BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H208121

ZULEYKA PICHARDO, EMPLOYEE	CLAIMANT
PRAIRIE GROVE ELEMENTARY SCHOOL, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 29, 2026

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

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

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed September 8, 2025. The administrative law judge found that the claimant failed to prove she sustained a compensable injury "in the form of thoracic outlet syndrome." After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

Zuleyka Maria Pichardo Sanabria, now age 39, testified that she became employed with the respondents on September 26, 2022. The

parties stipulated that the employment relationship existed on November 4, 2022. The claimant testified on direct examination:

> Q. Where did you work on November 4th of 2022?
> A. I was working at the school, elementary, Prairie Grove.
> Q. And what was your job there?
> A. I was serving food to the students….
> 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 (sic) 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. 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.

Danielle Patton testified that she was employed with the respondents. The respondents' attorney examined Ms. Patton:

> Q. And what do you do there?
> A. I am the manager of the elementary kitchen.
> Q. Was that your position back in November of '22?
> A. Yes.
> Q. Okay. And I am going to mispronounce her name, but did Zuleyka Pichardo work in the kitchen at the elementary school while you were there?
> A. Yes.
> Q. And do you recall having a conversation with her on November 4th of 2022?
> A. Yes.
> Q. What was that about?
> A. She told me that she fell.
> Q. And did she tell you what body part she hurt?

A. She said her knee and lower back.
Q. Did she mention any other body parts?
A. No.
Q. And was somebody there interpreting for her?
A. The janitor at the school.

According to the record, the claimant treated at MANA Urgent Care on November 7, 2022:

> Ms. Sanabria is a 35 y/o female non-English speaking (Kim interpreted) presents to urgent care c/o "…. I got hurt at work….I slipped….hurt my back….all the back….and the knee….right knee and leg."
> Her injury occurred three days ago at one of the local schools in Prairie Grove. She did not seek treatment at that time. Her back pain is from "top to bottom" and she points above her bilateral scapulas and tells me the pain goes all the way to her bilateral lumbar region….
> BACK: Back without deformity. Tenderness about paraspinous muscles in thoracic and lumbar region.

Dr. Brent Witherington assessed "1. Lumbar back pain," "2. Right knee pain," "3. Acute bilateral thoracic back pain," and "4. Morbid obesity." Dr. Witherington planned conservative treatment.

An x-ray was taken on November 8, 2022:

> History: Mid and lower back pain after fall at work.
> FINDINGS: PA and lateral views of the thoracic and lumbar spine were obtained. The T1 vertebral body is not included on this exam. There is normal vertebral body height and alignment. No evidence of a fracture or subluxation is seen. The paravertebral soft tissue muscles are unremarkable.
> IMPRESSION: 1. Unremarkable exam.

Dr. Witherington's assessment on November 16, 2022 included "1. Acute bilateral thoracic back pain." Dr. Witherington noted on November

16, 2022, “Her plain films of the lumbar spine, thoracic spine and right knee were unremarkable per radiology….Her exam is benign today and her complaints are fairly subjective. She has not been compliant with treatment recommendations. I releasing (sic) her back to full duty.”

The record indicates that the claimant was provided a series of physical therapy visits at MANA Physical Therapy beginning November 17, 2022. It was noted at that time, “Patient is a 35yo female with a 10-day history of low back, upper back and right knee pain. She fell at work and has been having pain since then.”

A physical therapist noted on January 26, 2023, “She continues to have significant pain (7/10) in the lower back and right knee. Patient also reports development of LUE radiculopathy.”

The claimant treated at Washington Regional Urgent Care on February 9, 2023: “Fell November 2022 at work landing on right knee then falling backwards landing on back. Has had back pain thoracic region since as well as knee hurting.”

The claimant reported at Rise Physical Therapy on February 23, 2023, “I was serving food for the kids and when I realized someone left the pizza in the oven, I turned around to get the pizza out when I slipped and fall (sic) to the floor hitting my right knee.”

A physical therapist noted on March 2, 2023, “Patient was seen in our office for 15 visits for low back and right knee pain after a fall at work. She did not report any significant improvements in pain but wanted to continue therapy. It was suggested that she return to PCP and get re-assessed before continuing therapy due to lack of progress. We are discharging her at this time, thank you for the referral.”

It was noted at Rise Physical Therapy on March 27, 2023, “Zuleyka reports that she went back to work today. States that she’s very tired and back is hurting more today.”

Dr. Loren Guzman reported on May 4, 2023, “Patient is a 36 yo with PMH of asthma who was referred from Alison Knox APRN for evaluation and management of low back pain that started after a fall in November 2022 at work where she fell forward, landing on her knee and fell back on her back grabbing two things at her side to stop her fall. This pain has been persistent despite NSAIDs, muscle relaxants and PT….Skin color, temperature are normal in all 4 extremities.”

An MR of the claimant’s thoracic spine was taken on May 17, 2023:

> History: Back pain after fall….
> Findings: The alignment of the thoracic spine is normal. Vertebral body heights are maintained. The marrow signal normal. The thoracic cord signal is normal. Mild T7-T8 and T8-T9 disc bulges. No significant central canal or neuroforaminal stenosis. The visualized portions of the chest and upper abdomen are unremarkable.
> IMPRESSION: No acute abnormality in the thoracic spine.

An MRI of the claimant's cervical spine was taken on July 28, 2023 with the impression, "Negative exam."

The claimant participated in a Functional Capacity Evaluation on October 31, 2023: "Ms. Pichardo is referred with complaints of on-going pain in her neck, both arms and her right knee which she attributed to injuries she sustained in a work related accident….The results of this evaluation indicate that an unreliable effort was put forth, with 18 of 46 consistency measures within expected limits….Ms. Pichardo completed functional testing on this date with **unreliable** results. Overall, Ms. Pichardo demonstrated the ability to perform work in at least the **LIGHT** classification of work[.]"

Dr. Guzman noted on December 27, 2023 and January 30, 2024, "Skin color, temperature are normal in all 4 extremities."

An MRI of the claimant's left shoulder was taken on February 21, 2024 with the impression, "No left rotator cuff or labral tear."

An APRN reported on February 29, 2024:

> She is tearful and would like a permanent fix to her problem. She has crepitus around the shoulder girdle with movement of her left shoulder. No shoulder joint pain. She had a normal MRI and has already tried ESI without improvement in this pain.
> We sent for updated cervical and left shoulder MRI – these do not show any abnormalities to explain her pain. We are not sure why she continued to have trapezius pain. Shoulder

> injury could have occurred from the mechanism of injury (catching herself as she fell).
> Will again send to Sports Medicine for further evaluation.

Dr. Robert Benafield, Jr. examined the claimant on March 28, 2024:

> Patient is a 37-year-old right-hand-dominant female who works with School district in the kitchen. She was at work on 11/4/2022 when she fell injuring her left shoulder and neck. She has treatment for now for over a year and evidently nobody has really looked at her left shoulder. She had an MRI of her left shoulder about a month ago that was normal other than a type II acromion. She was referred here for shoulder evaluation. She has had no physical therapy for the shoulder no injections into the shoulder. She reports pain with abduction and internal rotation and pain at night. She has been on full duty work because she failed an FCE….
> I discussed with the patient and her companion and the nurse case manager. I think she may have impingement of the shoulder. We discussed etiology natural history and treatment. She was offered a corticosteroid injection in the subacromial space agreed and tolerated it well. She will go to physical therapy for a month. She can return to work with no overhead lifting and no lifting greater than 10 pounds. I will see her back in a month for recheck.

Dr. Benafield assessed "1. Impingement syndrome of left shoulder region."

Dr. Benafield ordered an NM BONE THREE PHASE STUDY, which was performed on May 8, 2024:

> HISTORY: Impingement syndrome of left shoulder….
> FINDINGS: Flow, blood pool and delayed images demonstrate no abnormal areas of increased radiotracer activity in the right or left shoulders. No evidence of osteomyelitis.
> IMPRESSION: 1. NORMAL TRIPLE PHASE BONE SCAN OF THE LEFT SHOULDER.

The claimant followed up with Dr. Benafield on May 21, 2024:

> Patient seen in follow-up after the triple phase bone scan. This was normal showing no areas of inflammation. She is (sic) now had no response or improvement with an injection which is suggest (sic) that the problem is not coming from her shoulder and negative bone scan which again suggest (sic) that there is not a problem in her shoulder. She failed an FCE with unreliable results….
> I have discussed with the patient and her companion regarding her visit results. We discussed how there is (sic) been no objective findings that really show any significant pathology in her shoulder. I do not know what to make of her pain but I cannot explain it. It is possible this is related to psychological issues. She may need to see a pain specialist. Based on the negative bone scan and the failed FCE I am going to release her to MMI with 0 permanent impairment. She is released from my care.

Dr. Christopher P. Dougherty reported on July 15, 2024:

> The patient presents to the office today regarding left shoulder pain with numbness and tingling down her arm. This began after a work injury 11/4/2024. She has tried conservative care of physical therapy, rest with activity modification, cortisone injections and medical with little to no relief of the pain. She has had several studies completed of the cervical spine, thoracic spine and left shoulder including MRI's and a bone scan. She has a very positive adson's. All the testing was reviewed today have been reported as normal test with no abnormalities noted. Her exam is consistent with thoracic outlet syndrome. We will need to send her for an MR venogram of the neck to check for this. We will check bilateral sides for comparison. We will work on approval for this and will see her back to discuss the results once the test is completed. For work her restrictions are only right arm use. No left arm use at this time.

Dr. Benafield was provided a "Major Contributing Cause Physician Letter" on July 19, 2024. Dr. Benafield reported that the claimant's

diagnosis was “Shoulder impinegment (sic).” Dr. Benafield stated, “If she has TOS it is not related to her injury.”

The claimant followed up with Dr. Dougherty on September 9, 2024:

> She returns to the office today to discuss her MR findings. She had an MR angio chest W/WO contrast at Northwest Medical in Bentonville on 8/16/24. Her MRI was independently reviewed and agreed with outside interpretation and findings of thoracic outlet syndrome of the left side. Her exam remains consistent with these findings. She will need to be referred to Washington Regional to Dr. James Counce for further treatment. Her current work restriction will remain no lifting with the left upper extremity. Her TOS is post traumatic from having to catch herself at work during her fall. At that time scar tissue in the form of fibrotic bands can form after hyperextension injuries, and this is well documented in the literature. Based on her mechanism of injury where she experienced hyperextension of the arm while falling, to catch herself, this is consistent with the induction of the scar tissue formation resulting in her thoracic outlet syndrome.

Dr. Dougherty diagnosed “1. Left thoracic outlet syndrome.”

Dr. Theodore Hronas corresponded with the respondents’ attorney on September 20, 2024:

> At your request, the following films and reports were reviewed:
> Clinical records provided.
> MRA of the chest, 08/16/2024.
> The clinical history is of a work-related accidental injury that occurred on 11/04/2022 and described as, “I got hurt at work, I slipped hurt my back, all the back, and the knee and right knee and leg.” An MRA of the chest is presented for review. The study is of good quality and sufficient for diagnostic purposes. The indication for this exam was concern for thoracic outlet syndrome. I am a board-certified radiologist with additional training in body and musculoskeletal MRI, and therefore my focus will be on the imaging study provided.

> The initial pre contrast images of the upper chest demonstrate normal mediastinal and upper thoracic anatomy with no evidence of mass or lymphadenopathy. The brachial plexus is normal in appearance bilaterally. Pre and post contrast images of the chest demonstrate normal appearance of the great vessels. The common carotid, vertebral, and subclavian arteries are normal in size and caliber with no evidence of stenosis or abnormal extrinsic mass effect. The internal jugular and subclavian veins are normal. Specific attention to the subclavian veins demonstrates no evidence of stenosis or extrinsic mass effect. No abnormal venous collateral vessels are present.
> In summary, the MRA of the chest is normal with no evidence of either arterial or venous stenosis, occlusion, or extrinsic mass effect. Specifically, there are no objective imaging finding (sic) that would suggest presence of thoracic outlet syndrome.
> My findings herein are stated within a reasonable degree of medical certainty.

Dr. James S. Counce reported on or about September 26, 2024:

> This is a 37-year-old female who fell at work 2 years ago and had to catch herself on her left arm ever since then she has had pain ever since. She has weakness numbness tingling of the left arm and discoloration when she raises her left arm. She has underwent physical therapy and extensive imaging workup. MRI chest shows mild-to-moderate narrowing of the left subclavian vein underlying the clavicle in the arms in the up position. She was referred for thoracic outlet syndrome[.]…
> She has thoracic outlet syndrome on the left. Her left arm is swollen and discolored with pain, numbness and loss of strength. Schedule left robotic assisted thoracic surgery with 1st rib resection.

Dr. Counce performed a procedure on October 31, 2024: "Left robotic-assisted thoracic surgery with first rib resection and venolysis." The

pre- and post-operative diagnosis was "Left-sided thoracic outlet syndrome."

Dr. Counce reported on March 11, 2025:

> This is a 37-year-old Hispanic female, who fell at work 2 years ago and had to catch herself on her left arm. Ever since then, she has complained of pain weakness, numbness and tingling of her left arm as well as discoloration when she raises it over her head. She went to physical therapy and has had extensive imaging workup. MRI of her chest showed mild to moderate narrowing of the left subclavian vein, underlying the clavicle and the arms in the up position. She was referred to our clinic for evaluation. It was felt that she does have a true thoracic outlet syndrome and she is scheduled for a left robotic assisted thoracic surgery with 1st rib resection. She consented to the procedure and was taken to the operating room on 10/31/2024. She was last seen on November 12, 2024 during that visit, she looked good. She was breathing without difficulty. She had full range of motion. She was a little reluctant to left (sic) arm above her head. Her chest x-ray was unremarkable. Her surgical wounds were healing nicely. Plan for outpatient physical therapy and occupational therapy. Plan was to see back in 4 months with a repeat chest x-ray at that time.
> She only got 10 sessions of PT before her insurance stopped paying. She continues to have a lot of pain, numbness, tingling in her arm and hand. She has temperature changes in her arm when trying to use it. Her hand is too weak to hold a glass of water….She feels unable to return to work, she is too weak and in too much pain….
> She has no more popping or grinding. She still has pain in her left shoulder and arm….Plan to see her back 8 months with a chest x-ray. I am afraid she is going to have chronic pain that we can not do much about other than refer her for chronic pain management.

The respondents' attorney examined Dr. Counce at a deposition taken April 1, 2025:

Q. Tell us about thoracic outlet syndrome….
A. Thoracic outlet syndrome is a compression syndrome associated with either the 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 aneurysms; 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 blood work 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.
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 some 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. 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 suggested that it had to be 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.

A pre-hearing order was filed on April 15, 2025. The claimant contended, "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 parties stipulated that the respondents "have controverted this claim in its entirety." The respondents contended, "All appropriate benefits have been paid."

The parties agreed to litigate the following issues:

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.
5. Claimant reserves all other issues.

After a hearing, an administrative law judge filed an opinion on September 8, 2025. The administrative law judge found, among other things, that the claimant failed to prove she sustained a compensable injury "in the form of thoracic outlet syndrome." The administrative law judge therefore denied and dismissed the claim "in its entirety." The claimant appeals to the Full Commission.

II. <u>ADJUDICATION</u>

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body … arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, "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." The Full Commission affirms this finding. The parties stipulated that the employment relationship existed on November 4, 2022. The claimant testified that she slipped and fell on her knee. The claimant testified that

she “was trying to hold on to something with my left hand” when she fell. The record indicates that the respondents initially accepted the claim and provided benefits primarily related to symptoms which included back pain.

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).

The claimant contends that she “sustained a compensable injury to her thoracic outlet resulting in thoracic outlet syndrome.” The Full Commission finds that the claimant was not a credible witness, and that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her thoracic outlet. The evidence of record does not corroborate the claimant’s assertion that she sustained an injury to her thoracic outlet as the result of “grabbing” with her left hand. We find credible Danielle Patton’s testimony that the claimant asserted injuries only to her knee and lower back. Nor did the medical evidence corroborate the claimant’s testimony. The claimant informed the medical providers at MANA Urgent Care on November 7, 2022 that she had injured

her back and right knee. An x-ray of the claimant's back on November 8, 2022 was unremarkable. Dr. Witherington assessed "1. Acute bilateral thoracic back pain" on November 16, 2022. A series of physical therapy notes beginning November 17, 2022 indicated that the claimant complained of "low back, upper back and right knee pain." There was no report of pain related to the claimant's thoracic outlet. The claimant continued to inform various medical providers that she had injured her back and knee. The record indicates that the claimant returned to work for the respondents on or about March 27, 2023.

On May 4, 2023, the claimant asserted for the first time that she "grabbed two things" to stop her fall on November 4, 2022. Dr. Guzman reported on May 4, 2023, "Skin color, temperature are normal in all 4 extremities." An MR on May 17, 2023 showed "No acute abnormality in the thoracic spine." Dr. Guzman continued to note on December 27, 2023 and January 30, 2024, "Skin color, temperature are normal in all 4 extremities."

An APRN reported on February 29, 2024 that the claimant had sustained a shoulder injury which "could have occurred from the mechanism of injury (catching herself as she fell)." The evidence before the Commission does not demonstrate that the claimant "caught herself" with either upper extremity in order to prevent the slip and fall which occurred on November 4, 2022. Dr. Benafield's assessment on March 28, 2024 was "1.

Impingement syndrome of left shoulder region." Nevertheless, Dr. Benafield released the claimant with 0% permanent impairment on May 21, 2024.

Dr. Dougherty opined on July 15, 2024 that the claimant's examination was "consistent with thoracic outlet syndrome." On October 31, 2024, Dr. Counce performed a "Left robotic-assisted thoracic surgery with first rib resection and venolysis." Dr. Counce diagnosed "Left-sided thoracic outlet syndrome." Dr. Counce had stated on September 26, 2024 that the claimant "fell at work 2 years ago and had to catch herself on her left arm ever since then she has had pain ever since." The evidence does not corroborate Dr. Counce's conclusion that the claimant "had to catch herself" and as a result injured her left arm on September 26, 2024.

The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds that the opinions of Dr. Witherington, Dr. Benafield, and Dr. Hronas are entitled to more evidentiary weight than the opinions of Dr. Doughtery and Dr. Counce. The Full Commission attaches significant

evidentiary weight to Dr. Benafield's opinion on July 19, 2024, "If she has [Thoracic Outlet Syndrome] it is not related to her injury."

The Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her thoracic outlet. The Full Commission finds that the claimant did not prove she sustained an injury to her thoracic outlet which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her thoracic outlet which was caused by a specific incident or was identifiable by time and place of occurrence.

The Full Commission therefore affirms the administrative law judge's finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury in the form of thoracic outlet syndrome. The claimant did not prove that treatment provided by Dr. Counce, including surgery, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant did not prove she was entitled to any period of temporary total disability benefits in accordance with *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.3d 392 (1981), or *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

____
SCOTTY DALE DOUTHIT, Chairman

____
MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that 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 and by virtue of that decision all remaining benefits were denied. After reviewing the entire record *de novo*, I disagree with the findings of the ALJ. I would find that the Claimant has proved by a preponderance of the evidence that she suffered a compensable injury to her thoracic spine in the form of thoracic outlet syndrome, as a result of her work accident of November 4, 2022. I would further find that Claimant is entitled to reasonable and necessary medical treatment as recommended by Dr. Dougherty, and temporary total disability benefits from October 31, 2024, to a date yet to be determined.

1. The Claimant proved that she sustained a compensable injury that caused thoracic outlet syndrome.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (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 and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *See, Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative

condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

On November 4, 2022, the Claimant slipped and fell onto her right knee and back as she was serving lunch for the Respondent in the course and scope of her employment. Claimant testified that she attempted to break her fall by grabbing a serving table with her left hand. Following the incident, Claimant was escorted by a coworker to the office to report the incident to a manager named Danielle.

The Claimant first sought medical care on November 7, 2022, at the MANA Urgent care. At this visit, Claimant reported an injury to her back, right knee and leg as the result of the work accident on November 4, 2022. Claimant underwent x-rays which showed no remarkable injuries. The Claimant was diagnosed with lumbar back pain, acute bilateral thoracic back pain, and right knee pain. Claimant was then prescribed pain medication and referred for physical therapy.

The Claimant was seen by MANA Physical Therapy on multiple occasions, up to and including June 21, 2023. The Claimant consistently reported upper and lower back pain, as well as right knee pain at these appointments. On January 26, 2023, the Claimant additionally reported radiculopathy in her left upper extremity to her physical therapist. Claimant has a significant medical history of lumbar pain and carpal tunnel symptoms

prior to her work-related incident on November 4, 2022, however, the left upper extremity symptoms are new findings. Various medical providers evaluated the Claimant's medical condition and offered possible diagnoses of shoulder impingement syndrome as well as complex regional pain syndrome.

On May 21, 2024, Dr. Robert Benafield placed the Claimant at maximum medical improvement and gave her a 0% permanent impairment rating, stating that there were not objective findings to show any significant pathology in her left shoulder. The Claimant requested and received a Change of Physician order to be seen by Dr. Chris Dougherty. Claimant was first seen by Dr. Dougherty on July 15, 2024. Dr. Dougherty noted that the Claimant was suffering from left shoulder pain, numbness in her left arm and had a positive Adson's test. Following this examination, Dr. Dougherty stated that the Claimant's symptoms were consistent with thoracic outlet syndrome. Dr. Dougherty ordered an MR venogram which showed the Claimant as having thoracic outlet syndrome. Dr. Dougherty then referred the Claimant to Dr. James Counce for further evaluation and treatment.

Claimant was seen by Dr. James Counce on September 26, 2024. Dr. Counce noted Claimant as having swelling, pain, discoloration, numbness and loss of strength in her left arm. The Claimant was again diagnosed with

thoracic outlet syndrome. Dr. Counce recommended surgery for her thoracic outlet syndrome. Claimant underwent surgery on October 31, 2024.

As noted by the ALJ, thoracic outlet syndrome is an unusual malady in workers' compensation. However, the medical records of Dr. Dougherty and Dr. Counce prove that the Claimant suffered from an objective condition and refer to various physical findings such as a positive Adson's test, as well as discoloration and swelling of the Claimant's left upper extremity. Dr. Dougherty also confirmed these objective findings through the results of the Claimant's venogram.

A letter by Dr. Theodore Hronas was presented at the hearing to rebut the findings made by Dr. Dougherty and Dr. Counce. However, I give this evidence less evidentiary weight than the findings of Dr. Dougherty. This decision is based upon the discretion and duty of the Commission to make determinations of credibility, weigh the evidence, and to resolve conflicts of medical testimony and evidence. *Martin Charcoal, Inc. v. Britt*, 284 S.W.3d 91 (Ark. App. 2008). Dr. Hronas states that there is "no objective imaging finding that would suggest [the] presence of thoracic outlet syndrome." This opinion is solely based upon a review of the July 16, 2024, film and report. In contrast, Dr. Dougherty examined the Claimant in person, reviewed her medical history as well as prior diagnostic testing and performed a physical examination. Specifically, Dr. Dougherty found that the Claimant had a "very

positive adsons [test.]" Despite the letter of Dr. Hronas, I find that the Claimant suffered an objective compensable injury to her thoracic spine in the form of thoracic outlet syndrome as a result of her November 4, 2022, work-accident.

Arkansas law recognizes that an aggravation of a preexisting condition by a compensable injury is itself compensable. *Mineral Springs School District v. Macon*,704 S.W.3d 374 (Ark. App. 2025). Further, the work accident is not required to be the original cause of the underlying abnormality. *Wright v. St. Vincent Doctors Hospital Indemnity Ins. Co. of N. Am.*, 2012 Ark. App. 153 and *Cooper Tire & Rubber Co. v. Leach*, 2012 Ark. App. 452. Also, delayed symptom onset does not preclude a finding of compensability. *University of Arkansas for Medical Sciences v. Barton*, 2022 Ark. App. 181. In the case at hand, the Claimant suffered from an objective condition that resulted in discoloration, swelling, pain and numbness in her left upper extremity. These symptoms began somewhat progressively after her work accident of November 4, 2022.

Although the Claimant had medical problems that predated the work accident, the evidence in the record supports the conclusion that the Claimant's work-related accident on November 4, 2022, either caused her thoracic outlet syndrome or substantially and materially contributed to the development of the condition. Therefore, I would reverse the decision of the

ALJ and find that the Claimant has met her burden of proof by a preponderance of the evidence that she sustained a compensable injury in the form of thoracic outlet syndrome as the result of her November 4, 2022, work accident.

2. The Claimant is Entitled to Reasonable and Necessary Medical Benefits for her Compensable Injury.

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). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

The Claimant sustained a compensable injury in the form of thoracic outlet syndrome as a result of her work accident of November 4, 2022. The Claimant obtained a change of physician order through this commission and was seen by Dr. Christopher Dougherty on July 15, 2024. Dr. Dougherty diagnosed the Claimant with thoracic outlet syndrome and then referred the Claimant to Dr. James Counce. Dr. Counce recommended surgery. Based

upon the medical records, I find that the medical treatment the Claimant received for her thoracic outlet syndrome from Dr. Dougherty and Dr. Counce was both reasonable and necessary as the result of her work accident of November 4, 2022.

3. <u>The Claimant is Entitled to Temporary Total Disability Benefits from October 31, 2024 to a Date to be Determined.</u>

To prove entitlement to temporary total disability benefits a Claimant must prove that she remains in her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 613 S.W. 2d 392 (Ark. 1981). The Claimant received surgical treatment for her work-related thoracic outlet syndrome on October 31, 2024. The medical notes through March 11, 2025, indicate that Dr. Counce continued to keep the Claimant off work through that date. Based upon the evidence in the record in this matter I find that the Claimant met her burden of proof to demonstrate that she remained in her healing period and that she suffered a total incapacity to earn wages. Therefore, I find that the Claimant is entitled to temporary total disability benefits from October 31, 2024 to a date to be determined.

4. <u>The Claimant's Attorney is Entitled to an Attorney's Fee.</u>

An attorney's fee is appropriate in cases where indemnity benefits are awarded. Ark. Code Ann. §11-9-715(a)(1)(B). As I find that the Claimant is

entitled to temporary total disability, therefore an attorney's fee would be appropriate and should be awarded.

After my *de novo* review of the entire record, I would reverse the decision of the ALJ, and find that the Claimant met her burden of proof that she sustained a compensable injury in the form of thoracic outlet syndrome as the result of her November 4, 2022 work accident, that she is entitled to reasonable and necessary medical treatment of her injury including medical treatment rendered by Dr. Dougherty and Dr. Counce, that she is entitled to temporary total disability benefits from October 31, 2024, to a date to be determined, and that her attorney is entitled to an attorney's fee.

____

M. SCOTT WILLHITE, Commissioner