

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H103530**

VALINDA R. WILSON, EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC., EMPLOYER

RESPONDENT

**LIBERTY MUTUAL GROUP,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED DECEMBER 1, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 12th day of October, 2021, in Little Rock, Arkansas.

Claimant is represented by Sheila Campbell, Attorney at Law, North Little Rock, Arkansas.

Respondent is represented by David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 12th day of October, 2021, to determine the issues of compensability of an injury to the left shoulder, left arm, and left elbow, plus medical treatment, which included surgery for the left shoulder. The parties agreed at the start of the hearing that the claimant was no longer alleging a neck injury. Additional issues included travel expenses, attorney fees, and temporary total disability (TTD) from March 20, 2021, with the claimant released to return to work on September 20, 2021. All other issues were reserved. The parties were instructed in the Prehearing Order to submit briefs seven (7) days prior to the hearing if they were unable to reach an agreement as to the TTD/permanent partial disability (PPD) rate. At the time of the hearing, the parties had not submitted briefs, but agreed that the average weekly wage was \$396.00, which resulted in a TTD/PPD rate of \$264.00/\$198.00. Also during the hearing, the parties stipulated that TeamCare, through group coverage with UPS, paid the claimant \$4,538.29

for disability benefits for purposes of a possible statutory offset and also that the claimant filed a grievance regarding a failure to complete the First Injury report.

A copy of the Prehearing Order was marked “Commission Exhibit 1” and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers’ Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on March 20, 2021, when the claimant alleged a compensable injury to her left shoulder, left arm, left elbow, and neck. There was no objection to these stipulations, and the Prehearing Order was admitted into the record.

The claimant’s and respondents’ contentions were all set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. The witnesses consisted of Valinda R. Wilson, the claimant, Stacey Cade, the union representative for the UPS employees, and Jamal Smith, a supervisor for UPS. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on March 20, 2021, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$396.00 a week, sufficient for a TTD/PPD rate of \$264.00/\$198.00 per week.

3. The parties stipulated that TeamCare, through group coverage with UPS, paid the claimant \$4,538.29 for disability benefits for purposes of a possible statutory offset.
4. The claimant filed a grievance regarding a failure to complete the First Injury report.
5. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable work-related injury on March 20, 2021, to her left shoulder, left arm, and left elbow.
6. As a result of the above finding, all other issues are moot.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the Prehearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted one (1) exhibit of medical records consisting of 162 pages that was admitted without objection. The respondents submitted two (2) exhibits, the first one consisting of seventy-eight (78) pages of medical records, and the second one consisting of four (4) pages of documentary evidence, both of which were also admitted without objection.

The claimant was the first witness to testify. She testified that she worked in small sort in the SurePost area for the respondents on the date of March 20, 2021. In SurePost, small packages would come off a belt into a bag that she thought went to the post office. (Tr. 8) The bag hangs on two ring-like arms, with her job this morning consisting of coming in and hanging the clear bags on the rings. She testified that she “felt a little tug” while placing the SurePost bags which were “heavier than the old bags.” (Tr. 9) The bags were difficult to get on the hooks. She felt “a tug and I, you know, put it down [...] This time my bottom two fingers kind of held onto it, and I was like, dang, I feel something but

I shook it off like – you know, I didn't think nothing about it.” The claimant stated that she felt it in her hand. (Tr. 10) She went on to explain that her ring finger and pinky finger were caught under the package. She continued putting the bags up and just “squeezed my hand together, kept on working thinking that it was going - - I was going to shake it off [...] You have to put almost three bags on each ring, and I was able to get my bags on but I started feeling discomfort. (Tr. 11) The problem got worse and “[she] started feeling more pain.” The claimant testified she then went to get her supervisor, Jamal, but he was so far away, so “I can't remember but I may have texted him and told him, ‘my arm is killing me’ but I kept on working.” (Tr. 12) It was her left arm and left pinky finger. (Tr. 13, 14)

“Once the fire shot up my arm, I was - - I was sweating” and “I knew something was terribly wrong [...] This was - - I never had felt it before” (Tr. 15) The pain went up to her shoulder and “from that point, I just - - I didn't feel like I could let it go cause I didn't feel want to feel that pain again.” Jamel stated he was waiting on Mark Fijo. (Tr. 16) Later, the claimant testified that Jamal told her that Mark said that there was nothing wrong with her and she just wanted to go home. At that point, the claimant told Jamel, “You and Mark take this job and shove it. I'm in pain and I'm ready to go.” She then testified he told her to go to Concentra. (Tr. 17) She went to Concentra but it was closed on a Saturday. (Tr. 18) She then presented to CHI St. Vincent. The claimant admitted she did not obtain a return-to-work form. (Tr. 19)

The claimant testified she thought she called Jamal on the 22nd, a Monday, to ask if he filed an injury report. (Tr. 21) She also agreed she talked to Ed Charles, her union representative. It was part of the procedure to get in touch with the union representative

if there was an on-the-job injury. (Tr. 24) She texted Ed Charles on a Saturday, March 20. (Tr. 25, 26) She stated later Concentra told her that UPS had denied the claim. (Tr. 29) She did not think that Jamal ever told her that her injury was not work-related. (Tr. 30) The claimant further testified she had informed someone at UPS about the injury, and went to a specialist on her own. She was a walk in at OrthoArkansas (Tr. 32) “I gave them a history of where I was injured, and I told them of the medicine that I had been prescribed and it wasn’t working, and that you know, I’m coming here cause it’s - - I’m not getting any better and I - - it’s more than I’m thinking, like I need assistance. They gave me a steroid pack, something for my hand, and something for my elbow.” (Tr. 34)

Doctor Lipke dealt with her elbow up to my shoulder. Doctor Anderson and Nurse Pardo treated her fingers to her elbow. (Tr. 35) Doctor Anderson and Nurse Pardo did nerve testing and finger testing for numbness and sent the claimant to physical therapy. (Tr. 36) The claimant stated she saw Doctor Lipke several times and received injections in her bad shoulder. (Tr. 37) She was prescribed Z-Pacs.

Under cross examination, the claimant admitted to receiving short-term disability payments from The Harford. (Tr. 39) The claimant also admitted that it was retroactive all the way back to March or April of last year and she was paid up through the time she returned to work. The respondents’ representative contended at this point that if TTD was awarded, the respondents would be entitled to an offset. (Tr. 40) The claimant also admitted she had returned to work at UPS on the 21st of September, after being released on September 20th. (Tr. 41) She also admitted that she had been in the beauty parlor business for almost thirty (30) years, and she was part time at UPS. She taught beauty classes through her beauty business. (Tr. 42) The primary source of her income from

roughly 1990 until she went to work at UPS was her beauty shop business. (Tr. 44) The claimant admitted using her hands and arms in her business, sometimes cutting hair for up to four (4) or five (5) people a day. She additionally admitted she could not state whether she earned \$5.00 or \$5,000.00 a week in the business. (Tr. 45) She also admitted that since March, she had been doing her beauty consulting business, “somewhat.” “I was there at the salon.” She also admitted working some for her son. (Tr. 48) Her son worked in insurance consulting, and she was unable to provide any details about her earnings. She admitted to traveling to Denver, Memphis, and the beach. (Tr. 49, 50) The claimant also admitted to having issues with her neck due to her back injury. (Tr. 51) In regard to having any prior shoulder problems, she responded “No, no,” and further stated that she had never had issues regarding her left arm to this magnitude. She also denied telling Jamal Smith that she had problems for a couple of weeks prior to the claimed work-related injury date. (Tr. 52) The claimant was also questioned about her arthritis. (Tr. 53) She admitted to having problems prior to the work-related injury date and that she had “old age problems.” (Tr. 54) The respondents’ representative then asked the following questions while reading from the claimant’s deposition.

Q. Okay. And then the union guy told you, “Make sure you don’t talk too much.” Isn’t that what the union guy told you?

A. Correct.

Q. Okay. You told him it was arthritic, you thought it was arthritic, and he said, okay, don’t tell them about your old-age problems, didn’t he?

Q. Well, he’s talking about my back, so yeah, cool, yeah.

The claimant also admitted to back surgery prior to going to work for UPS. (Tr. 54, 55) The claimant was also asked about not telling UPS about her prior back injuries and

fall and she responded “I was released from my doctor.” Additionally, she admitted she had dropped any claim in regard to neck injuries and that no one told her she needed shoulder or elbow surgery. (Tr. 56) The claimant also admitted that she had stated in her deposition that she had never had any problems with her left shoulder. (Tr. 57) The claimant was also questioned about her chiropractor records providing that she had neck and left shoulder problems earlier, and she responded that she was not aware of those records. (Tr. 58) The claimant was then asked about “pain down the left shoulder,” the same problem that she was currently complaining about today, with pain down her left arm and she responded that it was “different.” (Tr. 60)

The claimant was also questioned about having problems sleeping in December prior to the alleged work-related incident and she responded, “I wasn’t having no pain while I was sleeping. I just was stumbling when I walked.” She admitted to having pain down her left arm, numbness, and radicular pain. (Tr. 63) She also admitted to falling in December, while walking after getting her nails done. (Tr. 64) The claimant also admitted that she failed to tell Doctor Anderson about her prior left arm injury, with her response being, “It wasn’t a issue, it was not.” (Tr. 65) She contended that her prior injuries “didn’t have nothing to do with me getting hurt at UPS.” (Tr. 69)

On redirect examination, the claimant testified when the boxes came down the conveyor belt, sometimes you would look and the weight may be stated as five (5) pounds, but that was not the true weight. When you fill up the bags, the bags will weigh forty-five (45) and sometimes fifty (50) to sixty (60) pounds. “I’m not too sure. The boxes fall into the bags on their own.” The average box is ten (10) pounds, but she admitted that she might be wrong. (Tr. 72, 73) She also admitted that she was working on

Saturday, March 20, and she had put thirty (30) bags out. (Tr. 74) She also testified she worked three and a half (3.5) to four (4) hours on a Saturday. (Tr. 75) She also admitted going to her chiropractor, Jesse Woods, on March 29, 2021, where she told him about the strain involving her shoulders two (2) weeks prior, which was related to her work. (Tr. 76) She also admitted to having back surgery in January or February of 2017, and later in 2018 going to work for UPS. (Tr. 77) In regard to the claimant's work after March 20, 2021, the claimant admitted she was doing her beauty consultant business somewhat. "I'm meeting and greeting and taking temperatures and hand sanitizing." (Tr. 78) She further testified she was going to her salon couple of times a week. (Tr. 79) The claimant stated at the time she hurt herself while at UPS, "I wasn't doing much of anything." (Tr. 80)

After a break, the parties stipulated that TeamCare, through group coverage with UPS, paid the claimant \$4,538.29 for disability benefits for purposes of a statutory offset if applicable. (Tr. 81)

The claimant then called Stacey Carol Cade, who testified that she was employed by UPS and held a position with the union bargaining unit. In that capacity, she had an occasion to speak by telephone with Ms. Valinda Wilson regarding an injury on or about March 20, 2021. She stated her concern was how could the claimant have possibly left the building and management not followed proper protocol in regard to her injury. (Tr. 83) She also stated she told the claimant if you are in pain, go to the emergency room. Ms. Cade further testified the claimant called again and stated she was in pain. Ms. Cade stated that her response was, "I don't see how you left that building, how that could have happened and they not have taken care of you." (Tr. 85) The claimant indicated to her

that she made an attempt to go to Concentra on the same day they spoke, but they were closed. “So, I then told her, ‘Look, just go get yourself some help.’” (Tr. 86)

At this point after a discussion, the parties stipulated the claimant had filed a grievance regarding a failure to complete the First Injury report. The respondents’ position in regard to the grievance was that since claimant’s problems were not work-related, there was no report filled out. (Tr. 87)

Ms. Cade further testified she had worked in the past in small sort and they now use “forever bags.” These bags are huge nylon bags that can be quite heavy can sometimes weigh over seventy (70) pounds. “Although the company states that you should not lift bags over seventy (70) pounds, there have been many times that I ‘ve had to handle bags well over seventy (70) pounds in small sort.” (Tr. 89)

Under cross examination, Ms. Cade was asked if she was told that an employee was having a back problem for several weeks and needed to leave work, would there not be a need to fill out a First Report of Injury. She responded that it would depend on whether or not “I have a - - I’m claiming an injury to my back.” She basically agreed that if someone admitted they had been hurting for several weeks, when asked if they had hurt themselves, a report would not be required. She also admitted she was not aware that the claimant had problems with her arm leading up to the March 20 date. (Tr. 91) She also admitted that she had not seen the claimant’s medical records but was aware that the claimant had said something earlier about a knee. (Tr. 92)

The claimant rested at this point and the respondents called Jamal Smith, an employee for UPS, who had worked for the company for twenty (20) years. Mr. Smith testified that he was the claimant’s supervisor and was familiar with the bags in question.

He stated that they weighed anywhere from fifteen (15) to twenty (20) pounds. He also stated he oversees the area, and it was incorrect that the bags weigh over fifty (50) pounds. On the day in question, he was a full-time supervisor. (Tr. 97, 98) His part time supervisor, who was in charge of small sort that day, called him and asked him to come and talk to the claimant. He then went to small sort, where the claimant told him that she had hurt her shoulder and wanted to go home. She stated, “I don’t know how I hurt it [...] It’s been hurting a couple of weeks.”

Mr. Smith also stated that when he gets an injury, the first thing that he does is fill out a report which specifically asked what happened. “When I found out she didn’t have - - the injuries had been existed two - - or for a couple of weeks, I then call my manager, at the time Allen Haroldson, to get his advice on what to do with it, and he told me to just let her go home.” She said she would go to the doctor but could not take the pain of lifting the bags with her shoulder hurting. When asked what he would have done if the claimant had told him she heard her shoulder pop or whatever, he stated, “I would have filed an injury report and we would have taken her to Concentra.” (Tr. 99, 100) In regard to her elbow, she did not state any problems. “She couldn’t tell me exactly how she hurt it, because that’s why I needed to know, how it got hurt and what. She just said it was a sharp pain going down her arm [...] When I asked her if she had injured her shoulder that morning, she stated her shoulder had been hurting for a couple of weeks, but it become intolerable that morning.” (Tr. 102)

Under cross examination, Mr. Smith stated that the bags involved in small sort could weigh up to fifteen (15) to twenty (20) pounds. In regard to the average weight, he testified that the average box is like an envelope, something like an Amazon little bag,

which would probably weigh no more than three (3) or four (4) pounds at the most. (Tr. 104) He also stated that in regard to the fifteen (15) to twenty (20) pound bags, during a three (3) hour shift, the claimant could remove 100 to 150 bags. “It depends on if she had any help. If she doesn’t have any help and she’s doing it all alone, then she would have more [...] She was still at work when I got up to where she was.” (Tr. 105, 106)

The claimant’s first exhibit consisted of 162 pages of medical records. They provided that the claimant presented to CHI St. Vincent on March 20, 2021, with left arm pain and swelling. The history of the present illness provided that the onset was four (4) hours ago and it occurred while lifting at work. The location of the pain was the left arm, elbow, and forearm, with no radiating pain. The report additionally provided there were no prior episodes and no swelling. The diagnosis provided for left arm pain. The chief complaint at presentation was “throbbing pain to entire left arm that started this am while lifting a heavy bag.” An immobilizer brace splint was ordered for the upper extremity. The report also confirmed problems with arthritis, back pain, and left shoulder pain, along with additional issues. (Cl. Ex. 1, P. 1 – 42)

On March 22, 2021, the claimant presented to Woodland Chiropractic and Jesse Wood, D.C. The report provided that the claimant was lifting something at work and strained her left arm, hand up to her elbow, and left shoulder. It now hurt her elbow to grip or lift things with a sharp pain. She also had an achy pain in her left shoulder socket now when lifting it or using it. She was still having pain in her low back and her hips. (Cl. Ex. 1, P. 43, 44). On the same date, the claimant presented to nurse practitioner Kala Hart. The report provided she was presenting to discuss concerns about her elbow which began on March 20, 2021. An examination of the left elbow revealed no swelling or

ecchymosis. The report also provided that the pain in the elbow began at work but that it was not a workers' compensation claim. An examination of the left shoulder revealed no swelling or ecchymosis with the claimant having good strength in the shoulder. X-ray images were obtained of the left shoulder, and they provided for degenerative changes but no fractures or dislocation. The x-rays of the left elbow also did not reveal any fractures or dislocations but did likely provide for cubital tunnel syndrome. (Cl. Ex. 45 – 50)

The claimant returned to the chiropractor for an adjustment on March 29, 2021. (Cl. Ex. 1, P. 51, 52) Later on the same date, the claimant presented to Doctor Jay Lipke. This report mentioned left shoulder pain with certain motion arcs and a left elbow with positive cubital tunnel Tinel's and a negative wrist Tinel's and a negative Phalen's test. The AP lateral x-ray of the left shoulder did not provide for abnormalities except for acromial clavicular arthrosis. The AP lateral x-ray of the left elbow did not provide for any abnormalities. (Cl. Ex. 1, P. 53 – 56)

On April 1, 2021, the claimant presented to Concentra and Doctor Troy Moore for a follow-up. The report provided that the left shoulder appeared normal with no tenderness, full range of motion, no signs of impingement, and normal strength. Additionally, the left upper arm appeared normal. The left elbow appeared normal but with tenderness in the lateral epicondyle with an exaggerated response. There was full range of motion with pain. There was resisted wrist extension with no pain. (Poor effort with strength testing.) The report provided for an ortho consult. (Cl. Ex.1, P. 57 – 64)

On April 12, 2021, the claimant presented to Doctor Jeanine Anderson for upper extremity pain and dysfunction. The report referred to the lifting of heavy bags at UPS

and that the claimant had provided she had a numbness and tingling in her right ring and small finger which radiated all the way up to her neck. The examination of the left elbow provided the elbow was diffusely tender anywhere “I touch the left arm and elbow.” There was a negative elbow flexion test, a negative Tinel’s at the elbow over the ulnar nerve, no subluxing ulnar, and no subluxation of the triceps tendon over the medial or lateral epicondyle. There was no obvious swelling of the left wrist and hand. The claimant was placed in a wrist cock-up splint to address some of her epicondylitis symptoms. (Cl. Ex. 1, P. 65 – 74) On the same date, the claimant also presented to Megan Nalley, OT. The report provided that the goal was to eliminate numbness and tingling of the bilateral hands. (Cl. Ex. 75 -81)

On April 26, 2021, the claimant presented to Jenna Pardo, PA-C. The report provided that the left elbow was diffusely tender in the left elbow and the lateral epicondyle was tender to palpation. There was no obvious swelling of the left wrist and hand. The MRI was reviewed with the claimant. The MRI revealed a marked increase in signal intensity in the ulnar nerve at the cubital tunnel with the report providing for left cubital tunnel syndrome. The report also provided that the claimant should return to Doctor Lipke for her left shoulder pain. (Cl. Ex. 1, P. 82 – 92)

On May 10, 2021, the claimant returned to Doctor Lipke for a work-related left upper extremity injury. X-rays of the cervical spine and shoulder did not provide significant abnormalities and recent left upper extremity EMGs failed to provide evidence of cervical radiculopathy, and but did provide for positive left mild carpal tunnel syndrome. An examination of the left shoulder provided for a full range of motion with pain with resisted forward elevation/abduction and passive motion above the shoulder level. The

shoulder x-rays were without abnormalities other than acromial clavicular arthrosis, left elbow x-rays were without abnormalities, and an elbow MRI provided an increased ulnar nerve signal, with no other abnormalities. A left upper extremity EMG nerve conduction study was positive for mild carpal tunnel syndrome, but was negative for ulnar nerve abnormalities, with no evidence of radicular symptoms. (Cl. Ex.1, P. 93 – 97)

The claimant again returned to her chiropractor on June 2, 2021, and the report provided the claimant received an adjustment with palpitation which revealed areas of spasm, hypomobility, and tenderness to the touch, which was indicative of a subluxation at the left shoulder and left elbow, plus additional body parts. (Cl. Ex. 1, P 98 – 99) On the same day, an MRI report provided for mild to moderate acromioclavicular joint osteoarthritis of the AC joint with small under surface osteophyte formation of the distal clavicle. In the rotator cuff, there was a mild increased intrasubstance signal in the supraspinatus, compatible with tendinopathy and no measurable full thickness supraspinatus tear. There was minimal fraying between the posterior margin of the supraspinatus tendon and a questionable tear near the myotendinous junction. There was a small articular sided and interstitial tear of the posterior infraspinatus tendon with no muscular volume loss. There was normal alignment of the glenohumeral joint with no degenerative spurring. (Cl. Ex. 1, P. 100)

The claimant then returned to Doctor Lipke on July 19, 2021, for a follow-up regarding the left shoulder injury, which had been treated with physical therapy. The shoulder MRI provided for acromial clavicular osteoarthritis, an infraspinatus tendinopathy/articular sided interstitial tear, and posterior fenestration without evidence of muscle atrophy or tendon retraction and with supraspinatus tendinopathy/minimal

bursal sided posterior fraying with a questionable interstitial tear/tendinopathy, without atrophy or tendon rupture. The assessment was for a left shoulder rotator cuff strain and pain with a rupture that was improving. (Cl. Ex. 1, P. 101 – 104)

The claimant again returned to Jenna Pardo, PA-C, on September 2, 2021, and the report provided the left elbow was minimally tender to palpitation with no obvious swelling of the left wrist and hand. The clinical exam of the left elbow was suggestive of medial and lateral epicondylitis, and the MRI revealed a marked increase in the signal intensity in the ulnar nerve at the level of the cubital tunnel. Additionally, there was cubital tunnel syndrome with a normal nerve conduction study and left mild carpal tunnel syndrome that was asymptomatic. (Cl. Ex. 1, P. 105 – 110)

A series of off-work slips were provided by various providers, with the first slip dated March 22, 2021, which provided that the claimant should remain off work for one (1) week and the second slip, which provided that the claimant should remain off of work until April 20, 2021. (Cl. Ex. 1, P. 117, 118) A work status report dated April 1, 2021, was issued by Concentra and Doctor Troy Moore, which provided that the claimant could return to work with no restrictions. (Cl. Ex. 1, P. 119) However, on March 29, 2021, a return-to-work slip was provided by Doctor Jay Lipke of OrthoArkansas that provided that the claimant should remain off of work until April 20, 2021. (Cl. Ex. 1, P. 120) Additional return to work slips were introduced into the record with a slip dated July 19, 2021, which provided that the claimant could return to work after August 3, 2021, with a ten (10) pound weight limit. The last return to work slip made part of the record was dated July 23, 2021, and it provided that the claimant could return to work on September 21, 2021. (Cl. Ex. 1, P. 121 – 128)

The claimant's UPS Grievance Form dated April 12, was also introduced into the record, and it contended that UPS failed to report her injury. (Cl. Ex. 1, P. 145) The claimant also introduced a series of what appeared to be screen shots of text messages or emails in regard to the alleged work injury. One text or email advised the claimant to not talk too much and one stated that they were still going to deny her because it was not work-related. (Cl. Ex. 1, P. 146 – 160)

The respondents also submitted medical exhibits consisting of seventy-six (76) pages. The claimant initially went to see her chiropractor, Jesse Wood, on July 20, 2016. The report provided that the claimant suffered from pain in the left shoulder and neck when looking over her shoulder and when reaching. The assessment provided that the future progress of the claimant was undetermined. The claimant returned to her chiropractor on July 25, 2016, "suffering from the same neck and left shoulder pain and hip pain." The claimant again returned on July 27, 2016, and the report provided that the left shoulder and low back were hurting her by the time she got off work yesterday. The left shoulder pain was continuing when the claimant presented to the chiropractor on August 1, 3, 4, 8, and 10, 2016. When the claimant returned to her chiropractor on August 15, 2016, the report provided the "shoulder pain and neck is bad when working but is actually better." On her visit to her chiropractor on August 16, 2016, the report provided that the claimant actually hurt more on the right shoulder. Later, on August 22, 2016, the claimant again returned to her chiropractor and the report provided that the claimant had stated that she had a light flare up in the neck, but her right hip was hurting the most. The claimant again returned to her chiropractor on September 6, 2016, with no specific mention of the neck or left shoulder. However, on September 14, 2016, the claimant

again returned, and the subjective part of the chiropractic report provided for the claimant suffering pain in the neck and left shoulder, but with the right shoulder being better. On her return on September 19, 2016, the chiropractic report provided the claimant was suffering from right cervical rotation, but left rotation was more painful. The last chiropractic report introduced by the respondents provided that the last chiropractic visit occurred on September 21, 2016, and the report provided that the claimant was suffering from pain in the neck radiating down the left shoulder. (Resp. Ex. 1, P. 1 – 34)

A report from Arkansas Specialty Orthopedics provided the claimant was a very sweet lady with a history of bilateral leg pain. The report was based upon a review of x-rays and her MRI, and it made the assessment of spondylolisthesis at L4-5 with spinal stenosis. (Resp. Ex. 1, P. 35 – 36) A later discharge report dated February 7, 2017, post lumbar fusion from St. Vincent Health System and Doctor Wayne Bruffett, provided that the claimant suffered from degenerative spondylolistheses at L4-5, severe lumbar spinal stenosis, and other issues. (Resp. Ex. 1, P. 37 – 40) The claimant then presented for a CAT scan of the lumbar spine, with the report dated February 24, 2017. She continued to suffer ongoing pain in her right hip, one (1) month post lumbar fusion. The report provided that he was not sure what was causing her pain, but he suspected that she has L4 nerve root compression. (Resp. Ex. 1, P. 41 – 42) Another discharge face sheet was issued on February 25, 2017, which provided the post operative diagnosis of foraminal stenosis, with L4-5 radiculopathy, and post laminectomy syndrome from a prior fusion with retained spinal implants. The procedure consisted of a removal of instrumentation with the reinsertion of a spinal fixation device at L4-5. Additionally, there was a revision of a hemilaminectomy, a complete facetectomy, and a decompression, L4-5 right. The

claimant underwent a laminectomy and fusion for degenerative spondylolisthesis with stenosis. (Resp. Ex. 1. P. 44 – 46)

The claimant returned to Jesse Wood, D. C., her chiropractor, on August 14, 2017. The report provided the claimant had two (2) surgeries involving her lower back and that her leg pain had improved since the surgery, but her lower back pain was constant. The claimant again returned to her chiropractor on August 20, 2020, with the subjective part of the report providing that the claimant was suffering from pain in the middle of her neck that “radiates up into HA’s several times a week but especially if she is working with hair.” The claimant again returned to her chiropractor on November 30, 2020, complaining of pain just above her lumbar fusion and complaining that her neck and shoulders were tight and stiff. On December 14, 2020, the claimant again returned to her chiropractor and the report provided she continued to improve with care. The neck and upper back were stiff, but it was mild. The para spinal muscles in the neck and the lower back were taught and tender. On the claimant’s visit to her chiropractor on December 21, 2020, the claimant provided she was feeling much better and when she went to get her nails done, upon leaving, she slipped coming down off the curve. Since, she has really been hurting in the upper right side of her back and neck and across the right and left hips but the lower back pain is worse on the right. The claimant again returned to her chiropractor on December 28, 2020. The report further provided the claimant stated the pain in her neck and upper back had moved from the right side to her left side and she had been having left side radicular pain the past three (3) nights so she had to adjust how she sleeps. The claimant returned to her chiropractor the next day on December 29, 2020, with the complaint of a stiff and achy neck and upper back in the midline and off to the left. There was a diagnosis

of pain in the left shoulder among other issues. The claimant again returned to her chiropractor on February 3, 2021, where she provided that her pain was worse in the morning but that it then loosens up. It flared up a lot after being on her feet or working for an extended period. Claimant again returned to her chiropractor on March 8, 2021, with another visit on March 9, 2021. She provided that her neck and back were stiff and sore and that she was sleeping with her left arm up over her head and this was making her arm go numb. Her last visit to her chiropractor prior to the work-related incident occurred on March 15, 2021, just five (5) days before the work-related incident. She again complained that her neck and upper back were stiff and sore. Palpation revealed areas of spasm, hypomobility and end point tenderness, which was indicative of subluxion that was found and adjusted at C1, C4, C6, T1, T2, T5, T7, L1, L2, L5, the sacrum and left pelvis. (Resp. Ex. 1, P. 47 – 69)

The respondents also submitted into evidence the physician's report (Form AR-3) and a medical report of Doctor Troy Moore, dated April 1, 2021. (Resp. Ex. 1 P. 70 – 76) The physician's report provided that, "Based on a careful exam of the patient, as well as the information obtained about their job duties and mechanism of injury, it does not appear that the presenting complaints arose out of their job and in the course of the patient performing those duties." This report was signed by Doctor Moore. In addition, the transcription of the report from Concentra and Doctor Moore provided that the left shoulder appeared normal with full range of motion and no tenderness. The left elbow appeared normal with tenderness in the lateral epicondyle (exaggerated responses). Palpation revealed no crepitus and no warmth. Palpation was normal with full range of motion, with pain. The report further provided that the claimant resisted wrist extension

with no pain. (Poor effort with strength testing.) The left forearm and wrist also appeared normal. The cervical spine had normal lordosis with no tenderness and full range of motion.

The respondents' final exhibit provided that the claimant had a loan for a beauty salon and the loan appeared to be in financial distress. In addition, the respondents submitted an email from Jamal Smith to Jim Gardner dated April 12, 2021, which provided that Mr. Smith was requested to speak to the claimant. The claimant stated her shoulder was hurting and she could not finish the day due to the pain. The email specifically provided that Mr. Smith asked the claimant if she had injured her shoulder that morning. She stated, "[Her] shoulder had been hurting for a couple of weeks but it had become tolerable that morning." When asked how she hurt her shoulder, the claimant stated that she did not know exactly how or when she hurt it. "Once I established she did not hurt her that day at work I contacted Allen Harrelson, who was off that day, he instructed me to let her go home." (Resp. Ex. 2)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for a claimed work-related injury to her left shoulder, left arm, and left elbow, under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has

the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter, the claimant testified that while at work on a Saturday morning, she “felt a little tug” while hanging SurePost bags and that her ring finger and pinky finger were caught under the package. The problem worsened and she contacted her supervisor, as “the fire shot up her arm.” She left work and went to Concentra which was closed, and then presented to CHI St. Vincent on the same Saturday. Later, on the following Monday, she contacted her supervisor Jamal Smith, to see if he had filed an injury report. Under cross examination, the claimant admitted that she had drawn short-term disability during the time that she was off work. She also admitted she worked at her beauty business during this time period but had no idea how much money she made. When asked under cross examination if she had ever had prior shoulder problems, she responded “No, no.” She denied that she told her supervisor Jamal Smith that she had been having problems with her shoulder a couple of weeks prior to the claimed work-related injury. She was also questioned about not mentioning a prior back injury to her employer UPS, and she responded, “I was released from my doctor.” She also admitted no one told her that she needed shoulder or elbow surgery.

Mr. Jamal Smith, the claimant’s supervisor, provided credible testimony that he talked to the claimant on the day of the alleged injury, and she told him that she had hurt her shoulder but “I don’t know how I hurt it [...] It’s been hurting for a couple of weeks.” He further testified that when he gets an injury, the very first thing he does is to fill out a report in regard to what happened. Since the injury had existed a couple of weeks, he just told the claimant she could go home. Confirming the conversation, an e-mail from

Jamal Smith dated April 12, 2021, also provided the claimant stated she was hurting and that she could not complete the day due to pain. The email specifically provided he asked the claimant if she had injured her shoulder that morning, and she responded that she did not know when she hurt her shoulder, but it had been hurting for a couple of weeks.

Medical reports provided that the claimant had previously presented to her health care providers as early as July 20, 2016, in regard to pain in her left shoulder, and on occasion the right, visiting her chiropractor on numerous occasions prior to the claimed work-related injury. A report from her chiropractor dated December 28, 2020, a few months prior to the alleged work-related accident, provided that the claimant had suffered from left sided radicular pain the past three (3) nights, which was causing sleep issues. The claimant returned to her chiropractor the next day, on December 29, 2020, complaining of a stiff and achy neck and back in the midline and off to the left, and received a diagnosis of pain in the left shoulder, among other findings.

In regard to the left elbow, Doctor Jeanine Anderson opined that it was diffusely tender, but the elbow flexion test was negative, along with a negative Tinel's. Additionally, an MRI provided that there was evidence of an increased signal intensity of the ulnar nerve at the cubital tunnel, with the report providing for left cubital tunnel syndrome. It is noted that Cubital Tunnel Syndrome may occur when a person frequently leans on or bends their elbow. X-rays of the elbow failed to provide evidence of any fractures. No swelling of the left wrist was present. It was also noted that the claimant's initial complaint at work did not mention her elbow or wrist. Additionally, there were no mention or description as to the cause of the tenderness of the left elbow. Claimant admitted under cross-examination that no surgery had been recommended for the left shoulder or wrist.

From the medical reports, it is clear the claimant was suffering from issues with her left shoulder prior to the alleged work-related injury. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 864 (1990); Conway Convalescent Center v. Murphee, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as finds him. *Murphee, supra*.

Here there is ample evidence that the claimant was complaining of pain in the left shoulder prior to the alleged work-related injury, with the testimony of Jamal Smith, the supervisor, being both compelling and controlling. The claimant presented to her chiropractor for left shoulder pain the last time a little over two and a half (2.5) months prior to the claimed work-related injury. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and

identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is noted that a claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical opinion. See Wal-mart Stores, Inc. v. VanWagoner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hail v. Pitman Construction Co. 235 Ark. 104, 357 S.W.2d 263 (1962)

Here, it is found that the claimant has failed to satisfy these requirements and consequently has failed to satisfy the required burden of proof that she suffered a left shoulder, left arm, and left elbow injury while at work. The claimant was clearly suffering left shoulder problems prior to the Saturday she claimed a work-related injury, and she has failed to satisfy the burden of proof that a work injury aggravated her previous left shoulder injury or injured her left arm or elbow. Consequently, all other issues are moot.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the required burden of proof that her claim for a left shoulder, left arm, and left elbow injuries, are work-related and compensable, and all remaining issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge