BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H407968

GRACIELA VASQUEZ DE AMBRIZ, EMPLOYEE **CLAIMANT**

TYSON POULTRY, INC., SELF-INSURED EMPLOYER **RESPONDENT**

TYSON SHARED SERVICES, INC., TPA **RESPONDENT**

OPINION FILED JULY 28, 2025

Hearing before Administrative Law Judge, Joseph C. Self, on April 24, 2026, in Springdale, Arkansas; decided by Administrative Law Judge, Steven Porch, via transcript.

Claimant was represented by Ms. Evelyn E. Brooks, Attorney at Law, Fayetteville, Arkansas.

Respondents were represented by Mr. Jeremy Swearingen, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on April 24, 2026. A prehearing telephone conference took place on December 30, 2025. A prehearing order was entered on December 31, 2025, and subsequently entered evidence as Commission Exhibit 1, with amendments.[1] The parties confirmed the stipulations and the issues at the hearing. The parties' stipulations are set forth.

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. The employer/employee/carrier/TPA relationship existed among the parties on November 26, 2024.

3. Respondents have controverted this claim in its entirety.

4. Claimant's average weekly wage is $731.80 which entitles her to temporary total disability benefits of $488.00 and permanent partial disability benefits of $366.00 weekly.[2]

[1] Respondents added, without objection, a statute of limitations issue at the outset of the hearing.
[2] The parties stipulated to these numbers at the hearing.

The parties have identified the following issues to be adjudicated:

1. Whether the Statute of Limitations has barred Claimant's claim.[3]

2. Whether Claimant sustained a compensable injury by gradual onset to her right shoulder.

3. Whether Claimant is entitled to reasonable and necessary medical treatment and related expenses, including mileage and out of pocket expenses.

4. Whether Claimant is entitled to Temporary Total Disability (TTD) from January 27, 2025, through August 3, 2025.

5. Whether Claimant's attorney is entitled to a controverted attorney's fee.[4]

All other issues are reserved.

CONTENTIONS

Claimant contends that "She is entitled to medical treatment for her right shoulder, and to temporary total disability benefits. Claimant reserves all other issues."

Respondents contend that "The Claimant's alleged gradual onset right shoulder condition was not caused by her work. The Claimant's work duties were not rapid and repetitive. Respondent contends the Claimant was not totally incapacitated from all work during the period of temporary total disability claimed."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations set forth above are reasonable and are hereby accepted.

[3] This issue will be addressed last.

[4] I have rearranged the numbering of the issues for the systematic flow of this opinion.

3. The Claimant has not proven that she has sustained a gradual onset injury to her right shoulder.

4. Based on my findings of no compensability, the remaining issues of statute of limitations, reasonable and necessary medical treatment, temporary total disability benefits, and controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record is made up of Commission Exhibit 1, Pre-Hearing Order filed December 31, 2025, consisting of 3 pages total; Claimant Exhibit 1, medical evidence, consisting of 117 pages; Claimant Exhibit 2, non-medicals, consisting of 7 pages; Respondents Ex. 1, medical evidence, consisting of 67 pages; Respondents Exhibit 2, non-medical documents, consisting of 15 pages; Respondents Exhibit 3, deposition of Alexandria Baughman, consisting of 44 pages; Respondents' Exhibit 4, thumb-drive containing a video depicting one of Claimant's job functions[5]; Respondents' Exhibit 5, Form AR-C, consisting of 1 page.

Claimant worked for the Respondent/Employer as a class 1 data collector. The Claimant has worked for the Respondent/Employer for 18 years. TR-13. Claimant testified that her position is in an area, with four other workers, where chicken falls and, according to her words, she must move quickly to catch it and weigh it. TR-14, 18. Claimant stated there is one computer to input information and that takes 10 minutes. TR-19. Respondents produced a video that was entered into the record, without objection, depicting a worker weighing chicken and recording the data on a computer. CL Ex. 4. Claimant further testified that in addition to weighing the chicken she had to remove the chicken that fell into a big 40-pound tray and place it into a Walmart-like cart and roll

[5] This exhibit in the transcript is marked as Claimant's Exhibit 4, when on record it was entered into evidence as Respondents Exhibit 4. TR-9. I will refer to the video as Respondents' Exhibit 4 in this opinion.

it over to put it into a bigger tray. TR-19. Claimant stated that she had to jump up to throw the good chicken into the larger bin. TR-21. The Claimant stated that what she does is "not one repetitive movement, but it is a lot of repetitive movements." TR-32. In November 2024, Claimant advised her supervisor that her shoulder was bothering her, and she was sent to the nurses' station, but did not receive any help. TR-23.

On November 12, 2024, Claimant had an office visit with Dr. Carlos Vela Sandoval. TR-24. She stated that her shoulder has been hurting her for a month or two with a "stinging kind of pain…." TR-24. The Claimant added that the pain was so bad that she could not pick up a piece of chicken. *Id*. Claimant was having pain with rotator cuff maneuvers and was referred to an orthopedic surgeon. CL Ex. 1, pp. 31-34. The Claimant was ultimately found to have a right shoulder rotator cuff tear with impingement and AC joint arthrosis. CL Ex. 1, pp. 53-54. She had surgery to repair her rotator cuff tear on January 31, 2025, by Dr. Andrew Heinzelmann. *Id*. After this repair, Dr. Heinzelmann later opined in Claimant's Disability and Leave Healthcare Provider Statement that Claimant's condition was not the result of an injury. Resp. Ex. 1, pp. 54-55. Dr. Heinzelmann further noted that he does not believe her injury was work-related. *Id*.

Moreover, Claimant has had pre-existing issues concerning her right shoulder. On December 12, 2013, the Claimant visited Ozarks Orthopaedics with complaints of "bilateral shoulder dull pain". Resp. Ex. 1, p. 1. On October 20, 2022, Claimant saw Dr. Sandoval, Northwest Primary Care, with concerns regarding right shoulder pain that was causing her issues with sleeping. CL Ex. 1, pp. 4-8. Claimant was prescribed Meloxicam with orders to begin home exercises. *Id*. On February 14, 2023, Claimant had a follow-up visit with Dr. Sandoval and complained about continued pain in her right shoulder. Resp. Ex. 1, pp. 18-23. On November 22, 2023, Claimant had another follow-up visit with Dr. Sandoval and again complained about pain in

her right shoulder. Resp. Ex. 1, pp. 24-29. But despite this history the Claimant testified that her pain in November of 2024 was so bad that she could not take it. TR-24. Claimant testified that after her surgery she did not return to work until August of 2025, approximately seven months later. TR-26. The Respondents have controverted this claim in its entirety.

Adjudication

A. Whether Claimant sustained a compensable injury to her right shoulder by gradual onset.

Regarding regular injuries sustained by gradual onset, Ark. Code Ann. § 11-9-102(4)(A)(ii) & (*a*) (Repl. 2012) reads:

> (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 and is identifiable by time and place of occurrence, if the injury is:
>
> (*a*) Caused by rapid repetitive motion.

In addition to rapid repetitive motion, a claimant seeking workers' compensation benefits for such a gradual-onset injury must prove that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(A)(ii) & (D)-(E)(ii) (Repl. 2012). "Objective findings" are those finding that cannot come under the voluntary control of the patient. § 11-9-102(16). In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court held that there is a two-part test for determining whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. If the first element is not met, the second is not reached. *Id.*; *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Moreover, "even repetitive tasks and rapid

work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly." *Malone*, *supra*.

Claimant has not proven by the preponderance of the evidence that she has sustained a compensable injury to her right shoulder by gradual onset. The Claimant must first prove an injury that arose out of and in the course of her employment. Claimant has had pre-existing issues concerning her right shoulder. On December 12, 2013, the Claimant visited Ozarks Orthopaedics with complaints of "bilateral shoulder dull pain". Resp. Ex. 1, p. 1. On October 20, 2022, Claimant saw Dr. Sandoval with concerns regarding right shoulder pain that was causing her issues with sleeping. CL Ex. 1, pp. 4-8. Claimant was prescribed Meloxicam with orders to begin home exercises. *Id*. On February 14, 2023, Claimant had a follow-up visit with Dr. Sandoval and complained about pain in her right shoulder. Resp. Ex. 1, pp. 18-23. On November 22, 2023, Claimant had another follow-up visit with Dr. Sandoval and again complained about pain in her right shoulder. Resp. Ex. 1, pp. 24-29. This clearly demonstrates that the Claimant was having right shoulder issues for several years. This issue got to the point where it affected her ability to sleep. Moreover, Dr. Heinzelmann, the surgeon who repaired Claimant's shoulder, opined in Claimant's Disability and Leave Healthcare Provider Statement dated January 29, 2025, that Claimant's condition was not work-related. Resp. Ex. 1, pp. 54-56. I credit his opinion. Thus, I find by the preponderance of the evidence that Claimant's injury did not arise out of and in the course of her employment.

Moreover, for the sake of thoroughness, say I did find that her injury was work-related, which I do not. The Claimant sustained a torn rotator cuff injury to her right shoulder which required surgery. This would satisfy the remaining prongs of the initial test. The focus would now shift to the rapid and repetitive two-part test. The Claimant's testimony preponderates that

Claimant was involved in multiple repetitive movements. Therefore, I do find by the preponderance of the evidence that this would satisfy the first part of the test that her job was repetitive.

The second part of the test is whether her repetitive movements were rapid. This is where the claim fails for a second time in this analysis. Claimant testified that her job was in an area with four other employees. TR-14, 18. The chicken would fall, and she must move quickly to catch it and then weigh it. *Id*. Claimant testified that when she worked in the area there was only one computer to input information and that takes 10 minutes. TR-19. Respondents presented a video that was entered into the record depicting a worker weighing chicken and recording the data on a computer. Resp. Ex. 4. The worker in the video was moving consistently but not rapidly. Though the worker in the video was not the Claimant, her testimony that it takes 10 minutes to input information into the computer appears consistent with Respondents' video. Thus, I credit this video and find that it adequately depicts the average speed of weighing chicken. Moreover, the Claimant testified that when she did the job there was only one computer shared by four co-workers. TR-18-20, 31-32. This would mean logically that it would take at least 30 minutes before weighings at a rate of 10 minutes per person. This does not appear to be rapid movement.

Claimant further testified that in addition to weighing the chicken she had to remove the chicken that fell into a big 40-pound tray and place it into a Walmart-like cart and roll it over to put it into a bigger bin which she must jump to throw in the chicken. TR-21. Claimant never testified as to how fast or how many pieces of the chicken would drop per hour, how many containers of chicken she would weigh a day, and how fast she had to push the weighed chicken to the bigger bin, and how long did it take for her to place the chicken into the larger bin. Claimant's description of her work activities along with Respondents' video do not demonstrate "rapid"

movements, just consistent ones. Thus, I find by the preponderance of the evidence that the Claimant has failed to prove her injuries were the result of rapid and repetitive movements.

In summary, I find by the preponderance of the evidence that the Claimant did not prove she sustained a work-related injury. I further find by the preponderance of the evidence that Claimant's work activities did not involve rapid repetitive motion. For these reasons, Claimant's claim must fail.

MISCELLANEOUS ISSUES

Based on my previous findings that Claimant has failed to prove she sustained a work-related right shoulder injury by gradual onset, the remaining issues regarding statute of limitations, 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, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge