BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM №s H109553 & H305845

VIVIAN LOUDERMILK, EMPLOYEE	**CLAIMANT**
PRODUCERS RICE MILL, INC., EMPLOYER	**RESPONDENT**
TRAVELERS INDEMNITY CO., CARRIER/TPA	**RESPONDENT**

OPINION & ORDER FILED 12 AUGUST 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 14 May 2025 in Little Rock, Arkansas.

The claimant was represented by The Law Office of Furonda Brasfield, PLLC, Ms. Furonda Brasfield.

The respondents were represented by Friday, Eldredge & Clark, LLP, Mr. Guy Alton Wade.

STATEMENT OF THE CASE

A Prehearing Order was filed on 19 December 2024 and admitted to the hearing record without objection as Commission's Exhibit № 1. Consistent with that Order, the parties agreed to the following:

STIPULATIONS

1. The Commission has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times relevant to both claims.

3. The respondents accepted as compensable and paid some benefits, including a four percent (4%) permanent partial disability (PPD) rating to the body-as-a-whole, on Claim № H109553, relating to an injury to the claimant's left shoulder. The date of injury associated with that claim is 20 September 2021. The claimant's average weekly wage at that time was $727. The date of the last indemnity benefit paid on that claim was 10 June 2022, when the PPD rating was paid.

4. The respondents have asserted that the applicable statute of limitations bars claims for additional benefits associated with the accepted shoulder injury on Claim № H109553.

5. On Claim № H305845, the respondents have controverted entirely any claim for benefits associated with an alleged injury on 30 August 2023.

ISSUES

1. Whether the statute of limitations bars any additional benefits on the claim associated with the claimant's 20 September 2021 compensable shoulder injury. (Claim № H109553)

2. If the statute does not bar claims for additional benefits, whether the claimant is entitled to any additional benefits associated with her 20 September 2021 shoulder injury. (Claim № H109553)

3. Whether the claimant sustained a compensable injury on 30 August 2023. (Claim № H305845)

4. Whether the claimant is entitled to an attorney's fee on any controverted benefits.

All other issues have been reserved.

CONTENTIONS

The Prehearing Order incorporated by reference the following contentions from the parties' respective prehearing information responses.

The claimant contends:

> . . . that she is entitled to medical treatment for her work-related injury, temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, rehabilitation, attorney's fees, reimbursements, and all other benefits to which she may be entitled from 20 September 2021 to a date yet to be determined. She reserves all other issues.

The respondents contend:

> Claim № H109553- . . . that the statute of limitations has run on the 20 September 2021 claim as the last benefits were paid on 10 June 2022. [Her] claim [for additional benefits] was not filed until 1 February 2024. The claim is barred and must be dismissed.
>
> Claim № H305845- The 30 August 2023 claimed injury occurred while the claimant was on break and not performing employment services. Respondents are not responsible for the payment of any medical or indemnity benefits.

FINDING OF FACTS AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witnesses, observing their 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 these claims.

2. The stipulations as set forth above are reasonable and are hereby accepted.[1]

3. The statute of limitations bars any claim for additional benefits on Claim № H109553 relating to the claimant's accepted compensable shoulder injury of 20 September 2021.

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[1] At the beginning of the hearing, the claimant attempted to raise nonpayment of her accepted PPD rating as an issue. *See also*, FN2. The respondents objected to her suddenly-asserted claim of nonpayment as not being properly before the Commission. A brief discussion was framed around whether the claimant should be allowed to litigate an untimely raised issue. The parties did not, however, discuss the matter in the context of the completed PPD payment already being an agreed-to stipulation. See Stipulation № 3. "A stipulation is an agreement between attorneys respecting the conduct of the legal proceedings." *Ark. Dept. of Corr. V. Jackson*, 2019 Ark. App. 124, 571 S.W.3d 539 (citing *Dinwiddie v. Syler*, 230 Ark. 405, 323 S.W.2d 548 (1959)). Parties are generally bound by their stipulations. *Dempsey v. Merchants Natl. Bank of Ft. Smith*, 292 Ark. 207, 729 S.W.2d 150 (1987). Still, the Court has recognized that the Commission has the discretion to permit the withdrawal of a stipulation. *See, e.g., Jackson, supra*. The Court of Appeals has stated, however, that "elementary principles of fair play" apply in Commission proceedings. *Sapp v. Tyson Foods*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549. To allow the claimant to withdraw a stipulation without prior notice of her intent to do so would generally violate the notions of fair play. But as noted just above, the claimant did not attempt to raise as an issue or argue that she should be allowed *to withdraw Stipulation № 3*. Conversely, the claimant agreed with the stipulation language as it was read into the record.

Judge: … The date of the last benefit paid on that claim was the 10th of June, 2022, when the PPD rating was paid out…. So, did I read those stipulations accurately, Ms. Brasfield?
Ms. Brasfield: Yes.
Judge: Okay. And, Mr. Wade?
Mr. Wade: Yes, Your Honor.
[TR at 6-7.]

It would be improper for me to now raise the matter *sua sponte*. Stipulation № 3 is accepted as fact, accordingly.

4. On Claim № H305845, the claimant has proven by a preponderance of the evidence that she suffered a compensable injury to her right hand on 30 August 2023.

5. On Claim № H305845, the claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee on 30 August 2023.

6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee on these claims.

ADJUDICATION

The stipulated facts are outlined above 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. VanWagner*, 337 Ark. 443, 448, 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 record consists of the hearing transcript and the following exhibits: Commission's Exhibit № 1 (the 19 December 2024 Prehearing Order); Respondents' Exhibit № 1 (one index page and five pages of non-medical records); and Respondents' Exhibit № 2 (one index page and 57 pages of medical records). The claimant testified on her own behalf and called coworkers Mr. Seneca Fluker and Mr. Gregory Coleman. The respondents called

Mr. Joe Kent Lockwood, Vice President of Finance and Administration at Respondent Producers Rice Mill.

Hearing Testimony

The claimant is sixty-six years old and retired. At the time relevant to her claims, she was working for the respondent-employer as a product labeler. With respect to Claim № H109553, she testified that she was injured when a piece of equipment fell onto her upper body on 20 September 2021. The respondents accepted her claim of a compensable left shoulder injury and began providing benefits, including surgery and indemnity payments. The claimant was eventually released back to work without restrictions. She returned to the same job duties and hours.

A four percent PPD rating was accepted by the respondents and, per Stipulation № 3, paid by the respondents; but the claimant testified that she did not receive the lump-sum payment for that rating.[2] The rating was based on a Functional Capacity Evaluation (FCE) performed on 1 June 2022. [Resp. Ex. № 2 at 7-33.] The claimant, however, testified that she did not participate in any sort of evaluation: "Didn't do none of that… I ain't been to Little Rock for this… None of that… No, sir. That's the God's heaven truth." [TR at 70-71.]

With regard to Claim № H305845, the claimant testified that she fell and injured herself at work on 30 August 2023.

Q: Okay. And what happened that day.

[2] At the beginning of the hearing, the claimant attempted to raise nonpayment of her accepted PPD rating as an issue. The respondents objected to a new issue being added as untimely and not properly before the Commission. Even if the issue was properly before the Commission, they argued, the statute would still bar the claim as beyond the limitations period. The claimant made no attempt to raise nonpayment of the accepted PPD rating during the prehearing telephone conference. Nor did she attempt to raise it during her deposition in this case. The respondents, therefore, had no opportunity to conduct discovery on that issue. I am declining to address the matter as an issue that was ripe for litigation at the hearing. The issue has been reserved.

A: Well, I was getting ready to go to lunch, me and my co-worker, you know, like, we was walking side-by-side.
. . .
And we were just walking along and all of a sudden I just—my foot got hung up and I think, there was plastic—a green—some green ties that was on the floor. You know, we was talking and going on and I didn't see it.
Q: Sure. And so what happened?
A: I tripped. My feet got tangled up in the green tie and that plastic.
Q: Okay. And did you fall?
A: Yes, ma'am.
Q: Okay. Did you fall hard?
A: Yes, I did.
Q: How hard did you fall?
A: I fell hard, so that it hurt my knee, my left knee and my right hand too. The pictures show this. I couldn't even make a fist for a long time. It was swollen.
Q: And during—when you were walking and you tripped, where were you going?
A: We was getting ready to go to lunch. I had to go leave my work area to walk up front to go in the break area and locker room to clock out.
Q: Had you clocked out?
A: No, ma'am.
Q: Okay.
A: I hadn't.
Q: Are you required to clock out, before you go to lunch?
A: Yes, we are.
Q: Okay. What happens if you don't clock out?
A: You can get wrote up for being—not clocking out.
Q: Okay. And so it was one of your job duties to clock out, before you went to lunch?
A: Yes, we must clock out.

[TR at 25-27.]

The claimant further testified that she reported the injury to her supervisor and that he had her fill out some paperwork about the incident. She sought treatment for some time, until a requested MRI was denied. Her right hand was swollen and bruised, she said, to the point that it was difficult to make a fist. The claimant said that she is right-handed, so her injury made it difficult to do daily activities. She experienced pain, numbness, and tingling.

Q: And what was your pain level in your hand?
A: If it—if – if the rating could be a hundred, it would be a hundred.

[TR at 32.]

According to the claimant, her daughter helped her around the house during that time. She also testified that her knee was swollen and that she could not bend it. "And now, it still give me problems, 'cause for me to get on my knees to pray, I can't do that right now. I can't do it, 'cause my knee hurts." [TR at 32-33.] Her doctor prescribed some pain medication,[3] but she continues to have problems. "My knee mostly. My hand, sometimes it give me (sic) a little problem, but me knee," she said. [TR at 34.]

The claimant testified that Dr. Raymond Coker took her off work when she presented for care the day after her fall. She could not recall how long Dr. Coker took her off work, but testified that she did not return to work afterwards her initial visit with him. She retired and began drawing a pension.

On cross-examination, the claimant acknowledged a history of arthritis in her knees and hands. She testified that she was being prescribed Methotrexate for her arthritis trouble for some time before the alleged injuries related to the present claims.

The claimant also acknowledged that she underwent surgery for her accepted shoulder injury in November of 2021 and that she was released back to work in May of 2022. She returned to work without restrictions following her release; and she was able to perform the same job duties as before the injury.

The claimant was reluctant to confirm her signature on the Form C that was filed on her behalf (and signed by her attorney) related to Claim № H109553, but she acknowledged that the form represented signatures dated 23 January 2024. [Resp. Ex. № 1 at 4.] The form is file-marked as received by the Commission on 1 February 2024.

[3] The records relating to this treatment were not offered into evidence.

With regard to Claim № H305845, the claimant testified that she was a few feet from her work station when she fell on 30 August 2023. After reporting her fall, she went home for lunch and then returned to complete her shift, although she was in pain at the time. The claimant recalled seeing Dr. Coker for her injuries two or three times. At her first visit, he took her off work from 31 August 2023 until 5 September 2023. Dr. Coker did not order any additional time off work; and no other provider ordered her off work after that initial week's time. She testified that she sought additional treatment from her primary care physician, a Dr. Yelvington; but no records reflecting such treatment were introduced.

The claimant confirmed that since retiring from the respondent-employer, she has not sought any work. She collects a retirement pension and Social Security retirement benefits. The claimant stated that she would have continued seeking treatment for her hand and knee if she had known that she had access to health insurance coverage after she retired.

After completing her testimony, the claimant called two co-workers who witnessed the accident related to her accepted shoulder injury in Claim № H109553. They did not testify about the alleged circumstances of her fall on 30 August 2023.

The respondents then called Mr. Joe Kent Lockwood, who serves as the Vice President of Finance and Administration at Respondent-employer Producers Rice Mill. He has worked at Producers for 38 years and testified that he was aware of both of the claims in this matter. With regard to her fall on 30 August 2023, he testified that video footage he reviewed at the time showed the incident occurred around noon and that she was walking from her work station to the breakroom after her production line shut down for lunch. Employees are free to take lunch wherever they choose during the lunch break. He denied that she was "in any way benefitting Producers at the time she fell." [TR at 86.]

On cross-examination, Mr. Lockwood testified that the production line's lunch time would vary on any given day, but that it would generally run when the area supervisor rang a bell and shut down the line around noon.

> Q: Okay. And is clocking out a requirement?
> A: Yes, ma'am.
> Q: So is there a penalty, if individuals don't clock out?
> A: Yes.
> Q: What's the penalty?
> A: It would depend on—it would be a verbal warning first, and then a red warning.
> . . .
> Q: Okay. So that's something that they're required to do, to clock out to walk from wherever they are in the building to the break room and to clock out, correct?
> A: Yes, ma'am.
> . . .
> Q: Was she on the clock? All you have to say is yes or no. That's all I need. Yes or no, was she on the clock?
> A: Yes, she was on the clock.
> Q: So you were still paying her?
> A: Yes.
> Q: And you, typically, pay people until they clock out, correct?
> A: (Nodding head up and down.)
> Q: Is that correct? You need to say yes or no.
> A: That's correct.

[TR at 88-90.]

The claimant briefly returned to the witness stand to state that after falling, she went to her supervisor's office to report the incident. She completed the necessary paperwork in the office before clocking out and leaving for her lunch that day.

Medical and Documentary Evidence

The respondents submitted a report on the benefits paid to the claimant. According to that report, a lump sum payment for permanent partial disability benefits was issued to the claimant in the amount of $4,750.58 on 10 June 2022. [Resp. Ex. № 1.]

The Form C associated with Claim № H109553 indicates a shoulder injury. The form was signed by the claimant's counsel on 23 January 2024 and shows a filing date of 1 February 2024. [*Id* at 4.]

The Form C associated with Claim № H305845 lists the date of injury as 30 August 2023 and states that she fell "on both her knees and hand." The form was signed by the claimant's counsel on 8 February 2024 and shows a filing date of the same day. [*Id*. at 5.]

The respondents also submitted medical records relating to both claims. On 28 April 2022, the claimant saw Dr. David Wassell for follow-up after surgical repair of her accepted compensable shoulder injury in Claim № H109553. His assessment noted rheumatoid arthritis involving multiple joints and a history of taking Methotrexate. Dr. Wassell stated, "At this point I feel that we are basically at Maximum Medical Improvement (MMI)." He ordered an FCE and anticipated closing her case after an additional visit following the FCE. [Resp. Ex. № 2.]

Claimant's FCE was conducted on 1 June 2022. She showed reliable effort at the time and was ultimately assigned a four percent (4%) whole-body impairment rating for her accepted compensable shoulder injury. [*Id*. at 7-33.]

The claimant returned to Dr. Wassell on 23 June 2022. He found her to be at MMI at that time and agreed with the four percent (4%) impairment rating determined at the FCE. [*Id*. at 39.]

The claimant first sought care related to Claim № H305845 on 31 August 2023. She reported a history of arthritis. Dr. Raymond Coker was the attending physician that treated her. The notes from that visit state:

> REASON FOR VISIT
> Pt. reports fall happened yesterday at work.
> Pt. reports tripped over packing plastic/material and fell. Pt. reports left knee and both hands are sore and painful today. Edema noted in right hand and wrist. Pt. unable to move wrist.

> PHYSICAL EXAM
> Right hand is swollen with tenderness to manipulation of the right wrist. Left hand is mild edema. No deformities of either place. Left knee has a little tenderness anteriorly but no deformity or swelling.
>
> ASSESSMENT
> Acute nasopharyngitis
> Sprain of left hand, initial encounter
> Sprain of right wrist, initial encounter
> Contusion of left knee, initial encounter
> No fractures. She [has] arthritis in her wrist, hand and knee. Continue same medications which consist of gabapentin, tizanidine and hydrocodone. She can add some NSAIDs and/or extra Tylenol. Workmen's Comp. Form 3 completed. Off work until Tuesday, 9/5/2023 for follow-up and reevaluation. Her hand is quite swollen, and she would be unable to do her job until at least that time.
>
> MEDICATIONS ADMINISTERED
> Ketorolac tromethamine 60 mg

[Resp. Ex. № 2 at 51-57.]

The Xray reports from that visit include:

> RIGHT WRIST RADIOGRAPHS
>
> IMPRESSION: Minimal lateral wrist osteoarthritic degenerative change with no evidence for acute injury. There is minimal dorsal swelling.
>
> LEFT KNEE RADIOGRAPHS
>
> IMPRESSION: Degenerative changes as described with no acute finding visible.

[Resp. Ex. № 2 at 42-43.]

DISCUSSION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 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.*

I do not find the claimant to be a very credible witness. Besides that she raised at the beginning of the hearing, and without any prior notice, her sudden disagreement with the stipulated fact that the respondents paid her PPD rating on 10 June 2022 [Stipulation № 3], she also refused to acknowledge that she underwent an FCE on 1 June 2022. Notwithstanding her proclaiming the "God's heaven truth" that she never participated in the evaluation, the record plainly shows that she did so in Little Rock on that day. Similarly, the payment register provided by the respondents [Resp. Ex. № 1 at 3] indicates a lump-sum payment on the PPD rating being made consistent with the stipulated facts. Paradoxically, she did not appear insincere in her testimony around these matters. I find her nonetheless to not be credible in these regards.

Claim № H109553

The claimant seeks additional benefits[4] on this claim associated with her accepted compensable left shoulder injury from September of 2021. The respondents have raised the statute of limitations as a bar for any claim for additional benefits on this claim. Claims for additional benefits are governed by A.C.A. § 11-9-702(b)(1), which provides:

> In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred

[4] The Form C erroneously indicates that this is a claim for initial benefits. It is clearly not.

> unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

The claimant has the burden to prove that she acted within the time allowed for filing a claim for additional benefits. *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640. Here, the claimant was injured on 20 September 2021. The statutory period therefore extends two years from that date, or until 20 September 2023. This is the operative date because it is later than the one-year period following the last payment of either medical or indemnity benefits. *See Wynne v. Liberty Trailer & Death & Permanent Total Disability Trust Fund*, 2022 Ark. 65, 641 S.W.3d 621; *Cosner v. C&J Forms & Labels Co.*, 2021 Ark. App. 453, 2021 Ark. App. LEXIS 473. Any claim filed after that date is barred as untimely. The Form C seeking benefits on this claim was not filed until 1 February 2024, well after the expiration of this period. The claimant failed to prove by a preponderance of the evidence that her claim for additional benefits on Claim № H109553 was timely filed. This claim is, therefore, barred by the statute of limitations.

Claim H305845

The respondents denied this claim for initial benefits in its entirety. The claimant seeks a finding of compensability associated with alleged injuries by specific incident to her left knee and right hand. The claimant fell while at work on 30 August 2023. The respondents argue that her fall occurred outside of the course and scope of the claimant's employment and have denied liability.

Under Arkansas' Workers' Compensation laws, a worker has the burden of proving by a preponderance of the evidence that she sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-

102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

The claimant alleges that her injuries occurred by specific incident. The claimant 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 his 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.*

The initial question is whether any alleged injuries sustained as a result of her fall are compensable because she was away from her work station and on her way to clock out for lunch when she fell. The respondents argue that under these circumstances she cannot satisfy the first factor listed above.

In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

> In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*

> An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.; Pifer v. Single Source Transp*., 347 Ark. 851, 69 S.W.3d 1 (2002). We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and space boundaries of employment, the critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

The respondents argue, essentially, that the claimant was not performing employment services at the time that she fell because her work line was shut down for lunch. I disagree. Both the claimant and Mr. Lockwood testified that the claimant was obligated to clock out at a designated area *before* taking her lunch break and that she was, in fact, still on the clock at the time of her fall. An employee failing to clock out for a lunch break would be subject to the respondent-employer's progressive discipline policy. Producers thus benefits from and advances its interests by maintaining supervisory control over their employees between the time that the production lines stop for lunch and the time that their employees actually clock out and begin their lunch break. The respondent-employer similarly benefits from and advances its interests by exercising supervisory control over its employees between the time that they clock in and the time that the production line actually starts running once everyone is at his or her work station.

The circumstances in this case all point towards finding that the claimant was performing employment services at the time of her fall. She was still on the employer's premises when she fell. She was acting in line with the employer's policy directives when

she fell. And she was still on the clock when she fell. She remained on the clock, even, while she completed the required post-incident paperwork with her supervisor before eventually clocking out and leaving for her lunch break. For these reasons, I find that the claimant was in the time and space boundaries of her employment and was benefiting her employer directly or indirectly at the time of her fall. She was thus performing employment services when she fell.

I must next address whether she met her burden on the remaining three factors for proving compensable injuries by specific incident with regard to her claimed left knee and right hand injuries.

Right Hand Injury

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right hand. The claimant testified that the fall caused her significant pain and swelling in her right hand. She had difficulty performing daily activities with her right hand for some time. The medical records show that swelling was remarked in the Xray report around the right wrist and hand and that she was unable to move her right wrist. Dr. Coker noted, "Off work until Tuesday, 9/5/2023 for *follow-up and reevaluation*. Her hand is quite swollen and she would be unable to do her job until at least that time." (Emphasis added.) Swelling can constitute an objective finding. *See Ellis v. J.D. & Billy Hines Trucking, Inc.*, 104 Ark. App. 118, 289 S.W.3d 497 (2008). Ketorolac was administered for pain. She was assessed with a right wrist sprain and was to supplement her then-current medications (which included hydrocodone) with additional NSAIDs or Tylenol for pain as needed. Additional treatment, or at least reevaluation, was anticipated by Dr. Coker. This injury thus caused physical harm to her body and required medical services. Also, it was caused by an incident that is identifiable by the place and time of occurrence: her tripping over some plastic on the facility floor while on her way to clock out

before taking lunch. The evidence thus preponderates in favor of a finding that the claimant suffered a compensable injury to her right hand.

Left Knee Injury

The claimant reported a history of arthritis when she was seen by Dr. Coker. She also testified that she had a history of the same, including in her knees, and that she was prescribed Methotrexate for the problem. While she reported her left knee being sore the day after the fall, the records do not show objective findings to support a compensable injury. The exam notes indicate that her knee had "a little tenderness anteriorly but no deformity or swelling." The Xray report for her knee noted only degenerative changes and no evidence of a fracture or injury.

In finding that the medical evidence lacks objective findings of a left knee injury, I am aware that the records of Dr. Coker lists a diagnosis of "contusion of left knee…." According to DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 414 (30th ed. 2003)(hereinafter "DORLAND'S"), a "contusion" is defined as "an injury of part without a break in the skin and with a subcutaneous hemorrhage. Called also *bruise*." As the Arkansas Court of Appeals pointed out in *Ellis, supra,* "[o]ur cases, moreover, use the words 'contusion' and 'bruise' interchangeably." But as cited above, Dr. Coker's examination notes do not reflect that he saw any bruise or mark on the claimant's left knee. He noted only that the knee had "a little tenderness anteriorly *but no deformity or swelling*. (Emphasis added.) In *Ellis, supra,* the Court of Appeals held that a contusion diagnosis is an objective finding *unless* other evidence indicates that it is not objective. *See also TJX Cos. V. Lopez*, 2019 Ark. App. 233, 574 S.W.3d 230. I find that the narrative portion of the record and its absence of notes on a left knee injury carry greater weight than the diagnosis coding in the record that appears without any explanation of evaluative impressions. 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). I, therefore, find that the persuasive evidence establishes that the contusion diagnosis is not an objective finding. Because of the Claimant's failure to show that she has an objective finding of a left knee injury, she cannot establish that this alleged injury is compensable.

ATTORNEY'S FEE

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury on 30 August 2023 to her right hand. Because she has not proven by a preponderance of the evidence that she is entitled to any indemnity benefits that would provide for an attorney's fee, her request for a fee must be denied.

CONCLUSION

The statute of limitations bars any claim for additional benefits on Claim № H109553. That claim is denied and dismissed, accordingly. The claimant has proven by a preponderance of the evidence that she suffered a compensable injury to her right hand on 30 August 2023 on Claim № H305845. She has failed, however, to prove that she suffered a compensable injury to her left knee on that claim.

SO ORDERED.

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JayO. Howe
Administrative Law Judge