

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H010321

CRYSTAL S. LARRY, EMPLOYEE CLAIMANT

PRESBYTERIAN VILLAGE, INC.,
EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED SEPTEMBER 23, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant appeared, pro se.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On July 27, 2021, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing telephone conference was conducted on May 26, 2021, from which a prehearing order was filed on that same date. The Prehearing Order has been marked as Commission's Exhibit No 1.

Stipulations

During the prehearing telephone conference, and during or at the start of the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within Claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times, including on or November 3, 2020, when the Claimant sustained a compensable

Larry – H010321

injury to her low back, in the form of a lumbar strain.

3. The claim was accepted as a compensable medical only claim. The Claimant's average weekly wage in November 2020 was \$442.33.
4. The Claimant was released to return to work at full-duty capacity on November 13, 2020.
5. The Claimant later obtained a change of physician to Dr. James Calhoun.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

The parties agreed to litigate the following issues.

1. Whether the Claimant sustained compensable injuries to her neck, shoulders, right arm, and thoracic spine during the November 3, 2020, work-related incident.
2. Whether the Claimant is entitled to reasonable and necessary medical treatment for her back and other alleged injuries.
3. Whether the Claimant failed to give notice of her injury until March 22, 2021.
4. Job retraining. At the time of hearing, the Claimant withdrew this issue.

Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends that on the November 3, 2020, she was working on the third floor and was rotating a resident when she felt a sharp pain in her lower back. Since that time, the Claimant has alleged that she also sustained injuries to her neck, shoulders, right arm, and thoracic

Larry – H010321

spine during this incident. She further contends that she is entitled to medical benefits for those alleged injuries.

Respondents:

The Respondents contend that they had no notice of neck, shoulders, right arm, or thoracic spine injuries until the Form AR-C was filed in this matter on March 22, 2021. It is Respondents' contention that Claimant did not suffer compensable injuries to those body parts. It is further Respondents' contention that the Claimant has reached maximum medical improvement associated with her compensable low back injury and that her need for medical treatment associated with the same is not reasonable and necessary. Respondents contend that any need for medical treatment associated with that body part would be preexisting and unrelated to her work-related injury.

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the Claimant's testimony and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that she sustained compensable injuries to her neck, shoulders, right arm, and thoracic spine during the November 3, 2020, work-related incident.
4. The Claimant failed to prove by a preponderance of the evidence that additional

Larry – H010321

medical treatment is reasonable and necessary in connection with her compensable lumbar strain injury of November 3, 2020.

5. The Claimant's Post-Trial Letter Brief of June 28, 2021, has not been considered in this Opinion.
6. All other issues have been rendered moot and not discussed herein this Opinion.

Summary of Evidence

Ms. Crystal S. Larry (the Claimant) was the sole witness.

Additionally, the record consists of the hearing transcript of the July 27, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit 1 includes the Commission's Prehearing Order of May 26, 2021, and the parties' respective response to the Prehearing Questionnaire; Claimant's Exhibit 1, includes a compilation of her Medical Records Only, consisting of 48 numbered pages; Claimant's packet of Non-Medicals Only consisting of 41 numbered pages was admitted into evidence and marked as Claimant's Exhibit 2; Claimant's Exhibit 3 consists of four pages relating to her application with the Arkansas Department of Workforce Services; Claimant offered into evidence a USB Drive, which has been marked as Claimant's Exhibit 4; Respondents' Exhibit 1 consists of 24 numbered pages of Medical Records; and Respondents' Exhibit 2 is a compilation of Non-Medicals, consisting of 24 numbered pages.

Testimony

The Claimant now age 44, is currently employed by Presbyterian Village, as a CNA. On November 3, 2020, while performing her employment duties as CNA for the respondent-employer, she sustained an admittedly compensable injury to her back while rotating a patient in the bed. According to the Claimant, the patient weight approximately 260 pounds. There were no witnesses

Larry – H010321

to the incident, except for the patient. The Claimant worked the night shift. Her normal working hours were from 10:30 p.m. until 6:30 a.m. According to the Claimant, her injury occurred around four or five o'clock in the morning. The Claimant reported her injury over the phone when she got off work that morning.

She completed paperwork for workers' compensation benefits. The Claimant sought treatment from Concentra for her back. She denied that they took her off work. However, the Claimant testified that they gave her restrictions of no lifting or pushing over 20 pounds. According to the Claimant, they did X-rays and gave her two steroid injections. She also underwent two weeks of physical therapy for her back injury. The Claimant maintained that Dr. Calhoun has recommended surgery for her back, but he did not put it in his medical notes. Per the Claimant, she last treated with Dr. Connor, a physician associated with Baptist Health. According to the Claimant, she paid out of her own pocket for this treatment using her group health insurance policy.

The Claimant confirmed that she obtained a change of physician to treat with Dr. Calhoun. She was evaluated by Dr. Calhoun on March 24, 2021. After seeing Dr. Calhoun, the Claimant sought medical treatment from Dr. Connor on her own. According to the Claimant, Dr. Connor recommended more physical therapy for her. However, she was unable to afford it. The Claimant essentially testified that Dr. Calhoun declared her to be at maximum medical improvement for her injury. According to the Claimant, her whole back is "messed up." She is unable to sit for prolonged periods of time. The Claimant testified that she has pain, cramping, and muscle spasms. She essentially testified that the nerve going from her back to her hand spasms and causes it to ball up into a knot sometimes.

Larry – H010321

The Claimant testified that she previously injured her back in 2017 performing the same job. According to the Claimant, she filed a workers' compensation claim, but her paperwork was lost. The Claimant testified that she also received a steroid injection and two weeks of physical therapy for that injury. She also injured her back in 2010, while working for a facility in Fayetteville as a CNA. According to the Claimant, it was the same type of incident at work of pushing, pulling, and tugging a patient. She admitted that they did a prior MRI of her back and it showed about the same thing, just a little bit more now.

She confirmed that she is asking the Commission for an award of more physical therapy treatment for her back. However, the Claimant confirmed that no doctor has recommended additional treatment for her back. She maintained that her doctor recommended therapy but did not put it in his notes. The Claimant takes over-the-counter medications for her back, namely Tylenol.

Regarding the Claimant's shoulder/right arm, she confirmed that during the phone call to the director of nursing (DON), she did not report an injury to her right arm. Per the Claimant, at that time, she did not have problems with her arm. The Claimant essentially confirmed that she realized she had injured her neck after she had been released from care for her back injury. She testified that it came on "gradually/slowly," and worsened over time. According to the Claimant, she tried to report a neck injury in January and February (2021) by calling the adjuster, Katie Staten. Ultimately, the Claimant testified that she realized around the end of November that she had injured her neck.

The Claimant testified that she did not see a doctor for her neck until March of 2021 because the Respondents would not pay for any treatment. The Claimant testified that she saw Dr. Connor for her neck. According to the Claimant, he recommended physical therapy for her neck,

Larry – H010321

but she has not been able to afford it. She confirmed seeing Dr. Connor in May of this year. The Claimant admitted that she has not treated with any other doctor for her neck condition.

With respect to the Claimant's shoulder condition, the Claimant testified that she first experienced symptoms of "cracking" of her shoulder in November 2020. The Claimant stated that these symptoms came on gradually as well. However, she next testified that all of it gradually came on all together between November and January.

Specifically, the Claimant testified:

Q When did you report to your employer you had injured your shoulder?

A I did not report nothing to them because the way they was treating me. I -- that's why I called workers' compensation and they was telling me what to do and I told them I couldn't contact my adjuster and I surely didn't like the way I was being treated at work.

Upon further questioning, the Claimant testified that Dr. Connor dealt with her cervical/neck, shoulders, and nerve injuries. She confirmed undergoing an MRI of her shoulder. The Claimant testified that she first realized a possible injury to her thoracic spine around the end of November 2020. She admitted to seeing Dr. Connor for her right arm condition. The Claimant again maintained that she tried to report her injuries in January 2021, by calling the adjuster, but she was never available.

Although the Claimant did not miss any days from work, she testified that she needed to miss work. The Claimant verified that she continues to work 32 to 35 hours per week for Presbyterian Village.

On cross examination the Claimant confirmed that she recalled her deposition being taken. The Claimant admitted that they discussed some of her preexisting conditions. The Claimant confirmed having injured her back in 2010 while working for Legacy Hospice. She later had a flareup of her back condition in 2016, while working for Forrest City Medical Center. During her

Larry – H010321

deposition, the Claimant testified that she had no back issues beyond those two and certainly nothing since going to work for Presbyterian Village.

Under further questioning, the Claimant admitted that since her deposition was taken, she has looked at the Respondents' medical packet but not really reviewed it. Initially, the Claimant would not admit or deny that during her deposition testimony, she stated that her last prior injury to her back occurred in 2016 while working at Forrest City Medical Center. The Claimant finally confirmed that she testified during her deposition that the 2016 injury at Forrest City was the last time she had any prior symptoms of the back. However, the Claimant in fact had a problem with her back in 2017 while working for Presbyterian Village.

Specifically, the Claimant testified:

Q With regard to your neck, mid back, arms, and legs, you told me you never had any prior problems, injuries, symptoms, or conditions at any of those body parts?

A No. Not my neck.

Q I'm going just -- I'm just going on what you told me in your deposition.

A Whatever that says I answered to that, and I guess that's what it was. That don't mean I clearly understood everything.

Q Okay.

A But, yes, whatever I put down there is what I said.

Regarding her neck, the Claimant confirmed that she testified during her deposition that prior to November 3, 2020, she did not ever have any prior problems, symptoms, injuries, or conditions with her neck. She further confirmed to having previously testified to no symptoms or conditions to her upper or lower extremities.

She essentially admitted to having testified during her deposition that she had spasms in the musculature of her upper shoulder and neck around the back near her bra strap previously since

Larry – H010321

at least 2017. However, the Claimant explained that this has nothing to do with her cervical injury.

Next, the Claimant was asked about medical records dated May of 2017, wherein she treated for lower back and upper back problems. Specifically, the Claimant initially testified that she only treated for lower back problems in 2017. Upon being shown a copy of the medical record, she agreed to treating for both her upper back and lower back problems. According to this same report, the Claimant complained of neck pain. She admitted that in May of 2017, she treated for upper and lower back problems. The Claimant also admitted that on that same date, she complained of neck pain to her doctor. She confirmed that her statement during her deposition wherein she stated that she never had any mid back or neck pain before November 3, 2020, would not be true based on the medical records.

Under further questioning the Claimant again admitted that her deposition testimony about having no back problems after her employment ended in 2016 with Forrest City Medical Center, was incorrect. She agreed that she had multiple visits in 2017 wherein she complained of having back pain, which did in fact occur after her employment with Presbyterian.

Regarding the mechanics of her injury of November 3, 2020, the Claimant denied that she was rolling a patient towards her. Instead, the Claimant testified, “I said I was pushing her back and forth.” Ultimately, the Claimant agreed that she was rotating the patient towards her when her injury happened. However, she added, “I still change her both ways, but yeah.”

The Claimant admitted that she filled out paperwork with Joselyn once she reported the incident. She further admitted that she listed on the AWCC Form 1, only her low back as being the injured body part. The Claimant also only listed her low back on the Med Corp report and the Form AR-N. She essentially agreed that a big part of her explanation for not reporting the other injuries is that she claimed to have had difficulty in contacting Rebecca Gwatney, the adjuster.

Larry – H010321

The Claimant chiefly agreed that she felt mistreated by her employer to the extent that she did not report the injuries to them because she did not want to deal with them.

Per the Claimant's deposition testimony, she would call the adjuster, but she would return her call from a blocked telephone number. According to the Claimant, she found out later that the adjuster was calling from a blocked number, but she does not answer phone calls from blocked numbers.

Under further questioning, the Claimant testified:

Q But what's more important is as of December, January, February, March, our firm was already on the case. We had made an entry of appearance. You had the contact information for everybody in my firm. Email?

A I had what contact information?

Q Email?

A No. No, I didn't.

Q A phone number?

A Uh-uh. Not from them I didn't.

Q Address?

A No, I did not.

Q Okay.

A Now, y'all sent me that, but that don't mean I received that. That's something y'all sent me. I never did receive nothing from them like that through no email. Y'all sent that copy with a big, ole red question mark at the top as if something didn't come through because it did come through on my end. And then on top of that didn't nobody tell me that they were going to contact me through email because of COVID. I never got that explanation.

Under further questioning, the Claimant agreed that she knew by December 18, 2020 that the adjuster and Presbyterian were represented by counsel. The Claimant agreed that she has contact information for the Respondents' law firm. However, she denied that by February 12,

Larry – H010321

2021, she had the email address for the adjuster and all of her contact information. The Claimant explained that she does not receive all of her emails.

The Claimant admitted that Dr. Calhoun requested an MRI, and she underwent it. However, the Claimant denied that the adjuster sent her an email confirming the MRI. The Claimant refused to answer the question of whether her deposition and attendance was confirmed by the Respondents' law firm with her email. She stated, "I don't read everything, and I don't get all my emails..." The Claimant denied receiving an email from the adjuster.

She denied that there is no mention of the extra body parts until March 24, 2021, the day after her lumbar MRI. The Claimant admitted that her symptoms gradually started by the end of November 2020. She agreed that she filed a claim for benefits (a Form AR-C) on December 14, 2020. At that time, the Claimant reported only a lower back injury. She confirmed that there was absolutely no mention of an injury to her neck, arms, legs, or shoulders on that Form AR-C. The Claimant admitted that there is no mention of the other alleged injuries until the filing of the second Form AR-C on March 22, 2021,

Under further questioning, the Claimant admitted that she applied for unemployment benefits. She verified that she completed the application herself. The Claimant agreed that she was completely truthful and honest with the Department of Workforce Services. She admitted that she stated on the application that she had no disabilities that would prevent her from working; that she could work full-time; and that she could begin work immediately. However, the Claimant went on to explain, "... Because that was not about disability." She completed this application in January of 2021.

The Claimant admitted that Dr. Calhoun released her to full duty just like Concentra had done. She agreed that Dr. Calhoun had taken steps to obtain the MRI prior to her office visit with

Larry – H010321

him. According to the Claimant, Dr. Calhoun had the study in hand before he provided his opinion. The Claimant denied that on February 12, 2021, the adjuster sent her an email confirming the MRI. Per the Claimant, someone from the commission sent her confirmation.

She essentially admitted that the Respondents' attorneys confirmed her attendance using her email address. However, the Claimant explained that she does not read everything.

The Claimant admitted that her entire back claim is for degenerative disc disease. She agreed that this is what the MRI showed.

Medical Evidence

A prior MRI was performed of the Claimant's lumbar spine on August 17, 2010 due to complaints of low back pain and left leg pain. Dr. Ron Dougan rendered the following opinion:

1. A disc protrusion is present in the left paracentral region at the L5-S1 level which appears to produce slight impingement on the S1 nerve root on the left.
2. Mild facet joint hypertrophy and ligamentous thickening is present at the L3-L4 and L4-L5 level. There is no significant foraminal narrowing or central canal stenosis at these levels.
3. Mild osseous degenerative changes appear to be present the L5-S1 level.

On September 7, 2018, the Claimant sought treatment for back pain from Dr. Ralph Joseph. He assessed the Claimant with "Acute bilateral low back pain without sciatica."

The Claimant sought initial medical treatment from Concentra Health Centers in Little Rock on November 4, 2020. At that time, the Claimant complained of, among other things, back pain, back stiffness, decreased spine range of motion, decreased flexion, and decreased extension. She gave an injury date of November 2, 2020. Merritt Finney, PA-C, diagnosed the Claimant with strain of muscle tendon, fascia, and tendon of lower back, for which a medication regimen of Naproxen and cyclobenzaprine were ordered. The Claimant was directed to undergo physical therapy. Ms. Finney also placed the Claimant on physical restrictions of no lifting, pushing, or pulling over 20 pounds.

Larry – H010321

On November 4, 2020, the Claimant underwent an initial evaluation for physical therapy due to her lumbar strain injury. She was authorized for a total of six visits. Jerry Daniel, the physical therapist, noted that the Claimant was a good candidate for therapy intervention and demonstrated good prognosis for improvement. She reached 50% of goal at the first visit. It appears that during this visit the Claimant underwent moist hot pack therapy.

Finney released the Claimant to return to work without any physical restrictions on November 13, 2020.

The Claimant underwent an MRI of the lumbar spine on March 4, 2021. Dr. Shannon Turner rendered the following opinion:

Impression:

Degenerative disc disease and facet arthropathy are seen in the mid lower lumbar spine. At L4-5, a small disc extrusion is seen extending inferior to the disc space with facet hypertrophy contributing to moderate central canal and mild right neural foraminal stenosis. Mild to moderate bilateral neural foraminal stenosis is also seen at L5-S1.

On March 24, 2021, the Claimant underwent an evaluation by Dr. J. Michael Calhoun. He wrote, in relevant part:

The patient is a 44 year old female who presents with back pain. The patient injured her lower back on November 3, 2020 when she was moving an invalid patient in her bed. She was evaluated at Concentra and was treated with intramuscular Toradol and Decadron. She was prescribed physical therapy and attended 5 of 6 session. the[sic] patient was reevaluated on November 13 and reported she was doing better. She was released to regular duty that day. An MRI of the lumbar spine had been done November 4 which showed a marked degenerative disc at L5-S1 and to lesser degree at L4-5. There was central disc protrusion or bulge at L4-5 with relative stenosis. Since returning to work, she reports increasing neck pain with weakness and pain in the right shoulder. There is also decreased strength right arm. The patient also reports increasing back pain with radiations into both hips and legs. This primarily occurs when standing or walking. The patient also has a history of several previous work-related lower back injuries. The last of these occurred in 2017. She was treated with physical therapy and returned to work with no restrictions.

Larry – H010321

All of the findings on her lumbar MRI are pre-existing, including the central disc bulge at L4-5. I would not suggest anything surgical. Her neck and right arm are symptoms that are not accepted condition[sic] by her Worker's [sic] Compensation carrier. She is at maximal medical improvement with regard [sic] her lumbar spine and may return to work with no restrictions. From the findings on the MRI all being pre-existing, she has suffered no permanent impairment.

An MRI of the Claimant's cervical spine without contrast was performed at Baptist Health Medical Center, in North Little Rock, on May 4, 2021. Per this diagnostic report, the Claimant had a history of radiculopathy, cervical region, neck pain, cracking, and stiffness. Dr. Justin Long rendered the following impression:

1. Multilevel disc degenerative changes with mild canal narrowing at C4-C5, C5-C6, C6-C7 where there is slight flattening of the ventral surface of the cord.
2. Dominant posterior disc protrusion eccentric to the LEFT at C6-C7.
3. Multilevel uncovertebral hypertrophy with mild to moderate foraminal narrowing bilaterally at C6-C7. Mild foraminal narrowing at C5-C6 on the RIGHT at C4-C5.

On May 19, 2021, the Claimant underwent evaluation by Dr. David Edward Connor due to complaints of neck pain. The Claimant reported that this was a recurrent problem. Her current problem started a week ago (2017, November 2020). The problem was occurring daily. The quality of her pain was aching and cramping. The pain radiated to the left shoulder, right shoulder, left scapula, right scapula and right arm. The severity of her pain was at 7/10. At that time, Dr. Connor diagnosed the Claimant with cervical disc disorder at C4-C5 level with radiculopathy and cervical spondylosis with radiculopathy. He noted that the imaging demonstrated degenerative changes worst at C4-C5. As a result, Dr. Connor prescribed muscle relaxers and ordered a short course of physical therapy. He also arranged for the Claimant to undergo an EMG/nerve conduction study of both arms to assess her progress.

A review of the non-medical evidence demonstrates that the Claimant filed a Form AR-C on December 14, 2020, with the Commission alleging an injury to her lower back. Her date of accident was noted to be November 3, 2020.

Larry – H010321

The Claimant filed a second Form AR-C on March 22, 2021, with the Commission for her November 3, 2020 work incident. At that time, the Claimant gave the following description and cause of injury and the part of her body injured, in relevant part: “Ongoing injuries after being released from Concentra care. Neck, shoulders, right arm, thoracic[*sic*] spine cervical. Bad muscle spasm in my hands, lower back, and legs. Cant [*sic*] keep my right arm elevated up long without support...”

The Claimant also submitted a USB of two conversations that she had with the adjuster. These have been reviewed.

Adjudication

A. Evidentiary

Following the hearing, there were several post hearing email exchanges that initiated with the Claimant. Most notably, the Claimant submitted a purported Post-Trial Letter Brief by regular mail, on July 28, 2021. Per an email dated July 29, 2021, the Respondents objected to this brief being considered herein this Opinion. Specially, Respondents’ attorney, wrote in relevant part: “Claimant’s letter appears to be an attempt to provide additional testimony without the risk of cross-examination. Therefore, I ask that Claimant’s letter not be taken into consideration.”

I am persuaded that the Claimant is attempting to supplement the record with additional testimony. However, it has been repeatedly held that a litigant has a vital right to cross examine a witness. The ability of a litigant to cross examine a witness is one of the safeguards to accuracy and truthfulness. However, if I allow this additional testimony to be considered via Claimant’s brief, it does not afford the Respondents with the opportunity to cross examine the witness. Therefore, under these circumstances, I find that the Claimant’s brief and other information sent after the hearing should not be considered herein this Opinion.

B. Additional Medical Treatment

The Claimant's back injury was accepted as a medical only claim for a low back strain. The Respondents paid for some conservative treatment for the Claimant's admittedly compensable low back strain. She received a change of physician order to treat with Dr. James Calhoun. They paid for the one-time visit and a lumbar MRI. The Claimant now contends she needs additional medical treatment for her back injury of November 3, 2020 although no medical personnel or doctor has recommended any further treatment for her back condition.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Repl. 2012).

Here, the instant Claimant sustained an admittedly compensable injury to her low back on November 3, 2020, while performing employment duties as a CNA. Her injury occurred as she rotated an overweight patient in bed. The Claimant treated conservatively at Concentra, under the care of Merritt Finney, PA-C, in the form of a medication regimen and some physical therapy treatment. My review of the evidence shows that Finney ordered six sessions of physical therapy, but the Claimant only underwent five sessions, with good results. At no time was the Claimant ever taken off work. On November 14, 2020, Ms. Finney pronounced the Claimant to be at maximum medical improvement for her lumbar strain. Finney released the Claimant from care without any physical restrictions.

Thereafter, the Claimant did not seek any medical treatment for her back. However, the Claimant obtained a change of physician to treat with Dr. Michael Calhoun. On March 4, 2021, the Claimant underwent an MRI of the lumbar spine at the direction of Dr. Calhoun. This was done prior to the Claimant's March 24, 2021 office visit with Dr. Calhoun. At that time, Dr.

Larry – H010321

Calhoun opined that the MRI revealed only preexisting degenerative disc changes, including the central disc bulge at L4-L5. He did not suggest surgical intervention, and nor did he recommend any medical treatment for the Claimant's back. Dr. Calhoun pronounced the Claimant to be at maximal medical improvement (MMI) with regard to her lumbar spine. He also released her to return to work without any restrictions. Dr. Calhoun specifically opined: "... She has suffered no permanent impairment."

The Claimant subsequently sought treatment from Dr. Connor on her own in May of 2021. However, Dr. Connor's clinic note primarily dealt with the Claimant's complaints of the neck, shoulders, and arms problems. I am unable to find where he recommended any treatment for the Claimant's lumbar strain.

Here, the only evidence offered of the Claimant's alleged need for additional medical treatment is her own testimony. However, I found the Claimant not to be a credible witness in this respect since her request for additional medical treatment does not comport with the expert opinions and/or documentary records. Even the Claimant admits that there are no written medical reports of record proving that any additional medical treatment has been recommended for her low back strain injury by any of her medical providers. She also testified during her deposition that she had no back problems after her incident at Forrest City in 2016. However, the Claimant admitted on cross examination that she had problems with her back in 2017.

Moreover, in January of 2021, the Claimant completed an application for unemployment benefits. At that time, she stated on that application that she had no disabilities and was ready to work. The Claimant has also continued performing her regular employment duties as a CNA with Presbyterian Village since her compensable incident of November of 2020, except for when she contracted COVID-19 and had to be off work.

Larry – H010321

Therefore, to summarize, considering that both Finney, PA-C and the Claimant's treating physician, of her own choosing, Dr. Calhoun, have declared her to be at MMI, without any permanent impairment or physical restrictions, and no recommendations for any further treatment; and because no other medical care provider of record (namely, Dr. Connor) has recommended any additional medical treatment for the Claimant's lumbar strain injury of November 3, 2020, I find that the Claimant failed to prove by a preponderance of the evidence that any additional medical treatment is reasonably necessary in connection with her compensable lumbar/back strain injury of November 3, 2020.

I realize that it is well-settled in workers' compensation law that a Claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the Claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark App. 230, 184 S.W. 3d 31 (2004). However, in the present matter, the record does not reflect that there is a need and/or recommendation for any additional medical treatment in connection with the Claimant's compensable lumbar strain injury of November 3, 2020.

C. Compensability

In addition to her admittedly compensable lumbar strain injury of November 3, 2020, the Claimant has asserted she sustained additional compensable injuries to her neck, shoulders, right arm, and thoracic spine during this incident.

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a Claimant must show that: (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

Larry – H010321

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). However, if a Claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). 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).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant has failed to prove by a preponderance of the credible evidence that she sustained compensable injuries to her neck, shoulders, right arm, and thoracic spine, arising out of, and in the course of her employment with the respondent-employer on November 3, 2020.

As noted above, I find that the Claimant was not a credible witness. In that regard, despite the Claimant's assertion during her deposition testimony that she had no shoulder or neck problems prior to the work-related incident of November 2020, a medical record dating back to 2017 clearly demonstrates that the Claimant had suffered prior shoulder and neck problems. This report also demonstrates that the Claimant had experienced pain and spasms in her shoulders/arms previously. These symptoms are similar in nature to the symptoms described by the Claimant following her alleged work incident of November 3, 2020.

Here, the Claimant maintained that her symptoms in her other bodily parts began gradually around the end of November. However, when the Claimant filled out the incident report, she did not mention these other body parts. Instead, she only mentioned her back. She confirmed on cross

Larry – H010321

examination that she listed on the AWCC Form 1 and Form AR-N only a low back injury. The Claimant also completed a Med Corp report for only a back injury.

Most notably, despite undergoing medical visits at Concentra under the care of Merritt Finney, PA-C and five visits of physical therapy sessions for her back injury, the Claimant did not make a documented report to these medical providers about her other alleged injuries. In fact, the Claimant did not file the first Form AR-C with the Commission until December 14, 2020, but she only listed an injury to her back.

The Claimant gave conflicting and confusing testimony about her alleged attempts to contact her employer concerning these additional injuries. (See full discussion above). However, by her own testimony, she did not try to contact them about the additional injuries until January 2021. There is no documented complaint of any injury to the Claimant's neck, shoulders, right arm, and thoracic spine until March 22, 2021 when she completed the second Form AR-C.

When filing for unemployment benefits in January of 2021, the Claimant stated on this application that she did not have any disabilities. Here, the Claimant did not file a second Form AR-C alleging the other alleged injuries until March 22, 2021.

In sum, considering all of the foregoing inconsistencies and contradictory evidence of additional work-related injuries as a result of the November 3, 2020 incident, I think it would require speculation and conjecture to conclude that the Claimant's conditions of the neck, shoulders, right arm, and thoracic spine were caused by her employment duties on November 3, 2020. Hence, conjecture and speculation, even if plausible, cannot take the place of proof. *Dena Construction Company v. Herndon*, 264 Ark. 791, 575 S.W. 2d 155 (1979). Therefore, on the basis of the record as a whole, I further find that the Claimant failed to prove that her possible need for medical treatment and asserted disability for these alleged injuries arose

Larry – H010321

out of and in the course of her employment with the respondent-employer, and that said conditions were the result of the alleged specific incident of November 3, 2020. As a result, this claim is hereby respectfully denied and dismissed in its entirety.

All other issues relating the aforementioned alleged conditions have been rendered moot and not discussed herein this Opinion.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim for additional medical benefits for the Claimant' lumbar strain injury of November 3, 2020, and other alleged injuries to her neck, shoulders, right arm, and thoracic spine is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge