

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H208121

ZULEYKA PICHARDO, Employee	CLAIMANT
PRAIRIE GROVE ELEMENTARY SCHOOL, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT

OPINION FILED SEPTEMBER 8, 2025

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

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

Respondents represented by JAMES A. ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 10, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 26, 2024, and an amended Pre-hearing Order was filed on April 15, 2025. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on November 4, 2022.
3. The respondents have controverted this claim in its entirety.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$245.00 for temporary total disability benefits and \$184.00 for permanent partial disability benefits.

5. The claimant reserves all other issues.

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

1. Whether Claimant sustained a compensable injury to her thoracic outlet resulting in thoracic outlet syndrome.

2. Whether Claimant is entitled to medical treatment as recommended by Dr. Christopher Dougherty, including treatment for thoracic outlet syndrome.

3. Whether Claimant is entitled to temporary total disability benefits from October 31, 2024, to a date yet to be determined.

4. Whether Claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

“Claimant contends she is entitled to treatment as recommended by Dr. Dougherty for her injuries sustained on 11/4/2022, including treatment for thoracic outlet syndrome.”

The respondents' contentions are as follows:

“All appropriate benefits have been paid.”

The claimant in this matter is a 38-year-old female who alleges to have sustained thoracic outlet syndrome in an incident that she alleges to have occurred on or about November 4, 2022.

The claimant was employed by the respondents to prepare meals for school children. On direct examination the claimant described her alleged incident as follows:

Q And what was your job there?

A I was serving food to the students. I was also preparing food for the students and cleaning the areas where the food was served.

Q And what happened on November 4th of 2022?

A I was serving lunch, some food during lunch. One of my friends handed me a pizza tray. I put the pizza tray in the warmer. So when I was turning around, I actually slipped and I fell on my knee. When I was trying to hold on to something with my left hand, on the sting table that they had, and tried to get up, there was a police officer. He was a co-worker. His name was Paredes and he tried to help me up. So I went to the office, to the manager, Danielle. I actually went with the officer and he helped me interpret.

Q Okay. Just a minute. I want to go back for a moment to the way you fell. You said you fell onto your knee first. Which knee was that?

A It was the right knee.

Q Okay. And after you hit the floor on your right knee, then what happened to your body?

THE INTERPRETER: Your Honor, may the interpreter inquire?

THE COURT: You may.

THE WITNESS: Yes. So when I fell and as I was falling, I was like trying to hold onto something. I put some force out and then I hold onto a sting table.

THE INTERPRETER: And the interpreter asked, "What is a sting table?" It's a serving table. It is a table where you serve the food.

THE COURT: Thank you for that explanation.

Q [BY MS BROOKS]: And how did you land?

A I slipped.

Q And did you fall onto your back or onto your side? How did you land?

A I fell on my back.

As seen in Claimant's Exhibit 1, page 1, the claimant initially complained of low back, upper back, and right knee pain. Over time, the claimant's complaints of pain began to change. She began to complain of neck pain and upper extremity pain in a physical therapy report dated June 5, 2023. Clearly, the medical records show that the claimant's difficulties revolved around her low back, upper back, and right knee throughout the majority of the first year following her alleged fall.

In the current hearing before the Commission the claimant is only alleging compensability of thoracic outlet syndrome. While medical records detail other issues, thoracic outlet syndrome is the only issue germane to this hearing.

The claimant was referred by Dr. Christopher Dougherty to Dr. James Counce, who performed surgery on the claimant for thoracic outlet syndrome on October 31, 2024, at Washington Regional Medical Center.

Dr. Counce underwent a deposition that was taken on April 1, 2025. In that deposition Dr. Counce gave deposition testimony that included a description of thoracic outlet syndrome as follows:

Q Tell us about thoracic outlet syndrome. I've been doing this for 47 years or so now, and I can count probably on two or three fingers the number of cases I have had regarding that condition.

Q [SIC] Thoracic outlet syndrome is a compression syndrome associated with either thoracic inlet or thoracic outlet, which is this small space where structures are traveling from the neck to the chest or from the chest to the neck, are compressed by first rib muscles and other things, and it can cause a variety of problems: pain, swelling. It can cause arterial aneurisms; it can

cause venous occlusion; it can cause neuralgia from these nerve trunks that are coming from the neck down to the arm. It's a syndrome; it's not a disease and so it's hard to assign a single bloodwork or single test. It's more a constellation of symptoms and findings and lack of findings, also, that go with thoracic outlet syndrome.

Q Am I correct in understanding that thoracic outlet syndrome can either be due to trauma or can be due to congenital or anatomical variants?

A That's correct.

As an administrative law judge, I have seen multiple injuries of all sorts and kinds over the last nearly 18 years; however, this is my first thoracic outlet syndrome case to the best of my recollection. Upon review of Dr. Counce's, Dr. Dougherty's, and the claimant's testimony, as well as other medical evidence admitted, I feel that I have a firm grip on the syndrome and its effects. It appears that in layman's terms, much like a water hose being kinked inside the body, this syndrome, while not affecting the flow of water, affects the flow of blood and nerve signals to the upper extremities of the human body. This syndrome, apparently, can be brought on acutely through trauma or can be brought on by the presence of anatomical anomaly. Just as a water hose kinks and prevents the movement of water, this condition prevents the movement of blood flow and nerve signals.

Dr. Counce was questioned in his deposition by the respondents' attorney about the history the claimant provided to him regarding her injury as follows:

Q When you initially saw this patient, what history did you get from her?

A What I have recorded is she was 37 years old at the time that I saw her and she fell at work two years ago and had to catch herself on her left arm and since then she has had pain. She has weakness, numbness, tingling in the left arm, and discoloration when she raises her left arm. She has – she had undergone physical

therapy and extensive imaging workup. An MRI, the chest showed mild or moderate narrowing of the left subclavian vein with venous collaterals underlying the clavicle in the arms-up position, and she was referred to us because – and I have forgotten who it was that referred her to us because they thought she had thoracic outlet syndrome.

Q I believe that was Dr. Dougherty who she had last seen before she saw you.

A Okay.

Q The claim is that this thoracic outlet syndrome arose as a result of the fall that occurred. Do you have an opinion as to that, other than relying on the history she gave you? In other words, was there anything about her physical findings, either on examination or during the operative procedure, which suggests that it had been due to trauma as opposed to something else?

A No.

Q So, any opinion regarding work-relatedness would be dependent on the history that she gave you?

A That's correct.

Medical records submitted into evidence do not support the claimant's claims of left arm difficulties since her initial November 4, 2022, incident. It was nearly a year after that incident that the claimant reported any difficulties that did not revolve around her right knee, lumbar or thoracic spine. The claimant in this matter gave cross examination testimony regarding previous physical issues she had encountered in life. Upon my review of the claimant's testimony that follows, I find the claimant to be either a very poor historian or untruthful to the Commission.

Hearing Transcript, page 14 line 17 to page 15 line 24

Q Now, before you had this accident in November of 2022, do you recall having any problems with your back?

A I don't remember.

Q And do you remember in your deposition when the other attorney asked you if you had ever had any problems with your back or with your neck before?

A I don't remember very well.

Q All right. But if you had been asked that question, do you recall any problems that you had had before with your back or neck?

A No. I don't remember.

Q So in your medical records introduced by the Respondents, it looks like in March of 2018, you had some low back pain with a little pain going down maybe your right buttock and your right leg.

A No. I don't remember.

Q Okay. And did you have any – do you recall having any ongoing treatment after early 2018 for any kind of back problems?

A No. I don't remember.

Q Okay. And there is one record in the Respondents' Exhibit from May 1st of 2020 that mentions your neck. Do you recall having any problems with your neck?

A No. I don't remember.

Q Okay. And do you recall having any sort of testing for your neck or for your low back?

A No. I don't remember.

Q Okay. So do you remember having any problems with your feet prior to this accident?

A No. I don't remember.

Q Okay. So do you recall going to a doctor about your feet?

A No. I don't remember.

Hearing Transcript, page 16 line 24 to page 17 line 9

Q Okay. That wasn't my question. My question was do you recall telling me in your deposition that Dr. Kempson had never treated you for your back, your neck, your shoulders, anything like that? Do you recall that?

A No. I don't remember that.

Q Okay. Well, the Judge has got your deposition transcript and he can see what you told me.

What you actually told these doctors was that you had never had any problems with your arm or shoulder or back prior to this fall at work on November 4, 2022; correct?

A No. I don't remember.

Hearing Transcript, page 19 line 5 to page 19 line 13

Q [BY MR. ARNOLD]: You already testified here today that you didn't have any neck or left shoulder pain before November 4th of 2022; is that correct?

A I don't remember saying that. I don't remember.

Q Okay. You were treated in 2020 by Dr. Kempson, your family doctor, for neck pain, left posterior pain, muscle spasms in your neck and over the left trapezius muscle. Do you recall that?

A No. I don't remember that.

Hearing Transcript, page 19 line 22 to page 19 line 25

Q [BY MR. ARNOLD]: Do you recall seeing a doctor on October 4, 2022, and preparing a diagram which said you were having pain in your bilateral shoulders?

A I don't remember drawing anything like that.

Hearing Transcript, page 21 line 25 to page 22 line 5

Q Left arm. Okay. And then when you saw the doctor next on November 16th of 2022, do you recall what complaints that you gave them and what parts of your body they were evaluating?

A I don't remember the dates as you are saying them because I don't know which doctor I saw.

Hearing Transcript, page 22 line 24 to page 22 line 25

Q They didn't do X-rays of your knee?

A I don't remember.

Hearing Transcript, page 27 line 11 to page 28 line 8

Q I only find one note in all the records from Dr. Kempson that references any problems with your neck and that was from May 1st of 2020. Do you ever recall having actual treatment for your neck by Dr. Kempson?

A No. I don't remember.

Q Do you know what kind of a doctor Dr. Kory Miskin is?

A The thing is it has been several years, so no, no. I don't remember.

Q Okay. Well, on Page 32 of the Respondents' Exhibit, it indicates that your family doctor is referring you to Dr. Miskin for bilateral foot pain. Do you ever remember seeing Dr. Miskin for foot pain?

A I don't remember.

Q Because there are no records associated with this one document on Page 34 of the Respondents' Exhibit, nothing at all except this one page, that purports to be from Dr. Miskin.

A I don't have any knowledge of that.

Q Okay. Because it says the date of service was October 4th of 2022, which was a month before your fall at work. Do you recall seeing a foot doctor around a month before your fall?

A No. I don't remember.

Upon review of the medical evidence submitted by both the claimant and the respondents, it appears that the claimant's testimony differs greatly from the medical evidence submitted into the record.

Dr. Counce, who performed the claimant's thoracic outlet syndrome surgery discussed his findings of an old fracture to the claimant's first rib and scarring in that same area as follows:

Q What is the significance of there being an old fracture in that area? Does that play any role in trying to determine whether her thoracic outlet syndrome is related to the trauma that fractured the rib or otherwise?

A It's just a comment on the findings. It's not related to the chronology of anything, and I'm not sure that there is any significance in it other than that's what I felt, that at some time in the past she had a first rib fracture.

Q Did you necessarily associate that with this fall that she described to you?

A No, sir.

Q Was there something about the fracture of the first rib that caused the compression that produced this constellation of symptoms?

A There wasn't anything that I could identify about the fracture that was there; just commenting on the fact that it was not pristine up there, like there had not ever been any trauma. There was clearly some trauma at some point and time. I don't know when or where or whether I can directly attribute it to her thoracic outlet syndrome.

Q Was there any other scarring in the area? In other words, what was causing the compression?

A Well, the – what she has more than anything that was least demonstrable was compression of her subclavian vein here. Okay?

Q Okay.

A That's compressed by the first rib in various provocative maneuvers; for instance, in an MRI when she raised her arm over her head. It's also indicated in the MRI but the ... so you do two things in this operation in order to relieve that. One is to remove the first rib, which opens up the thoracic outlet; and the second thing is if there is a scar surrounding the subclavian vein then you release this scar, that's what a venolousness is is the liceis of this scar round the vein to allow the vein to flow without restriction from a scar that might have occurred secondary to whatever the cause of the thoracic outlet syndrome was.

Dr. Counce was further questioned about his thoughts on the cause of the scarring and ultimately the claimant's thoracic outlet syndrome as follows:

Q Do you have an opinion as to what caused the scarring?

A Well, as to the direct cause, if – all I can say it was my opinion that she had thoracic outlet syndrome. As to the cause of her thoracic outlet syndrome, I'm not sure that I can tell you what I think is the exact cause of her thoracic outlet syndrome or what led to her thoracic outlet syndrome.

Q If she sustained trauma in the fall that she described to you, would you have expected the trauma to be serious enough that she would have complained of some new or different symptoms?

A I'm not sure that I understand exactly what you are asking there.

Q Well, we are trying to determine the extent to which or whether, if at all, this fall has anything to do with this thoracic outlet syndrome. If the scarring that you found – am I correct in understanding there was some scarring?

A That's correct.

Q If it was due to trauma that occurred at the time of this fall, would you have expected that trauma to be sufficient to cause symptoms?

A Well, once again, you know, all I can do is refer to her history and chronology that she was pain free prior to the accident and then had a lot of pain afterwards and that there was indeed some findings there that she had previous trauma with an old heal fracture and some scarring around the subclavian vein. Do I think that if the fall occurred as she described it, that the findings that I had were consistent, yes, I mean I – the findings that I saw could have been caused by old trauma.

Q Could it have been caused by the old trauma that caused the rib fracture?

A Could have been.

Q If she had fractured this first rib in this fall that she described to you would you have expected her to have had significant symptoms in that area that she had not had previously?

A Yes, I would expect that if she had broken her first rib, that she would have had symptoms from that.

Q And where would those symptoms have been?

A Well, I would expect her to have symptoms in and around the base of her neck up to the top her of her scapula down to her shoulder and down to her arm.

Q And would those have occurred immediately or within a matter of days after the incident if, in fact, the rib fracture was caused at the time of this fall?

A Well, I'm not sure – I would expect her to have symptoms and would expect her to have – I would expect her to have initial symptoms, but I would expect her also to have progressive symptoms, also. So if you are asking when would the onset of symptoms be, I would expect that some onset of symptoms would be immediately after whatever the trauma was that caused the first rib fracture and then for – the symptoms probably would be progressive from there.

Q Did I correctly understand you to say that she denied that she had these symptoms prior to the fall?

A If I said that, I didn't mean to say that. What I meant to say was that from her history she told me that the onset was two years ago. Okay? I don't think – I don't recall directly asking her if she was normal or had no symptoms prior to that time. All I know is that she says the onset of symptoms was two years ago.

Q And you had to accept that; you were not undertaking to check the veracity of her history?

A That's correct.

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.

The claimant's current claim before the Commission is limited in scope to her allegations of thoracic outlet syndrome. It is clear that some objective medical evidence of thoracic outlet syndrome exists from both the deposition and operative report of Dr. Counce. Those findings would include an old first rib fracture and scarring around the claimant's nerves in that portion of her chest. However, I do not find the claimant can prove a causal connection between the objective medical findings and the injuries she alleges to have occurred on November 4, 2022, at which time she alleges to have fallen to her knees and then to her backside. It was just short of a year before medical records indicate the claimant began to complain of difficulties that I believe could be associated with thoracic outlet syndrome. Even those complaints are hard to believe given the claimant's poor ability to remember medical problems or conditions in her past. The claimant is not able to prove by a preponderance of the evidence that she sustained a compensable injury in the form of thoracic outlet syndrome on or about November 4, 2022.

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

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 26, 2024, and contained in aa amended Pre-hearing Order filed April 15, 2025, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury in the form of thoracic outlet syndrome.

3. The claimant has failed to prove by a preponderance of the evidence her entitlement to medical treatment by Dr. Christopher Dougherty, including treatment for thoracic outlet syndrome.

4. The claimant has failed to prove by a preponderance of the evidence her entitlement to temporary total disability benefits from October 31, 2024, to a date yet to be determined.

5. The claimant has failed to prove by a preponderance of the evidence that her attorney is entitled to an attorney's fee in this matter.

ORDER

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

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

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**