

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H109799

GINA SALLEE,  
EMPLOYEE

CLAIMANT

UNIVERSAL HELTH SERVICES, INC.,  
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC., INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 9, 2023

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 LAUREN A. SPENCER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed November 3, 2022. The administrative law judge found that the claimant failed to prove she suffered a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable injury to her cervical spine and left knee. We find that the claimant did not prove she was entitled to additional temporary total disability benefits.

I. HISTORY

The record indicates that Gina Sallee, now age 49, became employed with the respondents, Heartland Behavioral Health, on or about September 13, 2021. Ms. Sallee was hired to be a Community Relations Representative 1 for the respondent-employer. The Job Description for a Community Relations Representative included the following physical requirements: "A wide range of motor activity is required in performing job responsibilities. The majority of activity will be standing, walking, bending, and lifting as necessary in the office setting. Ability to ascent (sic) and descent (sic) stairs in a timely fashion and sit long periods of time sorting paperwork and keyboarding." The claimant described her work duties: "I would travel to various locations in Missouri and Arkansas and provide information about services. Answer any questions that the providers may have in regards to the particular services or insurance."

The record indicates that an individual named Mary Flores signed a REFERENCE/INFORMATION REQUEST LETTER on behalf of the claimant, and that the same was dated September 17, 2021.

The parties stipulated that the employee-employer-carrier relationship existed on December 7, 2021. The claimant testified on direct examination:

Q. So what happened on December 7<sup>th</sup> of 2021?

A. December of '21, I was heading to Little Rock, which is where I was supposed to be heading for work that day, and on the interstate a deer came out and I hit the deer.

Q. And was that a motor vehicle accident that you could recover from and continue on to Little Rock?

A. No. The vehicle was completely totaled. All the airbags deployed. The car was inoperable.

Q. And did you report the accident?

A. I did immediately to my supervisor.

Q. And who was your supervisor?

A. Betsy Curtis.

Q. And how did you report it?

A. From the best of my remembrance, I texted her and let her know that I had had an accident and sent her photos of the vehicle and let her know that I was speaking to the State Highway Patrol at that time.

Q. Now, when you had the accident, were you alone?

A. No. I had someone riding with me that day....

Q. And what was the person's name?

A. Mary Flores. She is a corporal at Sebastian County Juvenile Detention Center.

Q. So did Ms. Flores riding with you change your routine in any way?

A. No, not at all....

Q. How did the morning start out?

A. She arrived at my home approximately at 7:30 in the morning and we left at 8:00 a.m. and had the accident, you know, shortly after that.

The claimant filled out an Arkansas State Police Crash Report Supplement Driver/Witness Statement Form on December 7, 2021: "I was traveling E on Hwy I 40 when a deer hit ran out in front of me. I tried to stop & couldn't. I hit the deer, and contacted State Hwy. Police."

An Arkansas Motor Vehicle Crash Report Narrative was completed on or about December 7, 2021: "V1 was traveling eastbound on Interstate 40 near the 40 mile-marker when a deer ran out in front of the vehicle. V1 didn't have enough time to stop and collided with the deer in the roadway."

The Arkansas Motor Vehicle Crash report indicated that Mary Andrea Flores was a passenger in the claimant's vehicle at the time of the accident.

The respondents state on appeal to the Full Commission that the claimant received temporary total disability benefits beginning December 8, 2021. According to the record, the claimant treated at "Back in Action Spine and Sports Injury Clinic, Inc." beginning December 15, 2021. The claimant complained of pain in areas including her left knee, neck, and back. Dr. Cameron J. Mitchell, D.C. reported "Reverse Curve" in the lateral curvature of the claimant's cervical spine.

Dr. Thomas E. Cheyne examined the claimant on December 22, 2021:

Ms. Sallee is a 48-year-old, who presents with cervical, left shoulder, and left arm pain as well as left knee pain. She has also some milder lower back pain. She states this began when she was working and was driving on 12/07/2021 and hit a deer. She had x-rays of her neck and left knee, both of which were within normal limits. She has been to a chiropractor....

MUSCULOSKELETAL: She is tender in the neck. She has 20% to 30% limitation of range of motion of her head and neck in all directions. She has normal sensation in the upper extremities to touch. She has good strength and muscle tone in her arms. Her DTRs are 1+ and equal bilaterally. With regard to the left shoulder, she is tender anteriorly. She has mildly limited adduction. With regard to the right shoulder, bilateral elbows and bilateral wrists, she has good range of motion with no pain, effusion, crepitus, or instability. She is minimally tender in the thoracic and lumbar region....With regard to the left knee, she is mildly tender anteriorly. There is no swelling or effusion. There is no erythema or abrasions. She has good range of motion with no instability. Again, x-

rays of the cervical spine and left knee are within normal limits.

Dr. Cheyne gave the following impression: “1. Cervical strain with possible left cervical radiculitis. 2. Left shoulder contusion. 3. Left knee contusion.” Dr. Cheyne planned, “We will put her on Celebrex, have her take hot showers twice daily, stay at light activity, go to physical therapy. We will put her on work restrictions and we will see her back in one month for followup.” Dr. Cheyne returned the claimant to restricted work on December 22, 2021: “5 LB WEIGHT LIMIT. NO LIFTING OR REACHING ABOVE SHOULDER LEVEL. NO SITTING MORE THAN 45 MINUTES.”

Carri Compton, an Administrative Officer with the respondent-employer, provided the claimant with ACCOMMODATION WORK REQUIREMENTS on December 27, 2021:

In review of your job description and in consultation with Betsy related to work requirements for the Community Relations position we have outlined work expectations for us meeting the restrictions requested from your physician at Mercy Clinic as of 12-22-21: 5 lb. weight limit, No lifting or reaching above shoulder level and no sitting more than 45 minutes. You can saturate your local area, and would not be sitting/driving more than 45 minutes at a time. A mix (obviously if you are comfortable) of saturating your local area with in-person face-to-face marketing and WFH. When WFH, you would be expected to have (AT LEAST) 25 phone call/individualized emails a day, everything logged in MS4 of course. In addition, at the very least 1 zoom presentation a week with outpatient clinic(s) IF you forgoes (sic) the F2F marketing. In addition to everything being logged, you would still need to turn in your weekly plan, and weekly recap. Betsy will also provide HBH RTC postcards for you to send out

mailings to OUTPATIENT CLINICS ONLY in your territory.  
The main focus would be outpatient clinics.  
Please let me know if you have any further questions.

Dr. Cheyne noted on January 28, 2022, "Ms. Sallee returns for followup of her cervical strain with possible left cervical radiculitis as well as left shoulder and left knee contusions. She has had some improvement in her neck and shoulder, but no improvement in the knee at all. She complains of an instability of the knee when she is walking. We will continue her Celebrex, work restrictions, light activity, heat therapy, and physical therapy, but I would also recommend getting an MRI scan of the left knee, and we will see her back after the scan."

An MRI of the claimant's left knee was taken on February 10, 2022 with the following findings:

Multiloculated very thin and small popliteal cyst. Tear of the posterior horn of the medial meniscus. Cruciate and collateral ligaments are intact as well as distal patellar tendon complex. Lateral meniscus intact. Small joint effusion. Very small cyst like lesion in the distal medial tibia femur measuring 6 mm.  
IMPRESSION: Tear of the posterior horn medial meniscus with small joint effusion.

Dr. Cheyne noted on February 15, 2022:

Ms. Sallee returns for followup of her cervical strain with possible left cervical radiculitis as well as left knee pain. She had her MRI scan of her knee which indicated a posterior horn medial meniscal tear. With regard to the knee, we will get her in to see one of our surgeons for an evaluation. She is having a great deal of difficulty ambulating because of this. She also is unable to sit in a car for any length of time without her knee bothering her as well as her back. For now, we will leave her

off work, get her in to see a surgeon regarding the knee, but she will also continue her Celebrex, and we will get an MRI of cervical spine. I will see her back after the scan.

Dr. Cheyne reported on February 15, 2022, "This is to certify that Gina M Sallee was seen in my clinic on 2/15/2022. SHE IS TO REMAIN OFF WORK UNTIL SEEN BY THE SURGEON. Appt on 3/1 at 8:10."

Betsy Curtis, the respondent-employer's Director of Business Development, corresponded with Carri Compton and others on February 16, 2022: "I have confirmed that Gina worked up to (including) yesterday. Today is Day 1 of her not working. I am not sure what I need to do in regards to payroll. Please let me know!"

Dr. Bryan Smith, Mercy Clinic Orthopedic Surgery Fort Smith, examined the claimant on March 1, 2022:

This is a 48-year-old female, who has been having pain in the left knee since December 7<sup>th</sup>. She states she was involved in a motor vehicle accident when she was traveling at a high speed and collided with a deer. She states she has had pain in the left knee, shoulder, and neck. She has previously seen by Dr. Cheyne. She has tried Celebrex as well as physical therapy on the knee. She says the physical therapy made her knee feel worse. The anti-inflammatories have not helped much. She does experience swelling in the knee. She localizes the pain medially as well as anteriorly. Sometimes, she feels like the knee will give out on her. She did obtain an MRI and was referred for evaluation. She says that she is not having tremendous amount of catching or locking, but does feel like the knee tries to give way sometimes. She has used a compressive sleeve. She is currently off work. She is employed as a marketing representative and she does a lot of driving in the car. She has not been able to do this and has had difficulty walking, going up and down stairs....

Examination of the left knee, she does have a mild effusion. She is very guarded with mobility of the knee, but she can get the knee straight and flexed to 120 degrees....

IMAGING: X-rays are available for review. They are negative for fracture or dislocation. They show maintenance of the joint space. MRI previously obtained is available for review. This has been read by the radiologist and I have reviewed the images directly with the patient. The radiologist did feel like there is a posterior horn medial meniscal tear. I have looked at this on the PD imaging. I do see signal in the posterior horn of the medial meniscus. I see this less so on the T2-weighted signals. Certainly, I do not see any displacement. It is hard for me to tell if it does exit to the articular surface. The MCL appears to be intact. There might be a little bit of edema around it, but there is no full-thickness tearing. ACL and PCL are intact as are the lateral ligaments.

ASSESSMENT: Left knee pain status post MVC concerning for medial meniscus tear. I had a long discussion with Gina. She has been extremely painful with this knee. She was in a high-energy accident. The MRI does look like there is some signal on the PD images in the posterior horn, however, it is less so visible on the T2 and I do not know if it exits the articular surface. She is really painful with stress to the medial collateral ligament, although I do feel it is stable. We have talked about options including diagnostic arthroscopy and possible meniscus repair versus debridement versus a trial of continued nonoperative management. She would like to proceed with a trial of nonoperative management. So, we are going to place her into a hinged knee brace. I would like for her to continue the anti-inflammatory. I want her to work on icing. We have also talked about injection. We are going to hold on this. We are going to see how she does with the hinged brace to protect that medial collateral ligament and see if that gives her any improvement in symptoms. I am going to see her back in 2 weeks' time. At that time, if she is continuing to have mechanical symptoms and her exam is consistent with meniscal pathology, we will give strong consideration to a diagnostic arthroscopy and likely meniscus repair versus debridement. Other options would be consideration of steroid injection. All this has been discussed. She has expressed understanding. We are also going to provide her a note for work given that she is to be up on her



feet and walk for extended periods. We are going to keep on her current work restrictions, which is off work. We will revisit this at the following visit. All this was discussed. She has expressed understanding and agreed to the plan.

Dr. Smith reported on March 1, 2022, "Patient was seen in my office today and is unable to work until seen again in 2 weeks."

A representative of the respondent-carrier corresponded with Dr.

Cheyne on March 1, 2022:

I am the claims examiner handling the Work Comp claim for your patient, Gina Sallee. She currently has work restrictions which include no lifting greater than 5 lbs, no reaching above shoulder level and no sitting more than 45 minutes. Her employer has advised me that she's able to work from home while staying within the restrictions. She has a desk job and can stand and sit as needed. Please indicate below your approval/disapproval of her working from home. Thank you.

Dr. Cheyne checked a space beside the word "Approve."

The respondents state on appeal that the claimant received temporary total disability benefits until March 14, 2022.

The claimant followed up with Dr. Smith on March 15, 2022: "She states that, unfortunately, her knee is not getting any better. She is still having pain. She does tell me that she is having cramping in the calf as well as pain that goes all the way down to her foot and caused her foot to cramp. She says that she is not interested in any surgical intervention for the knee." Dr. Smith assessed "Left knee status post motor vehicle collision with concern for medial meniscus tear. I have previously reviewed the MRI

with Gina. There may be a tear in the posterior horn of the medial meniscus....She is wanting to avoid surgery, so we are going to trial on injection today....With regard to her knee, I would recommend that she return to her previous work restrictions that were provided, which were no lifting heavier than 5 pounds and no sitting for greater than 45 minutes. So we are going to inject the left knee. I will see her in six weeks.”

Dr. Smith reported on March 15, 2022:

*This is to certify that Gina M Sallee was seen in my clinic on 3/15/2022.*

*She may return to work next scheduled day of work.*

**RESTRICTIONS:**

**5 LB WEIGHT LIMIT**

**NO LIFTING OR REACHING ABOVE SHOULDER LEVEL**

**NO SITTING MORE THAN 45 MINUTES**

The claimant agreed on cross-examination that the respondent-employer accommodated the work restrictions assigned by Dr. Smith.

Dr. Cheyne noted on March 30, 2022, “Ms. Sallee returns for followup of her left cervical radiculitis which has gotten more intense. We had ordered an MRI scan of the cervical spine, but her worker’s comp adjuster cancelled it, apparently wanting to schedule it at some other facility. They will need to be in control of that. From my standpoint, she has done medications and physical therapy, and I will see her back on a p.r.n. basis hopefully after she has an MRI of cervical spine.”

Dr. Cheyne noted on March 30, 2022, "Negative brain CT scan." Dr. Cheyne stated on March 30, 2022, "This is to certify that Gina M Sallee was seen in my clinic on 3/30/2022. She IS TO CONTINUE CURRENT WORK RESTRICTIONS. WORK AT HOME."

The respondents' attorney cross-examined the claimant:

Q. Do you agree on March 30<sup>th</sup> Dr. Cheyne said current restrictions continue and also work from home?

A. I do....

Q. But those additional restrictions, working from home, that was also accommodated, right? You were able to begin working from home?

A. Yes, that is correct.

Q. Under those restrictions by Dr. Cheyne, the 5-pound weight limit, the no lifting or reaching above your shoulder level, no sitting for more than 45 minutes at a time, under those restrictions you were not totally incapacitated. Right?

A. Correct.

Q. You were not so totally incapacitated you were unable to earn wages, right?

A. Correct.

Dr. Cheyne reported on April 26, 2022:

Ms. Sallee returns for followup of her cervical strain with left cervical radiculitis. She had her MRI cervical spine earlier today. To my review, the primary finding is a small disk osteophyte complex at C5-6 with moderate left facet arthrosis with neural foraminal narrowing. She had lesser changes at other levels. I do not think that she needs to see a surgeon with regard to her neck. She has done physical therapy and anti-inflammatories. We will get her into the pain clinic for 1 CESI to be done on the left at the C5-6 level, but she is now complaining of numbness in both of her arms as well as the hearing deficit off and on. She had head trauma in the accident and apparently was unconscious for a period of time. She went to the emergency room, but no scan was done. I would recommend getting a CT brain scan as well as

EMG/NCV of the upper extremities, and we will see her back after those are completed.

Dr. Smith noted on April 28, 2022, "Cheyne has her on restrictions. I would agree with those restrictions, and I asked her to continue those until I see her at the next visit."

The claimant followed up with Dr. Cheyne on June 7, 2022, and Dr. Cheyne kept the claimant's work restrictions in place.

Dr. Natalie Strickland provided a Pain Clinic Consultation on June 8, 2022: "Ms. Sallee is a 48 y.o. female who presents to the pain clinic with neck pain. She was a direct procedure referral from Dr. Cheyne....Inspection of spine reveals good posture, with cervical straightening....Cervical R>L paraspinal and trapezius spasm of muscle and myofascial pain to palpation....Cervical MRI from 2022, pertinent findings: Straightening cervical lordosis, multilevel disc desiccation." Dr. Strickland assessed "1. Cervical radicular pain. 2. Cervical foraminal stenosis. 3. Cervical spondylosis." Dr. Strickland treated the claimant conservatively.

Carri Compton, the respondent-employer's Director of Human Resources, signed an Employee Corrective Action Report on June 28, 2022 indicating that the claimant's employment was to be terminated:

Ms. Sallee documented that she contacted the Creative Counseling Center on 10-1-21, 4-6-22 and 5-18-22 indicating that she left brochures, was emailing a HBH video and had

spoke to Beth Stiles. It was discovered that this facility had not been contacted by Heartland per contact with one of the owners and they did not have any Heartland brochures in their office. Ms. Sallee also reported that on 6/20/2022 she made contact with approximately 15 contacts by phone (verified by Ms. Sallee on 6-21-22), however, the follow-up completed by the DBD with the names Ms. Sallee presented as contacts were found to not be in the office and some of the information presented was not people that worked at those facilities.... A meeting was held on 6-27-22 inquiring about this information and Ms. Sallee reported "If I documented I spoke to someone then I did it." During this meeting when questions were attempting to be asked she abruptly ended the call. As a result of Ms. Sallee not responding to questions being asked and her falsifying contacts that impact the business and image of Heartland termination will occur.

The CEO of Heartland Behavioral Health corresponded with the claimant on June 29, 2022:

Please find attached a termination corrective action based on information gained from our referral sources and your actions when attempting to discuss this matter. Enclosed you will find a box and label in order to return your computer, badge, keys, business cards, and any other Heartland property you may have....

The claimant testified on direct examination:

Q. In your termination paperwork that the judge has access to and the respondents have introduced it, it mentions something about falsifying contacts. Did you ever falsify any contacts?

A. Not to my knowledge I have never falsified any contacts.

Q. Now, since you were terminated at the end of June, have you been able to work anywhere else?

A. No, I have not.

Q. Are you still on restrictions?

A. I am, yes.

Q. Why have you not been able to work anywhere else?

A. Well, based off the restrictions and then the fact that I am on medication and I am in pain and I still have my injuries, I

have good days and bad days where I can function sometimes, but then I may have to sit or stand. And I am not able to take showers as requested by the doctor twice a day, so it makes it difficult in finding employment with restrictions and pain, you know. And the requirement of taking my medication affects me as well.

Dr. Cheyne reported on July 29, 2022:

This patient returns for follow-up of her left cervical radiculitis. She went to the pain clinic but decided not to have an epidural injection. She has had a nerve conduction test of the upper extremities which was normal. She is seeing an ear nose and throat physician with regard to her hearing loss. From the standpoint of her cervical radiculitis I will recommend that she simply continue her Celebrex, light activity and heat therapy and we will see her back on [an] as needed basis. She has lost her job. She states the insurance company has now denied her claim. If she wants to reconsider the epidural injections we can certainly consider that at another time. I have also suggested to her that if she would like to do so she could get a second opinion evaluation from another physician.

An amended pre-hearing order was filed on August 11, 2022.

According to the text of the amended pre-hearing order, the claimant contended that she was “entitled to temporary total disability benefits and additional medical treatment in the form of testing and pain management. Claimant is also entitled to an award of an attorney’s fee. The claimant reserves all other issues.”

The pre-hearing order included a “stipulation” indicating, “3. The respondent controverts that claimant sustained a compensable injury to her neck and left knee on December 7, 2021.” The respondents contended that

the claimant was “not entitled to any benefits under the Arkansas Workers’ Compensation law.”

According to the August 11, 2022 pre-hearing order, the parties agreed to litigate the following issues:

1. Whether claimant is entitled to temporary total disability benefits for injuries to her neck and left knee from June 29, 2022 to a date yet to be determined.
2. If compensable, the compensation rate.
3. Whether claimant is entitled to temporary total disability benefits from June 29, 2022 to a date yet to be determined as a result of an injury to her neck and left knee.
4. Whether claimant is entitled to additional medical treatment.
5. Attorney fees on all indemnity benefits.

A hearing was held on September 14, 2022, and an administrative law judge filed an opinion on November 3, 2022. The administrative law judge found, among other things, that the claimant failed to prove she sustained a compensable injury. The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

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[.]

The phrase “arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of the employment” refers to the time, place, and circumstances under which the injury occurred. *J. & G. Cabinets v. Hennington*, 269 Ark. 789, 600 S.W.2d 916 (1980). In order for an injury to arise out of the employment, it must be a natural and probable consequence or incident of the employment and a natural result of one of its risks. *Id.*

The test for determining whether an employee was acting within the “course of employment” at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer’s purpose or advancing the employer’s interests directly or indirectly. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997), citing *Pilgrims Pride Corp. v. Caldarera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996). A traveling employee is generally within the course of her employment from the time she leaves home on a business trip until she returns, for the self-evident reason that traveling itself is a large part of the employee’s job. *Id.*

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, “3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury on December 7, 2021.” It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge’s findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission reviews an administrative law judge’s opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable injury. As we have discussed, the record indicates that the claimant became employed with the respondents on or about September 13, 2021. The claimant was hired to be a Community Relations Representative 1 for the respondents. This employment position required physical activity with office work, and the claimant testified “I would travel to various locations in Missouri and Arkansas and provide information about services.”

The parties stipulated that the employment relationship existed on December 7, 2021. The claimant testified that she was traveling to Little Rock to perform employment services for the respondents that day, but that the vehicle she was driving struck a deer on Interstate 40. The claimant testified that her vehicle was disabled as a result of the accident. The claimant’s testimony was corroborated by an Arkansas Motor Vehicle Crash Report Narrative dated December 7, 2021. The evidence demonstrates that, because travel was an essential part of the claimant’s work for the respondents, the December 7, 2021 motor vehicle accident arose out of and in the course of the claimant’s employment. *J. & G. Cabinets, supra*. The record shows that the accident occurred within the time and space boundaries of the employment, when the claimant was directly carrying out the employer’s purpose. *Olsten Kimberly Quality Care, supra*. Traveling

was a large part of the claimant's job. *See id.* Whether or not the claimant's friend Mary Flores testified on her behalf, the Arkansas Motor Vehicle Crash Report certainly indicated that Ms. Flores was at least present at the time of the motor vehicle accident. Moreover, the respondent-employer obviously believed the claimant to be performing employment services on December 7, 2021, because the respondents paid temporary total disability benefits beginning December 8, 2021. The claimant also testified that the respondent-carrier initially provided medical treatment.

The claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved by a preponderance of the evidence that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on December 7, 2021.

Additionally, the claimant established a compensable injury by medical evidence supported by objective findings. Dr. Mitchell reported "Reverse Curve" in the lateral curvature of the claimant's cervical spine on December 15, 2021. Muscle spasms can constitute objective findings to

support compensability. *Continental Express, Inc. v. Freeman*, 66 Ark. App. 102, 989 S.W.2d 538 (1999). Straightening of the spine is a sign that is normally associated with muscle spasm in the straightened area. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). The claimant therefore proved that she sustained a compensable cervical strain as diagnosed by Dr. Cheyne, and that the cervical strain was established by objective medical findings not within the claimant's voluntary control. There were also objective findings supporting Dr. Cheyne's diagnosis of "Left knee contusion." An MRI of the claimant's left knee on February 10, 2022 showed "Tear of the posterior horn of the medial meniscus." This abnormality demonstrated on MRI testing was clearly an objective medical finding establishing a compensable injury to the claimant's left knee. Dr. Smith also noted an objective finding in the claimant's left knee, notably "effusion" on March 1, 2022. "Effusion" is another objective medical finding establishing a compensable injury. *Swifton Public Schools v. Shields*, 101 Ark. App. 208, 272 S.W.3d 851 (2008).

The claimant therefore proved by a preponderance of the evidence that she sustained compensable injuries to her left knee and cervical spine on December 7, 2021. The Full Commission reiterates in the present matter that the claimant was acting within the course of her employment with the respondents when she sustained the compensable injuries to her

left knee and cervical spine, because travel was a necessary part of the claimant's employment. *See Olsten Kimberly Quality Care, supra.*

B. Temporary Disability

The respondents state on appeal to the Full Commission that they paid temporary total disability benefits beginning December 8, 2021 until March 14, 2022. The claimant contends that she is entitled to additional temporary total disability benefits beginning June 20, 2022 and continuing until a date yet to be determined. The Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability benefits.

The claimant proved by a preponderance of the evidence that she sustained a compensable unscheduled injury to her cervical spine on December 7, 2021. For an unscheduled injury, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period continues until the employee is as far restored as the permanent character of her injury will permit. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670

(1993). The determination of when the healing period ends is a question of fact for the Commission. *Id.*

In the present matter, the claimant sustained a compensable cervical strain on December 7, 2021. Dr. Cheyne assigned work restrictions beginning December 22, 2021. The respondents provided reasonable ACCOMMODATION WORK REQUIREMENTS beginning December 27, 2021. However, the respondent-carrier continued to pay temporary total disability benefits until March 14, 2022. Dr. Smith released the claimant to return to restricted work beginning March 15, 2022, and as we have noted, the claimant agreed on cross-examination that the respondent-employer accommodated the work restrictions assigned by Dr. Smith. The claimant also agreed on cross-examination that she was not totally incapacitated from earning wages. The evidence does not demonstrate that the claimant remained within a healing period for her compensable cervical strain at any time after March 14, 2022. Temporary disability benefits cannot be awarded after an employee's healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). Nor does the record show that the claimant was totally or partially incapacitated from earning wages at any time after March 14, 2022. The claimant therefore did not prove she was entitled to any additional temporary total disability benefits with regard to her unscheduled compensable injury.

The claimant also sustained a scheduled compensable injury to her left knee on December 7, 2021. An employee who has sustained a scheduled injury is to receive temporary total disability benefits during her healing period or until she returns to work. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). Whether an employee's healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

The claimant on appeal argues that she is entitled to temporary total disability benefits from June 20, 2022 to a date yet to be determined. The claimant cites *Superior Industries v. Thomaston*, 72 Ark. 7, 32 S.W.3d 52 (2000), and contends, "As in Superior, here this claimant did not refuse the work even though she was working in pain. She was not terminated by choice; and therefore, she should not be denied TTD."

In *Superior Industries v. Thomaston*, *supra*, the Arkansas Court of Appeals awarded temporary total disability benefits even though the claimant's employment was terminated after he returned to light-duty work. Nevertheless, *Superior Industries* was limited to its facts and did not involve

Ark. Code Ann. §11-9-521(Repl. 2012), the statute applicable to the claimant's scheduled injury. See *Robertson v. Pork Group, Inc.*, 2011 Ark. App. 448, 384 S.W.3d 639. The claimant in the present matter returned to appropriate and suitable work following her scheduled injury. According to the evidence of record, however, the claimant was patently dishonest with the respondent-employer with regard to the claimant's employment duties. The respondents' Director of Human Resources documented on June 28, 2022 that the claimant falsely reported making several potential business contacts. When the respondents attempted to investigate these discrepancies, the claimant abruptly ended the conversation. The respondents appropriately terminated the claimant's employment effective June 28, 2022. The Commission is not required to believe the testimony of any witness, and may accept and translate into findings of fact only those portions of testimony it deems worthy of belief. *Tucker v. Roberts-McNutt, Inc.*, 342 Ark. 511, 29 S.W.3d 706 (2000). With regard to the termination of the claimant's employment, we find that portion of the claimant's testimony unworthy of belief. An indicator of the claimant's lack of credibility with regard to her work record is the claimant's delivery to the respondents of a counterfeit diploma purportedly issued from Michigan State University conferring upon the claimant a "Master of Social Work."



The Full Commission finds that the claimant's entitlement to temporary disability benefits ended when she returned to work within her physical restrictions. *See Turcios v. Tyson Foods, Inc.*, 2016 Ark. App. 471, 504 S.W.3d 622. The respondents' attorney cross-examined the claimant at hearing:

Q. On June 29th of '22 is when you received a termination letter. Right?

A. I'm sorry, what date again?

Q. June 29<sup>th</sup> of '22?

A. I am not sure exactly, the exact date I received it, but I believe the letter was dated the 28<sup>th</sup>, but I don't recall the exact date I received the box with the termination letter in it.

Q. Had you not been terminated, those accommodations would have continued. Right?

A. As far as I am aware, yes.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her cervical spine and left knee on December 7, 2021. We find that the claimant did not prove she was entitled to additional temporary disability benefits. The claimant proved that the medical treatment of record was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). There are currently no recommendations of record for additional medical treatment. For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED

\_\_\_\_\_  
SCOTTY DALE DOUTHIT, Chairman

\_\_\_\_\_  
M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant has met her burden of proving that she suffered a compensable injury to her cervical spine and left knee on December 7, 2021.

The outstanding issue in this case is whether the claimant was engaged in a work-related activity at the time of her car accident on the morning of December 7, 2021 as required by our Rules. See Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347

Ark. 851, 69 S.W.3d 1 (2002). We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* The critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. *Conner*, 373 Ark. 372, 284 S.W.3d 57. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

The particular facts of this case rest on the claimant's credibility as a witness. "Where there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts." *Templeton v. Dollar Gen. Store*, 2014 Ark. App. 248, 434 S.W.3d 417 (2014). Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 79, 250 S.W.3d 263, 271 (2007). A claimant's testimony is deemed controverted as

a matter of law. See *Ester v. Nat'l Home Ctrs. Inc.*, 335 Ark. 356, 981 S.W.2d 91(1998). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into fact only those portions of the testimony that it deems worthy of belief. *Long*, 98 Ark. App. at 79-80, 250 S.W.3d at 271-72.

The ALJ astutely enumerated five individual reasons why the claimant's testimony cannot be trusted. First, when applying for her position with the respondent employer, the claimant submitted a fake diploma representing that she had a master's degree in social work from Michigan State University. (Resp. Ex. 1, Pp. 7, 13). The claimant admitted in her testimony that she did not have a master's degree and had never enrolled in Michigan State. (Hrng. Tr. Pp. 23-24). Although the claimant testified that this was a "display for my future achievements," it is, more simply put, a total fabrication and disregard for the truth. (See Hrng. Tr., P. 23). Additionally, on her resume, the claimant represented that she was a licensed social worker and presented a document representing a provisional social work license. (Resp. Ex. 1, P. 13). This is another total fabrication and disregard for the truth. The claimant has never been a licensed social worker. (Hrng. Tr., P. 24). The claimant testified that these fabrications "might be beneficial . . . to help me get the job, but then I realized later that the job never required any type of social work degree."

(Hrng. Tr., P. 23). The degree in question “was made by me.” *Id.* As to her purported provisional social work license, the claimant testified that she “took the test, but I did not pass it.” (Hrng. Tr., P. 24). During the claimant’s employment with the respondent employer, the claimant used the abbreviation “PLMSW” in her email signature, giving the incorrect impression that she was a provisionally licensed master social worker. (Resp. Ex. 1, P. 60). Upon questioning, the claimant admitted she did not have a provisional license and that the use of LMSW was not accurate. (Hrng. Tr., P. 24).

The claimant continued her habit of not telling the truth throughout her employment with Heartland, falsifying reports reflecting that she met with Beth Stites at Creative Counseling Solutions when it was later discovered that no one worked there by that name and no Heartland brochures were left at their offices. (Resp. Ex. 1, Pp. 96-100).

Later, in June 2022, the claimant was given a list of businesses to contact and she made entries into the computer system reflecting that she had done so. When Betsy Curtis with Heartland followed up with those businesses to ensure that contact had been made, she could not confirm that any contacts had been made. In fact, for many of these calls, Ms. Curtis learned that the person that the claimant purported to contact either did not work for the business, was on vacation for the summer, or had not

received a call from the claimant. (Resp. Ex. 1, Pp. 101-103). The claimant was fired from the respondent employer for this incident. I am in agreement with the ALJ that the claimant's abject refusal to directly answer any question regarding the falsification of contacts was unimpressive and does not add any credibility to the claimant's testimony.

The Majority takes the respondent carrier's initial acceptance of this claim as compensable as proof that the claimant was providing employment services for Heartland at the time of her December 2021 accident. The initial acceptance of the claim by the respondents is absolutely no proof that the claimant was performing employment services at the time of the accident. The Commission is well aware that many cases are initially accepted as compensable and later denied when the carrier's investigation is completed and respondents should not be punished as a result and their initial acceptance is not and should not be treated as proof.

The Majority fails to recognize that the claimant's irrefutable history of not telling the truth to benefit herself has a direct impact on the compensability of this claim. The Majority spends little time addressing the issue of credibility when the credibility of the claimant is the crux of this case. The ALJ, who was able to observe the demeanor and credibility of the claimant, correctly determined that the claimant was not a credible witness and denied her claim. The claimant fabricated her resume, a

diploma from Michigan State, and a social work license in order to be hired by the respondent employer and was ultimately fired due to her inability to be truthful.

There is no record reflecting any appointments that the claimant had set for the date of her accident, and she did not name any offices she intended on visiting specifically. Beyond her own statements made to make this appear to be a work-related injury, there is no testimony or evidence proving that the claimant was indeed traveling to Little Rock for work. The claimant did not call her passenger in the accident, Mary Flores, to substantiate her claim, but rather rested her entire claim on her own self-serving testimony. It is unreasonable to take the claimant's word as fact considering her history of being unable to tell the truth, and I believe the claimant has failed to meet her burden of proving that she was providing employment services at the time of her accident on December 7, 2021.

The respondents clearly proved the claimant is not truthful and not credible. Even more importantly, the claimant admitted under oath that she falsified documents and did not tell the truth. She admitted under oath that she stated on her resume she had a master's degree from Michigan State when she had never even enrolled there. She went so far as to provide the respondent employer with a fake diploma from Michigan State. She also stated on her resume she was a licensed social worker experienced in all

aspects of social services and provided a print out from the Arkansas Social Work Licensing Board of her provisional license when in fact she admitted under oath that she did not pass the social work exam and had never held a provisional license. She also admitted at the hearing that she used LMSW as the signature line on her email when she does not have a degree in social work or a license to practice social work.

The only true issue in this case is whether the claimant was a credible witness. The only proof presented was her own self-serving testimony. The claimant has admitted under oath that she is not truthful, fabricated her resume, produced a fake diploma, provided a printout from the Social Work Licensing Board when she had failed the licensing exam, and held herself out as a licensed master social worker when she had never received a degree or license in that field. If the claimant was this untruthful just to obtain a job with Heartland, it defies reason to believe her testimony is credible while she is seeking workers' compensation benefits.

To accept the testimony of the claimant, who under oath has admitted she is not truthful, only rewards her deceitful behavior. I agree with the ALJ that the claimant is not credible and that her claim should be denied.

For the reasons stated above, I respectfully dissent.



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MICHAEL R. MAYTON, Commissioner