

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G304931

SUMMER PUGH, EMPLOYEE	CLAIMANT
STAFFMARK, EMPLOYER	RESPONDENT
CCMSI, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 17, 2014

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

Claimant represented by the HONORABLE JASON M. HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE JOSEPH H. PURVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed February 12, 2014. The administrative law judge found that the claimant proved she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

Summer LaDawn Pugh, age 33, testified that she began working for the respondent-employer, Ozark Electronics, in

September 2012. Ms. Pugh testified that she became a Line Loader for the respondents in approximately February 2013, which position required lifting, pushing, and pulling. The claimant testified regarding an individual named Curtis Harris, who she met away from the workplace in April 2013: "On April 27<sup>th</sup>, we were wrestling around and I caught an elbow to my left arm, approximately right here (indicating). I had a bruise for about three to four days." The claimant testified that she subsequently became involved in a domestic dispute with Dennis Davis, who at that time was the claimant's husband, on April 30, 2013. The claimant testified that she called the police, but that Dennis Davis did not physically harm her.

The parties deposed Samuel Sanchez, Jr., a police officer employed with the Siloam Springs Police Department. The respondents' attorney examined Officer Sanchez:

Q. Are you familiar with Ms. Pugh?

A. I am.

Q. And are you familiar in a professional capacity with Ms. Pugh?

A. I - I responded to her house for a domestic call one day.

Q. Do you recall when that would have been?

A. April sometime. I don't remember -

Q. April 30<sup>th</sup>, roughly, of this year, 2013?

A. Yes, sir....Somebody called dispatch and I was dispatched to the - to the address about a - like I said, I don't remember the specifics, it was either a domestic dispute or - or - or a violent - domestic violence....

Q. When you got there, what did you find?

A. The - Ms. Pugh was outside. I believe she had a small kid. I don't remember if it was a boy or a girl....They were outside. And then there was a man inside the house. I believe they were married....

Q. They were at least cohabiting?

A. Uh-huh. Yes, sir....

Q. What happened when you pulled up?

A. She - or I approached her and asked her what had happened. She said that she had gotten into a verbal argument with whoever the guy was inside....

Q. Were there any threats of physical violence?

A. No, sir....and we didn't see any signs of physical violence.

Q. Did you make any arrests?

A. No, sir.

The claimant's attorney questioned Officer Sanchez:

Q. Did you write a report?

A. No, sir.

Q. Okay. Was there any reason to write a report?

A. No, sir. There was no redness. There was no - she said that he did not touch her....

Q. And she didn't have any visual bruising, or redness, any swelling, anything like that?

A. No, nothing like that. Otherwise, we would've done a report and somebody probably would have gone to jail.

The claimant testified that she moved out of Dennis Davis' house on April 30, 2013 and that she missed work with the respondents on May 1, 2013. The claimant agreed on cross-examination that she was thereafter absent from work on several other occasions due to illness. The record indicates that the respondent-employer's operations manager, Rusty Wallace, entered the following history regarding a conversation with the claimant on May 20, 2013:

Asked me if she could have off for a week to move. I told Summer that with her attendance subpar and Applica needing her for productivity, that she could not have off. I told her that if she wants to quit, that would be her decision. Summer has decided to stay at OERI.

The parties stipulated that the employment relationship existed on May 21, 2013, "when the claimant was assigned by respondent to work at Ozark Electronic, Inc." The claimant testified at a deposition included of record:

Q. Tell me what happens on May 21.

A. I parked my pallet jack, cut my plastic to unwrap the pallet, walked around the pallet jack. Another employee, Mikey, had went by with his pallet with an empty Gaylord on it, pulled my handle down sideways. It flew back up towards me, towards my right shoulder. I jerked backwards to avoid it, and that's when it started hurting....

Q. And it had flipped up, you say?

A. The pallet jack handle flipped up. Yes, sir.

Q. Okay. So what happened then?

A. I moved the pallet jack and continued to work.

Q. Well, I mean, you're coming around. The pallet jack gets flipped up. And what happens?

A. The pallet jack handle came towards my right shoulder.

Q. Okay. So it flipped up and struck your right shoulder?

A. Yes, sir.

Q. Where did it hit you on the shoulder?

A. Right in the joint (indicating)....Right in the joint, where you can feel the separation.

Q. It hit you right there, all right. And what happened at that point?

A. I jerked backwards to avoid it. My shoulder popped....I moved my pallet jack and tried to continue working.

Q. And what happened then?

A. It was sore, and so a fellow - Ella - I don't know her last name - she came up to me. She

noticed I was struggling. She asked me what happened. I told her what happened. She went and got Rusty for me, Rusty Wallace.

Q. Now, who is Rusty Wallace?

A. My Staffmark supervisor....

Q. So that day, the 21<sup>st</sup> of May, you told Rusty what happened?

A. I told Rusty that the pallet jack had come up, struck my shoulder. I backed up - or jerked backwards. He brought me four Ibuprofen, and that was the last time I saw him for the rest of the day.

Ella Carter, a co-worker, testified at deposition:

Q. Did Summer drive a forklift or did she use a forklift that was a push and pull?

A. She used one that you push and pull.

Q. Okay. And do you remember the day when she was injured? Were you around?

A. Well, I was on the other end - other end of the line and then I come down to pick up my stuff and she told me she was hurt.

Q. Okay. So you were present that day when she said that she got hurt?

A. Yes.

Q. You - did you see her get hurt?

A. No.

Q. Okay. Did you work with her before she got hurt?

A. Yes....

Q. Did she ever complain that her shoulder was injured or she had an injury that she couldn't help you?

A. Not that I remember, no....

Q. And what did Summer tell you had happened?

A. She said the jack hit her.

Q. Okay. And that was - did she say it happened that very day?

A. Yes.

Q. Okay. And had she complained about her shoulder before that conversation took place?

A. If she did, she didn't to me.

The record contains a Staffmark "Employee Incident Report (to be completed by employee only)." The record indicates that Rusty Wallace, rather than the claimant-employee, completed the Employee Incident Report. The Employee Incident Report indicated that an incident occurred at 11 a.m. on May 21, 2013 and that the claimant had injured her right shoulder. The Employee Incident Report described the incident: "Employee bumped into pallett (sic) jack." The claimant signed the Employee Incident Report on May 22, 2013. The claimant also signed a Form AR-N, Employee's Notice Of Injury, on May 22, 2013. The Form AR-N, which was filled out by Rusty Wallace, indicated that an accident

occurred at 11 a.m. on May 21, 2013 and that the claimant injured her shoulder: "Employee bumped into pallett (sic) jack."

In addition, Rusty Wallace completed and signed a Staffmark "Incident Report - Site Investigation" on May 22, 2013. The Incident Report - Site Investigation indicated that an incident occurred at 11 a.m. on May 21, 2013: "Employee bumped into pallett (sic) jack." One section of the Incident Report - Site Investigation included the following language: "Do you feel this is a questionable claim?  YES  NO." Rusty Wallace did not mark a box indicating "Yes" or "No."

The claimant testified that the respondent-employer sent her to Community Physicians Group, where she was seen on May 22, 2013: "Pt was hit by a jack handle that popped up as she was rounding pallets striking her Rt shoulder and pushed her backwards." The claimant was diagnosed with "Rt shoulder pain." It was indicated that the claimant could return to Modified Work, and that the claimant could not climb, reach, or perform repetitive movements. The claimant was also given a 10-pound lifting restriction.



Dr. Dale Clemens examined the claimant on May 22, 2013, "1. Worker's Comp - shoulder injury. Onset on 05/21/2013....Trauma type: direct blow, occurred at work. 1 day ago on 05/21/2013." Dr. Clemens assessed "Shoulder pain, right, Acute....Acute shoulder pain due to trauma." An x-ray of the claimant's right shoulder was done on May 22, 2013: "Joint spaces maintained, no bone lesions, no soft tissue abnormalities. Normal shoulder x-ray."

The claimant testified that the respondent-employer did not provide light-duty work beginning May 22, 2013. The claimant testified, "I reported back to work after I left the doctor's appointment, and they sent me home....They did not have anything for me to do with those restrictions." The claimant testified that the respondent-employer did not offer light-duty work. Rusty Wallace testified that the respondent-employer "Didn't have any positions available....I took her off assignment....Basically she was unable to more or less perform the duties that I had available to her so we had to basically make a decision and basically that's it....We did not have any available positions that first week."

The claimant followed up with Dr. Clemens on May 28, 2013: "[Pain] occurs constantly and it is worsening. Location: right shoulder. The pain radiates to the right arm....Is having difficulty holding things in right hand, has been doing exercises as instructed but has pain." Dr. Clemens' assessment on May 28, 2013 was "Shoulder pain, acute." Dr. Clemens assigned work restrictions of no lifting greater than two pounds. Dr. Clemens also appeared to indicate, "Limited use rt arm."

Rusty Wallace noted at 11:57 a.m. on May 28, 2013, "Came into my office after her Dr's appt. OERI offered a light position that meet (sic) the Dr's criteria for light duty and Summer declined." Rusty Wallace testified, "She was late the 28<sup>th</sup>. I called her up, she overslept. She had a doctor's appointment. She came in wearing flip-flops, which, as she knows, is against policy. So it seemed like Summer came in, more or less, not prepared to work, but, yes, we offered her light duty and she declined on 5/28."

The record indicates that Maureen Horvath, an employee of the respondents, prepared a Staffmark Witness Incident Report for her husband, co-employee Mike Horvath. Mike Horvath signed the following statement on June 3, 2013: "I

did not witness Summer getting injured. All I witnessed was Summer getting startled by the noise of the pallet jack. In no way did I witness an injury." The claimant's attorney questioned Mike Horvath at deposition:

Q. Do you recall a day when Summer either told you that she was injured or got startled?

A. She got startled, but I didn't know she'd got hurt....

Q. Tell me what you remember about her being startled?

A. Okay. I was taking the thing out, and I actually hit a pallet jack with - the pallet jack with her line - on her station with the pallet. And the pallet went down like that (witness indicating) and the handle back up and she startled. And I asked her, "You all right?" And she said, "Yes." And just walked away.

Q. Okay. So you were operating a floor jack?

A. Yes.

Q. And did your floor jack hit the handle of her floor jack?

A. Yes.

Q. And when it did that, did it drag the handle of her floor jack down?

A. No, it got halfway and went - went up fast (indicating)....It flipped up.

Q. And was she in the vicinity when it flipped up?

A. No, she was, like, about three feet away from it.

Q. Okay. And did - did you see all of this?

A. I - I saw it, but - then at the - I saw it, but the handle - the handle, it went a different way. And took it - then took it towards her and everything just went straight ahead, like that (indicating)....But and then she jumped. Like, she got scared.

Q. She jumped back?

A. Yeah. She - yeah.

Q. And as far as you know, you don't think it hit her?

A. Nope....

Q. Did she ever complain to you that she had injured her shoulder before this day when this incident occurred?

A. She - one time she told me when I went - came back - when I came back, she said her shoulder was hurting. Like I came back and was doing my job.

Q. That was after this happened? After this?

A. Yeah.

Q. After your pallet pulled the pallet jack handle down?

A. And I - I said, "Are you all right" And she said, "Yes." And I come back and then she said, "By the way, my shoulder is hurting."

Q. All right. So shortly after that - shortly after she said she was okay, she said, "Oh, my shoulder's hurt?"

A. Yeah.

Q. Okay. And before that day, did she ever - did you ever notice her to have any problems with her shoulder?

A. I didn't notice.

The respondents' attorney cross-examined Mike Horvath:

Q. You saw the jack come up, did you not?

A. Yes.

Q. Did it strike Summer?

A. No, it did not.

Q. You're sure of that?

A. Yes.

Q. Okay. She just acted like she was startled?

A. Right.

Q. All right. You stand by that?

A. Yes.

An MRI of the claimant's right shoulder was taken on June 12, 2013, with the following findings:

There is a small full-thickness tear in the supraspinatus tendon with a small amount of fluid in the subacromial and subdeltoid bursa. Most of the tendon is intact without retraction. The other rotator cuff tendons are intact. The labrum is intact. AC joint is normal. Biceps long head tendon is intact.

IMPRESSION: Small full-thickness tear in the supraspinatus tendon near insertion to humerus.

Dr. Clemens' assessment on June 25, 2013 was "Supraspinatus tendon rupture, Acute. Pain meds, working on W/C status. No lifting over 2 lbs., may do gentle ROM exercises. Consider PT." Dr. Clemens also stated on June 25, 2013, "Consider referral to Dr. Matt Coker."

A pre-hearing order was filed on August 22, 2013. The claimant contended that she "sustained a compensable injury to her right shoulder while in the course and scope of her employment on May 21, 2013. The claimant was placed on a two-pound lifting restriction by Dr. Clemens on June 25, 2013 and the respondents have failed to provide the claimant with work to accommodate this restriction. An MRI of the right shoulder from June 12, 2013 documented a full-thickness tear in the supraspinatus tendon near insertion to humerus. The claimant contends that she is entitled to medical treatment, temporary total disability benefits from May 21, 2013 through a date yet to be determined, and an attorney fee." The respondents contended that "the claimant's full thickness rotator cuff tear in her right shoulder is not the result of a compensable incident."

The parties agreed to litigate the following issues:

1. Compensability of injury to the claimant's right shoulder on May 21, 2013.

2. Medical treatment.
3. Temporary total disability benefits from May 21, 2013 through a date yet to be determined.
4. Attorney fee.

The parties deposed Dr. Clemens on October 17, 2013.

The respondents' attorney questioned Dr. Clemens:

Q. Did you have any initial suspicions as to what her problems might be when you saw her?

A. Yes....I thought she had an injury to her shoulder, upper chest and shoulder....

Q. If a lady had injured her shoulder by striking a pallet jack handle, would you expect there to be fairly substantial bruising or hematomas around the shoulder area?

A. Well, you could. Obviously, that would vary, depending on the severity of the blow to the area....

Q. And the MRI that was done in June, reflected in Exhibit No. 2, indicates that the injury that she had or the problem that she had, as reflected by the MRI, is a full-thickness tear of the rotator cuff.

A. Right....

Q. Would you think it somewhat unusual that someone could run into a pallet jack and sustain a full-thickness tear of the rotator cuff, yet have no bruising whatsoever?

A. I'm not sure I can - let me say this, I guess. I have seen people who fall - obviously, a different type of injury - that don't have any - again, don't have any bruising.

Q. Right, right.

A. Of course, a different kind of an injury, but yeah, I would think so....Most of the time, again, you would have - I think you would have a significant - more injury - localized injury that you could see.

Q. All right.

A. But I couldn't say that would always be the case....

The claimant's attorney questioned Dr. Clemens:

Q. And in your experience of 32 years of practicing, you've seen injuries like this, tears, where there wasn't any bruising?

A. That's right.

Q. And so an incident where a pallet jack abruptly comes up and Ms. Pugh twists, regardless of how hard the pallet jack hit her or didn't hit her, is consistent with the type of injury she sustained?

A. Could be, yes.

Q. And I don't dispute that if it's true that she was participating in some type of martial arts, that could also cause an injury like this.

A. Right.

Q. But she never told you about any martial arts incident?

A. No.

The parties deposed Rusty Wallace on November 20, 2013.

The claimant's attorney questioned Rusty Wallace:

Q. You have surveillance of this incident?



A. Oh, yes. I had the plant manager sign off. We looked, gosh, several hours before, several hours after. I had my IT Department look over that and, yes, my plant manager signed off on it and there was no - basically, no surveillance of Mikey - I think Mikey was in three to four foot of Summer, but the surveillance showed nothing hitting her shoulder....

Q. Can you tell me why you didn't provide me with a copy of the surveillance video when I requested it?

A. Okay. My thing is, as we just re - or will reiterate, I have no knowledge of this, the interrogatories. So nobody requested....

Q. Is there surveillance video of this incident?

A. Yes.

Q. I want a copy of the surveillance video of this incident.

A. Sure....

Q. Was there any video that showed that Summer was ever having trouble doing her job?

A. I did not witness that, no.

Q. Did anyone tell you that they had video showing that she had some type of shoulder problem before the incident?

A. There is no video of that.

On December 5, 2013, the Commission received a number of undated written statements prepared by Rusty Wallace and signed by several of the claimant's co-workers. Sheila

Carter signed the following statement, prepared by Rusty Wallace:

My name is Sheila Carter, and I am writing this statement to advise (sic) you that Summer Pugh approached me a week to 10 days prior to the "incident" and told me that her husband is very abusive and had gotten physical with Summer the night before, i.e., threw her to the ground and battered her. Summer mentioned to Sheila that her arm/shoulder was bothering her....

The respondents' attorney examined Sheila Carter:

Q. What did you indicate there and would you tell us a little bit about that statement?

A. I indicated that Summer had approached me and we got to talking about some of the reasons why her shoulder and stuff was hurting her and -

Q. When was this?

A. That - about a week to ten days before she walked off the job and said she had gotten hurt there.

Q. So this would have been sometime around - roughly around the 10<sup>th</sup> of May?

A. Probably, yes.

Q. What did she tell you had happened?

A. She told me that her husband had gotten abusive with her, and they got into a knockdown drag-out, and that he had threw her up against the wall and grabbed her by her arm and threw her down on the ground and started battering her.

Q. Did she indicate that it was causing any problem with the shoulder?

A. Yes, she said her shoulder hurt her. And at that time, I told her that I had some arm cream, pain cream, that if she needed to use it, she was welcome to use it to put it on her shoulder. It's a type of Bengay. And at that point she opened the tube, and she used it and applied it to her arm.

Q. So you're telling us that she indicated to you some ten days prior to this May 21 incident that her shoulder was hurting and it had been the result of a domestic altercation?

A. Yes, sir....

The claimant's attorney cross-examined Sheila Carter:

Q. You didn't work with Summer in the month of May? You didn't work on her line?

A. No....

Q. And it's my understanding you never saw any bruising or anything on her shoulders?

A. Not on her shoulders, no....

Q. And I want to make sure that it was Rusty that asked you to make a statement. You didn't go up to Rusty and say, "Hey, I want to make a statement"?

A. No.

Q. Rusty came to you?

A. Yes.

Beverly January signed a statement prepared by Rusty Wallace:

My name is Beverley (sic) January and I am writing this statement to inform you that Summer Pugh

mentioned to me the day before the supposed incident that her husband had again gotten abusive with her and hurt her arm in the process....

The respondents' attorney questioned Beverly January:

Q. Would you tell me about this statement that you gave? How did it come about?

A. Well, about a week or so I guess before all this other stuff come up, before that, Summer was doing this to her arm (indicating) and I asked her -

Q. You're rotating your shoulder like it was -

A. Yeah, yeah.

Q. - shoulder -

A. And I asked her, you know, what's wrong, what's going on, and she told me that her and her old man had gotten into it and that she hurt her arm....

Stephanie Yeakley signed a prepared statement which was also signed by Beverly January and Sheila Carter:

This statement is in regards to the incident concerning Summer Pugh. I am writing this statement to communicate that Summer Pugh mentioned to Beverly January, Stephanie Yeakley (Supervisor), and Sheila Carter, that her right shoulder was bothering/hurting Summer approximately 2-3 weeks before the 5/21/13 incident....

The respondents' attorney examined Stephanie Yeakley:

Q. Tell me a little bit about this statement. How did it come about?

A. Well, I just - I had heard that she was injured so -

Q. Now, this is after the May 21, 2013, alleged incident with her right shoulder?

A. Yes, sir.

Q. Okay.

A. Yes, I heard that she was injured and they had asked me if she said anything.

Q. Had she?

A. Yes, she had told me she hurt it taking wrap off of a pallet that jerked her arm.

Q. And how long before this incident of May 21 was it?

A. Before the incident?

Q. Uh-huh.

A. Probably about a week before.

Another employee, Shane Olson, also signed a statement prepared by Rusty Wallace:

My name is Shane Olson and I work for Ozark Electronics, Inc. (Staffmark Client), in Siloam Springs, AR. I am writing this statement to communicate that Summer Pugh told my self a week before the "incident" that Summer's boyfriend had put Summer in an arm bar, which is a Mixed Martial Arts submission move (see definition below). Summer told Shane that her shoulder may have been dislocated/hurt due to this submission technique....

The respondents' attorney questioned Shane Olson:

Q. Tell me about - what did she tell you?

A. She said her boyfriend, a week prior to when the incident happened, had put her in a arm bar during the weekend and hurt her arm.

Q. What is an arm bar?

A. It's a mixed martial arts move, pretty much....

The claimant's attorney cross-examined Shane Olson:

Q. Did she ever tell you that her husband physically abused her or anything like that?

A. No....

Q. And the dislocation or whatever, you said that was a possibility, but that was never confirmed?

A. No.

Q. And you haven't indicated which arm it was.

A. I don't know that.

Q. Could have been her left arm?

A. Like I said, that's just what I got told, and that's what I put in there.

Q. But I means as far as your testimony today under oath, you know, you don't know which arm she was even talking about?

A. No.

An administrative law judge filed an opinion on February 12, 2014. The administrative law judge found that the claimant proved she sustained a compensable injury to

her right shoulder. The administrative law judge awarded reasonably necessary medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Compensability

\_\_\_\_\_ Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(i) An 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i) (Repl. 2002).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). 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. 269, 101 S.W.3d 252 (2003). The Full Commission reviews an administrative law judge's decision *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission makes its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

An administrative law judge found in the present matter, "3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder while working for the respondent on May 21, 2013." The Full Commission affirms this finding. The parties stipulated that an employment relationship existed on May 21, 2013. The claimant testified that she was employed as a Line Loader for the respondents and that her work required lifting, pushing, and pulling. The claimant testified that while she was performing her employment duties on May 21, 2013, a pallet being pulled by Mike Horvath struck the claimant's



pallet and "pulled my handle down sideways. It flew back up towards me, towards my right shoulder. I jerked backwards to avoid it, and that's when it started hurting." The claimant testified that she felt a "pop" in her right shoulder. Ella Carter corroborated the claimant's testimony. Although she did not personally witness the incident, Ms. Carter testified that the claimant told her on May 21, 2013 that the claimant's right shoulder had been injured as the result of a pallet jack incident.

The documentary evidence of record corroborates the claimant's testimony that she sustained an accidental injury on May 21, 2013. Rusty Wallace, the respondent-employer's operations manager, assisted the claimant in preparing an Employee Incident Report, an Employee's Notice of Injury, and a Staffmark Incident Report. Each of these documents prepared by Rusty Wallace corroborated the claimant's testimony that she injured her right shoulder as the result of a pallet jack incident on May 21, 2013. We also note that a section on the Staffmark Incident Report included language asking, "Do you feel this is a questionable claim?" Rusty Wallace did not indicate as of May 22, 2013 that he believed the claimant's claim was questionable. The

respondents sent the claimant to a medical provider, where the claimant's testimony was corroborated. It was reported at Community Physicians Group beginning May 22, 2013 that the claimant "was hit by a jack handle that popped up as she was rounding pallets striking her Rt shoulder and pushed her backwards." Dr. Clemens' diagnosis on May 22, 2013 was "Trauma type: direct blow, occurred at work." Dr. Clemens assessed "Shoulder pain, right, Acute....Acute shoulder pain due to trauma." Dr. Clemens testified at deposition, "I thought she had an injury to her shoulder, upper chest and shoulder."

The Full Commission recognizes the testimony of Mike Horvath, who agreed that he was involved in the workplace incident occurring on May 21, 2013. Mike Horvath testified that the claimant was merely "startled" when the accident occurred on May 21, 2013. Mr. Horvath testified that the handle on the claimant's pallet jack did not "strike" the claimant's shoulder. The Commission is not required to believe the testimony of the claimant or any other witness. *Patterson v. Frito Lay, Inc.*, 66 Ark. App. 159, 992 S.W.2d 130 (1999). However, the Commission may not arbitrarily disregard the testimony of any witness. *Boyd v. Dana Corp.*,

62 Ark. App. 78, 966 S.W.2d 946 (1998). In the present matter, the claimant timely reported the accidental injury, and all of the forms prepared by supervisor Rusty Wallace corroborated the claimant's testimony. The claimant's testimony was also corroborated by Ella Carter and Dr. Clemens. In considering the evidence of record before us, the Commission must assign minimal weight to Mr. Horvath's testimony that the claimant was not injured on May 21, 2013.

The respondents correctly state on appeal that the claimant has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2002), *supra*. The respondents assert that the claimant's right shoulder was injured as the result of activity occurring outside of the workplace. The respondents suggest that the claimant injured her right shoulder as the result of activities such as wrestling or physical altercations. The preponderance of evidence before the Commission does not support the respondents' argument. The claimant testified that she was bruised on her left arm as the result of wrestling with Curtis Harris on April 27, 2013. Mr. Harris testified that he was unaware he had bruised the claimant's left arm. There is no evidence

demonstrating that Curtis Harris ever injured the claimant's right shoulder. Nor is there any evidence demonstrating that the claimant's ex-husband, Dennis Davis, injured the claimant's right shoulder. Officer Samuel Sanchez with the Siloam Springs Police Department corroborated the claimant's testimony that Dennis Davis did not harm her. Additionally, we attach minimal evidentiary weight to the statements gathered by Rusty Wallace from various employees alleging that the claimant was injured as the result of a physical assault or "mixed martial arts" activity. There is no evidence of record corroborating the undated statements written by Rusty Wallace and signed by Sheila Carter, Beverly January, Stephanie Yeakley, or Shane Olson. There is no evidence before the Commission demonstrating that the claimant's right shoulder was injured as the result of the claimant being thrown to the ground or against a wall, or that the claimant's right shoulder was injured as the result of a wrestling "arm bar." Finally, the Full Commission notes that the surveillance video purportedly showing that the claimant's right shoulder was not injured on May 21, 2013 has not been submitted into evidence. Our decision in this case is based on the evidence of record submitted to

the Commission rather than the presence or absence of surveillance video footage.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The Full Commission finds that the claimant proved she sustained an accidental injury causing physical harm to her right shoulder. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on May 21, 2013. The claimant established a compensable injury by medical evidence supported by objective findings, namely, the full-thickness tear shown on the June 12, 2013 MRI of the claimant's right shoulder. The Full Commission finds that the full-thickness tear in the claimant's right shoulder was causally related to the May 21, 2013 accidental injury and was not the result of physical violence outside of the workplace, wrestling, "mixed martial arts," or a pre-existing condition.

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of the injury will permit. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). If the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* The determination of when the healing period ends is a question of fact for the Commission. *Porter Seed Cleaning, Inc. v. Skinner*, 1 Ark. App. 235, 615 S.W.2d 380 (1981).

An administrative law judge found in the present matter, "4. Claimant is entitled to temporary total disability benefits beginning May 22, 2013 and continuing through a date yet to be determined." The Full Commission affirms this finding. We have found that the claimant proved she sustained a compensable injury to her right

shoulder on May 21, 2013. The claimant's treating physician assigned work restrictions beginning May 22, 2013. The claimant testified that light-duty work was not available. Rusty Wallace confirmed the claimant's testimony, stating, "I took her off assignment....We did not have any available positions that first week." The record therefore shows that the claimant remained within a healing period and was totally incapacitated from earning wages beginning May 22, 2013.

Dr. Clemens assigned more significant work restrictions on May 28, 2013. Dr. Clemens restricted the claimant to no lifting greater than two pounds, and "limited use of the right arm." Rusty Wallace testified that work was available, *i.e.*, "folding manuals," but Mr. Wallace did not indicate how long this position would be available. Nor does the evidence demonstrate that the claimant could have performed work such as folding manuals with the significant restrictions assigned by Dr. Clemens. We also reiterate that an MRI on June 12, 2013 showed a full-thickness tear in the claimant's right shoulder. The Full Commission therefore finds that the claimant remained within a healing

period and was totally incapacitated from earning wages beginning May 22, 2013 until a date yet to be determined.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder on May 21, 2013. Based on the record currently before us, the Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning May 22, 2013 until a date yet to be determined. The claimant proved that the treatment of record provided for her right shoulder on and after May 21, 2013 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant also proved that a referral to Dr. Coker, as recommended by Dr. Clemens, was reasonably necessary. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing on appeal, 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. 2002).



IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.