

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H404600

DENA McLEVAIN,
EMPLOYEE

CLAIMANT

SPRING CREEK HEALTH & REHAB,
EMPLOYER

RESPONDENT

ARKANSAS SELF-INSURED TRUST FUND/
CANNON COCHRAN MANAGEMENT
SERVICES, INC., INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 25, 2026

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed February 6, 2026. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits.

I. HISTORY

The record indicates that Dena Cherie McLevain, now age 47, became employed with the respondents, Spring Creek Health and Rehab, on or about March 8, 2024. The claimant testified that her job title was

Certified Nurse Aide. The claimant testified that she assisted residents with showers, meals, and other activities of daily living. The parties stipulated that the employment relationship existed on or about April 7, 2024, on which date the claimant “sustained a compensable injury to her left ankle.”

The claimant testified on direct examination:

Q. Would you have to occasionally physically handle patients?

A. Oh, yes, sir. We did a lot of transferring back and forth between their bed, their wheelchair, other devices. And on the particular day when I hurt myself, actually I was moving a resident up in the bed. She had slid to the bottom of the bed off of her pillow and she wanted to be more comfortable, and so myself and another aide were moving her in her bed, adjusting her for comfort.

Q. What happened?

A. The bed was in the highest position instead of it being low, about waist-height. It was up here (indicating), and the bed was broken and it could not be lowered, and so we assisted – we attempted to move her from that position, so –

Q. Okay. And your ankle, what happened to your ankle during that time?

A. When I stepped – because you step when you move – you have to lift them off of the bed where they’re no longer making contact, and then slide them up towards the pillow, and you step in that process, and when I stepped, my ankle popped seven times....

According to the record, an x-ray of the claimant’s left ankle was taken on April 7, 2024 with the impression, “No fracture or dislocation.” A physician at Cabot Emergency Hospital noted on April 7, 2024, “Light work starting 4/7/2024. Return on 4/13/2024. No weight-bearing in left leg/ankle until cleared by a physician or other medical provider.”

A handwritten "Light Duty" note dated April 8, 2024 indicated that the claimant could perform work such as feeding residents, folding clothes, sit-down activities, rolling silverware, nails & shaves, grooming residents' hair, oral and denture care for residents, and delivering mail.

The claimant testified on direct examination:

Q. Between May the 1st going back to when the accident took place on April the 7th, did you continue to work during that time?

A. I did attempt to go back to work. I don't like being unemployed. I double-checked with the doctor that I was seeing through workman's comp and he said that I should be okay as long as I wasn't attempting to lift another person, hold more weight, things like that. It was just kinda like a light-duty thing, so I did go back to work for a while. I did let the management there know about the situation – let them know what my restrictions were. They worked with me for a while....

Q. I know during your deposition, you talked to Ms. Wood about a wheelchair.

A. Oh, when I was working for Spring Creek still? Yes, they had me in a wheelchair.

Q. Okay. When you say they had you in a wheelchair, who are you talking about?

A. The H.R. Manager and my Nurse Aide Supervisor.

Q. Okay.

A. They both said that I needed to be in the wheelchair.

Q. All right. And you worked in the wheelchair. What sort of things were you able to do and what sort of things were you not able to do?

A. Well on the list of chores, basically, the job duties they gave me during the time, bed making. They had me making beds, which I couldn't do from a wheelchair. Nail care, I could do the nail care on some patients. Some of them, their beds were not against the wall, some were. I couldn't get to both hands for the ones who were not able to get up. And then – so a lot of what I was doing was basically chasing the patients around trying to get them to get their blood pressure and stuff

before a certain time in the morning, and there's a hundred of 'em and they're going to breakfast, they're going to showers, they're going to do all these things, so that was difficult to achieve from a wheelchair with so many of them.

The respondents' attorney cross-examined the claimant:

Q. And you did light duty for Spring Creek from that date of injury, April 7th, up until May 1st; is that correct?

A. To the best of my ability, the things they had on the list, yes....

Q. Now some of the things that you told me in the deposition that you did well on light duty included cutting patients' nails and rolling silverware; is that right?

A. Yes.

A MedExpress Worker's Compensation Duty Form dated April 20, 2024 indicated that the diagnosis was "Left ankle pain" and that the claimant could return to Modified Duty. The claimant was restricted from "Kneeling" or "Pulling/Pushing." "Standing" and "Walking" were limited to 3-5 hours daily.

A MedExpress Worker's Compensation Duty Form dated April 22, 2024 indicated that the claimant could return to Modified Duty. The claimant was restricted from "Bending/Stooping," "Kneeling," "Pulling/Pushing," "Reaching," "Fine Manipulation," and "Overhead Reach."

The record contains a handwritten note dated April 22, 2024 and entitled "Dena." The following items were listed:

- Make beds –
- Do vitals
- Pass snacks & ice
- Check ice packs (thickened liquid residents)

- Pass trays & Feed Meal Service
 - Oral Care
 - Nail Care
 - Roll silverware
 - Help with activities
- Chart snacks & meals that you do

Tommi Kirkland testified that she had been employed as the respondent-employer's Director of Nursing since September 2018. The respondents' attorney examined Tommi Kirkland:

Q. I'm going to hand you what's been marked as Respondents' Exhibit 2. These first couple of pages, can you identify what those are for us?

A. [The witness peruses the document]. These are the list of duties based off of her restrictions, the light duty.

Q. Okay. So those are pages – let's see, 1 through 3. Is that right?

A. Yes. This was done by my CNA supervisor. It looks like they were modified based off of updated medical paperwork....If I remember correctly, we had her original paperwork that came in stating what her job duties were, and then she went back for an appointment and brought back a new restrictions (sic). First she was working with crutches, and then I believe afterwards, when they talked about the standing no longer than 20 minutes, that's when we offered the wheelchair.

Q. Okay. Did you ask her to do anything outside of her restrictions?

A. No.

Q. What were her hours during the time frame she was working light duty?

A. I don't know specifically, but typically when we do light duty, it's Monday through Friday through the working business hours....

Q. Was she making the same pay as far as you know?

A. Yes.

Q. Had she not been terminated would you have continued to provide light duty until she was released to full duty?

A. Yes.

The record contains an Employee Memorandum dated April 30, 2024. The April 30, 2024 Employee Memorandum was a "Write up" which detailed "Poor work performance[.]... Snacks left in rooms unopened/not offered[.]"

The record contains another Employee Memorandum dated April 30, 2024. The second Employee Memorandum was a "Write up" detailing "Poor work performance[.] Employee did not chart snacks she passed prior to leaving at end of shift. Employee stated on 4/29/24 that charting log in didn't work and was told by supervisor to see HR on 4/30/24 in morning to fix and employee failed to do so. Employee also stated on 4/29/24 that she had been charting under someone else's log which is also in violation of policy."

The record contains a third Employee Memorandum dated April 30, 2024, a "Write up" which detailed "Poor work performance[.] Failure to complete job duties – employee was given a list of job duties to complete – nails and shaves task not being done." The action taken was "Employment Termination."

The record contains a TERMINATION OF EMPLOYMENT document indicating "Involuntary Termination." The Termination Reason was "Inability to Perform." The Last Day Worked (Term Date) was May 1, 2024.

The respondents' attorney examined Tommi Kirkland:

Q. And first let me ask, were you involved the date that she was terminated? And we understand that to be May 1st.

A. I don't remember the date of the actual incident but yes, I was in the office....

Q. The next page, page 7, is entitled Termination of Employment, and it's checked that it was an involuntary termination. Is that right?

A. [The witness peruses the document]. Yes.

Q. And the other check says [as read], "Inability to Perform." Can you tell us what is meant by that on this form?

A. Uh, so there's a list of reasons for termination here, and you have to check one of those. That most closely explained why we're terminating. It wasn't – it was a failure to perform.

Q. Failure to perform the duties?

A. Yes.

Q. It didn't have anything to do with her work injury, did it?

A. No, we had accommodated her light duty.

An MRI of the claimant's left ankle was taken at UAMS on May 6, 2024, with the following impression:

1. Chronic tear of the anterior talofibular ligament with scarring.
2. Mild tenosynovitis of the tibialis posterior and mild sprain of the deltoid ligament.
3. Subtle T2 hyperintense signal with trace fatty infiltration in the visualized soleus and flexor hallucis longus muscle, suggesting denervation changes.
4. Incidentally noted 3.6 x 1.4 cm benign subcutaneous lipoma in the medial aspect of the hindfoot.

The claimant began treating at UAMS with Dr. Robert Daniel Martin on or about May 6, 2024:

The patient is seen today for evaluation of her left lower extremity. Worker's compensation injury, April 7, 2024 she was lifting a patient, on her tip toes, she felt a distinct pop in the posteromedial ankle and had immediate pain and difficulty bearing weight. She initially was in a wheelchair, then went to crutches for several days, she is now in regular shoes but has

pain with prolonged standing or walking. She is otherwise healthy....

Left ankle is examined, the patient is able to do a single heel rise but this reproduces pain, she has tenderness with deep palpation of the posterior tibial tendon....

MRI of the left ankle dated today reviewed and interpreted by myself is consistent with some tendinitis, tenosynovitis of the posterior tibial tendon. No intra-articular abnormality noted.

Dr. Martin assessed "Posterior tibial tendinitis left side worker's compensation following injury/sprain....MRI findings reviewed with the patient, recommended boot walker immobilization for a month. She is not at maximum medical improvement, she may return to work light duty, 20 minutes standing [per hour], no ladders stairs, allowed to wear the boot. I will see her back in a month's time. At that point will plan on starting physical therapy and place her in a lace-up ankle brace."

Dr. Martin noted on May 6, 2024, "She may return to work light duty with the following restrictions: no more than 20 minutes of standing per hour, no climbing ladders or stairs."

Dr. Martin noted on June 6, 2024, "It is my medical opinion that Ms. Dena McLevain She may return to work light duty with the following restrictions: no more than 20 minutes of standing per hour, no climbing ladders or stairs." Dr. Martin assessed "Worker's compensation, left ankle sprain, posterior medial, improved but still not completely better."

The claimant was provided a series of physical therapy visits beginning June 6, 2024.

The claimant followed up with Dr. Martin on July 12, 2024:

“Recommended continue therapy for another month, her work restrictions are 30 minutes standing our (sic), no ladders or stairs, at next visit would anticipate releasing her to full duty without restriction. I do not anticipate a permanent partial impairment rating.”

The claimant testified that she worked part-time at Dollar General for three weeks beginning in September 2024. Dr. Martin reported on September 13, 2024:

The patient is seen today in follow-up, overall she is improved, she still feels like there is some tightness in the posteromedial ankle but her pain has resolved. She is ready to go back to work full duty....

The patient is much improved, she will be allowed to return to work full duty without restriction, she is not yet at maximum medical improvement, follow-up in a month for final check. I do not anticipate a permanent partial impairment rating or any permanent work restrictions.

Dr. Martin assessed “45-year-old female worker’s compensation, left ankle posterior tibial tendon sprain.” Dr. Martin also noted on September 13, 2024, “She may return to work full duty with no restrictions.”

Dr. Martin noted on October 17, 2024, “She may return to work full duty with no restrictions.”

Dr. Martin reported on November 21, 2024:

The patient is seen today in follow-up, she is in regular shoes, she has no pain in the heel or ankle, she is happy with her progress, no new problems reported since last seen....

Left foot examination is benign, she has no areas of tenderness, no swelling, alignment equal to the contralateral side, foot well perfused....

The patient is placed a maximum medical improvement, she has a 0% permanent partial impairment rating based on 4th edition AMA guidelines, she has no permanent work restrictions, she will follow-up with me as needed.

Dr. Martin assessed "Worker's compensation follow-up, left ankle posterior tibial tendon sprain, plantar fasciitis, resolved." Dr. Martin noted on November 21, 2024, "It is my medical opinion that Ms. Dena McLevain may return to work as full duty."

A pre-hearing order was filed on August 27, 2025. The claimant contended, "Claimant contends that she sustained admitted compensable left ankle/foot injuries 04/07/24. Claimant contends entitlement to payment of temporary total disability benefits beginning 05/01/24 through 11/21/24 (with the exception of a short period of time when she worked for Dollar General in a part-time capacity). These benefits have been controverted for purposes of attorney's fees. **Claimant's attorney respectfully requests that any attorney's fees owed by claimant on controverted benefits paid by award or otherwise be deducted from claimant's benefits and paid directly to claimant's attorney by separate check, and that any Commission Order direct the respondent to make payment of attorney's fees in this manner.**"

The parties stipulated that the respondents “accepted this claim as compensable and have paid appropriate medical benefits.” The parties stipulated, “This claim for additional benefits has been controverted by the Respondents.” The respondents contended, “Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this matter. As indicated above, the claimant was released as having reached maximum medical improvement with Dr. Martin on 11/21/24. Respondents have no medical documentation taking the claimant off work subsequent to her full duty release and, as such, deny her entitlement to ongoing temporary total disability benefits. This will be reevaluated in the event Claimant’s counsel is able to produce medical documentation supporting his assertion regarding TTD entitlement.”

The parties agreed to litigate the following issues:

1. Whether the Claimant is entitled to additional temporary total disability compensation from May 1, 2024, until November 21, 2024, (with the exception of the period of time she worked at Dollar General).
2. Whether the Claimant’s attorney is entitled to a controverted attorney’s fee.

The respondents informed the administrative law judge on October 8, 2025, “Claimant is seeking TTD from 5/1/24 through 11/21/24. Respondents were providing light duty work to Claimant, but she was terminated for cause. As such, it is our position that she would not be entitled to TTD during the timeframe sought.”

After a hearing, an administrative law judge filed an opinion on February 6, 2026. The administrative law judge found that the claimant was entitled to temporary total disability benefits from May 1, 2024 through November 21, 2024. The administrative law judge ordered the respondents to pay benefits in accordance with the findings of fact. The respondents appeal to the Full Commission.

II. ADJUDICATION

An employee who has sustained a compensable injury shall receive temporary total disability benefits during her healing period or until she returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

An administrative law judge found in the present matter, “3. The Claimant proved by a preponderance of the credible evidence her entitlement to temporary total disability compensation from May 1, 2024, through November 21, 2024 (except for the days she returned to work).” The Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits.

The credibility of witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. *Johnson v. Democrat Printing & Lithograph*, 57 Ark. App. 274, 944 S.W.2d 138 (1997). 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 it deems worthy of belief. *Jackson v. Circle T. Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995). An administrative law judge's findings with regard to credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The Full Commission finds in the present matter that the claimant was not a credible witness. The claimant became employed as a CNA for the respondents on or about March 8, 2024. As we have noted, the claimant testified that she assisted residents with showers, meals, and other activities of daily living. The parties stipulated that the claimant "sustained a compensable injury to her left ankle" on or about April 7, 2024. Although the parties stipulated that the claimant sustained a compensable scheduled injury, the evidence does not corroborate the claimant's testimony that her ankle "popped seven times."

An x-ray of the claimant's left ankle was taken on April 7, 2024 with the impression, "No fracture or dislocation." A physician examined the claimant on April 7, 2024 and stated that the claimant could return to light work duty. A handwritten "Light Duty" note dated April 8, 2024 indicated that the claimant could perform work such as feeding residents, folding clothes, sit-down activities, rolling silverware, nails & shaves, grooming residents' hair, oral and denture care, and delivering mail. The evidence does not demonstrate that the compensable injury prevented the claimant from performing light work activities for the respondents. The claimant testified that she in fact did return to work for the respondents. The claimant agreed on cross-examination that she returned to work beginning on or about April 7, 2024. The evidence shows that the respondent-employer complied with the light duty restrictions that were assigned. Tommie Kirkland, the respondent-employer's Director of Nursing, credibly testified that light work was provided, and that the employer did not ask the claimant to perform any activities which exceeded her physical restrictions following the compensable injury.

The evidence demonstrates that the claimant returned to work for the respondents on or about April 8, 2024. The Full Commission finds therefore that the claimant "returned to work" in accordance with Ark. Code Ann. §11-9-521(a)(Repl. 2012) and is not entitled to temporary total

disability benefits. *See Turcios v. Tyson Foods, Inc.*, 2016 Ark. App. 471, 504 S.W.3d 622. The respondents terminated the claimant's employment effective May 1, 2024. The reason for the claimant's termination was "Inability to perform" her assigned work. The evidence does not demonstrate that the claimant's employment termination was causally related to the compensable injury. We find credible Tommi Kirkland's testimony that the claimant simply did not competently perform her work, and that the employer was accommodating the claimant's work restrictions at the time of the termination of the claimant's employment. The record does not show that termination of the claimant's employment was related to the work restrictions or any circumstance related to the compensable injury. *See Robertson v. Pork Group, Inc.*, 2011 Ark. App. 448, 384 S.W.3d 639.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits. The Full Commission finds that the claimant returned to work in accordance with Ark. Code Ann. §11-9-521(a)(Repl. 2012). The subsequent termination of the claimant's employment was not causally related to the compensable injury or work restrictions assigned following the compensable injury. *See Turcios* and *Robertson, supra*. The administrative law judge's opinion is reversed, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.