

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G901891 & H005058**

<b>FLORA M. "RUBY" MARLETT, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BAXTER COUNTY REGIONAL HOSPITAL, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 2, 2022**

Hearing before Administrative Law Judge, James D. Kennedy, on the 19<sup>th</sup> day of January 2022, in Mountain Home, Arkansas.

Claimant is represented by Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 19<sup>th</sup> day of January 2022, to determine the issues of compensability for injuries that occurred on September 1, 2018, plus the claim for reasonable and necessary medical treatment in regard to these injuries. (Claim H005058) The respondents accepted the compensability of an injury to the left shoulder that occurred on March 14, 2019, and medical for the left shoulder injury was provided through the maximum medical improvement (MMI) date of March 16, 2021, when a zero percent (0%) impairment rating was given. The respondents denied the claim of a neck injury on the March 14 date and denied additional medical in regard to Claim G901891. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on both September 1, 2018, and March 14, 2019.

The claimant earned an average weekly wage of \$1,108.84, sufficient for a TTD/PPD rate of \$695.00 and \$521.00 per week respectively. There were no objections to these stipulations. (See Discussion and Adjudication of Issues for a clarification and explanation of the two [2] claims)

The claimant's and respondents' contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses consisted of the claimant, Flora "Ruby" Marlett, her husband Michael Lynn Marlett, and Debbie Talburt. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on September 1, 2018, when the claimant contended she suffered a work-related injury to her left shoulder and neck. (Claim H005058) An employer/employee relationship also existed on March 14, 2019, when the claimant contended she suffered a work-related injury to her left shoulder and neck. The claim to the shoulder was accepted as compensable and reasonable and necessary medical was paid up until the MMI date of March 16, 2021, when a zero percent (0%) impairment rating was given. The claim involving the neck was denied. (Claim G901891).
3. That the claimant earned an average weekly wage of \$1,108.84 a week, sufficient for a temporary total disability (TTD)/permanent partial disability (PPD) rate of \$695.00/\$521.00 per week.
4. That the claimant failed to satisfy the notice requirement and the required burden of proof to show that she sustained a compensable work-related injury on September 1, 2018, and consequently the

- question of reasonable and necessary medical treatment in regard to this claim is moot. (Claim H005058)
5. That the claimant has satisfied the required burden of proof to show she suffered a compensable work-related neck injury on March 14, 2019, and she is entitled to reasonable and necessary medical treatment after the date of filing the Form AR-C.
  6. That the claimant is entitled to an attorney fee pursuant to Ark. Code Ann. § 11-9-715. This shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. (Claim G901891)
  7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties and the claimant's amended response to the Pre-hearing Questionnaire, were admitted into the record without objection. The claimant submitted two (2) exhibits that were admitted without objection: (1) eighteen (18) pages of medical records and (2) the deposition of the claimant. The respondents also submitted two (2) exhibits that were admitted without objection: (1) fifty (50) pages of medical records and (2) five (5) pages of non-medical records.

The claimant testified she was fifty (50) years old at the time of the hearing and was born on January 17, 1972. She worked as a RN for the respondent, where she was employed for approximately three and a half (3.5) years. She has been a registered nurse since 2011 and worked in the medical field for twenty-four (24) or twenty-five (25) years. (Tr. 8, 9)

In regard to the March 14 claim, the claimant was caring for a patient with dementia who had taken off a mask he needed to wear and when the claimant attempted to put the mask back on him, he grabbed her arm and yanked her across his body and the bed.

“He jerked me over him, and tried to throw the mask off.” This action resulted in the claimant’s onset of pain in her left shoulder and neck. Within fifteen (15) minutes, the claimant stated her shoulder began to hurt and she notified her employer. In regard to the earlier injury of September 1, the claimant stated that she was computer charting and pushed away from the computer and turned to stand when the wheel buckled on the chair and the chair tipped out causing her to land on her shoulder with her head hitting the shred box, which jerked her neck. (Tr. 10, 11) She testified she told her employer about the incident, and the charge nurse stated she would file an incident report, but the claimant did not know if that occurred. (Tr. 12) In regard to the earlier injury of September 1, the claimant felt like she would be sore for a few weeks, but she did not get better. Her shoulder started getting stiffer and harder to use with her range of motion becoming more limited. “My neck, it would get still and it would hurt from my shoulder into my neck.” (Tr. 13) The claimant continued to work full-time through March. She saw her nurse practitioner, Dana Gunthrop, for a regular checkup and also saw her chiropractor, Doctor Ungerank. Prior to the March incident, the claimant took over-the-counter medication for her pain and stiffness. The March injury was much worse for her shoulder. “I don’t know if my neck would have been as bad as it was without the second, but I don’t know that.” The neck injury got worse after the second injury. The charge nurse wrote up the second injury immediately and had me go get checked out in the emergency room. (Tr. 14, 15) The claimant charted while waiting to go to the emergency room. She received steroid injections and physical therapy and then surgery on her shoulder, with physical therapy after that. (Tr. 16) The claimant testified there are now a lot of things in daily life that she has trouble doing. She has a quite a bit of numbness and tingling in her hand, especially

with certain motions. Her range of motion still is not full, and she still has a lot of trouble lifting in certain positions. She stated she still has trouble sleeping due to her injuries. There are a lot of good days, and it has gotten a lot better, but she went on to state that, you “never know when the bad days are gonna happen.” (Tr. 17) The claimant testified that due to her neck and shoulder problems, if she has to use any pressure such as in mopping, sweeping, or scrubbing the floors, she cannot do it. She has trouble washing the dishes and folding laundry. (Tr. 18) She went on to testify that she is not working now and hasn’t worked since Baxter terminated her in April of 2021, she believed. She was given thirty (30) days to secure a new position after she was released to go back to work, due to a hiring freeze in place. She would love to return to work. (Tr. 19) She received a letter that she had not filled or had not been able to secure a position in the thirty (30)-day period. In regard to her pain, she stated her neck was constant at probably a two (2) even in the best of times. (Tr. 20) She thought that a twelve (12)-hour shift would be unbearable. In regard to sleeping, the claimant stated she has to awaken and reposition several times through the night. In a typical week, the claimant stated she would have one (1) or two (2) bad days. (Tr. 21, 22) She was requesting to be found to have a neck and shoulder injury. (Tr. 23)

The claimant was also questioned about her Functional Capacity Exam (FCE) where there was a finding she was not putting forth a good effort. She stated she was doing her best at the time of the test. (Tr. 25)

Under cross examination, the claimant admitted to having an injury while she worked at Belle Mead Nursing Center in Paragould, in 2005 or 2006, when she was bent over talking to her director, and one of her co-workers came up and kicked her and she

fell and messed up her hip. She admitted that she knew to report the injury to her supervisor, but she did not pursue a workers' compensation claim. She also admitted she had gone to Chiropractor Ungerank prior to her claimed injuries at Baxter, presenting as far back as 2002. She agreed that she worked as a floor nurse while at Baxter and only one (1) injury occurred around September 15, 2018. (Tr. 27, 28) In regard to the incident in September of 2018, she completed her shift and did not think she needed treatment that evening. (Tr. 29) She also admitted she testified in her deposition that her neck started hurting within twenty-four (24) hours of the fall, and she had trouble with her left shoulder in 2002 and 2008, when she dislocated it. She had no neck problems prior to September of 2018. The claimant testified that after the September of 18 incident, she told her doctor what happened and also went to a chiropractor. (Tr. 30) The claimant was not sure if she told anyone at the respondent about the treatment she received.

In regard to the injury of March 14, 2019, the claimant admitted she was assisting a patient with a mask at the time of the injury and immediately went to the charge nurse and paperwork was filled out. The claimant also admitted she only mentioned her left shoulder on the paperwork. (Tr. 31) Her neck started hurting within fifteen (15) to twenty (20) minutes of the incident. She received physical therapy from Doctor Knox for her shoulder, and ended up having shoulder surgery, but it did not help a lot with the pain. She also admitted performing light-duty work prior to the surgery, and one-arm duty after the surgery. (Tr. 32) The claimant also admitted the hiring freeze was due to Covid-19, and stated the reason she only listed her shoulder in regard to the March 14<sup>th</sup> incident, was that the immediate pain was her shoulder. By the time the claimant reported it, it was hurting up in her neck again, so she did not know if it amplified that injury or just

aggravated it. She also admitted that she stated in her deposition that the reason she did not put her neck on the incident report was because she thought she had aggravated it. The claimant also admitted that she answered, “I believe so, yes, ma’am,” when she answered in her deposition that she did not go back to Baxter and tell them about her neck injury. (Tr. 33) She also admitted that she would take gabapentin for her arthritis and that she still was home schooling her grandson. She had localized pain in her left shoulder joint and was started on prednisone and Flexeril. She also admitted Doctor Reynolds went over the FCE with her and her husband, on March 16, 2020, when he gave her a full-duty release. She also admitted to obtaining a Change of Physician through the Commission and seeing Doctor Cox, who ended up ordering a cervical MRI on August 19, 2021. (Tr. 34, 35) The claimant was then referred to the respondents’ Exhibit Two, which was the Form AR-N with the claimant’s signature, and which only provided the claimant had hurt her left shoulder, but the Form AR-C provided that the claimant suffered from a left shoulder and neck injury, and she responded that was correct. (Tr. 36)

On redirect, the claimant stated when she filed her claim, her problem was her left shoulder and was the major reason for her problems. Her neck was having some issues. After the MRI, she knew the neck was also causing problems. The numbness in her hands and other issues indicated a nerve impingement. (Tr. 37) The claimant testified her neck was getting worse but thought that her shoulder had stabilized. (Tr. 38)

The claimant then called Michael Lynn Marlett, the claimant’s husband for twelve (12) years, as her second witness. He testified that he did not remember his wife having any problems with her neck and shoulder back in 2002. (Tr. 41) He also testified he

observed his wife's FCE and thought that the examiner did not really listen to some things. (Tr. 42) Whenever the claimant would tell him things that were specific to why she could not do something, the examiner did not really appear to be paying attention to what she was saying. She had surgery in December prior to the FCE and was still recovering, which was complicating her effort in the FCE. (Tr. 43) Under cross examination, Mr. Marlett testified the claimant had surgery in regard to her ulnar nerve on the right hand and side. (Tr. 45)

The respondents called Debbie Talburt, who testified she was the employee health nurse for the respondents and had been in that position for three (3) years coming up in April. As far as workers' compensation, she received the packets from the supervisors or the employees which were filled out after injuries. She or someone from workers' compensation would follow-up with them and schedule any appointments needed. (Tr. 46) The procedure for a work-related injury was the employee would notify their supervisor, who knows they have packets available to fill out. It has the Form AR-N for workers' compensation and an incident report. She also stated that the Form P was located in a glass-enclosed bulletin board down by the Human Resources Department. (Tr. 47) Ms. Talburt testified she did not recall a notice of an alleged neck injury until the Form AR-C was filed with the Commission July 27, 2020. "If it wasn't on the Form N, I didn't know about it." She knew about the left shoulder injury in March of 2019, but she did not receive any documentation in regard to the September of 2018 injury. She also stated that it was correct that there was a hiring freeze at the respondents due to the onslaught of Covid-19 and a lot of employees were furloughed. (Tr. 48)



Under cross examination, Ms. Talburt testified that to her knowledge, all employees who were off after twelve (12) weeks, the position that they had was no longer open, and its then available for other people to be hired into. If there is not a position available to be hired into, a letter was issued from Human Resources, but she does not work in that department. She also denied she was the one that determined if a claim was compensable. (Tr. 49, 50)

The claimant's first exhibit consisted of eighteen (18) pages of medical records. The first report was dated February 11, 2019, which was an office visit to see Danna Guntharp, APRN, of First Choice Healthcare, for a general healthcare follow-up involving diabetes, hypertension, and a medication refill. Localized left shoulder pain was listed in the report. Prednisone and Flexeril were prescribed. (Cl. Ex. 1, P. 1 – 7) Approximately three (3) months later, the claimant presented to Knox Orthopedics on May 29, 2019, for surgery to the claimant's left shoulder due to recurrent traumatic anterior inferior subluxation of the left shoulder. (Cl. Ex. 1, P. 8, 9) The next medical report was dated November 8, 2019, which provided the claimant presented to Doctor Kirk Reynolds with the report referring to workers' compensation and a review of adhesive capsulitis of the left shoulder with an onset of October 10, 2019. The report also provided the claimant was seen for an Independent Medical Exam (IME) on October 9, 2019, for left shoulder pain. "At that time, I felt as though her adhesive capsulitis warranted administration of an ultrasound - guided glenohumeral injection." Doctor Reynolds recommended the claimant follow up in two (2) months. The claimant reported improvement in left shoulder pain, although the pain was still intermittently experienced. The report also provided that the claimant remained on modified duty and had not reached MMI. (Cl. Ex. 1, P. 10 – 13)

On February 3, 2021, the claimant presented to UAMS Orthopedics and Sports Medicine and received an x-ray, which provided there was a widening of the acromioclavicular distance as compared to the prior exam, which could be secondary to the prior surgery, and the glenohumeral joint appeared intact with soft tissue abnormality. The medical report of Doctor Wesley Cox on the same date provided and it appeared that the claimant had early frozen shoulder. The MRI showed no tear, but the pattern of inflammation was consistent with frozen shoulder. The report went on to provide that there were certain areas of the cervical spine that could be causing all of her shoulder problems with nothing seen that would require surgery. (Cl. Ex. 1, P. 14 – 17) The claimant returned to Doctor Cox on June 30, 2021, and the report provided he did not think that the shoulder was responsible for the majority of her problems. After seeing the MRI, he had concerns that her problems were coming from her cervical spine and neck. “I believe she needs a work-up for the cervical spine [...] Work restrictions unchanged.” (Cl. Ex. 1, P. 18)

The claimant also introduced her deposition into the record without objection as Claimant’s Exhibit 2.

The respondents introduced fifty (50) pages of medical records without objection. SOAP notes from Chiropractor Ungerank, from September 25, 2002, to January 13, 2009, provided that the claimant had fallen off a bed and was suffering pain from her left shoulder to her left fingers. (Resp. Ex. 1, P. 1 – 4) The reports further provided that the claimant returned to Chiropractor Ungerank from July 7, 2015, through October 16, 2016, and provided that the claimant was suffering with moderate shooting pain of the left shoulder and hip, the right elbow, and also stiffness. (Resp. Ex. 1, P. 5 – 10)

An operative report from Baxter Regional dated June 3, 2019, provided that an arthroscopy of the claimant's left shoulder was performed due to subacromial bursitis of the left shoulder. The report further provided there was no evidence of any abrasion or wear and the findings were consistent with subacromial bursitis. Additionally, a fairly impressive subacromial osteophyte was discovered. (Resp. Ex. 1, P. 16 – 17)

On March 2, 2020, nearly nine (9) months after surgery, the claimant presented for an FCE. The claimant was referred due to ongoing pain in her neck and left shoulder. The report provided that the claimant put forth an unreliable effort with 24 of 54 consistency measures within expected limits. (Resp. Ex. 1, P. 18 – 38)

On March 16, 2020, claimant returned to Doctor Reynolds, and the report provided for a review of the adhesive capsulitis of the left shoulder, that had an onset of October 10, 2019. The report provided Doctor Reynolds reviewed the FCE with both the claimant and her husband and discussed the nature of an unreliable FCE and the fact that this finding invalidates her functional impairments that were determined on the FCE. He went on to provide, "It is my professional, medical opinion that symptom magnification is at play in this case, and she is hereby released at full, unrestricted duty and has reached Maximum Medical Improvement." Doctor Reynolds provided a return-to-work slip that the claimant could return to work with no restrictions. (Resp. Ex. 1, P. 39 - 42)

An MRI of the cervical spine was obtained on August 19, 2021, which provided under findings that there was a mild reversal of the normal cervical lordosis and mild space narrowing seen at C5–C6 and C6–C7, with no significant bone marrow signal alterations. The spinal cord exhibited normal caliber and signal intensity and the visualized contents were normal. (Resp. Ex. 1, P. 43, 44) Doctor Wesley Cox issued a

report on September 8, 2021, stating he had reviewed various records of the claimant including her family history, and opined that the claimant had pathology in her neck that makes sense with the symptoms that she is having. The next steps for treatment should be with a neck specialist. They would be the authority on work restrictions, MMI, etc. Most of the time, people with this problem do well with conservative treatments like time, therapy, injections. We will set her up to see a neurosurgeon for further treatments. (Resp. Ex. 1, P. 45 – 49)

The respondents also introduced six (6) pages of forms and wage information without objection. A Form AR-N dated April 4, 2019, and signed by the claimant, provided she had injured her left shoulder. (Resp. Ex. 2, P. 1) A Form AR-4 dated June 9, 2020, the claimant was able to return to work on October 14, 2019, and the case was closed on June 16, 2020. (Resp. Ex. 2, P. 4) The Form AR-C, which was filed on July 27, 2020, provided that claimant injured her left shoulder and neck while assisting a patient on March 14, 2019. (Resp. Ex. 2, P. 5)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

The facts regarding these two (2) claims are somewhat confusing. The initial claim filed of record involved the claimant's second work-related incident, when she was more or less assaulted by a dementia patient on March 14, 2019. (Claim No. G901891) The claimant signed a Form AR-N dated April 4, 2019, which provided she injured her left shoulder. A Form AR-4 dated June 9, 2020, provided that the claimant was able to return to work on June 9, 2020, and the case was closed. Over a year later on July 27, 2020, the claimant filed a Form AR-C in the above claim, contending that she injured her left shoulder and neck on March 14, 2019. The respondents accepted the left shoulder injury

and benefits were paid through the claimant's MMI date of March 17, 2020. The respondents denied the claimed neck injury on March 14, 2019.

The second claim filed of record (H005058) was the first one by calendar year, and involved an alleged incident on September 1, 2018, where the claimant fell from a chair after pushing back after charting on a computer. The respondents denied this claim, contending among other things that the claimant did not report a work-related injury. Since this claim is the initial one by calendar date, it will be reviewed first. In this claim, there is no record of a Form AR-C or any other documentation being filed, and the neck injury was claimed on the second injury date of March 14, 2019, as stated in the Form AR-C. The claimant testified she told her charge nurse, who would have been her supervisor, about the incident, but she was not sure what actions the charge nurse took. She admitted under cross examination that she finished her shift. She also admitted that within twenty-four (24) hours of the fall she was hurting, but was not sure if she told anyone about the treatment she received when seeing her chiropractor.

Ms. Debbie Talburt, the employee health nurse, who was very credible, testified that she did not recall an alleged neck injury until the Form AR-C was filed with the Commission on July 27, 2020. She had never received any documentation in regard to the September 2018 injury. Although the claimant contends that she told her charge nurse that she was injured on September 1, 2018, there is no documentation of record that the respondent was notified of the claimed injury on September 2018. In addition, the claimant admitted that she was aware of the procedure involving workers' compensation claims. She also admitted that she may not have told anyone about the treatment she received from her chiropractor at the time of this injury. Consequently,

based upon the available evidence, and the applicable law as spelled out below under the March 14 claim, there is no alternative but to find that the notice requirements of Ark. Code Ann. § 11-9- 701 have not been met and the claimant has not satisfied the required burden of proof in regard to the September 2018 injury. (Claim H005058) Consequently, there is no alternative but to find that this claim is not compensable

In regard to the issue of compensability of the neck injury involved in the claim of March 14, 2019 (Claim No. G901891), the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. § 11-9-102 (16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

An injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here the medical records clearly provide that the claimant suffered from issues involving her shoulder to her fingers as far back as 2002. It is also noted surgery was performed on the claimant's left shoulder due to subacromial bursitis. Approximately nine (9) months after the surgery on March 16, 2020, the claimant presented for a FCE, which reported the claimant put forth an unreliable effort with only 24 of 54 consistency measures within the expected limits. After reviewing the FCE, Doctor Reynolds opined that, "It is my professional, medical opinion that symptom magnification is at play in this case, and she is hereby released at full, unrestricted duty and has reached Maximum Medical Improvement."

Claimant contended that she continued to have problems and obtained a Change of Physician, presenting to Doctor Wesley Cox on June 30, 2021. He opined that the claimant needed a work-up for the cervical spine and after reviewing a MRI, had

concerned her problems were coming from the cervical spine and neck. A cervical MRI dated August 19, 2021, provided a finding of mild reversal of the normal cervical lordosis with mild space narrowing at C5–C6 and C6–7 with no significant bone marrow signal alterations. Later, on September 8, 2021, Doctor Cox stated he had reviewed various records of the claimant including her family history, and opined that the claimant had the pathology in her neck that makes sense with the symptoms that she is having and that she should be referred to a neck specialist who would be the authority on work restrictions and MMI, etc.

Under Arkansas Workers' Compensation law, it is clear an employer takes the employee as it finds her and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W.3d 150 (2003). Further, a claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical opinion. See Wal-mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hail v. Pitman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962)

Here, the claimant's injuries on March 14, 2019, and the difficulties that she testified to correlates with her claimed injuries and also with the opinion issued by Doctor Cox. The Commission has the duty of weighing medical evidence, with the resolution of



conflicting evidence a question of fact for the Commission. It is well settled that the Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. Based upon the above, there is no alternative but to find that the opinion issued by Doctor Cox is in fact controlling, and that consequently, the neck injury is the result of the work-related incident of March 14, 2019. A compensable injury is one that was the result of an accident that arose in the course of her employment and that grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987).

In regard to the medical, the Arkansas Compensation Act also provides that 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). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Stone v. Dollar General Stores, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. Metropolitan Nat'l Bank v. La Sher Oil Co., 81 Ark. App. 263, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984). In the present matter, there is no alternative but to find that the claimant has satisfied the required burden of proof that she is entitled to reasonable and necessary medical treatment for her neck which would include seeing the type of physician recommended by Doctor Cox.

Based upon the evidence available, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has

satisfied the required burden of proof to show she suffered a compensable work-related injury to her neck on March 14, 2019, is entitled to reasonable and necessary medical after the date of filing the Form AR-C, which would include the care as recommended by Doctor Cox. (Claim G901891) The claimant has failed to satisfy the required burden of proof to show she suffered a compensable work-related injury on September 1, 2018, and consequently, the question of reasonable and necessary medical care is moot in regard to this claim. (Claim H005058)

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY**  
**Administrative Law Judge**