BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H505420

DELMA YANES, EMPLOYEE	**CLAIMANT**
VS.	
TWIN RIVERS FOODS, INC., EMPLOYER	**RESPONDENT**
SUMMIT CONSULTING, LLC, TPA/CARRIER	**RESPONDENT**

OPINION FILED JULY 22, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 19TH day of May 2026, in Russellville, Arkansas.

Claimant is represented by Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondent is represented by Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 19th day of May 2026, to determine the issues of compensability for a claimed work-related right shoulder and neck injury, related medical, which includes surgery recommended by Dr. Hussey and Dr. Cartwright, and attorney fees. A copy of the Pre-hearing 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 employee/employer/carrier relationship existed on April 23, 2024, the date of the claimed injury in question. The parties stipulated at the time of the hearing that the claimant earned sufficient wages for a TTD/PPD rate of $534.00/$401.00 respectively.

The claimant's and respondent's contentions are all set out in their respective amended responses to the Pre-hearing Questionnaire and made a part of the record

without objection. The claimant contended that she sustained compensable injuries to her right shoulder and neck on April 23, 2024, which was initially accepted as compensable but subsequently controverted when the Claimant made a change of physician request. The Claimant further contended that the medical treatment she has received to date has been reasonable and necessary and the respondents should be ordered to pay for the same and any additional medical treatment which they have not already accepted and paid for, including the evaluation by Dr. Jeff Cartwright. Additionally, Claimant contends that the Respondents should be ordered to pay for the additional medical treatment including the surgery recommended by Dr. Hussey and or Dr. Jeff Cartwright or at a minimum, be given the opportunity to pursue a change of physician which respondents have prevented her from doing by fully controverting the claim in spite of the clear objective evidence contained in the record. Additionally, the claimant contends that she is entitled to attorney fees. The respondents contended that the claimant does not have objective findings of an injury. The claimant's arthritic shoulder condition was preexisting. The claimant's treatment in 2025 and suggested future treatment was the result of an aggravation that occurred at a new job the claimant began working after the alleged injury. The sole witness that testified was the claimant, Delma Yanes. 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 witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee/carrier relationship existed on April 23, 2024, the date of the claimed injury. At the time, the claimant earned sufficient wages for a TTD/PPD rate of $534.00/$401.00 per week, respectively.
3. That the claim for her right shoulder injury and neck injury on April 23, 2024, was initially accepted as compensable but then controverted in its entirety.
4. That the Claimant was determined to have reached MMI on September 11, 2024, by her treating physician.
5. That the Claimant then went to work for another employer in a somewhat similarly related job on January 28, 2025.
6. That the claimant has satisfied the burden of proof that she suffered a work-related injury while working for the respondents on April 23, 2024, and that respondents are responsible for the medical, with the exception of the second opinion issued by Dr. Cartwright, up to the date of reaching MMI on September 11, 2024. The claimant is entitled to statutory attorney fees based upon these findings.
7. It is also found that the claimant has failed to satisfy the burden of proof that the respondents are responsible for the right shoulder injury after the date of September 11, 2024, with the exception of the ongoing physical therapy that was occurring at that point in time.

8. That the request for a change of physician is not reasonable and necessary based upon the facts presented.
9. That consequently all other issues are moot.
10. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. The claimant submitted an exhibit that consisted of 124 pages which were admitted without objection. The respondent introduced an exhibit of medical records that consisted of 7 pages, and an objection was made to the admission of page 7 of the medical exhibit, an opinion letter by Dr. Hussey. The objection by the Claimant was that the opinion letter by Dr. Hussey referred to correspondence by Ms. Sheila Hall and that the Commission was not provided with the correspondence and consequently there was not a proper foundation for the information. The Respondents medical records were found to be admissible with the exception of page 7 and that specific issue was taken under advisement and would be addressed in the opinion. Additionally, the Respondents non-medical exhibits were admitted, without objection.

The claimant was the only witness to testify and stated she was thirty-eight at the time of the hearing, currently employed at Tyson in Russellville, and started working there on January 28th, 2025. She worked as a spreader, admitted not being a U.S. citizen, but testified that she had obtained a work permit. She admitted that she lost her job briefly in April of 2025 due to being required to renew her work permit, which she did. Her job

consists of standing before a conveyor belt while working as a spreader and she is to be sure there are no bones in the chickens passing in front of her. She uses her left hand to move the items around to check for bones. She uses her left hand due to her right hand being in pain. She is not required to do any overhead lifting and is also not required to extend her left or right arm out in front of her. Prior to working for Tyson, she worked for Twin Rivers, the respondent. (Tr. 8 – 10)

She started working for Twin Rivers in May of 2022 after coming to Arkansas from New York. When she started at Twin Rivers, her first job lasted a few months and consisted of checking chicken bags. She then went to work in what she called “manifest” a position where she made labels and placed boxes on pallets, preparing the product to be shipped. On April 23, 2024, she was performing her normal manifest duties and was also throwing 10-to-13-pound bags of chicken up when she felt something and consequently went to see her manager. “I was picking up this heavy chicken from like a basket down below and putting it up in a line high up and that is where I got hurt.” She was throwing it above her shoulder after picking it up from a basket on the floor. She felt a “very sharp pain” and went to the office, where they gave her some Bio-freeze to put on her shoulder and sent her back to work. The pain was in her right neck and right shoulder. She denied having any problems previously or being previously prescribed pain medication. She reported the incident to her supervisor, Dave Lanford. (Tr. 11 – 15) She did not go to the nurse’s station that day but later an appointment was made for her to go see a doctor due to her shoulder “hurting a lot.” The doctor was located at the Conservative Care Occupational Health Clinic, and she received some x-rays, but couldn’t remember if she received any medications there or an MRI. She later received

physical therapy at Atkins Physical Therapy, which she felt did not help. She admitted having muscle spasms in her neck and shoulder and taking the prescribed medications. She could not remember if she was placed on any restrictions at the time, but Dr. Hussey later did place her on restrictions. She also testified that she wanted to obtain a second opinion and that's how she went to see Dr. Cartwright before seeing Dr. Hussey. Dr. Cartwright provided she needed surgery which she never received. She also testified that Dr. Rice referred her to Dr. Hussey and Dr. Hussey or Dr. Vargas provided injections. (Tr. 16 – 19)

While receiving treatment by Dr. Hussey, she continued working her manifest job, with the restrictions he placed on her. She went on to state that Dr. Hussey never mentioned anything about her neck, but she told him that it always hurt. She admitted being somewhat apprehensive when they placed her on the machine during physical therapy which caused her a lot of pain. She was specifically asked if she remembered Dr. Hussey stating in a progress note on September 11, 2024, that she was doing better and that he was going to give her a full-duty release, and the claimant responded that he told her that she needed surgery, and without surgery her pain was going to get worse. She denied telling Dr. Hussey that Dr. Cartwright recommended surgery. She admitted continuing with therapy after her full release by Dr. Hussey on September 11, 2024, and stated he never told her to go back to "full work." (Tr. 20 - 23) She admitted that she was having difficulty with her strength and rotation of her shoulder. The claimant stated "Well, I changed jobs to Tyson because they were asking me to do heavy things at Twin Rivers and I couldn't, so I had to change" referring to the 10-to-13-pound chicken bags. (Tr. 24)

The claimant denied any injury while at Tysons and admitted returning to Dr. Hussey due to her continued pain on June 9th, 2025. She further testified that she talked to the respondent about returning to Dr. Hussey and was told that they were going to work with workers' comp to get it approved and that it was approved. The claimant received an MRI and stated that surgery was recommended but that the respondent did not agree to provide the surgery. The claimant further testified that nothing new had happened to her arm or shoulder after she had left the respondent. (Tr. 25 -28)

Under cross examination, the claimant was questioned about her job as a "manifestor," and responded that she held no equipment but placed labels on boxes, did not fill the boxes, and was not required to lift anything heavy. The lifting of the chicken bags off the floor was what her supervisor instructed her to do. It was her understanding that the initial treatment she received was covered by workers' compensation. She was also questioned about the MRI of May 8, 2024, which provided for edema with arthrosis. She denied arthritic pain in her shoulder in the past and denied being told that she suffered from arthritis. (Tr. 29 – 32) In regard to declining surgery by Dr. Hussey, the claimant testified that she did not have a lot of confidence in Dr. Hussey and was afraid, "but in my mind I knew that I had to have it done." She also denied requesting a release to full duty. (Tr. 34) The claimant also admitted receiving physical therapy until October 11 and working as a "manifestor" for the Respondent before eventually starting to work for Tyson on January 28th, 2025. "I left there because they were making me do heavy jobs." She admitted only using her left hand at Tyson to inspect the chicken as it comes down the line. She also stated that Tyson allowed her to work on the line, one-handed. She could not remember if she told Tyson about her injury when she applied for her job

but thought that she told them. They were now aware of the injury at Twin Rivers. (Tr. 35 - 37)

The claimant was specifically questioned about a document dated January 23 of 2025, which would have been about five days prior to starting at Tyson and where claimant denied ever having treatment including surgery or symptoms to her shoulder, neck, elbow , wrist, fingers, ankle or foot and claimant responded “I didn’t know that I had to put my injury because my injury I had gotten at Twin Rivers.” She was also questioned why she responded “No” to the question about “Have you ever been restricted or limited for work because of your health” and answered that she responded as she did because it was the first time that she had ever filled out the application and did not know how to fill it out. She was also questioned about responding “No” to the question “Do you have any limitations to do any of the following activities or any that apply” which included lifting, pulling, twisting, standing, repetitive movements, et cetera, and she responded “I didn’t know that I was supposed to put that there.” She was also questioned about admitting diabetes and high blood pressure but not admitting her shoulder condition. The claimant was then asked the following question in regard to her shoulder condition:

Q: Okay. And you did so because you thought they wouldn’t give you the job.

A: Yes. (Tr. 38 - 40)

Under continuing cross examination about filling out the forms, the claimant responded, “I didn’t know really how to fill that out when I did it.” (Tr. 41)

After a break in the hearing, the Respondents’ attorney was allowed to make a statement in regard to where he was in questioning prior to the break and he provided that the Claimant began working for Tyson on January 28, 2025, and then went to

Conservative Care due to Tyson on Tyler Road in Russellville on March 26th, 2025, and later received an MRI in June of 2025. The claimant agreed that she received the MRI and stated that nothing had happened the two months prior to the MRI. She was then questioned about the top of the MRI report which was made part of Respondents Medical Exhibit at Page 6 and which provided under "History: Shoulder injury happened two months ago, right shoulder pain" and which was dated June 30th of 2025. The claimant responded that she did not understand the question but again stated that nothing had happened in the two months prior and that she was in fact working for Tyson at the time. (Tr. 43) She was also questioned about being off work in April where the records providing that she was off work from Tyson's on the dates of April 16, 17, and 18, for what looked like FMLA leave. She responded that she did not remember taking off on those days and again stated that she was not injured at that time. In regard to being let go by Tyson in May of 2025, she testified that she had to renew her work permits and was off work for about two weeks but then returned and started again. (Tr. 44) She again denied any incident at Tyson that occurred in regard to the shoulder injury and admitted to the new MRI scan on June 30th, 2025, which showed osteoarthritis, edema, and tenosynovitis. She was also questioned about Dr. Hussey blaming the MRI finding on her 2024 injury and was questioned whether she told Dr. Hussey that she was working full time at Tyson's. She responded that she did not remember if he asked but if he had asked, she would not have denied it. She was not aware of what arthritis of the shoulder was. (Tr. 45 – 47)

On redirect, the claimant stated that she had never had shoulder or neck pain prior to April 23rd, 2024, and that she does not understand everything the doctor says. She just

knew that they said she needed surgery. She additionally said that when she presented to Dr. Hussey, he would grab her arm and attempt to lift it but couldn't, due to the pain, and that Dr. Cartwright also attempted to do the same thing. (Tr. 48, 49)

On recross examination, she was questioned about returning to work for the respondent for about two months while working as a "manifestor". She responded yes, "but they would require me to do heavy jobs" again referring to lifting the 10-to-13-pound bags of chicken, but denied heavy lifting at Tyson. On redirect, the claimant testified that the pain interfered with her sleep and was always there. (51 – 52)

In regard to Claimant's evidentiary records, she first presented to Conservative Care Occupational Health with the report referring to the Respondents on April 26, 2024, with a chief compliant of right shoulder pain which she described as moderate. She provided that she was picking up a bag of chicken weighing 10 pounds from floor level and felt a pop in her right shoulder on April 23, 2024. The report referred to a right shoulder strain, and that based upon the physical exam, a tear was not suspected. The cause of the problem appeared to be work-related and the claimant's work status was regular duty. (Cl. Ex. 1, P. 5 – 9) An AR-N Form was also provided, signed by the claimant which explained her rights in regard to a change of physician. (Cl. Ex. 1, P. 10) Claimant again presented to Conservative Care Occupational Health on May 3, 2024, where she again provided a chief complaint of right shoulder injury, and the report provided for a diagnosis of strain of the muscles and tendons of the right rotator cuff. Strength and range of motion was limited. Pain on motion was present over the supraspinatus. Pain on palpitation was not present, and range of motion was normal. The report provided for an MRI referral. (Cl. Ex. 1, P. 11 – 15) An MRI of the right shoulder on May 8, 2024, provided that the rotator

cuff and Glenoid labrum were unremarkable, and that a questionable partial tear of the long biceps tendon was not definitive. Under impression, the report provided for AC joint arthrosis. (Cl. Ex. 1, P. 16, 17)

The Claimant again returned to Conservative Care Occupational Health on May 10, 2024, again for right shoulder pain and the diagnosis provided for a strain of the muscles and tendons of the right rotator cuff, which appeared to be related to work activities. A physical therapy referral was mentioned. (Cl. Ex. 1, P. 18 – 22) The claimant then presented to Atkins Physical Therapy multiple times between May 15, 2024, and May 30, 2024. The reports provided she was presenting due to shoulder pain on the right side due to lifting a 10-pound bag of chicken from the floor to a belt. The report referred to a strain of the right shoulder, neck spasm, and infraspinatus spasm, with range of motion deficits. (Cl. Ex. 1, P. 23 -32) On May 31, 2024, the claimant again returned to Conservative Care Occupational Health. The report referred to six sessions of physical therapy and mentioned a slight improvement in her range of motion. (Cl. Ex. 1, P. 33 -37)

The Claimant returned to Atkins Physical Therapy on June 6 and June 7 of 2024. The claimant still complained of pain, and it appeared that she was minimally improved. (Cl. Ex. 1, P. 38 – 40) On June 11, 2024, the claimant presented to Dr. Jeff Cartwright, for the first time of record. The report provided that the claimant self-referred and that the MRI of her right shoulder in May of 2024 provided for high-grade partial-thickness tearing of the subscapularis and more modest tearing, probably low grade of the supraspinatus, with substantial arthritis and impingement affecting the acromioclavicular joint with subacromial crepitus involving the motion of the right shoulder, and pain in the right shoulder with the overhead use of the right arm. Dr. Cartwright opined that the claimant's

right shoulder suffered from a combination of issues including subacromial impingement and bursitis which were clinically symptomatic. A non-traumatic tear of the right rotator cuff was also mentioned in the report. He believed that he observed a slap tear extending into the anterior labrum on her MRI and recommended that Claimant consider arthroscopy. (Cl. Ex. 1, P. 41 – 45)

The Claimant returned for additional physical therapy at Atkins Physical Therapy between June 12 and June 20, 2024. The report provided that the strain of the right shoulder was slightly improved, and that the claimant does have a moderate amount of spasm in the supra, infraspinatus, teres minor, as well as the upper trapezius. The claimant stated that she couldn't sleep at night. She was still tender and sore. (Cl. Ex. 1, P. 46 -51) The claimant then again returned to Conservative Care Occupational Health on June 20, 2024. This report provided that based upon her MRI noting a questionable partial tear of the long biceps tendon and therapy notes indicating pain, an orthopedic referral was felt necessary. (Cl. Ex. 1, P. 52 – 56). The claimant then returned for physical therapy on July 2, 2024, where she stated that she was to see an orthopedic surgeon. (Cl. Ex. 1, P. 57)

On July 10, 2024, the claimant presented to Dr. Michael Hussey for the first time. The report provided that the right shoulder pain began on April 23, 2024, and an MRI provided for moderate arthritis of the AC joint with active inflammation but with no obvious sign of traumatic rupture or tear. The labrum was grossly intact. MRI findings were consistent with mild bursitis and synovitis. Dr. Hussey recommended referral to Dr. Vargas for corticosteroid injections for diagnostic and therapeutic purposes. He recommended no pushing, pulling, or lifting greater than 5 pounds with no overhead

motion and a follow up in six weeks for a reevaluation. (Cl. Ex. 1, P. 58 – 64) A progress note from Dr. Victor Vargas dated July 11, 2024, provided that an injection was deferred. (Cl. Ex. 1, P. 65, 66)

The claimant again returned to Atkins Physical Therapy multiple times between July 18, 2024, and August 15, 2024. The claimant was referred to Dr. Hussey and the report provided for observation of subacromial bursitis of the right shoulder with right shoulder pain and rotator cuff tendinitis. The treatment goals were stated to be to reduce right shoulder pain to nil and increase pain free ROM for the right shoulder to within normal limits. (Cl. Ex. 1. P. 67 – 80) Claimant returned to Dr. Vargas on July 16, 2024, where she received a right acromioclavicular joint steroid injection. (Cl. Ex. 1, P. 81 – 84) On August 19, 2024, Dr. Hussey referred the claimant for more physical therapy due to bursitis of the right shoulder.

The claimant again returned to Atkins Physical Therapy for the period of August 28, 2024, through September 11, 2024, with a patient evaluation providing that the claimant had been returned to therapy by Dr. Hussy, due to subacromial bursitis with a right shoulder and right rotator cuff strain. The report further provided that the claimant was showing improvement in her strength especially in external rotation and that her pain had dropped two to three points. (Cl. Ex. 1, P. 86 – 94)

A progress note by Dr. Hussey dated September 11, 2024, provided that the claimant suffered an occupational injury on April 3, 2024, (as stated in the report) with right shoulder/upper extremity pain and dysfunction secondary to aggravation of preexisting asymptomatic acromioclavicular joint arthritis, bursitis/synovitis, along with cervical spine derangement/radiculopathy and a congenitally absent long head bicep. The

report went on and provided that the claimant was going to be released full duty without restrictions. “She still has a few more visits of therapy left and I will let her complete those to help for rehabilitation of the shoulder.” She was determined to be at MMI and no follow up was necessary. (Cl. Ex. 1, P. 95 – 97) The claimant then again returned to Atkins Physical Therapy for the period of August 12, 2024, through October 11, 2024. (Cl. Ex. 1, P. 98 – 107) She again presented to Dr. Hussey on June 9, 2025, and the progress note provided that the claimant stated her pain had worsened with the pain again located in her superior deep shoulder and that she denied any recent new injury. The report went on to provide that another MRI would be sought. (Cl. Ex. 1, P. 111 – 113)

Another MRI was obtained on June 30, 2025, which provided for mild AC osteoarthritis and mild tenosynovitis of the long head of the biceps. (Cl. Ex. 1, P. 114) The claimant was then seen by Dr. Hussey and the progress note on the same date of the MRI provided for active arthritis inflammation of the AC joint and Dr. Hussey opined that it was related to her occupational injury of April 23, 2024, and he believed that her shoulder injury was over 51% related to her work injury. He recommended a right shoulder arthroscopic distal clavicle excision and debridement. He also provided for restrictions which included no pushing, pulling, and lifting greater than 5 pounds with repetitive overhead motion. (Cl. Ex. 1, P. 115 – 117)

Claimant filed an AR – C on August 25, 2025, and the respondents filed an AR – 2 on August 27, 2025, where they provided that the claim was medical only. (Cl. Ex. 1, P. 118, 119) The Claimant then filed a request for a change of physician on September 10, 2025. An email dated September 18, 2025, provided that the respondents then filed an

amended AR -2 which provided that the claim was denied in its entirety and a copy of the Amended AR – 2 was included in the record. (Cl. Ex. 1, P. 120 - 124)

The respondents also submitted seven pages of medical records and all of the pages with the exception of page seven were admitted without objection. The claimant objected to the admission of page seven, and the issue was taken under advisement at the time of the hearing. An MRI at St. Mary's Regional Medical Center on May 8, 2024, has been reviewed previously, above. An X-ray taken at Millard Henry Clinic on June 3, 2024, of Claimant's right shoulder provided that the soft tissues were unremarkable and that there were no fracture or dislocation noted. (Resp. Ex. 1, P. 1, 2)

A second opinion by Dr. Jeff Cartwright of Millard Henry Clinic, dated June 11, 2024, provided that it was the impression of Dr. Cartwright that claimant's right shoulder suffered from a combination of issues which included a subacromial impingement and bursitis which is clinically symptomatic, bicep tendonitis based upon an examination with subluxation of the biceps on the MRI out of the bicipital grove and that she therefore had a "subscap" tear and a SLAP lesion both of which were supported by a clinical examination. There was probably a lower grade partial thickness tear of the supraspinatus. Dr. Cartwright recommended arthroscopy of the shoulder. (Resp. Ex. 1, P. 3 - 5)

A second MRI on June 30, 2025, previously reviewed, provided for mild AC osteoarthritis and mild long head of the biceps tenosynovitis. (Resp. Ex. 1, P. 6) The medical report on page seven of the respondent's exhibit that was objected to as to its admissibility, was an opinion issued by Dr. Hussey, dated April 17, 2026. In his opinion, Dr. Hussey stated that he was answering questions submitted by Ms. Sheila Hall. He

appeared to respond to each specific question by Ms. Hall as spelled out. He stated that he was not aware that the claimant had been working for Tyson since January 8, 2025, for five months. He also responded that the claimant's job as a spreader for Tyson's could have aggravated her pre-existing arthritic condition. He provided that "when I last saw Ms. Yates on 9/11/2024 and released her to MMI, that I documented that she still had some mild tenderness and pain over the acromioclavicular/AC joint but that she was otherwise doing well and she requested to be released to full duty. So, there is also the possibility that she still has some lingering aggravation of her AC joint from her prior job that might not have been fully resolved, and was again further exacerbated/aggravated by her new job at Tyson's." He went on to opine that the fact that she had been working a new job for six months prior to June 30, 2025, "in my medical opinion would reduce the certainty that her right shoulder pain could still be attributable to the work injury on April 23, 2024. In my opinion, I believe it is possible that Ms. Yates right shoulder pain could have fully resolved from when I saw her in 2024, and that she had a new aggravation injury/incident in 2025 from her new job." There was still a possibility that Ms. Yates still had some lingering pain in her right shoulder from the April 23, 2024, incident that had never fully resolved. (Resp. Ex. 1, P. 7)

Respondent's Exhibit two consisted of claimant's January 23, 2025, application for work at Tyson which was in Spanish, and her Post Offer Health Assessment which did provide for the claimant's hypertensive diabetes and hyperlipidemia but made no mention of her right shoulder injury. (Resp. Ex. 2, P. 1 – 3)

Respondents Exhibit 3 consisted of 62 pages of employment records.

DISCUSSION AND ADJUDICATION OF ISSUES

The initial issue to be determined by the Commission is the admissibility of page seven of Respondents' Exhibit One, due to Claimant's objection. On page seven of the exhibit, the treating physician responded to specific questions by what appeared to be a representative of the Respondent. The Workers' Compensation Commission has broad discretion with reference to the admission of evidence, and its decision will not be reversed absent a showing of discretion. *Brown v. Alabama Elec. Co.,* 60 Ark. App. 138, 959 S.W.2d 753 (1998). The Commission is given a great deal of latitude in evidentiary matters. Specifically, A.C.A. §11-9-705(a) states that the Commission "shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure." Additionally, the Commission is directed to "conduct the hearing in a manner as will best ascertain the rights of the parties." A.C.A. §11-9-705(a); *Clark v. Peabody Testing Service,* 265 Ark. 489, 579 S.W.2d 360 (1979). In the present matter, the evidence that was objected to corresponded with the testimony of the witnesses and consisted of responses to specific questions as noted by the treating physician and consequently assists the Commission to understand the facts. It is therefore found to be admissible.

In regard to the primary issue of compensability of the claim against the Respondents regarding a work-related injury on April 23, 2024, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the claimed injury to her neck and right shoulder 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. Cavananugh'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).

Under workers' compensation law in Arkansas, 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). Additionally, these objective findings are findings that cannot come under the voluntary control of the patient. A.C.A. §11-9-102 (16). 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 A.C.A. §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 also important to note that the claimant's testimony is never considered uncontroverted. *Lambert v. Gerber Products Co.* 14 Ark. App. 88, 684 S.W.2d 842 (1985).

The timeline and related medical in regard to this claim is somewhat confusing and at first glance somewhat out of a timely order. The claim was originally accepted as a compensable claim and medical was provided but was later controverted in its entirety. The claimant originally presented to Conservative Care Occupational Health on April 26,

2024, after the claimed injury on April 23, 2024, and later received an MRI of her right shoulder in May of 2024. The MRI provided that the claimant suffered from multiple health related issues involving her right shoulder including AC Joint arthrosis. The law is clear that an employer takes the employee as it finds her and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). The claimant reported her injury and signed an Ark. N Form on May 2, 2024. The treating physician, Dr. Hussey, opined that the claimant reached MMI on September 11, 2024, and could return to work with no restrictions. Later on June 30, 2025, after a second MRI of her right shoulder, Dr. Hussey opined that the active inflammation of the AC Joint was related to the Claimant's occupational injury of April 23, 2024, and he believed that the Claimant's shoulder injury was over 51% related to her work injury. However, he later changed his opinion.

It is noted that the claimant returned to work for the respondent for a period of time, then changed employers, and became employed by a second employer where she performed somewhat similar job duties starting in January of 2025. Approximately five months later, claimant received her second MRI on June 30, 2026. The second MRI provided for mild AC osteoarthritis along with mild long head of the bicep's tenosynovitis. Dr. Hussey modified his medical opinion after he was made aware of the fact that the claimant had been working for a different employer in a somewhat similar job for five months and was asked specific questions, which he responded to on April 17, 2026. He opined that the Claimant's second job as a spreader on a poultry line could have been the cause of the aggravation of her preexisting arthritic and generic conditions.

In addition to the medical records, the testimony of the Claimant also must be evaluated. The Claimant testified that she did not understand how to fill out the job application form for her second employer and this was why she did not mention her right shoulder problems and right shoulder injury when applying for work there. However, she apparently understood that she needed to list her preexisting health issues involving her diabetes, high blood pressure, and hyperlipidemia. She also admitted not saying anything about the right shoulder because she wanted the new job.

A claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See *Wal-Mart Stores, Inc. v. VanWagner*, 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 A.W.2d 263 (1962).

It is clear that the workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. A.C.A. §11-9-102 (4) (E) (i). A compensable injury is one that was the result of an accident that arose in the course of his or her employment and that grew out of or resulted from the employment. See *Moore v. Darling Store Fixtures*, 22 Ar. App 21, 732 S.W.2d 496 (1987). 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. 263, 101 S.W.3d 252 (2003). Based upon the available evidence in the case at bar, it is found that the claimant has satisfied the burden

of proof that she suffered a work-related injury while working for the Respondents on April 23, 2024, and this was supported by the opinion of the treating physician Dr. Hussey, who also opined in his original opinion that the claimant reached MMI on September 11, 2024. It is also found and determined that the respondents are not responsible for the medical treatment and second opinion issued by Dr. Cartwright, who claimant agreed was sought out for the purpose of a second opinion after she had signed the N Form which provided her rights and responsibilities in regard to a change of physician.

With that said, it is also found that the claimant has failed to satisfy the burden of proof that the respondents are responsible for the right shoulder injury after the date of September 11, 2024, with the exception of the ongoing physical therapy at that point in time. The amended opinion by Dr. Hussey provided that the claimant could have aggravated her injury while working for the second employer which could have clearly contributed or caused the Claimant's current right shoulder problems. Speculation and conjecture cannot substitute for credible evidence in determining the cause of the injury. See *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 236 S.W.3d 524 (2006).

It is noted that the Claimant also requested, as something of an alternative, a change of physician. The MRI's, x-rays, and medical opinions issued by Dr. Hussey as well as the testimony by the claimant did not reflect the need for additional testing at that time. Claimant was released to full duty and then went to work for a second employer a few months later. Her job application for her new employer listed no health issues involving her shoulder but did list diabetes, high blood pressure, and hyper-lipidemia. Based upon the available facts, there is no alternative but to find that the Respondents

are not responsible for providing a second opinion due to a lack of proof of it being reasonable and necessary.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the required burden of proof that she suffered a work- related injury while working for the respondents on April 23, 2024, and that respondents are responsible for the medical with the exception of the second opinion issued by Dr. Cartwright, up to the date of reaching MMI on September 11, 2024. The claimant is entitled to statutory attorney fees based upon these findings. It is also found that the claimant has failed to satisfy the required burden of proof that the respondents are responsible for any additional treatment after the date of reaching MMI. The claimant's request for a change of physician is also found to not be reasonable and necessary. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge