

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H403567

DINA YUGEN, EMPLOYEE CLAIMANT

PINNACLE CAR SERVICE, INC., EMPLOYER RESPONDENT

BROADSPIRE,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED JULY 14, 2026

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed January 12, 2026. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 10, 2025, and contained in a Pre-hearing Order filed March 13, 2025, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her neck or cervical spine on or about May 21, 2024.

3. The claimant has proven by a preponderance of the evidence that she entitled to reasonable and necessary medical treatment for her neck or cervical spine injury.
4. The respondent's request for sanctions under A.C.A. §11-9-717(b) in that the claimant failed to appear for a scheduled deposition is hereby denied.
5. The respondent's motion to submit additional medical evidence is hereby granted.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. § 11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's findings that the claimant has met her burden of proving by the preponderance of the evidence she sustained a compensable injury to her neck or cervical spine on or about May 21, 2024, and the respondents are not entitled to costs and fees related to the claimant's failure to appear for a duly noticed deposition.

Arkansas Code Annotated section 11-9-102 (4)(A)(i) provides that a compensable injury includes "[a]n accidental injury causing internal or external physical harm to the body. . . An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence."

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident

identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant 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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy

of belief. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

Here, the claimant reported an injury to her neck, left wrist and left shoulder while lifting a luggage door on May 21, 2024. The claimant previously reported this exact injury on June 4, 2020. In fact, the claimant has documented pain and objective changes in her cervical spine dating back a decade.

The claimant received medical treatment for degenerative disc disease beginning sometime prior to 2017 and has complained of neck pain since 2017. She was diagnosed with chronic pain disorder prior to 2017. In 2018, the claimant underwent a cervical MRI, which revealed multiple findings at C4-C5 and C5-6, including straightening of the cervical lordosis.

While the claimant alleges a neck injury on May 21, 2024, there is no evidence in the record beyond the claimant's own self-serving testimony an injury occurred. Any purported evidence pre-existed the date of the claimant's injury.

The claimant received her first medical treatment after the alleged injury on May 28, 2024. At that initial appointment, APRN Prince did not observe muscle spasms, nor were muscle spasms listed as an objective finding in his report on that date. A spasm in the claimant's upper back was later observed on May 29, 2024; however, PA-C Laura Jackson opined the

claimant was suffering a reaction to nabumetone, an NSAID prescribed to treat arthritis.

It was six months after the alleged injury before any medical professional observed a cervical spasm. On January 24, 2025, APRN Paul Price noted the claimant had “The same issue about five years ago.” An April 2, 2025 MRI of the claimant’s cervical spine revealed essentially degenerative findings for which the respondents are not responsible. There were no acute findings to justify a finding of compensability.

There is no evidence in the record of objective findings of a new or recent injury to the claimant’s cervical spine. Every problem noted by the claimant’s treating physicians relate back to the claimant’s degenerative spinal issues and pre-existing injuries. Even the purported objective findings of back spasms which were due to medication issues pre-date the claimant’s injury. Any objective findings of degenerative bulging discs were found nearly a year after the claimant’s alleged injury. This is insufficient for the claimant to have met her burden of proof, and the claimant has clearly failed to do so by the preponderance of the evidence.

The respondents further contend that they are entitled to costs and fees associated with a scheduled deposition for which the claimant failed to appear. Our Rules provide:

Appropriate sanctions, including
the amount of reasonable

expenses and attorney's fees, may also be imposed against a party or its attorney which, without good cause shown, fails to appear for a hearing, deposition, or any other matter scheduled by the commission or administrative law judge, or frivolously joins another party.

Ark. Code Ann. § 11-9-717(b).

In the present case, the claimant did not appear for a deposition for which respondent's attorney had notified claimant's attorney by email/letter. Respondent's attorney traveled to northwest Arkansas from Little Rock and waited with a court reporter for forty minutes for the claimant to appear. The claimant never appeared. Respondents incurred costs of \$1,334.24 for which the claimant is responsible.

While the claimant contends that she was unaware of the deposition, her attorney received notice and was present. Respondent's attorney was unduly burdened by this error and is entitled to relevant costs and fees.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner