

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H004995**

JANIE LYNN NORKS, EMPLOYEE

CLAIMANT

BALD KNOB SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSN.
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER, TPA**

RESPONDENT

OPINION FILED DECEMBER 16, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 27th day of October, 2021, in Batesville, Independence County, Arkansas.

Claimant is represented by George Bailey, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted on the 27th day of October, 2021, to determine the issues of compensability of an injury to the left lower extremity and hip, temporary total disability (TTD), § 505 benefits, medical treatment, wage loss, and attorney fees, with all other issues reserved. At the time of the hearing, the parties stipulated the claimant's employer was the Bald Knob School District and that ALE was an area or department of the school. 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 July 23, 2020, when the claimant alleged a compensable work-related injury to her left lower extremity and hip. At the time of the alleged injury, the claimant was earning an average weekly wage of \$411.65, sufficient for a TTD/permanent partial disability (PPD) rate of \$274.00/\$206.00, in the

event the claim was found to be compensable. The parties provided post-hearing briefs, which are bluebacked and attached to this Opinion.

The claimant's and respondents' responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses consisted of Donna Laire, the lead custodian; Janie Lynn Norks the claimant; and Becky Green, the Transportation and Custodial Director. 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 with the Bald Knob School District on July 23, 2020, the date of the claimed injury. At the time of the injury, the claimant earned an average weekly wage of \$411.65, sufficient for a TTD/PPD rate of \$274.00/\$206.00.
3. That the claimant has satisfied the required burden of proof to show that she sustained a compensable work-related injury to the hamstring on the left lower extremity on July 23, 2020.
4. That the claimant has satisfied the required burden of proof to show she is entitled to the reasonable and necessary medical treatment for the above-described injury of the left lower extremity.
5. That the claimant has also satisfied the burden of proof to show that she is entitled to TTD from July 23, 2020, up to the week of November 21, 2020.
6. That the claimant has failed to satisfy the required burden of proof required for § 505 benefits.

7. That the claimant has failed to satisfy the required burden of proof for wage loss.
8. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809.
9. 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, were admitted into the record without objection. The claimant submitted three (3) exhibits, with Exhibits One and Two admitted into evidence without objection: (1) Claimant's Exhibit One, which consisted of thirty-five (35) pages of medical records; (2) Claimant's Exhibit Two, which consisted of five (5) pages of Commission Forms. An objection was made in regard to the admission of Claimant's Exhibit Three, which consisted of eight (8) pages of discharge information from the White County Medical Center, but the claimant was allowed to proffer the evidence and the admissibility was taken under advisement. The respondents submitted two (2) exhibits without objection, with Exhibit One consisting of sixty-five (65) pages of medical records, and Exhibit Two consisting of forty-three (43) pages of employment documents.

The initial witness called by the claimant was Donna Laire, who was employed by the Bald Knob School District. She testified she had worked there for a number of years and was working as the lead custodian on the day of the claimed injury when she witnessed the claimant's fall. (Tr. 7) Ms. Laire had worked as lead custodian for six (6) or seven (7) years, with her crew consisting of a varied number of people, with approximately five (5) or six (6) members on the day of the incident. (Tr. 8) She testified that they were working in the ALE building, which was just an alternate school for the

children from other districts. (Tr. 9) On the day of the incident, the claimant was working as a second mopper. "A lot of times, like when the second mopper goes through, then we can leave and go to break and let the last mopper come in and mop the room out. That way no one's in her way." At the time of the incident, the claimant was finishing up her mopping.

We were all waiting to go to break. None of us leave unless we're all waiting to go, and none of us come back until we all come back. That's the way - - the job has to work that way [...] So I called for break. The other girls come up. We were waiting for Lynn at the door, and I went back and told Lynn it was break. She laid her mop down and we come through [...] And I had went to the other side of the building to check those lights. As we go, we turn the lights off. So we both met basically right in front of the hall of the door on the way out.

Ms. Laire stated that rugs had been placed underneath the light switch, which was on the left-hand side of a double door. (Tr. 10, 11) One of the double doors was propped open because they had to go in and out for our water supply and two rugs were piled up. (Tr. 12) The rugs were piled up in front of the light switch. "They're just wrinkled up." (Tr. 13) She additionally testified that you would probably have to step on the pile of rugs to get to the light switch. "She started to the light switch as I started to the door, and as I hit the door, she went down like a ton of bricks in front of me." Ms. Laire additionally stated it was the responsibility of the last person leaving the building to turn off the lights and the claimant was the last one leaving the building that day. (Tr. 14) She went down after turning off the lights. "You would have had to put a foot on the rugs to get to the light switch that day, in that particular day [...] As she - - as the lights went off, Lynn fell in front of me. I didn't see, - - I did not see her take a step. I didn't see anything except Lynn was at the light switches and all at once - - you could tell she was coming down and there was not stopping. And I tried to catch Lynn, but I could not catch Ms. Lynn." When the

claimant fell, she screamed. (Tr. 15, 16) She yelled "It's my leg. It's my leg [...] And I untangled her foot from the rug and pulled her foot - - it was straight behind her kind of." (Tr. 17) According to Ms. Laire, "I am not sure the claimant knew what side she fell on. She was in such pain [...] I know Lynn's left leg was what was hurting her." (Tr. 18) They did not try to move her until the ambulance got there because she was in too much pain. "She remained where she fell." (Tr. 22) Ms. Laire stated that it was the last person out's responsibility to turn off the lights and the last person out was the claimant. (Tr. 24, 25) She also testified she later observed the claimant limping. (Tr. 28)

The claimant was hired as a substitute. She did not have a position or contract with the school. (Tr. 29) When the incident occurred, they were in summer work, which is different than what they do during the school year. "I can honestly say I know of - - in September, the last time that I had talked to Lynn, I had asked several times, 'Ms. Becky, have you heard from Lynn?' [...] And Ms. Becky would tell me no." (Tr. 30)

Under cross examination, Ms. Laire stated she was holding the door open when they were going to break. The following questioning occurred:

Q. Okay. And you've stated repeatedly, the last person in the building is responsible for shutting off the lights?

A. That's the way we've always done it.

Q. So once a person turns off the lights, there's nothing left to do but to go to break, do you are with that in this particular situation?

A. In this particular situation, that was her last job was she would turn the lights off. (Tr. 32)

Q. The lights were off and she fell towards the door, towards you?

A. She fell towards me.

Q. All right. And you stated on Direct. "She didn't take a step because she couldn't."

A. She couldn't.

Q. But you will agree with me that doesn't mean she hadn't tried to take a step and that's when she fell?

A. Yes, I will agree. I will agree that, you know, I don't know what Lynn's attempt was. All I know is Lynn went down, I mean, just like a ton of bricks I mean. (Tr. 33)

Under further cross examination, Ms. Laire stated, "I would say that she was falling at the same time the lights were going off [...] I'm saying when she fell, lights were off. I know that. I know when she fell, she'd already made it to the light switch because they were off." (Tr. 34, 35)

The claimant was then called as a witness and testified that she was employed by the Bald Knob School District on July 23, 2020, as a sub custodian and was working as a second mopper. Her supervisor was Donna Laire. (Tr. 36, 37) She stated she was not limping and had not had problems with her hip the night before or the week before. She admitted that she had "ailments." (Tr. 38) She additionally testified that the rugs were crumpled up and thrown in a corner under the light switch. She was making sure the lights were off because they were leaving the building for break and were then supposed to go to a different building. (Tr. 39) Donna was at the door. "She hadn't gone out of it, but she was standing at the door [...] Because I knew we were going to break, and I know that the lights needed to be turned off because we were not coming back to that building that day." She considered the lights her responsibility. She had taken a step onto the rugs because they were underneath the light switch. She stated that she could not reach the light switch without stepping on the rugs. (Tr. 40, 41) She denied taking a step

towards the door before she fell. (Tr. 42) She additionally testified she thought she fell on her left leg because that was what was hurting her. (Tr. 43)

The claimant testified that once she was transferred to the hospital, they performed a CT scan and an x-ray of her hip, legs, and back. She was told that they suspected a hamstring tear, and upon discharge, was told to use a walker and to stay off the leg as much as possible. She received a prescription for a walker. The claimant testified that she received several sheets of discharge documents and she delivered them to the school. At this point, the claimant's attorney asked for the documents to be introduced into the record, since they had been provided to the claimant by the respondents. The respondents objected since the documents had not been provided in excess of the seven (7)-day period. The claimant contended that they should be admissible since the respondents provided it as part of the personal file. (Tr. 45, 46) The claimant was allowed to proffer it and the admissibility was taken under advisement. The claimant contended that since the respondents had provided the discharge instructions in response to discovery prior to the Pre-hearing Conference, they should be admitted. (Tr. 47)

The claimant testified that a request for the discharge papers was received by a text request as per Page 25 of the respondents' Exhibit. The next text message was dated September 29, 2020, the date the claimant finally received an MRI. The message provided "How is it going? Wondering if you've had any idea of when you might come back to work.?" The claimant responded, "I don't know, I have an MRI this afternoon." The claimant testified she learned through Arkansas Workforce Services that she had been terminated or quit her job on September 29th. (Tr. 48,49) She testified she was not told of this fact until Becky told her when she was ready to come back to work. She was

referred to an orthopedic doctor by her emergency room doctor. (Tr. 50) The orthopedic doctor was Doctor Franz, who she saw about a week after her injury, and he ordered an MRI. (Tr. 51) She had been in the hospital on an unrelated matter around the middle of August with upper GI problems, running a fever, throwing up, and in a lot of pain. (Tr. 52) The claimant stated that they did not treat her for her hip at this time. In regard to her hip, the claimant testified that she was miserable, on a walker, and in a lot of pain during the middle of August. (Tr. 53) She denied being able to do any yard work or to stand up to cook during this time period. (Tr. 54)

The claimant was offered surgery by Doctor France on October 27th to "reattach." Prior to the surgery, "I could hardly put any weight on my leg and was using a walker [...]. It was just like burning all the way down to my buttocks, all the way down the back of my leg." She testified that she could not walk without the help of the walker. (Tr. 57) After surgery, she was placed in a brace, where her leg was locked in a sitting position. The claimant did not know why Doctor Franz did not provide a restriction slip for the school district. (Tr. 58) The claimant testified she or her boyfriend at the time took her hospital discharge papers to the school. She learned that that her workers' compensation claim had been denied in January when she received a letter, but after further questioning stated that it was around September. (Tr. 59, 60) The claimant stated that she ran into Ms. Becky at a church parking lot after her MRI and told Ms. Becky that she was going to have surgery to reattach her hamstring. Ms. Becky stated, "Well, let me know when you're ready to come back to work and we'll get you back in." (Tr. 61)

The claimant admitted to having a previous workers compensation injury when she tore an Achilles tendon. The claimant also admitted to two (2) additional workers'

compensation claims, one originally diagnosed as tennis elbow, and one involving a rotator cuff. (Tr. 63, 64) The claimant also admitted she had been treated by Doctor Fletcher for complex regional pain syndrome. (Tr. 65) The claimant denied that her medications affected her balance. but admitted that she had seen Doctor Fletcher about a week prior to the fall. She also denied that Doctor Fletcher had treated her for any hip issues, but did treat the left side of her body, her neck, shoulder, and lower back. (Tr. 66, 67) She denied having any trouble with her hip while seeing Doctor Fletcher. Her group health had paid for the MRI and her surgery, as well as some lab tests, her walker, visits to Doctor Franz, emergency room visits, and all the radiology. (Tr. 68, 69)

Under cross examination, the claimant admitted that in her deposition, she testified that her only pre-existing conditions of the left lower extremity was the Achilles tear. The claimant was then questioned about being in the office of Doctor Turner seven (7) days prior to the incident at Bald Knob, complaining of pain in the back and side of the left leg, an aching and burning, cramping, deep sharp pain, consisting of a ten on a ten-point scale. (Tr.70) The claimant was also questioned about telling Doctor Fletcher about pain radiating down the back of her left leg and the side of the leg, also complaining of aching, burning, cramping, deep and sharp, with the pain when at the worst a ten out of ten. (Tr. 72) She was then asked if the hamstring was on the back of her leg, and she responded yes. The claimant was questioned about the existence of these records and her truthfulness, and her response was, "Well, I mean, I, like I said, it's a different kind of pain." (Tr. 72) The following questioning then occurred:

Q. So you would agree that statement to me, "I had nothing prior in my left-lower extremity other than the Achilles injury" would not have been a truthful statement at your deposition, would it?

A. I would say that it was not the same kind of pain.

Q. Okay. But you didn't say that at the deposition?

A. No, I did not say that at the deposition.

Q. You said "No," and you sent me out of there with the understanding that there was nothing else besides the Achilles before this injury date of July 23, 2021, right?

A. Right.

Q. But now we've got your medical and was see that there is (*sic*) problems in that left leg documented in several doctor's visits, so inherently what you told me at the deposition was not true, correct?

A. Okay, yes, I would say that.

Additionally, the claimant admitted she was on muscle relaxers, gabapentin, and morphine prior to the accident. (Tr. 73) She also admitted that she had been diagnosed with neuropathy in the various limbs of her body, which extended into her left lower extremity, and that the complex regional pain syndrome was on the left side of her body. The claimant also admitted that the pain and discomfort was so severe that she had even applied for Social Security Disability, although she had not been approved. (Tr. 74) She admitted that during her breaks, she was allowed to leave the school campus, as long as she returned by the end of the break. (Tr. 75)

The claimant was then questioned extensively about how many light switches were on the wall. She finally stated that, "All I remember is shutting off lights [...] I never took a step towards the door. I turned the light off, and as I was turning the light off, I looked back and down I went." (Tr. 81)

The claimant was then cross examined about her statement to the insurance adjuster. She denied making a step towards the door, and stated a step was never taken.

"When I stood on those rugs, I turned the light, and I wanted to make sure the lights were off in the building. And as I turned, my foot was - - I was wrapped up in the rugs and I fell [...] There was never a step taken." (Tr. 88) The claimant was also questioned about her Form-N, which made no mention of her checking on any lights, and her response was that she was not asked. (Tr. 89) She was then cross examined about her application for unemployment, which provided that she left work due to a lack of work and further provided she had no disabilities that would limit her ability to work, and was available full time. She responded, "I may not have been able to stand up and work." (Tr. 91) The claimant also testified that in regard to her unemployment paperwork, the paperwork that she had received in the mail stated she had been fired, but when she was questioned about her possession of the paper work and its location, she responded she did not keep it because, "I thought it was crap." (Tr.93) In regard to multiple texts to Ms. Becky in regard to what was going on in her case, the claimant admitted that in her deposition she had testified she had lost them on an old phone. The phone number on the texts were not her phone number. (Tr. 94)

An issue arose as to the recall of Ms. Donna Laire in regard to the case in chief. The attorney for the claimant stated at the end of the claimant's testimony that, "We have no further. Can we have a break? [...] If I wasn't clear, I don't have any more questions [...] We're through with this witness [...] I don't have another witness, but I've got Ms. Donna out there as possible rebuttal." (Tr. 100)

After a brief break, the claimant's counsel stated, "I have Ms. Laire as a rebuttal witness and have retained her, but at this point I would request that I can recall her in my

case-in-chief and put her on about two (2) questions and then let go. And not that I want to waive the right to call her in rebuttal, but I'd just like to recall her before I rest.”

Initially, the respondents' counsel provided he had no objection to the recall since he had subpoenaed her, but after thinking about the situation, he then objected to the witness being recalled since counsel for the claimant had stated on the record that he had no witnesses. The claimant was then allowed to recall the witness. (Tr. 100, 101) She was questioned by both parties about the number of light switches on the wall. (Tr. 103 - 105)

The respondents called Becky Green as their witness, who testified she was the Transportation and Custodial Director at the time of the incident involving the claimant and there was only one light switch on the wall. (Tr. 106) She was also asked about an additional response from the claimant in regard to the text message on September 29, about returning to work or the claimant's desire to return to work. Ms. Green responded that she did not receive a response in regard to returning to work and denied she had an in-person conversation with the claimant about returning to work. (Tr. 107, 108) She was also questioned about terminating the claimant's employment on September 29, when e-mails were being swapped, and she denied that a decision was made on that date. She also denied the claimant contacted her in regard to employment between September 29, 2020, and the completion of the unemployment paperwork by David Frieze. She stated she was the person the claimant should have been contacting in regard to restrictions, ability, and availability of work. (Tr. 109, 110) She testified she was never contacted. (Tr. 111) She was aware of the documents that Lee brought to the administration, but she had not received anything after. (Tr. 111) She additionally stated that the office had

contacted her and asked if she knew when the claimant was returning, and she responded, "I haven't heard anything. I assume she quit." She did not know the date of that response. (Tr. 112)

The claimant submitted a packet of medical records consisting of thirty-five (35) pages, which was admitted into the record without objection. The records provided that the claimant presented to the Emergency Department of the White County Medical Center on July 23, 2020, with left hip and knee pain following a fall. The report further provided that the claimant stated she was walking prior to admission and fell on her left side and had intense pain in her left knee, hip, and back. She also provided she suffered from complex regional pain syndrome, which mainly affected her left side. An x-ray of the pelvis and knee did not show any fracture or dislocation. Upon inspection, the report provided for an abrasion of the left knee. (Cl. Ex. 1, P. 1 – 13) The radiology report of the left knee provided a negative study under impression. The radiology of the left hip report provided that no displaced fracture was identified and the "left greater trochanter benign bone island is stable compared to prior CT from February 2019" with very minimal degenerative changes to the hips. Under impression, Doctor White reported that there is a "[q]uestionable tear of the left hamstring tendons at the origin from the left ischial tuberosity." (Cl. Ex. 1, P 14 – 19) An MRI of the left hip was performed September 29, 2020. The report provided the following:

1. Degeneration/tear of the anterior/anterolateral left acetabular labrum with high-grade chondromalacia of the adjacent acetabular roof.
2. Tendinopathy and partial tear of the right hamstring tendon in the left gluteus medius tendon.
3. Tendinopathy and small partial tear of the right hamstring tendon and right gluteus medius tendon.

4. Abnormal intramuscular edema signal in the quadratus femoris may represent strain or may be reactive to adjacent hamstring pathology. No significant narrowing of the ischiofemoral interval. (Cl. Ex. 1, P. 24)

An exam, assessment, and plan were provided by Doctor Justin Franz on October 22, 2020. It provided under assessment of a sprained left hamstring insertion. The plan provided for left hip proximal hamstring repair. (Cl. Ex. 1, P. 25 – 29) Left hip proximal hamstring repair was performed on October 27, 2020, by Doctor Franz. The report provided the MRI confirmed a proximal hamstring tear. The surgery report provided “There was noted to be fluid in the center of the tendon with degenerative central tearing off of the ischial tuberosity.” (Cl. Ex. 1, P. 33 – 35)

The claimant also submitted a First Report of Injury that provided that the specific injury was a fracture and mentioned the left hip and right leg. (Cl. Ex. 2, P. 1) The Form AR-2 provided that the claim was denied due to the fact that it did not occur at work. (Cl. Ex. 2, P. 2) The Form AR-N provided the left hamstring was pulled from the bone. (Cl. Ex. 2, P. 3)

The respondents also submitted a packet of medical reports without objection, which consisted of sixty-five (65) pages. A chart-note from Nikki Taylor, ARNP, dated October 3, 2011, provided there was a family history of arthritis with “pain acute, not elsewhere classified.” (Resp. Ex. 1, P. 1 – 7) The claimant was referred for a nerve conduction study on December 21, 2012. (Resp. Ex. 1, P. 8) A report by Nikki Taylor, ARNP, dated December 13, 2012, provided for joint tenderness and fibromyalgia. (Resp. 1, P. 9 – 17) The claimant returned to Nikki Taylor, ARNP, on August 20, 2013, and the report provided for polyneuropathy and fibromyalgia. (Resp. Ex. 1, P. 18 – 20) The claimant again returned to Nikki Taylor, ARNP, on February 15, 2014, and the report

provided the claimant had chronic pain, insomnia, and polyarticular joint pain. (Resp. Ex. 1. P. 21, 22)

On March 26, 2019, the claimant presented to Doctor Terry Fletcher. His report provided that the claimant complained of pain primarily of the lower back and also the neck, which radiated to the left shoulder arm. The pain began following an accident in 2009. A bilateral medial branch block at L3-4, L4-5, and L5-S1 was recommended. (Resp. Ex. 1, P. 23 – 27) The claimant returned to Doctor Fletcher on April 25, 2019, and reported increased pain radiating down the left leg. The report further provided the claimant had failed conservative treatment and wished to proceed with a lumbar epidural steroid injection. (Resp. Ex. 1, P. 28 – 32) On July 9, 2019, the claimant filled out a patient questionnaire for Doctor Baskin. The questionnaire provided the claimant was suffering from pain, weakness, and numbness of the arms, legs, hips, and knees. (Resp. Ex. 1, P. 33 – 36) The claimant then made return visits to Doctor Fletcher on September 23, 2019; January 21, 2020; and July 16, 2020. The claimant was diagnosed with radiculopathy of the lumbosacral region and received her third epidural steroid injection in September of 2019. On her January 21, 2020, visit, the claimant complained primarily of knee pain with lower back pain radiating to the left leg and side of the left leg. The assessment on this visit was of left and right knee pain, radiculopathy of the lumbosacral region, spondylosis of the lumbosacral region without myelopathy or radiculopathy, chronic pain syndrome, and long-term use of opiate analgesic. On the claimant's visit on July 16, 2020, she still complained of lower back and knee pain. The report also provided that the claimant should maintain normal activities. (Resp. Ex. 1 P. 37 – 47)

The claimant was discharged from the White County Medical Center for what appeared to be an unrelated reason on August 11, 2020, with the report providing the claimant suffered from complex regional pain syndrome of the left side along with multiple other issues. The claimant then returned to Doctor Fletcher on August 12, 2020, and the report provided the claimant was suffering from complex regional pain syndrome diagnosed twelve (12) years earlier, along with other issues. (Resp. Ex. 1, P. 50 – 53) The claimant then again returned to Doctor Killough two (2) days later with the report providing that the claimant suffered from multiple problems with one consisting of “arthraigia” (*sic*) with a referral to Pain Centers of America. (Resp. Ex. 1, P. 54 – 58) The claimant then presented to Doctor Fletcher on March 16, 2021. This report provided that the claimant primarily complained of lower back pain. “The patient states that the onset of pain was sudden with no known reason. It radiates to the back of the right leg, side of the right leg, back of the left leg and side of the left leg. At its worst, the pain is 10 out of 10, and at its best it is 3 out of 10. (Resp. Ex. 1, P. 59 – 63)

The respondents also submitted a packet of non-medical employment documents without objection that consisted of forty-three (43) pages. The first document consisted of an unemployment application where the claimant checked that she did not have any disabilities that limited her to perform normal job duties. (Resp. Ex. 2, P. 1 – 4)

A tape-recorded statement made by the claimant to the Arkansas School Board Association was also entered into the record. The recording was made at approximately 11:45 a.m. on the morning of July 24, 2020. The claimant stated she was a substitute custodian paid by the school district who would go to work every Monday and would be assigned a hall. She was injured the day before, about 2:00 p.m., after starting work at

6:00 a.m. The claimant was instructed that she needed to fill out a Form AR-N. In regard to the accident, the claimant stated,

I had just got done cleaning my equipment and the girls that I work with told me that I was ... they were leaving to go on break, and I said, 'Okay.' Well, I was carrying Lysol and I had picked up my glass and my belongings, and I turned and turned off the light, and when I did, I started to walk to the door and I tripped over a pile of rugs that were on the floor [...] We were just going back to our break room that we have.

The claimant admitted she did not have to clock out for a break, and she could leave the campus. "I was standing by the front door to turn the lights off, so I was standing by the main front door." The claimant stated that she had turned off the lights. In regard to her injury, the claimant stated, "I pulled my hamstring from the bone on my left hip and leg." She also stated she scraped her left knee and left elbow. She admitted the left side of her body had been affected by complex regional pain syndrome for the last fifteen (15) to twenty (20) years. The claimant also admitted to taking the prescription medications, morphine, meloxicam, lansoprazole, cyclobenzaprine, and gabapentin. (Resp. Ex. 2, P. 6 – 24)

A page of text messages was also admitted wherein the claimant was asked for her discharge papers and she stated that "Lee" had taken it in earlier. The claimant was also asked if she had any idea when she would return and the claimant responded that she did not know but was going for an MRI that afternoon. (Resp. Ex. 2, P. 25) The claimant's employment application was also made part of the record, which provided that the claimant could begin work immediately, work full-time, with the reason for separation from her last work being lack of work. (Resp. Ex. 2, P. 26, 27) The final documents that were admitted by the respondents were unemployment application and records. The claimant stated in a document to Arkansas Workforce Services that she worked as a

substitute custodian and her employer had contracted her job to a company. She further stated she had voluntarily quit but was able to return as needed. The respondents responded to the Arkansas Workforce Services that the claimant voluntarily quit on August 24, 2020, and her job was not outsourced. The reason for the claimant quitting was unknown as per the respondents' response. The claimant provided she got hurt on the job and that she supplied medical evidence of this fact on July 23, 2020. The Arkansas Department of Workforce Services accepted the employer's statement as more credible. The claimant began receiving unemployment benefits the week of November 21, 2020. (Resp. Ex. 2, P. 28 – 41)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for her 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).

Evidentiary Issues

The initial issue to be decided is the admissibility of the proffered discharge information issued by the White County Medical Center. From statements of counsel, it appears that that the documents were provided by the respondents pursuant to discovery, but the information was not listed by the claimant as documents to be admitted during the

hearing prior to the seven (7)-day deadline as spelled out in the Prehearing Order filed July 1, 2021. Although the respondents should not have been surprised by the documents, they were not made aware of the fact that the documents were intended to be introduced by the claimant, and consequently would possibly have not prepared for the introduction of the documents. Consequently, it is found that the introduction of the documents will be denied, based upon the Prehearing Order.

In addition, an issue arose as to the claimant recalling a witness to testify in her case in chief, after it appeared she had rested. A break occurred after the claimant rested and upon return, the claimant asked to return the witness to the stand. Since no other witness had been called at this point in the hearing, and the Commission has great discretion in the admissibility of evidence, the testimony of the recalled witness was allowed and is found to be admissible.

Compensability

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). A compensable injury does not include an injury that was inflicted upon the employee at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. The same test is used to determine whether an employee is performing employment services as is used when determining whether an employee is acting within the course and scope of employment. 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. Whether an employer requires an employee to do something has been dispositive of whether the activity constituted employment services. Ray v. University of Ark., 66 Ark. App. 177, 990 S.W.2d 558 (1999).

In the present matter, much time was spent questioning the various witnesses in regard to the number of light switches, where the claimant was in regard to the door, whether a step had been taken towards the door, and the fact that the claimant was about to leave for a break where she was even allowed to leave the campus if needed. Based upon the testimony of Donna Laire, it is clear and compelling that the last person to leave a room is the person responsible for turning out the lights and responsible for this action. Here, this responsibility fell on the claimant, who fell while stepping on a pile of rugs under the light switch or switches.

In a case with somewhat similar facts, a claimant tripped over a rug in the main office, prior to leaving work for the day. The claimant in this matter fell on her left side, injuring her head and was also taken to an emergency room by ambulance. She clocked out and then went to her office to retrieve her purse to leave for the day. She then proceeded to the main office where she checked the fax machine for any last-minute faxes and last-minute caterings. At the front or main office, she laid her purse on the printer and checked her mailbox and the fax machine. As she started to walk out of the front office, she fell before retrieving her purse. The Court of Appeals stated that the claimant was injured in an area where employment services were expected of her and which advanced the interests of C.L Swanson, the employer. In the present matter, the claimant was in an area where employment services were expected, and she was responsible for turning out the lights due to the fact that she was the last person out.

Based upon the above facts and law, it is found the claimant was performing employment services at the time of her injury. See Barrett v. C.L. Swanson Corp., 210 Ark. App. 2010.

In addition, under Arkansas workers' compensation law, 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).

Objective findings 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 was suffering from issues to the left side of her body, specifically complex regional pain syndrome, that was

diagnosed up to twenty (20) years earlier. It is also clear that the claimant's testimony that was provided in her deposition as well as her statements provided to the Arkansas Workforce Services were inherently unreliable. With that said, the claimant's work-related incident was witnessed by her supervisor. The emergency room doctor opined that the claimant suffered a "questionable tear of the left hamstring tendon" when she presented to the emergency room immediately after the accident. She finally obtained an MRI on September 29, 2020, and it provided she suffered from a small partial tear of the right hamstring tendon in the left gluteus medius tendon and tendinopathy and a small tear of the right hamstring tendon in the left gluteous medius tendon. Surgery was performed by Doctor Franz on October 27, 2020, on a proximal hamstring tear.

It is noted that 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).

A workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that it grew out of or resulted from the employment. See Moore v.

Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987). It is also clear that an employer takes the employee as it finds him 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).

Based upon the available evidence in the case at bar, and specifically the medical evidence, there is no alternative but to find that the claimant has satisfied the burden of proof to show that she suffered a work-related injury to her left leg, specifically her hamstring. Consequently, she has established by a preponderance of the credible evidence that the left hamstring injury to her left lower extremity is the result of the incident that occurred on July 23, 2020.

Medical

In regard to medical, the Arkansas Compensation Act 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). Here the health care provider who initially examined the claimant in the emergency room after the work-related accident noted that the claimant suffered a “questionable tear of the left hamstring tendon.” This

diagnosis was later confirmed by surgery on October 27, 2020. Based upon this finding, the claimant has satisfied the burden of proof to show that she is entitled to the reasonable and necessary medical treatment for her left hamstring tear.

Temporary Total Disability

In regard to temporary total disability (TTD), the claimant contended she was entitled to TTD due to a work-related injury to her left lower extremity. TTD is that period within the healing period in which an employee suffers a total incapacity to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. App. 244, 613 S.W.2d 392 (1981). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. See Breshears, *supra*. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. Paalazolo v. Nelms, 46 Ark. App. 130, 877 S.W.2d 938 (1994). The claimant suffered the work-related injury to her left hamstring on July 23, 2020, and later underwent surgery on October 27, 2020, for its repair. No medical return to work documentation was introduced into the record. The claimant starting drawing unemployment benefits the week of November 21, 2020, based upon her contention to the Arkansas Department of Workforce Services that she had no disability and was able to begin full-time work immediately. Based upon the best available evidence, the condition affecting the hamstring was alleviated due to the surgery of October 27, 2020, and the claimant stating she had no disability and was able to return to work immediately, and in fact started drawing unemployment benefits the week of November 21, 2020, based upon her statement. Consequently, it is found that the claimant's TTD period

ended the week of November 21, 2020, and there is no alternative but to find that the claimant is entitled to TTD from the date of the injury up to the week of November 21, 2020. It is also noted that Ark. Code Ann. § 11-9-506 provides that no compensation for TTD shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment insurance benefits under the Division of Workforce Services Law.

§ 505 Benefits

Ark. Code Ann. § 11-9-505 provides that any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between the benefits received and the average weekly wages, lost during the period of the refusal for a period, not exceeding one (1) year.

Before the above act applies, several requirements must be met. The employee must prove by a preponderance of the evidence that she sustained a compensable injury, that suitable employment which is within her physical and mental limitations is available with the employer, that the employer has refused to return her to work, and that the employer's refusal to return the claimant to work is without reasonable cause. See Torrey v. City of Fort Smith, 55 Ark. App. 226, 934 S.W.2d 237(1996)

The claimant in the present matter sustained a compensable injury but failed to prove that suitable employment was available within her limitations. Further, the claimant made no affirmative step to be reinstated to her employment and the credible testimony

of Ms. Becky Green established that the claimant quit communicating with her and the respondents. Without any attempt to return to work, it cannot be said that the respondents refused to return the claimant to work. See Burke v. Arkansas Dept. of Correction, 2018 Ark. App. 231, 547 S.W.3d 745 (2018). Based upon the above, there is no alternative but to find that the claimant has failed to satisfy the burden of proof required for § 505 benefits.

Wage-Loss

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Tempworks Mgmt. Servs., Inc. v. Jaynes, 2020 Ark. App. 70, 593 S.W.3d 519. Here, the claimant suffered an injury to her hamstring. There is absolutely no supporting evidence of a permanent injury, and consequently, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof for wage loss. It is also noted that the claimant provided to the Department of Workforce Services that she does not suffer from any disability that would prevent her from working.

Attorney Fees

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

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the burden of proof that the claim of an injury to her left lower extremity, specifically her hamstring, is compensable and the treatment of the injury is reasonable and necessary. The claimant has also satisfied the burden of proof that she is entitled to TTD from the date of the injury up to the week of November 21, 2020. The claimant has failed to satisfy the burden of proof that she is

entitled to § 505 benefits and wage loss. She is also entitled to attorney fees as spelled by the Arkansas Workers' Compensation Act. 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.

JAMES D. KENNEDY
Administrative Law Judge