

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H304579**

GLEND A KENNEDY, EMPLOYEE

CLAIMANT

**UNIVERSITY OF ARKANSAS AT PINE BLUFF,
EMPLOYER**

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA

RESPONDENT

OPINION FILED 3 DECEMBER 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 9 October 2025 in Pine Bluff, Arkansas.

Ms. Risie Howard appeared on behalf of the claimant.

Mr. Robert Montgomery appeared on behalf of the respondents.

STATEMENT OF THE CASE

A Prehearing Order was filed on 14 July 2025 and admitted to the record as Commission's Exhibit No 1. For this litigation, and consistent with that Order, the parties agreed to the following at the hearing:

STIPULATIONS

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employee/employer/carrier-TPA relationship existed at all times relevant to this claim.
3. On 14 February 2023, the claimant allegedly fell while at work. She alleges that she sustained compensable injuries by specific incident to her right shoulder, right knee, right wrist, and back.
4. The applicable average weekly wage would entitle the claimant to the maximum available weekly benefit amounts of \$835 for Temporary Total Disability (TTD) and \$626 for Partial Permanent Disability (PPD).
5. The respondents have controverted this claim in its entirety.

ISSUES TO BE LITIGATED

1. Whether the claimant sustained compensable injuries to her right shoulder, right knee, right wrist, and/or back by specific incident on 14 February 2023.
2. Whether the claimant is entitled to reasonable and necessary medical benefits, including reimbursement for past treatment, mileage, and future treatment.

All other issues are reserved.

CONTENTIONS

The Prehearing Order incorporated the following contentions from the parties' respective prehearing questionnaire responses:

Claimant

The claimant was carrying a box to the back of her classroom when she tripped over an electric socket. She fell against equipment that she and her chairperson had asked the University to remove from the classroom. She landed on the floor. Although the claimant may have had preexisting injuries, the "egg-shell plaintiff" rule would apply. "You take your victim as you find her." Therefore, the employer is liable to the claimant.

Respondent

The claimant alleges that she sustained injuries as the result of falling on February 14, 2023. She contended that she sustained injuries to various body parts. The report of injury was investigated by the respondents, and it was determined that the claim did not meet the statutory requirements of a compensable injury. After reviewing available information, the respondents have controverted this claim in its entirety. The Claimant's claim is not supported by objective medical findings of an acute work-related injury.

The Respondent reserves the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The stipulations as set forth above are reasonable and are hereby accepted.
3. The claimant has failed to prove by a preponderance of the evidence that she suffered any compensable injuries by specific incident on or about 14 February 2023.
4. Because the claimant has failed to prove a compensable injury, her claims for related medical benefits are moot and will not be addressed in this Opinion

ADJUDICATION

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

SUMMARY OF THE EVIDENCE

The claimant was the only witness. The record consists of the hearing transcript and the following exhibits: Commission's Exhibit № 1 (the 14 July 2025 Prehearing Order); Claimant's Exhibit № 1 (seven pages of medical records);¹ [the record does not include a

¹ Several of the records admitted into the record by the claimant contained her counsel's hand-written notations. "Clean" copies of these records were not made available for

Claimant's Exhibit No 2] Claimant's Exhibit No 3 (three photos); Claimant's Exhibit No 4 (a one-page report from an MRI of the claimant's right shoulder); Claimant's Exhibit No 5 (a one-page questionnaire prepared by Claimant's counsel and completed by Stuart Jones, DPT); and Respondents' Exhibit No 1 (one index page and 32 pages of medical records).²

Hearing Testimony

The claimant is a 73-year-old professor at the University of Arkansas at Pine Bluff. She testified that she hurt herself when she tripped and fell in a classroom on 14 February 2023. According to the claimant, she stumbled over some cords and/or an electrical outlet and cover on the classroom floor. "I cannot say exactly how I fell, but I found myself on the floor. I was—when—it's like when I fell, I guess, I twisted and fell against the wall. There was a display monitor there and I, good as I recall, did fall to the right side." [TR at 50.]

She claims that as a result of that alleged fall, she suffered compensable injuries to her right shoulder, right wrist, right knee, and back. The claimant acknowledged pre-existing conditions and past treatments related to the same injuries that she is claiming as

inclusion in the record. These writings on the records are not considered to carry relevant or additional evidentiary value.

There was confusion on the claimant's part before the hearing about what exhibits were being made part of the record. Discussions about this appear in the hearing transcript. The claimant suggested the impression that any materials exchanged with opposing counsel, with copy to the Commission, before the hearing were, essentially, deemed to be admissible evidence *and* admitted to the record before the hearing began. We discussed that, consistent with Ark. Code Ann. § 11-9-705(a)(1), the Commission is not bound by the technical rules of evidence or procedure; but the Commission is informed by those rules in its review of what purported evidence should be admitted to the record and what evidentiary weight should be afforded to the same. Towards the end of the proceeding, I made clear to the claimant that only evidence offered and admitted into evidence at the hearing would be made part of the evidentiary record:

Judge: So, Ms. Howard, is there any other documentary evidence that you had exchanged before today that you want to make an exhibit? Because, to be very clear, our record today is based on the transcript of this hearing, the testimony that we've gotten from our witness, and then the things that are accepted into evidence while we're here. [TR at 55-56.]

compensable. She also acknowledged that she continued working after the date of her alleged fall. She offered very little testimony about the nature or extent of her alleged injuries and symptoms. Instead, she intended to rely on the few medical records she entered into evidence.

Medical Evidence

A clinic note shows that on 5 January 2022 (more than a year before the claimant's alleged workplace fall), she was seen by Dr. Eric Gordon. That note provides, in pertinent part:

CHIEF COMPLAINT: Right shoulder pain

HISTORY: Patient is a 69-year-old female who is right hand dominant and works as an educator for UAPB. Patient presents today for evaluation of right shoulder pain which has been present since last summer. She is not certain, but she did have a fall where she stumbled forward and landed on outstretched upper arms about 2 months prior to the onset of pain. There was not a direct connection but that is the only thing she could think of as a cause of her symptoms. Around June 2021 however she stated to have pain in her right shoulder that has been a bit worse lately.

Pain is mainly located lateral shoulder.

Pain is described as a moderate aching, throbbing pain.

The pain seems to be worse with lifting overhead, pushing, and pulling.

The pain is better with relative rest and limited activities.

Treatment so far has included occasional use of oral anti-inflammatories and activity modifications.

Patient also reports some difficulty reaching behind her back.

The patient was kind enough today to fill out the patient history questionnaire, which was reviewed and is documented in the EMR.

EXAMINATION: ...

Right shoulder range of motion testing reveals basically full shoulder range of motion except for mild limitation of internal rotation behind her back. She does have early trapezial activation with active shoulder range of motion but mobility otherwise is full. Shoulder does move with some mild intermittent crepitation. Impingement signs are mildly positive...

ASSESSMENT: Right shoulder pain likely secondary to rotator cuff tear.

PLAN: Diagnosis and treatment options were discussed with her. Discussed that I suspect she has a rotator cuff tear but fortunately is having only some mild to moderate symptoms currently. We will try round of physical therapy for strengthening and see how she responds to that. Follow-up 1 month.

[Resp. Ex. № 1.] The claimant returned to clinic on 16 February 2022. The note from that visit includes, in pertinent part:

Patient returns today for follow-up in regards to her right shoulder. She reports overall that physical therapy does seem to be helping with her function, but she complains of persistent weakness in her shoulder as well as a constant numb sensation in her hands with is constantly present. She does complain of occasional neck pain mainly present when she is lying flat.

ASSESSMENT: Right shoulder weakness concerning for rotator cuff tear and likely neurologic deficit.

Then, on 27 April 2022, the claimant saw Dr. Edward Saer. She reported abnormal feelings in her fingertips and right leg pain. Recent imaging studies were discussed, and she was assessed with the following:

Cervical stenosis with cord compression at C3-4 and C4-5 with early myelopathy. I had a long talk with her about this. I explained that she is going to need to have surgery to take the pressure off the spinal cord. If we leave this alone she is likely to develop progressive changes. The goal of surgery is to keep that from happening and hopefully she will get some improvement in her symptoms but there is no guarantee of that.

On 8 February 2023, nearly one week before the claimant's alleged workplace fall, the claimant saw Dr. Michael Cassat at a UAMS Orthopedic Clinic. The note from that visit provides the following:

HPI: She is a pleasant 70-year-old female who comes today with chronic right shoulder pain with loss of motion x2 years after a fall. This has not improved despite physical therapy. She also complains of right low back and lateral hip discomfort with an antalgic gait. She has no associated sensory change. It is not worse with motion of the hip.

PHYSICAL EXAM: ... Right shoulder with markedly limited range of motion in all planes. Strength is preserved with the exception of 4 out of internal rotation and 3/5 supraspinatus. Both lower extremities have normal strength, sensation, 3+ patellar reflex on the right, 2+ on the left. Straight leg raise is negative. Right hip has full range of motion without reproduction.

X-ray of the right hip shows some cystic change in the femoral head, preserved joint space. X-ray of lumbar spine with spondylolisthesis at L4/5, multilevel changes otherwise.

X-ray of the right shoulder shows a high-riding humeral head consistent with rotator cuff arthropathy.

We will get an MRI of her right shoulder to further evaluate her chondral surface and supraspinatus tear, start physical therapy for her low back.

[*Id.*]

An MRI report of the right shoulder dated 15 February 2023 includes:

IMPRESSION:

1. Attenuated supraspinatus tendon with high grade oblique tear of the bursal surface fibers anteriorly and interstitial tear extending to the myotendinous junction. Interstitial tear of the infraspinatus tendon extending to the myotendinous junction. Mild atrophy of the supraspinatus and infraspinatus muscles.
2. Moderate acromioclavicular osteoarthritis with lateral downsloping acromion with chronic subacromial impingement causing rotator cuff tear as described resulting in high riding humeral head.
3. Completely torn and retracted biceps tendon with nonvisualization of the tendon in the bipetal groove.
4. Subscapularis tendinopathy.
5. Circumferential degenerative changes of the glenoid labrum.

[Resp. Ex. No 1 at 19; Cl. Ex. No 4.]

A physical therapy evaluation is also dated 15 February 2023. That note includes the following:

CHIEF COMPLAINT & MECHANISM OF INJURY: Patient presents with complaints of low back pain. She states that her pain began a couple of years ago, but has gradually worsened. The right side of her back hurts, but the left side is fine. Occasionally, she will feel sharp pain in the R side of her low back, and she also has radiating pain down to her knee. Pt reports that sometimes just her knee will hurt and not her back. A while ago, she thought her pain was getting better and only had stiffness, but then it began to hurt worse again.

[Resp. Ex. No 1.]

On 3 April 2023, the claimant returned to the UAMS Orthopedic Clinic reporting a workplace injury. She was seen by Dr. Cassat again. The note from that visit provides, in part:

HPI: She returns today for a discussion regarding her work[-]related injury. When she was seen initially, we were evaluating her for a shoulder injury, back pain, hip pain, neck pain. She apparently sustained an injury the day before her MRI to these same areas, and subsequently reports that her injury worsened her symptoms...

ASSESSMENT: She is here today to discuss her MRI findings. By my interpretation, she has a partial tear of her rotator cuff, there is some associated atrophy. There is not substantial bony edema or effusion present that I would suspect with a 1-day-old injury. She does have degenerative changes at the AC joint. Her biceps is not visualized in her biceps groove on her axial sequences.

We discussed that I could not completely exclude that her injury occurred during her recent work-related problem, however I cannot say greater than 50% likelihood that this is the case. She would like to attend physical therapy, I think this is quite reasonable. If she fails then she will need to see my partner to discuss possible surgical intervention. Her only restrictions related to her job need to be limitations in overhead activity.

[*Id.* at 21-22.]

Then, on 15 July 2023, the claimant saw Dr. Lawrence O'Malley for a review of her history and an opinion relating to her claimed work-related shoulder injury. He opined: "I believe that with a reasonable degree of medical certainty that greater than 51% of the patient's current medical problems are related to her chronic shoulder injury prior to her work injury."

[*Id.* at 26.]

A few days later, on 19 July 2023, the claimant saw Dr. Wayne Bruffett for a review of her history and an opinion relating to her claimed work-related back injury. He opined: "The cause of her low back pain would be degenerative disc disease and a subtle degenerative spondylolisthesis that was existing [and] symptomatic prior to her fall at work. I would say with a reasonable degree of medical certainty that her low back symptoms and degenerative changes are pre-existing and not related to her fall of February 14th."

[*Id.* at 30.]

On 28 February 2024, the claimant saw orthopedic surgeon Dr. Jeffrey Hill for a new patient visit. The note from that visit provides, in part:

CHIEF COMPLAINT: Right shoulder

HISTORY OF PRESENT ILLNESS: Glenda F. Kennedy is a 71 y.o. female presenting for evaluation of their right shoulder. She has had some history involving this shoulder. In February of 2023 she had a fall [while] she was at work. She is a professor at UAPB. She states that prior to this fall she had some occasional pain and discomfort involving the shoulder but nothing significant. After the fall she had limited motion of the shoulder. She was seen by Dr. O'Malley [and] an MRI was completed. She was then referred to physical therapy. She has now had 2 rounds of physical therapy and her last round [ended] in October. She has perceived some benefit however has not been significant. She has not had any injections. She is right-hand dominant. She has medical history of hyperthyroidism.

...

PAST MEDICAL HISTORY: She has a past medical history of Arthritis.

...

REVIEW OF X-RAYS/STUDIES: There is preservation of the glenohumeral joint space. There is no inferior humeral head-neck junction osteophyte. Glenoid rim osteophytes are not visible. There is subtle superior migration of the humeral head with asymmetric narrowing of the superior glenohumeral joint space. There is no acromial osteophyte on scapular Y view. Acromial morphology appears normal. On axillary lateral, the humeral head is centered and the glenoid is without deformity or dysplasia. AC Joint demonstrates no arthritis. There is diffuse mild osteopenia. There are no fractures or caseous lesions.

MRI dated February 2023 reviewed. [She] has thinning of the posterior superior rotator cuff insertions with partial-thickness tearing. Tendinopathy of the upper border of the subscapularis. This tendon is not visualized within the groove. Penny degeneration noted within the subscapularis, supraspinatus, infraspinatus.

IMPRESSION/DIAGNOSIS: Glenda F. Kennedy is a 71 y.o. female with right rotator cuff deficiency.

TREATMENT PLAN: Long discussion with the patient regarding her diagnosis and treatment options. She feels that she has seen small benefits with therapy once like [sic] to continue this. We did discuss that this is reasonable. We did discuss that rotator cuff repair at her age and chronicity may be difficult to have a good outcome. She may end up needing a reverse

total shoulder arthroplasty. If she decides that therapy is not providing any benefit [...] then she will call us, we would obtain an MRI to better characterize the status of her rotator cuff. This would help us decide which surgical option would be best for her.

An Attending's Addendum to the note offers some additional details:

... MRI of the right shoulder from 2/15/23 was reviewed. These images are of suboptimal quality. This shows significant thinning of the posterior superior rotator cuff insertion with areas of high-grade partial-thickness tearing and some full-thickness tearing of the anterior crescent/cable. There is bony edema in the acromion from humeral head abutment. The subscapularis tendon is not visualized in the groove. There is diffuse chondrosis without any clear full-thickness chondral defects. There is moderate-severe AC joint arthrosis. On T1 parasagittal images there is mild atrophy of the upper subscapularis, supraspinatus, and infraspinatus. Fatty degeneration grade 1-2 for the subscapularis, grade 1 for the supraspinatus, grade 1-2 for the infraspinatus. Teres minor appears healthy.

[Cl. Ex. No 1.]

Claimant's counsel submitted three letters to providers seeking opinions on the relatedness of the claimant's general "injuries" (the letter was not specific to any particular diagnosis or symptom(s)) and her alleged workplace fall. Drs. Michael Cassat and Jeffery Hill declined to provide an opinion establishing causation. Stuart Jones, PT, DPT, returned the letter indicating that he believed that there was causal relationship "Based on subjective and objective measurements taken/obtained during initial physical therapy evaluation dated 3/14/24."

[Resp. Ex. No 1 at 31, 32; Cl. Ex. No 5.]

DISCUSSION

The claimant alleges that her injuries occurred by specific incident on 14 February 2023. She must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) an injury occurred that arose out of and in the course of her employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical

evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Id.* As explained below, the claimant has failed to prove by a preponderance of the evidence that she suffered any compensable injury.

The record simply lacks evidence that the claimant sustained compensable injuries to her right knee, right wrist, or her back. She did not testify about these alleged injuries; nor did she present objective findings to support these alleged injuries. The record evidence shows that any complaints about back pain are attributable to degenerative conditions. In the absence of *any* record evidence that she suffered compensable injuries to her right knee, right wrist, and her back, her claims for the same must fail.

The claimant was reluctant to testify at all. Respondents' counsel solicited the slightest amount of testimony about the claimant's alleged right shoulder injury; and in so doing, the claimant essentially acknowledged that she was having problems with her right shoulder before the date of her alleged fall. The medical records in evidence clearly establish that the claimant had a history of right shoulder complaints predating her alleged fall. As early as January of 2022, she was being seen for complaints of right shoulder pain, and she participated in conservative treatment for the same. She only happened to have an MRI study the day after her alleged fall because it had been scheduled at a clinic appointment *before* her alleged fall. The X-ray imaging obtained during that appointment showed irregularity that was most likely attributable to rotator cuff degeneration and/or a tear. The MRI scan then confirmed a rotator cuff tear and other degenerative changes.

The medical records address the alleged fall having no likely involvement in her shoulder complaints. Dr. Cassat explained, “There is not substantial bony edema or effusion present that I would suspect with a 1-day-old injury. She does have degenerative changes at the AC joint.” He went on to decline to relate her alleged fall to the findings from the imaging. Dr. Hall also declined to suggest any relation between the two. I find these opinions and the other records clearly indicating symptomology relating to preexisting conditions credible. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Subsequent records show that Drs. Bruffett and O’Malley found that the claimant had preexisting complaints and degenerative conditions that were not related to her alleged fall. While the record includes a letter from a physical therapist that appears to relate her complaints to the alleged fall, I find it to be inconsistent with the weight of the persuasive evidence to the contrary and not credible.

Accordingly, the claimant has failed to prove by a preponderance of the evidence that she sustained any compensable injury by specific incident on 14 February 2023. Her claims for benefits are therefore moot and are not otherwise being addressed in this Opinion.

CONCLUSION

The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury by specific incident. Accordingly, this claim for initial benefits is DENIED and DISMISSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE