

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208633**

BELINDA PRICHARD, EMPLOYEE

CLAIMANT

**SHEARERS FOODS LLC,
EMPLOYER**

RESPONDENT

**FARMINGTON CASUALTY CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED DECEMBER 14, 2023

Hearing before Administrative Law Judge Steven Porch on October 27, 2023, in Jonesboro, Arkansas.

Claimant was represented by Mr. Daniel A. Webb, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Ms. Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on October 27, 2023. Claimant was represented by Mr. Daniel A. Webb, Attorney at Law, Little Rock, Arkansas; Respondents were represented by Ms. Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier relationship existed among the parties on December 5, 2022, when Claimant alleges she sustained a compensable injury to her left shoulder.

3. Respondents have controverted this claim in its entirety.
4. The parties will stipulate to Claimants average weekly wage and compensation rates on or before the hearing date.¹

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury to her left shoulder by specific incident.
2. Whether Claimant is entitled to any reasonable and necessary medical treatment, including mileage and out-of-pocket expenses.
3. Whether Claimant is entitled to temporary total disability benefits from December 6, 2022, to a date yet to be determined.
4. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant injured her left shoulder on December 5, 2022, while working for Respondent/Employer. The Claimant should receive benefits related to the injury including medical expense payments, a period of temporary total disability benefits, and an attorney's fee. All other issues are reserved.

Respondent's Contentions: The Claimant did not receive an injury per statutory definition².

¹ The parties did not stipulate to the average weekly wage by the hearing date. As a result, this stipulation was withdrawn.

² During the full hearing, Respondents' counsel moved to amend their contentions. Respondents now concede that Claimant's left shoulder rotator cuff injury is an objective finding. I have granted Respondents' motion. Respondents still assert that Claimant's injury did not occur by a specific incident during the course and scope of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, and other matters properly before the Commission, and having the opportunity to hear the testimony of Claimant and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012): The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

1. The stipulations set forth above are reasonable and are hereby accepted.
2. The Claimant has not proven by the preponderance of the evidence that she sustained a compensable left rotator cuff injury, by specific incident, during the course and scope of employment on December 5, 2022.
3. Based on my finding that Claimant did not sustain a compensable injury, the remaining issues of whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record consisted of Claimant's Exhibit 1, Medical Records, that consists of 43 pages, Respondents' Exhibit 1, Medical Records, that consist of 16 pages, Respondents' Exhibit 2, Non-Medical Documents, consisting of 255 pages, Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages, and Claimant's and Respondents' blue-backed post-hearing briefs. The Claimant, Brenda Prichard, was the sole witness in the full hearing.

Claimant was a processor of chips for the Respondent/Employer. She went to work assigned to line six but was told to move to line two. The sheeter pans on line two

were not clean and were full of masa. Claimant carried the pans of masa, weighing approximately fifteen pounds, to the trash. She testified that she almost dropped the pans and had to readjust her hands, to get a better grip on the pans. Claimant had taken about 15 minutes to clean the masa pans. Her testimony was that she felt fine after cleaning the masa pans. She added that she felt no strains or pains after cleaning the pans.

Philip Weiss, who oversaw line one, asked Claimant to watch over his line until he came back from the restroom. The Claimant went to line one, grabbed the radio, and climbed three or four steps that allowed her to watch over the line. After a few minutes, she walked down the steps, holding the handrail, when she heard a pop in her left shoulder. She had walked down the stairs for the purpose of waiting on her fellow employee, Mr. Weiss, who remained gone for 10 to 15 minutes. The Claimant also stated she had to make sure line one had corn while she waited on her co-worker. When her co-worker returned, Claimant then reported her injury to management.

Adjudication

A. Whether Claimant sustained a compensable left shoulder injury.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(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 be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those

findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

I do find, as Respondents conceded at the hearing, that the Claimant has objective findings of a left shoulder rotator cuff injury. I further find that this shoulder injury manifested itself while Claimant was at her place of employment during working

hours. However, the key inquiry here is whether this injury occurred by a specific incident during the course and scope of her employment. This is the Claimant's burden. The Claimant has not pointed to a specific work-related incident as the reason for her left shoulder injury. Rather, her testimony has been inconsistent as to the cause of her injury.

For example, Claimant initially signed a team member statement on December 5, 2022, the date of her injury, stating that no work-related condition caused the injury to her left shoulder, nor could she explain it. *See Respondents' Exhibit 2, page 103.* I credit this statement. She maintained that point of view until she was made aware that her claim was denied since her injury was not connected to her work. The Claimant later modified her answer and now believes it was the weight of the masa pans from line two that caused her injury. When further pressed at the hearing about the masa pans, she testified that she felt fine after dumping the masa in the trash. She later admitted in her testimony that she was using deductive reasoning as her bases for believing the near drop of the masa pans, due to their weight, had caused her injury. The Claimant also testified that she doesn't believe walking down the stairs had anything to do with her injury when she heard the pop.

It is the Claimant's burden to prove she was injured by a specific incident, and she has not satisfied that burden. I'm left with speculation and conjecture as to whether the dumping of the masa pans was the specific incident that caused her injury. But speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herdon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Thus, I find that Claimant has not proven by the preponderance of the evidence that she has sustained a

compensable left shoulder injury, by specific incident, during the course and scope of her employment on December 5, 2022.

B. Remaining Issues

Due to not finding the left shoulder injury compensable, I further find the remaining issues of whether Claimant is entitled to any reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge