

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H109984**

**SHAUNA D. TORRENCE,  
EMPLOYEE**

**CLAIMANT**

**LAFAYETTE COUNTY SCHOOL DISTRICT,  
EMPLOYER**

**RESPONDENT**

**ARKANSAS SCHOOL BD. ASS'N WORKERS'  
COMPENSATION TRUST/ARKANSAS SCHOOL  
BDS. ASS'N, INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JULY 24, 2024**

Hearing conducted on April 25, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, L.L.P., Texarkana, Miller County, Arkansas.

The respondents were represented by the Honorable Melissa Wood, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

**INTRODUCTION**

In the prehearing order filed December 11, 2023, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including October 5, 2021, the date the claimant alleges she became temporarily totally disabled due to alleged work-related bilateral carpal tunnel syndrome (CTS), particularly CTS, most notably in her right wrist/hand.
3. The claimant's average weekly wage (AWW) was \$701.46 which is sufficient to entitle her to weekly compensation rates of \$351.00 for temporary total disability (TTD) and \$238.00 for permanent partial disability (PPD) benefits if the claim is deemed compensable.

4. The respondents controvert this claim in its entirety.
5. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 4-6). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claim for the claimant's left wrist CTS is barred by the applicable statute of limitations (S/L).
2. Whether the claimant sustained compensable bilateral CTS injuries, particularly in her right wrist/hand, within the meaning of the Arkansas' Workers' Compensation Act (the Act) which allegedly culminated in disability on or about October 5, 2021.
3. If the claimant's alleged bilateral CTS is deemed compensable, the extent to which she is entitled to medical and indemnity benefits, specifically TTD benefits from on or about January 18, 2022, through on or about June 30, 2022, for treat related to her right wrist/hand; and from on or about January 10, 2023, until at least March 7, 2023, with respect to her left wrist/hand.
4. Whether the claimant's attorney is entitled to a controverted fee on these facts.
5. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Comms'n Ex. 1 at 2; T. 4-6).

In the prehearing order filed December 11, 2023, the parties' made certain contentions, which they amended at the hearing as set forth below. (Comms'n Ex. 1 at 2-4; T. 5-6). In the prehearing order the claimant contends she sustained bilateral CTS injuries which culminated in disability on or about October 5, 2021; or alternatively, as a result of her rapid, repetitive work-related activities performed at the school district since 2004. She contends the applicable S/L does not barr her claim for CTS in her left wrist/hand. The claimant further contends she is entitled to TTD benefits from on or about January 18, 2022, through on or about June 30, 2022, for treatment associated with her right wrist/hand. Furthermore, the claimant contends she is entitled to TTD

benefits for treatment associated with the left wrist/hand beginning on or about January 10, 2023, until she was seen by Dr. Cassatt for evaluation on a date certain in 2023 (the claimant has requested these related records). The claimant contends the respondents are responsible for payment of her medical treatment and related out-of-pocket expenses for her bilateral CTS, as such treatment is related to and reasonably necessary in light of the work-related bilateral CTS injuries. The claimant contends she has sustained permanent anatomical impairment to both her left and right wrist/hand as a result of these bilateral CTS injuries; however, she specifically reserves this issue pending the Commission's decision of the threshold compensability issue. The claimant reserves any and all other issues for future determination and/or litigation.

In the prehearing order the respondents contend the applicable S/L bars the claimant's CTS claim with respect to her left wrist/hand. Furthermore, the respondents contend the claimant cannot meet her burden of proof pursuant to the Act in demonstrating she sustained CTS in either her right wrist/hand and/or her left wrist/hand, which culminated in alleged disability on or about October 5, 2021, or at any other time while she was working with the respondents. Significantly, the respondents contend the claimant did not provide them the statutorily required notice of any alleged right wrist/hand CTS injury until the Form AR-C was filed on her behalf on January 5, 2022. In addition, the respondents contend the claimant also failed and/or refused to provide them the legally required notice of any alleged left wrist/hand CTS injury until October 26, 2023, the date she filed her initial response to the prehearing questionnaire. Alternatively, the respondents contended that if the claimant's alleged CTS injury(ies) is (are) deemed compensable, she received both short and long-term disability (STD, and LTD, respectively) benefits and, therefore, pursuant to *Ark. Code Ann.* Section 11-9-411 (2024 Lexis Replacement), they are entitled to a dollar-for-dollar offset/credit. Finally, the respondents contend the claimant's need for medical treatment, if any, is

related to her diabetes mellitus and not to any acute or gradual injury. The respondents reserved the right to supplement their contentions and assert any and all other applicable defenses and arguments upon the completion of necessary investigation and discovery. The respondents reserve any and all other issues for future determination and/or litigation. (Comms'n Ex. 1 at 3-4).

With respect to their amended contentions made at the hearing, the respondents contend the claimant cannot meet her burden of proof pursuant to the Act in demonstrating she sustained compensable CTS for either her left wrist or her right wrist. Furthermore, the respondents contend the claimant did not provide them with the required statutory notice of the alleged right extremity injury until the Form AR-N was filed on January 6, 2022. Moreover, the respondents contend the claimant did not provide them with the required notice of the alleged left extremity injury until the Form AR-C was filed on October 3, 2023. (T. 5). Therefore, according to the applicable law even if the Commission finds one (1) or both of these alleged injuries to be compensable, the respondents would not be responsible for the payment of any medical or TTD benefits until the date they received the required statutory notice of the respective injuries – *i.e.*, the dates set forth above.

In response to the respondents' amended contentions, the claimant contends the respondents' S/L argument is inapplicable to the claimant's alleged right wrist injury. With regard to the claimant's alleged left wrist injury, the claimant agreed with the respondents that she had not made a claim for a left wrist injury until the Form AR-C was filed on October 3, 2023. (T.5).

The record consists of the hearing transcript, and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

## STATEMENT OF THE CASE

The claimant's post-hearing brief contains a fair recitation of the basic facts involved herein. (Claimant's Brief at 1-3). Consequently, I hereby incorporate the aforementioned facts by reference as if they were set forth herein. In addition, I will discuss the relevant facts as applied to the applicable law in the "Discussion" section of this opinion, *infra*.

## DISCUSSION

### The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2024 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). *Ark. Code Ann.* Section 11-9-704(c)(3) (2024 Lexis Repl.) states that the ALJ, the Commission, and the courts "shall strictly construe" the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4) (2024 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595

S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles*, *supra*.

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (Ark. App. 1994). The determination of a witness's credibility and how much weight to accord that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (Ark. App. 2001).

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

**The claimant has failed to meet her burden of proof pursuant to the Act in demonstrating either or both her left or right wrist conditions is (are) compensable as either a specific incident or a gradual onset injury.**

In order to prove a compensable injury as a result of a specific incident the claimant must establish by a preponderance of the evidence that she sustained: (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) there exists medical evidence supported by objective findings, as defined in *Ark. Code Ann.* § 11-9-102(16) (2024 Lexis Repl.), establishing the injury; and (4) the injury was caused by a specific incident and identifiable by

time and place of occurrence. *Ark. Code Ann.* § 11-9-102(4)(A)(i) (2024 Lexis Repl.).

Concerning an alleged gradual onset compensable injury *Ark. Code Ann.* § 11-9-102(4)(A) (2024 Lexis Repl.) defines “compensable injury” as follows:

- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident is not identifiable by time and place of occurrence, *if* the injury is:
  - (a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

(Bracketed material, and emphasis added). Our Arkansas courts of appeal have held that CTS is an injury that may be caused by a specific incident, or gradual onset caused by rapid, repetitive motion. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335; 969 S.W.2d 190 (1998); and *see, Harper Co. v. Woods*, 216 Ark. App. 431; 216 Ark. App. 456 (2016 Ark. App. 2016); *Sally v. Service Master*, 2009 Ark. App. 209; 309 S.W.3d 7 (Ark. App. 2019).

Based on the applicable law as applied to the facts of this case, the claimant has failed to meet her burden of proof that either her right or left wrist condition was the result of either a specific incident or a gradual onset compensable injury as defined by the Act, for the following reasons.

First, the claimant’s own sworn testimony at the hearing demonstrates she herself has no idea what caused her alleged bilateral CTS. The claimant, Ms. Shauna Torrence (the claimant), is 43 years old. She started working for Lafayette County School District in August of 2004. (T. 8). She initially worked as a bus driver and later began working a second contract job as a custodian. (*Id.*). Concerning her alleged bilateral wrist injuries and her reporting/providing notice to her employer of the alleged incidents/injuries the claimant testified as follows:

- Q: On the day of the alleged injury, October 5, 2021, it’s my understanding that you had the cart that you described earlier, and on

that cart would have been everything you needed to clean. The mop bucket, dust mop, paper towels, etcetera, is that correct?

A: Yes, ma'am.

Q: All right. When you were trying to get over the metal door frame, you testified in your deposition that you held onto the cart, and the cart did not fall over, is that right?

A: Correct.

Q: You indicated in your deposition that your right elbow hit the floor, is that right?

A: Right.

Q: And during this is when you twisted your left foot?

A: Yes.

Q: You told us earlier that you hopped to the main office that day and that's where you saw Mr. Crank and the secretary, is that correct?

A: Correct.

Q: Did you tell them at that time that you were hurt?

A: Yes.

Q: And after that was when you sent to the teacher's lounge for a while?

A: Yes.

Q: And you hopped around the rest of the day, but you did finish your job duties that day, correct?

A: Yes, ma'am.

Q: And you told us today that you did not think you needed treatment that day, is that right?

A: That's right.

Q: I asked you in your deposition did you hurt anything besides your foot, and you responded I hurt my arm that day. I hurt my arm. Is that correct?

A: What now?

Q: I asked you in the deposition did you hurt anything besides your foot, and your response was I hurt my arm that day. I hurt my arm. Is that correct?

A: Yes.

Q: And I asked you which one, and you said it was the right arm?



A: The right arm.

(T. 40-42).

The claimant went on to testify she showed Mr. Crank her swollen right hand on the day of the fall, and she had to wear a house shoe the following day because she could not put a regular shoe on her foot. (T. 42-43). Dr. Patel was the first physician she saw for her alleged right hand/wrist injury, and she told both him and Dr. Saldino she fell pushing a cart at work. (T. 43). Concerning the alleged left hand/wrist injury, the following exchange took place between the claimant and the respondents' attorney:

Q: We discussed your left hand during the deposition, and you told me that you assumed that you put strain on the left one because you never had problems with your hands or feet before the fall, is that right?

A: Correct.

Q: You also went on to say that you thought it was holding the door and pushing the buggy at the same time that put the strain on your left hand, is that right?

A: Correct.

(T. 43).

The claimant's attorney her attorney questioned her concerning she believed the Commission should find her alleged injury(ies) to be compensable:

Q: So, we're here today because you are alleging the symptoms with regard to your hands, the right that you've had surgery on and the left that you didn't, you believe occurred as a result of your work-related activities there at the School District. Why do you think the school should be responsible for your hand problems?

A: Yes, sir. The reason why I think is if it wasn't from the fall, it was the day-to-day activity I had to do, the repetitive on my job.

Q: When you say repetitive activities, what are you talking about?

A: The sweeping, the mopping, the dusting, the everyday things that I did, vacuuming.

(T. 38).

The aforementioned testimony makes it abundantly clear the claimant is essentially guessing that the fall caused her bilateral CTS; or that maybe it was the pressure she put on the cart with her left hand that caused the left wrist injury; or maybe it was the alleged rapid, repetitive job duties of her custodial work that caused her bilateral CTS. There exists no evidence the claimant's job duties were rapid or repetitive. The claimant's aforementioned testimony is subjective, self-serving, and simply incredible. I had the opportunity to closely observe the claimant as she testified under oath. Her demeanor, her manner of testifying, the way she responded to her attorney's simple, direct questions, and other factors obvious even from a fair and objective reading of the hearing record, conclusively demonstrate the claimant's testimony to be wholly speculative. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co., supra*. It must also be noted the claimant's obviously speculative testimony concerning how her alleged injury(ies) occurred was both implausible and incredible.

Second, and significantly, the medical evidence is insufficient to prove the claimant sustained either a specific incident or a gradual onset injury to either or both her right or left wrist. The claimant's testimony as compared to the medical evidence in the record is instructive and revealing in this regard. The claimant testified she never told her doctors she had problems with her hands (or her feet) before October 5, 2021. (T. 45). She reported to both Drs. Patel and Saldino that she fell pushing a cart at work. (T. 43). When Dr. Saldino examined the claimant one (1) week after the fall of October 12, 2021, the claimant reported pain in her left dorsal foot – but, significantly, she made no mention whatsoever of either right or left hand/wrist pain or other symptoms. (Respondents' Exhibit 1 at 1-4). Then some six (6) days thereafter the claimant saw Dr.

Patel on October 18, 2021, seeking care for “left foot problem, bilateral swelling in hands.” (Claimant’s Exhibit 1 at 7). Dr. Patel’s report of this office visit states the claimant, “Has been having bilateral foot pain. Has seen Dr. Saldino recently. Reports feet swelling. *Has been hurting for years.*” (CX1 at 7-8) (Emphasis added).

Moreover, the claimant made no mention of any problems with her hands when she returned to see Dr. Saldino on October 26, 2021; November 1, 2021; and December 2, 2021. 12/2/21. (RX1 at 5-10). Thereafter, on January 3, 2022, the claimant provided the following history to her treating physician:

He [sic] states that she is getting a neurological testing for her hands and feet as she is concerned that there may be a carpal tunnel syndrome. Both the feet and the hands are painful and are keeping her up at night. She states that her feet have become so painful that she cannot do basic housework. Apparently, there is some type of Workers’ Compensation claim. She indicates she is wearing the boot on a regular basis. As her pain has not improved.

(RX1 at 11) (Bracketed material added).

Dr. Saldino completed paperwork for the claimant’s disability claim with American Fidelity, and he documented that her diagnosis was left and right posterior tibial tendonitis, which indicated was not work-related. (RX1 at 13). The medical record is devoid of any evidence, much less sufficient evidence, demonstrating the claimant’s bilateral CTS was the result of either a specific or an alleged gradual onset injury as the Act defines such an injury(ies).

Third, claimant’s failure to provide timely notice of either a right or left wrist injury provides yet further evidence (if any were needed, which I do not believe it is) the claimant was unsure as to what caused her bilateral CTS complaints. *Ark. Code Ann.* § 11-9-701 (2024 Lexis Repl.) provides:

- (a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible

for disability, medical, or other benefits prior to receipt of the employee's report of injury.

- (2) All reporting procedures specified by the employer must be reasonable and shall afford each employee reasonable notice of the reporting requirements.
  - (3) The foregoing shall not apply when an employee requires emergency medical treatment outside the employer's normal business hours; however, in that event, the employee shall cause a report of the injury to be made to the employer on the employer's next regular business day.
- (b)(1) Failure to give the notice shall not bar any claim:
- (A) If the employer had knowledge of the injury or death;
  - (B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or
  - (C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.
- (2) Objection to failure to give notice must be made at or before the first hearing on the claim.

The claimant completed three (3) documents acknowledging she was aware of the required procedures concerning how to report an alleged work-related injury. (T. 47; Respondents' Exhibit 2 at 1-3). When she completed her application for disability benefits with American Fidelity on November 1, 2021, she stated her disability was due to "illness" as opposed to "accident." (T. 47-48; RX2 at 5). Thereafter, on January 6, 2022, the claimant completed and signed a Form AR-N alleging she had injured her left foot and right hand trying to push a cart. (T. 48; RX2 at 9). At the hearing the claimant admitted she would have told the adjuster she hurt her left foot and right hand when her statement was taken if this were in fact the case. (RX2 at 18; T. 48). Admittedly, the claimant did not even allege the left CTS injury until she filed her Form AR-C on October 3, 2023, which states, "carpal tunnel syndrome—bilateral," and lists a specific injury date of October 5, 2021. (T. 5; CX1 at 119-120).

Finally, the assistant principal at Lafayette County Elementary School, Mr. Shane Crank, testified at the hearing and explained the procedure an employee is instructed to follow in reporting

an alleged work-related injury. I found Mr. Crank to be an unbiased, articulate, and wholly credible witness. He confirmed the Form AR-P was and is located in the teachers' lounge. (T. 51-52). Mr. Crank further testified he was present on October 5, 2021, and he recalled the claimant telling him she hurt her ankle in the foyer before the kids came in. (T. 53). He testified under oath he did not recall her saying anything about having hurt either her left or right hand. (T. 54). Mr. Crank's testimony is consistent with all the aforementioned evidence demonstrating the claimant was unsure as to what was causing or had caused her bilateral hand/wrist pain/CTS.

Finally, while the S/L issue would have been a threshold issue in this claim, it is clear there exists insufficient evidence demonstrating this claim is barred by the applicable statute of limitations set forth in *Ark. Code Ann.* Section 11-9-702 (2024 Lexis Repl.). Therefore, I have not and will not discuss that issue in other than this conclusory manner.

As usual, both of these experienced, credible, well-respected attorneys did an excellent job preparing for and trying this case, and in-writing their post-hearing briefs, which this ALJ very much appreciates. Again, based on the applicable provisions of the Act and other applicable law, *supra*, as compared to the totality of the evidence of record, I am compelled to find the claimant has failed to meet her burden of proof in demonstrating she has sustained a compensable injury to either her left and/or right wrist(s).

Therefore, for all the aforementioned reasons I hereby make the following:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations contained in the prehearing order filed December 11, 2023, hereby are accepted as facts.
2. There exists insufficient evidence this claim is barred by the applicable statute of limitations of *Ark. Code Ann.* Section 11-9-702.
3. The claimant has failed to meet her burden of proof that she has sustained either a specific incident or a gradual onset compensable

injury to either or both her right or left wrist.

4. The claimant's attorney is not entitled to a fee on these facts.

Therefore, for all the aforementioned reasons this claim hereby is denied and dismissed subject to the parties' respective statutory appeal rights. If they have not already done so, the respondents shall pay the court reporter's invoice within 20 days of their receipt of this opinion.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law

MP/mp