

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604112

REGINALD ANDREWS, EMPLOYEE	CLAIMANT
ODOM'S TENNESSEE PRIDE SAUSAGE, EMPLOYER	RESPONDENT
SENTRY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 5, 2008

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

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JARROD S. PARRISH, 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 September 6, 2007.

In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on December 29, 2005, and at all other relevant times, including January 30, 2006.

3. The claimant has proven by a preponderance of the evidence that he suffered a compensable injury to his right shoulder on January 30, 2006.
4. The applicable compensation rate for claimant is \$309.00 for TTD and \$232.00 for PPD, based on an average weekly wage of \$463.20.
5. The claimant was terminated for cause on February 17, 2006.
6. Claimant has failed to prove that he is entitled to additional temporary total disability benefits since he has been released to return to work.
7. Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical benefits in connection with the compensable injury to his right shoulder.
8. Respondents have controverted the compensability of the claim. Claimant is entitled to a 25% statutory attorney's fee on the indemnity benefits awarded herein including any indemnity benefits previously paid, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of benefits.
9. Although claimant's nonappearance required a postponement of the hearing originally set for March 7, 2007, the evidence demonstrates that claimant reasonably relied on communications from his attorney. Therefore, the claim for costs associated with the attempted hearing on March 7, 2007, is hereby denied.

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 September 6, 2007, 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.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on January 30, 2006. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer in the boning department. The claimant's job duties required him to cut the shoulders of hogs as the came through the line. The claimant had been employed by the respondent employer for approximately five years at the time of the alleged incident.

He described the incident, as follows:

Well, I came in, it was about 4:30.  
I sat around until about 5:00. I  
started setting up pipes, setting up  
my pipes. After I finished my pipes,

I went to the break room, you know, and drank me a little soda pop, came back, started my work. You know, I got dressed, you know, ready for, you know, my work, because, you know, I don't be dressed doing - setting up pipes. Then I have to have to get my knives and everything ready.

So once I go every, you know, fully dressed ready for work, then I started working and just cutting shoulders and blades, you know, just doing my job and just pulling and cutting.

And sometimes what I do is whenever I would cut, you know, a shoulder, I'd take my knife and just throw it, you know, just cut and then just take a blade and just throw it. Instead of taking my hook and sling it like that, I just cut it, drop it down, take it off and just throw it like that (Demonstrating)... .

... I was cutting shoulders and I just had a sharp pain. And as soon as I had the pain I just, you know, just stopped, and then I just went and I reported it to Eddie Hughes  
... .

... It was a worse pain than usual  
... .

The claimant testified that he was sent to Concentra and subsequently referred to OrthoArkansas. He testified that he hurt his right shoulder. He continued to work on light duty until he was fired for being intoxicated at work. The claimant contended that he continues to have problems with his shoulder.

He explained that he kept his knives sharp most of the time but that when the hogs came out fast, the knife dulls making it more difficult to cut. He was not setting up pipes when he hurt himself so he did not mention the pipes when he reported the incident. He explained that he had soreness every day, but recalled "out-of-the ordinary pain" when he was cutting shoulders. He did not hear any popping or clicking or observe any swelling or reddening.

Mike Eilers was called to testify for the respondents. He explained that on January 30, 2006, the date the First Report of Injury was filed, was the first date that the claimant had reported shoulder problems or pain. He explained that the claimant was fired when he showed up to work under the influence of alcohol and that he would have been able to continue to work at his job but for that misconduct. He explained that the workers were not supposed to drop and catch the hog shoulders, but if there was dropping and catching, it would be done with the left hand and not the right.

The medical records in this case reveal that the claimant sought medical treatment for pain in his right shoulder while "cutting the blade from the hog." He was treated conservatively with pain medication and physical therapy. On February 8, 2006, he was assessed with a possible rotator cuff strain and tear and

referred for an MRI. The MRI was performed on February 17, 2006, revealing a complete rotator cuff tear of the supraspinatus and infraspinatus tendon with contraction. On March 7, 2006, he was examined by Dr. Hudson. Dr. Hudson recommended arthroscopy to attempt to repair the rotator cuff tear.

On April 10, 2006, Andrews was examined by Dr. David Collins. In his report, Dr. Collins noted that he did not have records from Dr. Hudson. He further opines that he "cannot understand how he [the claimant] could sustain a 2 tendon tear of the rotator cuff in the process of raising his hand and drawing a knife through pork tissue in the manner that he describes and with the force that he describes."

Mr. Eddie Hughes was called to testify on behalf of the claimant. Mr. Hughes worked with the claimant at the boning table performing essentially the same job duties as the claimant. He explained that his job was cutting the shanks or front legs of the hog and catching them as they drop. He testified that he was working with the claimant when the claimant told him that he pulled his shoulder "out of position." Mr. Hughes told the claimant to notify his supervisor. He could not recall when the incident occurred. He explained that the claimant, Mr. Perry and he would set the machines up and that it was the claimant's job to go

up a ladder and put up a long pipe. He recalled the claimant telling him that his shoulder was hurting from reaching overhead. He explained that the equipment had to be taken down every night for cleaning and put back up every morning. He estimated the weight of the pipe to be 15-20 pounds. He estimated that it took the claimant approximately a half-hour to put the pipes up and the same amount of time to take them down. He said that the claimant complained of shoulder problems every day. On cross-examination, he explained that after telling him about his shoulder injury, the claimant reported the injury to Mr. Walker, his line leader, and to Mr. Eilers, and began receiving medical treatment. He testified that at the time he complained about his shoulder he was cutting meat and not doing the pipe job. He did not see the incident and could not tell whether the claimant hurt his shoulder putting up pipes or cutting meat. He explained that the claimant never identified a specific time or incident when he talked about his shoulder hurting when handling the pipes.

Tim Brown testified that he worked with the claimant as a "boner". He explained that he was working side by side with the claimant when he allegedly injured his shoulder while cutting out shoulders from the hogs. He recalled that the claimant reported the incident to Mike Eilers. He could not recall when the incident

occurred. On cross-examination, Mr. Brown testified that he was the claimant's brother-in-law. He was not aware of any pipe situation. Mr. Brown testified that the claimant was cutting out the shoulders when he injured his shoulder and that he reported the incident. He recalled that the claimant continued to work for a while after the incident and had not sought medical treatment for his shoulder before he complained on the day of the incident.

Chester Perry testified that he was a protocol operator with the respondent employer. He testified that he was aware that the claimant had hurt himself but could not testify if he got hurt from helping put machines together, handling the pipe, or cutting shanks. He witnessed a confrontation between the claimant and Mr. Eilers because the claimant was complaining about his arm and Mr. Eilers was wanting him to cut the shanks. He explained that he could not specify the date of when the injury occurred but that it was close in time to when Mr. Eilers was told. He testified that the claimant told him that it was hurting his shoulder to pick up the meat with a hook after he cut it to put it on the conveyor belt. He could not identify which shoulder was hurt.

Ealkert Walker testified that he was the lead person in the boning department at the respondent

employer. He said that the claimant told him that his shoulder was hurting and he took him to Mr. Eilers and then to the safety office to fill out the paperwork. The claimant told him that he was throwing the shoulders and said "I don't know did I pull a muscle or what, but I'm hurting." He could not recall when the incident occurred but that the company took the claimant to the doctor on the day he complained. He explained that the claimant did not mention the pipes.

Mr. Eilers testified that he was a supervisor for the respondent employer. He testified that the claimant would come in to work around 5:00 or 5:30 in the morning and would work about two hours after the shift for a total of 10 to 12 hours a day. He testified that the claimant reported the injury to him on January 30. He said that Mr. Walker reported that the claimant was complaining about hurting and he immediately took him off the line and took him to the Safety Director.

Ark. Code Ann. §11-9-102(4) (A) (i) (Supp. 2005) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and

place of occurrence. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "in the course of employment" when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly. City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

In addition to establishing the general requirements for compensability set forth in §11-9-102(4)(A)(i), the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). That a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). "Objective findings" are those that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). Moreover, objective medical evidence, while necessary to establish the existence and extent of an injury, is not

necessary to establish a causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996).

There is no presumption that a claim is indeed compensable. O.K. Processing, Inc., et al v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Crouch Funeral Home, et al v. Crouch, 262 Ark. 417, 557 S.W.2d 392 (1977). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act, and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i) (Repl. 2002); Clardy v. Medi-Homes LTC Serv. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In other words, in a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that his claim is compensable, ie., that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc.,

74 Ark. App. 55, 45 S.W.3d 408 (2001); Ringier Am. v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Further, the claimant must show a causal relationship exists between his condition and his employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well established that the party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c)(2) (Repl. 2002). A preponderance of the credible evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). In determining whether a claimant has sustained his or 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. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The claimant's testimony, the testimony of his co-workers, medical records, notice forms and depositions are fraught with inconsistencies. The claimant told Dr. Collins he injured himself cutting shoulders and he told his co-workers that he injured himself throwing shoulders. It was not until Dr. Collins

informed the claimant that his theory was physiologically unsound that he started mentioning the pipes as the cause of his condition. Likewise, cutting backbones appeared to have only been a theory of compensability for the claimant during his deposition.

The claimant's undated Form C and Form N bear the signature of the claimant's counsel. The claimant's Form N states that the problems were related to "putting pipes up" and cutting shoulder blades. Clearly, the claimant did not start offering this alternative incident involving pipes until Dr. Collins had already explained to him that his first theory was physiologically unsound. The claimant conceded that there is nothing in his medicals or any of the contemporaneous reports about him injuring himself handling pipes. The claimant testified as follows:

Q. Okay. These two forms (A and N) are the first time that something shows up about you handling pipes out at Odom's Tennessee Pride, isn't it?

A. Yes, sir.

Q. Okay. It's not anywhere in the medicals prior to May 2, 2006, anything about you handling pipe out there, is that right?

A. No, sir.

Q. Okay. These forms came about, these two forms that I just showed you, after you went to see Doctor Collins and did that IME, correct?

A. Yes, sir.

Q. And after he said that the mechanics of cutting a hog couldn't have caused the type of injury you have?

A. Yes, sir.

Q. That's when the talk of pipes came up?

A. Right, right.

Additionally, the initial medical reports and accident reports do not mention the "throwing" shoulders theory the claimant apparently relayed to at least two of his co-workers. Additionally, at the claimant's deposition, he offered up yet another version of how he came to be injured by testifying that he had hurt himself cutting backbones. The claimant backed off of that theory at the hearing as well, and simply testified that he "had been hurting from working with backbones," but they were not the cause of his injury.

Eddie Hughes testified that the claimant told him his injury was from working with his shoulder out of position. He also discussed a different occasion when the claimant indicated that he had injured himself "dropping" shoulders. Mr. Hughes conceded that he never witnessed any incident involving the claimant. In fact, all Mr. Hughes could testify to is the fact that the claimant complained of shoulder pain at work. Initially,

Mr. Hughes testified about the claimant "pulling his shoulder out of position" while catching the shanks that dropped after he cut through the shoulder. Later, he hypothesized that the claimant had injured himself handling pipes. Mr. Hughes also testified that the day the claimant complained was the same day that he reported it to Mr. Eilers, which was January 30, 2006, and not December 29, 2006. However, by the end of his cross examination he admitted that he did not know of any specific incident or job duty that caused the claimant's shoulder pain. Mr. Hughes testified:

A. Yeah, he was cutting shoulder, and like I say -- see, a lot of -- you know what? I really couldn't say that he hurt it putting the pipes up, because you know what, a lot of times that you can hurt yourself and you don't even know you've been hurt at all, so, you know--

Q. Okay. So you can't really say one way or the other if or when he hurt himself at Odom's?

A. Well, when he informed me about it, he was doing the shoulders. That's when he informed me.

Q. Okay. So the only date or the only time we can pin down is when he came to you and said --

A. Yeah, that's the only thing I can testify.

Later, when confronted on re-direct examination, Mr. Hughes explained that he had just provided some possible

scenarios where the claimant "could" have hurt himself on the day that he went to Mr. Eilers with shoulder pain. Mr. Hughes's testimony does not establish anything other than the fact that the claimant complained of shoulder pain while at work on January 30, 2006.

In contrast to Mr. Hughes's testimony that the claimant could have injured himself handling pipes, Mr. Brown testified that the claimant injured himself while cutting hogs, something Dr. Collins said was physiologically unlikely. Mr. Brown, the claimant's brother-in-law, was the only witness who even attempted to attribute the claimant's problems to a specific incident injury. However, he recanted his testimony by the end of the hearing and indicated that the claimant suffered a specific incident rotator cuff tear injury, which occurred over time, which makes absolutely no sense. Mr. Brown testified on cross-examination:

Q. Okay. So when you testified earlier that it was from just cutting the shoulder over a long period of time, that wasn't accurate?

A. Same thing to me.

Q. Okay. Well it's not the same in comp, thought. But what I'm trying to figure out is if there was a specific time that he cut a shoulder and hurt himself, or if it was doing it over and over, and that was my understanding that you were saying it was from doing it over and over.

A. How can it be different when it -- they had to be a beginning? Whether it's over and over, there has to be a beginning, so its still the same.

Q. Okay. Your statement about there being a specific incident where it started is coming from what he told you, right?

A. When he first injured his shoulder, he reported it. He mentioned that he injured his shoulder.

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Q. We're talking about that days that Mike Eilers filed out a report and he went to Mike Eilers, right (January 30, 2006)?

A. Uh-huh, yes.

The claimant provided an injury date of December 29, 2005, a month earlier. Clearly, Mr. Brown's attempts to help his brother in law's case fall short. Mr. Brown did not testify credibly about anything other than the fact that the claimant complained of pain on January 30, 2006. Mr. Brown's testimony does not align with that of the claimant or any of the other witnesses.

Chester Perry also provided vague testimony about what "could" have been the cause of the claimant's problems. Mr. Perry testified as follows:

Q. Okay. And you testified on direct about the things that Mr. Andrews did out there that is something you could have gotten hurt doing, but -- and I understand that

there was a point where he came and told you "My shoulder is hurting"?

A. Uh-huh.

Q. But you can't point to a specific incident that caused his shoulder to be injured that you witnessed or know about, can you?

A. No sir; no, sir.

Later Mr. Perry testified that the claimant had actually told him that he had injured his shoulder picking up the meat and throwing it. Mr. Perry stated, "The way he explained it, it was hurting his shoulder to pick up the meat and, you know, and put it on the conveyor belt. But I don't know if he didn't hurt from the pipe. I don't know which one he hurt it from, but I know his shoulder was hurting." Mr. Perry's testimony is important because the claimant's alleged injury to his right arm, and the catching and throwing of the hog shoulder once it is cut takes place with the left hand and arm. Obviously, the claimant provided yet another alleged cause for his shoulder problems when he talked to Mr. Perry, in addition to blaming cutting shoulder when talking to Mr. Brown and blaming handling pipes during his deposition.

Ealkert Walker also testified that the claimant told him he injured himself "throwing shoulders." Mr. Walker testified:

Q. Claimant's counsel was asking-- you said that your understanding of

how the Claimant hurt himself was that he was throwing shoulders?

A. Yeah, that's what he told me.

Q. Is that right?

A. Yes, yes.

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Q. Mr. Andrews did not make any mention of handling the pipes or doing anything with the pipes when he said his shoulder --

A. No, he didn't tell me about no pipes then.

Mr. Walker testified the claimant told him his shoulder began hurting when his "hook [would] hang up or something." He later explained that the cutting would be done with the right hand and any hooking, catching or throwing would be done with the left arm and shoulder, which was not injured. Mr. Eilers provided testimony to the same effect. Mr. Walker was adamant that the claimant did not mention anything about cutting or hitting any cartilage or bone with his right hand. The claimant only told him that he had hurt himself throwing shoulders. Mr. Walker's testimony is indicative of the complete lack of credible evidence supporting the claimant's claim. The claimant notified Mr. Walker that he had injured himself doing a job duty that did not even involve his injured arm.

In my opinion, the inconsistencies within the claimant's testimony coupled with the two different dates that the claimant stated that he was injured, along with the medical evidence of Dr. Collins who stated that he did not know how the claimant could have injured himself doing the job that he was doing, as well as the testimony of the claimant's co-workers, the claimant is not a credible witness. It is well settled that questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agriculture Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001); Scarborough v. Cherokee Enterprises, 306 Ark. 641, 816 S.W.2d 876 (1991); Ark. Coal Co. v. Steele, 237 Ark. 727, 375 S.W.2d 673 (1964); Potlatch Forest Inc. v. Smith, 237 Ark. 468, 374 S.W.2d 166 (1964). Arkansas Code Annotated section 11-9-704(b)(6)(A) vests with the Commission the duty to "review the evidence" and if deemed advisable to "hear the parties, their representatives, and witnesses." The statute further requires the Commission to determine, "on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by preponderance of the evidence." A.C.A. § 11-9-704(c)(2). Thus, in determining that the Commission's authority and duty to conduct a de novo review of the entire record,

including issues of credibility as being constitutional, the Court of Appeals stated in Stiger v. State Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000):

When the Commission reviews a cold record, demeanor is merely one factor to be considered in credibility determinations. Numerous other factors must be included in the Commission's analysis of a case and reaching its decision, including the plausibility of the witness's testimony, the consistency of the witness's testimony with the other evidence and testimony, the interest of the witness in the outcome of the case, and the witness's bias, prejudice, or motives. The flexibility permitted the Commission adequately protects the claimant's right of due process of law.

Accordingly, when there are contradictions in the evidence, it is constitutionally within the Commission's exclusive province to reconcile the conflicting evidence and to determine the true facts. White v. Gregg Agriculture Ent., supra. In addition, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Co., 48 Ark. App. 227, 894 S.W.2d 603 (1995)

It is the exclusive function of the Commission to determine the credibility of the witnesses and the

weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 275 (1994). Neither the Workers' Compensation Act nor Arkansas case law contains a requirement that the Commission personally hear the testimony of any witness. There is nothing in the statutes that precludes the Commission from accepting or rejecting any finding made by the Administrative Law Judge, including findings pertaining to the credibility of witnesses. Stiger v. State Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000). However, the findings fo the Administrative Law Judge on issue of credibility are not binding on the Commission. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983); Linthicum v. Mar-Bax Shirt Co., 23 Ark. App. 26, 741 S.W.2d (1987). By allowing the Commission to review evidence or, if deemed advisable, hear the parties, their representatives and witnesses, Ark. Code Ann. §11-9-704(b) (6) (A) (Repl. 2002), adequately protects a claimant's due-process rights. Id. When the Commission reviews a cold record, demeanor is merely one factor to be considered in determining credibility. Numerous other factors must be considered, including the plausibility of the witness's testimony, the consistency of the witness's testimony with the other evidence and testimony, the interest of the witness in the outcome of the case, and the witness's bias, prejudice, or motives.

Id. "The flexibility permitted the Commission adequately protects the claimant's right of due process of law."

Id.

The claimant provided at least four different scenarios on how he could have injured himself. The testimony of the claimant's witnesses indicates that the claimant never provided a consistent account of how he allegedly injured himself. The claimant's diagnostics were studied to reveal that he had two tendon rotator cuff tears. However, neither the claimant nor his witnesses could identify when this injury occurred. Further, Dr. Collins expressly indicated that the possibility that cutting the shoulder of the hog, as the claimant indicated, would not have caused a two-tendon rotator cuff tear. Therefore, when I consider all the evidence in the record, I cannot find that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. Accordingly, I would reverse the decision of the Administrative Law Judge. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner