

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H108635**

SAMANTHA PETTY, EMPLOYEE	CLAIMANT
BUTTERBALL LLC, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED **MAY 12, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by ZACHARY F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 26, 2022, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on December 16, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1 and was modified at the hearing. No objection was made to it being part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on October 5, 2021.
3. The respondents have controverted the claim in its entirety.
4. The claimant's average weekly wage was \$636.00, making her temporary total disability rate \$424.00 per week.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury on October 5, 2021.
2. If compensable, whether claimant is entitled to temporary total disability benefits from October 6, 2021 until December 27, 2021, as well as medical benefits, and attorney fees.

All other issues are specifically reserved.

The claimant contends that “she injured her right shoulder on October 5, 2021 and is entitled to medical benefits and temporary total disability benefits. The claimant reserves all other issues.”

The respondents contend that “The claimant alleges that she injured her shoulder on her last day of employment. She did not sustain a compensable injury.”

From a review of the record as a whole to include medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a prehearing conference conducted on December 16, 2021 and contained in the prehearing order (as modified at the hearing) filed that same date are hereby accepted as fact.
2. Claimant has met her burden of proof by a preponderance of evidence that she is entitled to temporary total disability benefits from October 6, 2021 through December 27, 2021, as well as medical benefits for her right shoulder injury that occurred on October 5, 2021.
3. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

At the time of the prehearing conference, claimant did not make a precise claim as to the duration of her claim for temporary total disability benefits, and the parties had not come to an agreement on claimant's average weekly wage. Between the time the prehearing order was entered and the date of the hearing, the parties agreed on claimant's average weekly wage, and claimant determined that her claim for temporary total disability for the purposes of this hearing would be limited to the period between October 5, 2021 and December 27, 2021. Those announcements at the beginning of the hearing have been incorporated into the stipulations set out above as well as the issues to be litigated without objection from either party.

HEARING TESTIMONY

Claimant was the only witness testifying at the hearing. She said she was working at respondent Butterball on October 5 and on that day had been moved to a different department. Claimant said she was "not used to it and I fell coming down the stairs and hit my shoulder on the railing." Claimant said she had grabbed the railing too tightly and completely fell, causing her shoulder to make full contact with the back of the railing. Claimant reported the injury to the nurse's station and said at the time she was having pain, burning, numbness, and tingling in her fingers. Claimant said the nurse rotated her shoulder to see if it was really dislocated. He then took pictures of her boots, gave her Tylenol, and sent her back to the floor. Claimant said she was not able to continue working because the pain in her right arm was too much, but she did stay for the rest of her shift that night. At the end of her shift, the nurse told her to come back tomorrow if she had any more problems with it.

Claimant testified that she did return the next day and reported that her shoulder had gotten worse, to the point that she could not put on her PPE. After being offered Tylenol and told to

return every six hours if the shoulder continued to hurt, claimant said that she had rather go to a doctor because she felt something was seriously wrong with her shoulder. The nurse did not offer to send her to a doctor, so she went to Urgent Care in Van Buren. The doctor x-rayed claimant's shoulder, after which her arm was put in a sling and medication was prescribed for her.

Following the doctor's visit, claimant spoke with a person in the Human Resources Department and was told to keep bringing in the notes and they would be given to the nurse. Claimant said she also talked to "the day-shift nurse that does the workmen's comp." No sort of light duty work was offered to claimant, and claimant was not referred to any medical provider.

Claimant testified that she had physical therapy, shock therapy, and surgery on her shoulder. The surgery was performed on December 14, 2021. Claimant said she did not work from the date of her injury through the end of December. Claimant was in a sling up until her surgery and for about three months after her surgery. She said that she was terminated by Butterball when she went to get her only check after the injury. She spoke with someone in the office but did not know who it was. Claimant then filed for unemployment and provided as an exhibit to the hearing a copy of the denial letter, which will be reviewed below.

Claimant said her shoulder was better now but that it still sometimes dislocates if she turns it the wrong way. She is still under the treatment of Dr. Johnathan Tobey.

On cross-examination, claimant was asked about a visit to the emergency room four days before she said she was injured at respondent Butterball. Claimant testified that she did not recall going to the emergency room on October 1 or on the day before. When asked about a report from Urgent Care dated October 4, 2021 where the doctor recorded an ankle injury for a fall claimant had in a hotel room, claimant maintained that she did not remember it. After being advised of the contents of the medical reports from those emergency room visits, claimant said that her incorrect

answers at the deposition were because she did not understand the questions. “I thought it had something to do with any other ER visits due to my shoulder, like any other ER visit.” She did not think it was relevant to the questions that were being asked that she had other ER visits. Claimant denied that the fall in her hotel room caused an injury to her shoulder. She said she was given a knee brace and put on light duty work for the incident in tripping over the chair in a hotel room but could not work because there was no light duty for her. She returned to the doctor on October 4, 2021 and requested the light duty restriction be removed which it was. She denied that the injury to her ankle¹ played a part in her fall at Butterball which injured her shoulder.

Claimant said that she had reported this as a workers’ compensation claim, informing both the nurse that was on duty at the time of the injury and the day shift nurse that handles the workers’ compensation claims for Butterball. Claimant said that she had four subsequent dislocations of her shoulder after her injury at Butterball while she was doing random things during her day. She said she could turn the wrong way and it automatically pops out of place. Stretching in the morning upon awakening, sneezing too hard or coughing too hard could cause a dislocation.

Upon redirect examination, claimant said that she was accompanied to the nurse’s station by her supervisor who had seen her on the ground holding her shoulder. She did not recall the name of the supervisor, but he remained at the nurse’s station once they arrived. He did not offer to have her fill out any paperwork.

REVIEW OF THE MEDICAL RECORDS

Following her injury, claimant first went to see Dr. Donald Samms at Baptist Health Urgent Care in Van Buren. Dr. Samms ordered an MRI, suspecting a rotator cuff disorder. The MRI was

¹ Respondent’s attorney said “ankle” when asking some of his questions, but I believe he misspoke. The records for the October 1 and October 4 Urgent Care visits refer to a contusion of her right knee and makes no mention of an ankle injury.

conducted on October 14, 2021, and showed that the rotator cuff was intact, but the finding suggested “a recent anterior-inferior humoral dislocation”. Claimant was referred to Dr. Jonathan Tobey who concurred that claimant had an interior dislocation of her right shoulder and began her on a course of physical therapy. During the course of her treatment, claimant reported at least four subsequent dislocations and Dr. Tobey then recommended surgery. Surgery was performed on December 14, 2021, with claimant returning to the clinic to see Dr. Tobey on December 27, 2021. Dr. Tobey noted that claimant had undergone “right shoulder arthroscopic anterior labral repair with capsulorrhaphy.” The office notes from that visit conclude with “patient is to continue to use a sling for another two weeks at which time she would start physical therapy for a range of motion exercises to the right shoulder per post op physical therapy protocol. No lifting at this time”.

Respondent provided the records from claimant’s October 1, 2021 visit to Baptist Health Urgent Care where she was treated by Dr. Matthew McLellan for a contusion of her right knee. In his examination, Dr. McLellan found claimant was not in acute distress. His musculoskeletal exam mentioned only the right knee problem. Three days later, claimant returned to Urgent Care and requested that she be released to full duty, as her knee was not bothering her. Claimant was released to full duty on October 4, 2021. Those records from the October 1 and October 4 visits do not mention any complaints claimant had regarding her right shoulder.

NON-MEDICAL EXHIBITS

Claimant submitted two non-medical exhibits, both from the Arkansas Division of Workforce Services dated March 10, 2022. The Notice of Agency Determination found that claimant was discharged for absenteeism on October 12, 2021, but also found that the reasons were beyond her control. The Agency further found that “due to a disabling injury, you are not able to perform suitable work. You are ineligible for benefits for the time period shown below and

continuing until this condition no longer exists. Please advise your DWS office when this condition no longer limits your availability for suitable work.”

ADJUDICATION

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630. If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The "preponderance of the evidence" standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415. I find claimant has met her burden of proof in this case.

The objective medical evidence was overwhelming that claimant injured her right shoulder and needed surgery to repair the damage. Ultimately, the question in this case is whether claimant is a credible witness on this issue of whether she was hurt at work as she testified. Although a claimant's testimony is never viewed as uncontroverted, the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). While claimant's deposition testimony could have caused her entire account of her injury to be called into question, after considering all the evidence in this case, I believe that the injury arose out of and in the course of claimant's employment at Butterball on October 5, 2021.

During her deposition, claimant was asked about other emergency room visits she had made, and she denied any such visits other than for her asthma. The medical records respondent produced showed that claimant had been to Urgent Care during the week before the date she alleges she was injured at Butterball. Claimant first said she did not recall going to the ER on or about October 1, 2021, nor did she remember the circumstances for which she sought medical treatment on that date. But upon further questioning, claimant said she did remember getting x-rayed and receiving a prescription of Meloxicam during an ER visit. She then said she didn't understand the questions that were being asked during the deposition, stating that she thought the questions related to her shoulder injury. There was then this exchange between claimant and respondent's attorney:

Q (BY MR. RYBURN): Did you injure your shoulder when you fell in your hotel room over your chair?

A: No.

Q: Did you not tell me about that incident because you injured your shoulder in your hotel room when you tripped over the chair?

A: No.

Q: Was there any reason you didn't tell me about that incident and going to the ER when I asked you about going to the ER?

A: I honestly got confused.

Q: You were given a knee brace and put on light duty work for that incident tripping over the chair. Do you recall that?

A: Yes

Q: Did you go on light duty when you returned to work after that incident?

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A: I went and gave a note, but I could not work. They told me they did not have any light duty for me.

Q: Okay. And then you went back to Urgent Care on the 4th and told them to take off the light duty restriction?

A: Yes.

Q: Did they take off the light duty restriction?

A: Yes.

Q: And then you returned to work at Butterball full duty; is that correct?

A: Yes.

Q: At the time of this incident on October 5th were you still on light duty for that knee injury?

A: No.

Q: Did your injury to your ankle play any part in your fall at Butterball which injured your shoulder?

A: No.

Over the course of a couple of minutes, claimant said that (a) she didn't remember going to the ER on October 1, 2021, (b) that she did remember getting x-rayed and a prescription, (c) that she thought the questions related to her shoulder injury and (d) that she was honestly confused about what was being asked. If the only proof on this point was claimant's testimony, I would be hesitant to accept it, but when I piece together all the evidence, I find the following is what happened:

1. Friday, October 1, 2021: Claimant went to Urgent Care at 8:30 A.M., relating that she hurt her knee on September 30, 2021, when she tripped over a chair in a hotel room. She told the doctor

that there were jobs at Butterball she could perform while sitting, and the doctor thought that was best for her at the time. However, claimant testified she was not put on light duty on October 1, 2021.

2. Monday, October 4, 2021: Claimant returned to Urgent Care at 9:20 A.M, needing a note from her doctor that she had no further restrictions for her knee injury. This is consistent with claimant's testimony about not being placed on light duty at work on October 1, 2021. Claimant then went to work on October 4, 2021.

3. Tuesday, October 5, 2021: Claimant fell down the stairs at work, causing damage to her right shoulder, and saw a doctor for that injury the next day.

Thus, while claimant created some doubt about her veracity due to her various reasons why she didn't tell respondent's counsel about the Urgent Care visits of October 1 and October 4, 2021, I find it interesting that those reports did not hurt her claim of a shoulder injury on October 5, 2021. To the contrary, those records demonstrated that she sought medical treatment for an unrelated injury a few days before her fall on October 5, 2021, and nothing was mentioned to the doctors about a shoulder injury; she was returned to full duty on October 4, 2021. When she saw Dr. Samms on October 6, 2021, he diagnosed an internal derangement of the right shoulder. Based on this evidence, I conclude she returned to full duty on the night shift of October 4, 2021 and was injured at work the next evening. There was no evidence produced that claimant was not able to work at full duty on October 4, 2021, or that she came to work on October 5, 2021 with limited use of her arm, or that she didn't report an injury to the plant nurse on October 5, 2021. Claimant's testimony is consistent with the medical records on the timing and extent of the shoulder injury, and without anything contradicting this evidence, I find claimant met her burden of proof.

ORDER

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on October 5, 2021. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes continuing medical treatment from Dr. Tobey. In addition, respondent has controverted claimant's entitlement to temporary total disability benefits from October 6, 2021 through December 27, 2021 and is liable for payment of an attorney fee on all unpaid indemnity benefits. This fee is to be paid one-half by claimant and one-half by respondent pursuant to A.C.A. § 11-9-715.

Respondent is responsible for paying the court reporter her charges of \$366.55 for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE