. This is a gradual thing that you believe happened over a period of time?
>
> A. Yeah.

(T. 52).

Gradual-Onset Compensable Injuries

Moreover, in the case of an alleged gradual-onset compensable injury the Act requires the

claimant to prove additional elements. Specifically, ***Ark. Code Ann.*** § 11-9-102(4)(A)(ii) & (*a*) (2025 Lexis Repl.) defines a gradual-onset injury as follows:

> (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment *if* it is not caused by a specific incident and is identifiable by time and place of occurrence, *if* the injury is:
>
> (a) Caused by rapid repetitive motion.

(Emphasis added).

Concerning the rapid, repetitive motion requirement for proving a gradual-onset compensable injury, in *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court held there is a two (2)-part test for determining whether an injury is caused by rapid, repetitive motion: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. If the first element is not met, the second is not reached. *Id.*; *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Moreover, "even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly." *Malone*, *supra*.

In order to establish *any* compensable injury a claimant seeking workers' compensation benefits must prove that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) the injury was the major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. ***Ark. Code Ann.*** §11-9-102(4)(D) (Repl. 2012). ***Ark. Code Ann.*** § 11-9-102(4)(A)(ii) & (D)-(E)(ii) (2025 Lexis Repl.).

"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 as pain, straight-leg-raising tests, and [active] range-of-motion tests." *Burks v. RIC, Inc*., 2010 Ark. App. 862 (Ark. App. 2010) (Bracketed material added).

Objective medical evidence is not always essential to establish a causal relationship between the work-related accident and the alleged injury where in specific and appropriate cases objective medical evidence exists to prove the existence and extent of the underlying injury and a preponderance of other nonmedical evidence establishes a causal relationship between the objective injury and the work-related incident(s) in question. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010). Moreover, the claimant must prove a causal relationship exists between her employment and the alleged injury. *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)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, the Commission must deny his request for benefits. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Based on the applicable law as applied to the facts of this claim I am compelled to find the claimant has failed to meet the Act's requirements that his job at Interstate was rapid and repetitive in nature, and that his job – a job which by his own admission he had only worked for "a couple of months" – was the major cause of his clearly long-standing degenerative bilateral shoulder condition. Indeed, the claimant mentioned to his supervisor he had long-standing problems with

both his shoulders from past jobs, and the preponderance of the medical evidence further reveals the claimant's right and left shoulder problems were clearly degenerative and not traumatic in nature. I make the aforementioned findings for the following reasons.

First, it is important to note the claimant was not a credible witness. I have no opinion concerning whether this lack of credibility was due to the fact he was a poor historian or that he intended to be evasive and exaggerate relevant facts, thereby providing testimony that was contradictory, confusing, or misleading testimony. But the simple fact of the matter is that by both his demeanor and the way he responded to questions appeared to be defensive, evasive and contrived. This fact can be seen both in the claimant's sworn deposition testimony of April 29, 2024, and his hearing testimony.

Second, while the claimant attempted to portray his roof-cutting job at Interstate as rapid and repetitive in nature, a simple reading of both his own testimony was well as the testimony of the respondents' three (3) objective, disinterested witnesses conclusively demonstrates this was not the fact of the matter.

The claimant testified the aluminum coils weighed anywhere from 3,000 to 4,000 pounds and that he was required to bend at the waist and push the rolls out by extending both his arms, pushing against them with his hands and arms, and exerting significant force on the aluminum coils to unroll and cut them. He testified he was required to unroll the aluminum coils about 20 times for each roll during the course of his 10-hour shift. The claimant said he cut anywhere from 15-18 rolls in a day and that he would push maybe 4 aluminum rolls in an hour. He said that once he unrolled the aluminum coils, he would "get on all fours" and use shears to cut the aluminum sheets in 15, 20, or 30-foot pieces. (T. 13-19; 26).

Three (3) of the respondents' witnesses directly contradicted the claimant's testimony concerning the physical requirements of the roof-cutting job, as well as the pace of the job. All three (3) of these witnesses – Mr. Black, Mr. Newton and Mr. Asbell – no longer worked with Interstate at the time of the subject hearing, gave no indication of any animus toward the claimant, and were highly credible, disinterested, objective witnesses. They were clear and articulate in their testimony. (T. 56-110).

Mr. Black, the claimant's immediate supervisor, explained that when the claimant first started working with Interstate in around May 2024 he initially worked in the company's roof cell line. He went on to explain that within he had to transfer the claimant from this job to the roof-cutting job because of "quality issues and complaints of physical problems" as the claimant "was having issues climbing up and down the scaffolding" as well as "shoulder issues" in operating the tools required for that position. The claimant complained of shoulder problems *well before* he ever went to work as a roof-cutter, and he himself attributed those problems to "previous employment." Indeed, Mr. Black specifically testified concerning what the claimant told him: "He had said he had prior problems from previous employment… ." (T. 58; 56-58). This latter statement is consistent with the totality of the medical evidence that reveals the claimant's bilateral shoulder condition was degenerative and not traumatic in origin and nature. (CX1 at 58-65).

Due to the claimant's quality issues and shoulder complaints Mr. Black explained he moved the claimant to an "easier" work cell, the roof-cutting job. Mr. Black explained this job was generally not a difficult, demanding, physically challenging job. He also explained in some detail how the roof-cutting job was performed. He said the aluminum coils weighed up to 2,000 pounds – not 3,000 to 4,000 pounds as the claimant had testified – and said they were heavy enough that

once they were pushed with an arm or leg they were heavy enough they would keep rolling without any additional push. Mr. Black directly contradicted the claimant's testimony concerning the physical requirements and difficulty of the roof-cutting job and flatly stated this job was "not a very face-paced job." In a 10-hour shift a roof-cutter like the claimant would spend some 18 minutes unrolling and rolling-up the aluminum sheets, separated by anywhere from 20-30 minutes during which he was cutting the aluminum sheets, and that he also would perform various other jobs throughout his shift. Just as Mr. Newton and Mr. Asbell would testify after him, Mr. Black said the claimant never reported any work-related shoulder injuries to him and never attributed the origin of his shoulder problems to his job at Interstate. (T. 56-80).

Likewise, Mr. Newton and Mr. Asbell – who also no longer worked with Interstate as of the hearing date – testified consistent with Mr. Black's testimony and also directly contradicted the claimant's description of his roof-cutting job requirements, and confirmed the claimant had never claimed or reported that his bilateral shoulder problems were work-related. (T. 80-96; 96-111). In fact, Mr. Asbell described the roof-cutting job as "the easiest, lightest job in the plant." Mr. Asbell further testified he was aware the claimant had told Mr. Black that he "was almost 60 years old and he had previous shoulder injuries from previous employment and throughout his work history." (T. 96-111). Again, the claimant's reported statement to Mr. Black, of which Mr. Asbell was aware, is consistent with the totality of the medical evidence that reveals the claimant's bilateral shoulder condition was long-standing, degenerative and not traumatic in origin and nature, and had been symptomatic well before his employment at Interstate. (CX1 at 58-65). In summary, the overwhelming preponderance of both these witnesses' testimony conclusively demonstrate the claimant's roof-cutting job at Interstate may accurately or reasonably be

characterized as either "rapid" or "repetitive" within the Act's meaning.

Since the claimant has failed to meet his threshold burden of proof in demonstrating his bilateral shoulder problems were not the result of "rapid and repetitive" motion as the Act requires, we do not even need to proceed to a discussion of Act's second gradual-onset injury requirements, namely that the claimant's roof-cutting job at Interstate was the "major cause" of his bilateral shoulder condition. Still, it should be noted that the totality of the medical evidence reveals the claimant's bilateral shoulder condition was degenerative in both origin and nature, and not the result of trauma. (CX1 at 56 -65; 1-66). Consequently, the medical evidence is insufficient to meet the Act's "major cause" requirement for a compensable gradual onset injury. While I do not doubt the claimant experienced pain in both his shoulders while he was working at Interstate, there exists no credible medical evidence that the underlying cause of that pain was the result of a gradual onset compensable injury as such an injury is defined by the Act and relevant case law. Experiencing pain at work and being injured at work are not the same thing.

Moreover, it should be noted for the record that Interstate's HR manager, Ms. Schreckhise, credibly testified – consistent with the testimony of Mr. Black, Mr. Newton and Mr. Asbell – that she had no knowledge of the claimant having ever reported any work-related injury while he was employed with Interstate. She said she had no knowledge the claimant was alleging a work-related injury until some seven (7) months after the claimant left his job at Interstate. Although the claimant continued to work the rest of the month after the July 4, 2024, Fourth of July holiday (RX1 at 6-10), Ms. Schreckhise testified he never returned to work in August 2024, was considered a "no-call-no-show" and, therefore, was terminated effective August 5, 2024. (T. 111-118).

Finally, it is both interesting and revealing the claimant never sought treatment for his

bilateral shoulder pain until September 5, 2024 – almost an entire month after he failed to return to his job at Interstate. (CX1 at 1; 2-14). Also, again, the claimant's reports of experiencing pain at work are not the same thing as having sustained an injury at work. And, clearly, the claimant has failed to meet any of the Act's requirements in demonstrating he sustained a gradual-onset compensable injury during his short stint of employment at Interstate.

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 claimant has failed to meet his burden of proof pursuant to the Act in demonstrating his alleged right and left shoulder injuries constitute compensable gradual-onset injuries within the Act's meaning.

3. The claimant has failed to meet his burden of proof in demonstrating his degenerative bilateral shoulder problems were either the result of rapid, repetitive motion or that his work duties at Interstate were the major cause of those problems.

4. The claimant has failed to meet his burden of proof in demonstrating his attorney is entitled to a fee on these facts.

WHEREFORE, this claim hereby is denied and dismissed subject to the parties' appeal rights pursuant to ***Ark. Code Ann.*** Section 11-9-702 (2025 Lexis Repl.)

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp