

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H400364**

JENNIFER LOWS, Employee	CLAIMANT
CRAIN KIA OF BENTONVILLE, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

**OPINION FILED FEBRUARY 10, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by LAURI THOMAS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On November 12, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 30, 2024, and a Pre-hearing Order was filed on October 2, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on January 12, 2024.
3. The claimant sustained a compensable injury to her neck and left shoulder on or about January 12, 2024.
4. The respondents have controverted an alleged injury to her right shoulder on about January 12, 2024.

5. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$409.00 for temporary total disability benefits and \$307.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to her right shoulder on or about January 12, 2024.

2. Whether Claimant is entitled to medical treatment for her right shoulder injury.

The claimant's contentions are as follows:

“Claimant sustained a compensable injury while working for Respondent on or about 01/12/24. At that time, Claimant was in the course and scope of her employment with Respondent when Claimant slipped on ice and fell on one side of her body, got up, and then fell on the other side of her body.

Claimant is having significant pain in her right shoulder. Respondents have failed to provide medical treatment for claimant’s right shoulder.”

The respondents’ contentions are as follows:

“Respondents contend that all appropriate benefits are being paid with regard to Claimant’s compensable injuries sustained on 1/12/24. Claimant is currently receiving TTD associated with her left shoulder injury. Respondents contend that claimant did not sustain a right shoulder injury on 1/12/24 or any other time while working for Respondent/Employer.”

The claimant in this matter is a 52-year-old female who sustained compensable injuries to her neck and left shoulder on January 12, 2024. The claimant now alleges that she also sustained a compensable right shoulder injury in that same incident in which she sustained her compensable neck and left shoulder injuries. The claimant described the January 12, 2024, incident on direct examination as follows:

Q Can you describe what happened that morning when you went to check the doors on January 12, 2024.

A Yes. I went to open the doors and previously I got locked out and then I would have to go around the building. So I saw the parts manager out there and thought I am fine. If I get locked out, I could walk around and she will let me in.

So I went to open the door and got locked out and when I walked down, I slipped and fell on the ice. I had a coffee in my left hand and when I had went out, I fell and caught my fall on my hand (indicating) and then went down on my right side.

And the parts truck was backing up and did not apparently see me, so Dee, the parts manager, was yelling stop, stop, while I was trying to get up and slipping on the ice. And I had that coffee in my hand so I couldn't brace my fall, so I fell on my left side and that is what occurred.

Q So you originally fell on your right side?

A Yes.

Q And then as you tried to get up, you fell on your left side?

A Correct.

Q And you broke your fall on your right side with your right hand?

A That is correct.

Q And then you didn't break your fall on your left shoulder?

A No.

The claimant reported her incident to the appropriate respondent administrator and was sent to Washington Regional Urgent Care. The medical record states the following chief complaint, "Patient comes in today for a Pain, Chest, Pain, Shoulder, Pain and Pain, Neck. PT slipped and fell on left side. LROM (source: patient)." Following is a portion of the medical record regarding the claimant's right shoulder:

Musculoskeletal – ABNORMAL: Tenderness noted over both rib bilaterally, Abnormal flexion right shoulder, Abnormal extension right shoulder, Abnormal abduction of right shoulder, Abnormal adduction of right shoulder, Tenderness noted on anterior right shoulder, Tenderness noted on posterior right shoulder.

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Assessment/Plan: Strain of unspecified muscle, fascia and tendon at right shoulder and upper arm level, unspecified arm, initial encounter (S46.919A) – Uncomplicated.

Discharge disposition: Patient discharged to home or self care (routine discharge). Recorded on 01/12/2024 4:26 PM by SKremers. tn011

Rest, ice and elevate the affected area, and keep ace wrap on for compression. If you received an X-Ray at this clinic, a radiologist will over-read your images and report back to us generally within a few hours.

We will call you with the results.

If your condition worsens we recommend that you receive another evaluation at the emergency room immediately or contact your primary medical clinics after hours call service to discuss your concerns.

You must understand that you've received an Urgent Care treatment only and that you may be released before all of our medical problems are known or treated. You, the patient, will arrange for follow up care as instructed.

Ice affected area 15 minutes 3-4x daily.

Get plenty of rest.

Tylenol every 4-6 hours as needed and/or ibuprofen every 6-8 hours as needed, over the counter for pain or fever.

Rest, apply ice, and evaluate affected area.

If your condition worsens or persists we recommend that you be evaluated at the emergency room immediately or contact your primary medical provider or his/her after hours call service to discuss your concerns, or come back and see us.

Prescribed Naprosyn 500 mg tablet; Take 1 tablet (oral) ever 12 hours for 10 days; total Qty: 20 (Twenty) tablet; 1 refill(s); Allow substitutions; Earliest Fill Date: 01/12/24.

Prescribed cyclobenzaprine 5 mg tablet: Take 1 tablet (oral) 3 times per day PRN – Muscle Spasm for 5 days; total Qty: 15 (Fifteen) Tablet; No refills; Allow substitutions; Earliest Fill Date: 01/12/24.

X-rays were taken of the claimant's left shoulder during that same visit but not taken of the claimant's right shoulder.

Medical Decision Making/Time: Diagnosis: Low strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, unspecified arm, initial encounter (S46.919A) – Injury, Acute, Uncomplicated.

An addendum was added to the claimant's January 12, 2024, medical record on November 16, 2024, which states:

Billing Addendum: Strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, unspecified arm, initial encounter (S46.919A) – Uncomplicated excluded from claims for this visit.  
Strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, left arm, initial encounter (S46.912A) added to claims for this visit.  
Chest pain, unspecified (R07.9) added to claims for this visit.  
Unspecified fall, initial encounter (W19.XXXA) added to claims for this visit.

On January 12, 2024, APRN Sean Kremers completed a Form AR-3, which is found at Claimant's Exhibit 1, pages 10-11. Following are portions of that report:

Physician's Report of Injury and Treatment; Brief Description of Accident: [handwritten] Pt slipped on ice landing on right shoulder. No head injury. Pt c/o right shoulder, chest pain, and wrist pain.  
Diagnosis/Treatment Rendered: [handwritten] Shoulder Strain.  
Prognosis/Expected Duration of Treatment: [handwritten] Rest, Ice 20 minutes on and 20 minutes off. Prescription for anti-inflammatories or muscle relaxers. Wear shoulder sling as needed for comfort. Follow up in 6 weeks if symptoms return.

The claimant testified that she received a sling for her right arm during her treatment on January 12, 2024. That same day the claimant signed a Form AR-N or "Employee's Notice of Injury." The report asked, "What part of your body was injured?" The response, "Shoulder/neck left side, right hand." The report asked, "Briefly describe the cause of injury." The response,

“Walking between buildings, snow mat removed and there was ice/snow and I fell. Then the parts truck was driving in reverse towards me and I was struggling to get up as to not get ran over and fell again on my right side, arm and shoulder.”

On January 23, 2024, the claimant began treating with conservative care at Occupational Health. The chief complaint from that medical record states, “Neck, left shoulder, left upper arm.” The following treatment plan and diagnosis was given:

**TREATMENT PLAN:**

I have instructed her to use ice to reduce pain and inflammation. She was given an opportunity to ask questions about her care. She verbalized understanding. She has been instructed on the use of Ibuprofen and Cyclobenzaprine as needed.

**DIAGNOSIS**

1. Strain of muscle, fascia and tendon at neck level, initial encounter (S16.1XXA).
2. Pain in the left shoulder (M25.512)

From this point forward the claimant is treated with conservative care for her neck and left shoulder including physical therapy. On March 7, 2024, the claimant underwent an MRI of her cervical spine at Northwest Medical Center, Bentonville. The diagnostic report gave the following Impressions:

**IMPRESSION:**

1. Multilevel mild degenerative disc disease.
2. No moderate or high-grade canal or foraminal stenosis.

On May 6, 2024, the claimant was seen by Dr. Michael Calhoun. Dr. Calhoun examined the claimant and reviewed the claimant’s cervical MRI at that time. He recommended the claimant have a left shoulder MRI and if that MRI was abnormal that she should obtain an orthopedic referral.

The claimant saw Dr. Chad Songy, an orthopedic surgeon, on May 30, 2024, for her left shoulder. Following is a portion of that medical record:

History of Present Illness:

Jennifer Lows is a 51 y.o. female who is here today for evaluation of her left shoulder. This is a worker's Comp injury. Patient does have a lawyer involved. The patient had an injury on January 12, 2024. Patient slipped on the ice and landed on her left shoulder. Since then she has had pain in her left shoulder radiating up towards her neck. She has had significant pain and dysfunction with limited left shoulder range of motion. She has had difficulty with sleep and activities of daily living. She has done physical therapy. She has also seen a neurosurgeon who felt the pain was coming from her shoulder and not her neck.

On June 12, 2024, the claimant underwent an MRI on the left shoulder at Physicians' Specialty Hospital. Following are the Impressions from that diagnostic report:

Impression:

1. Tendinosis of the mild and distal supraspinatus tendon. Tendinosis of the distal infraspinatus tendon.
2. Moderate hypertrophic DJD of the acromioclavicular joint with moderate bone edema on both sides of the joint. This likely contributes to patient's pain.

On July 11, 2024, the claimant was again seen by Dr. Songy. Following is a portion of that medical report:

Patient had very limited range of motion at her last visit. I had concerns for a traumatic injury to her shoulder. An MRI was ordered. She is here today to discuss the results of that MRI.

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Plan

Jennifer Lows is a 51 y o female who presents today for follow-up of left shoulder pain and dysfunction from an injury at work whenever she slipped on the ice. Patient states she had no pre-existing shoulder issues to pathology, but since that injury is had significant dysfunction. MRI does not show any significant pathology to the glenohumeral joint or rotator cuff, but she does have significant edema in the distal clavicle and acromion at the AC joint. We discussed doing an ultrasound-guided AC joint

injection for both diagnostic and potentially therapeutic purposes. Patient is on board with that plan.

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We will continue the patient with limited work as she is having significant pain and dysfunction at this time. I will see her back in clinic in 1 month to see how she responds to this injection.

Of note, the patient states when she originally fell, she fell onto her right shoulder 1<sup>st</sup> and then her left. I do have it documented in my note that she fell on her left shoulder. She is telling me that when she fell on her right shoulder 1<sup>st</sup> and then her left and would like to be seen for her right shoulder. I am happy to see her for her right shoulder, but since this is under workers' comp we will need to get approval from the nurse case manager/adjuster. Once it is approved I am happy to see her back and work out for her right shoulder.

I note this is the first mention of the claimant's right shoulder in admitted medical records since her January 12, 2024, visit to the Washington Regional Urgent Care.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

It is the claimant's burden to prove that she sustained a compensable injury to her right shoulder on January 12, 2024, in the incident in which she fell. The claimant alleges that she fell twice on both her right and left side. Quite frankly, I believe the claimant's account of the incident. However, the claimant must prove the existence of objective medical findings to support her claim that she sustained a compensable right shoulder injury in that incident. Here,



she is unable to do so. The right shoulder is only addressed one time specifically in medical records introduced from January 12, 2024, as follows:

Musculoskeletal – ABNORMAL: Tenderness noted over both rib bilaterally, Abnormal flexion right shoulder, Abnormal extension right shoulder, Abnormal abduction of right shoulder, Abnormal adduction of right shoulder, Tenderness noted on anterior right shoulder, Tenderness noted on posterior right shoulder.

\*\*\*

Assessment/Plan: Strain of unspecified muscle, fascia and tendon at right shoulder and upper arm level, unspecified arm, initial encounter (S46.919A) – Uncomplicated.

Even though the claimant has extensive medical treatment from that point in time until July 11, 2024, there is no mention in the medical records of right shoulder difficulties. On July 11, 2024, the claimant simply mentions she would like to be seen for her right shoulder.

In the January 12, 2024, medical records, the claimant's right shoulder range of motion findings are subjective in nature and mention the claimant's subjective complaints of pain. I find that no objective medical evidence exists to support the claimant's claim that she sustained a compensable right shoulder injury. As such, the claimant has failed to prove that she sustained a right shoulder injury on January 12, 2024.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 30, 2024, and contained in a Pre-hearing Order filed October 2, 2024, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on or about January 12, 2024.

3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her alleged right shoulder injury.

**ORDER**

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**