

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G902241

MARY L. DAWSON,
EMPLOYEE

CLAIMANT

DOLLAR GENERAL STORE,
EMPLOYER

RESPONDENT

DOLGENCORP/YORK RISK SERVICES,
GROUP, INC., INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JULY 14, 2022

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

Claimant appears *pro se*.

Respondents represented by the HONORABLE JASON A. LEE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed, in part; reversed, in part.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on January 19, 2022. The Administrative Law Judge found that the claimant proved by a preponderance of the evidence that her left shoulder injury is compensable, the claimant failed to satisfy the burden of proof that injuries to her neck, back, and right wrist are compensable work-related injuries, the claimant failed to satisfy the burden of proof that she is entitled to permanent total disability or wage loss benefits, and that the claimant failed to satisfy the burden of proof that she is entitled to \$505

vocational rehabilitation. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to a five percent (5%) wage-loss benefit in excess of her 3% impairment rating.

I. HISTORY

The claimant, now 54 years old, was injured in a workplace accident on November 22, 2018. The claimant offered the following testimony as to how the accident occurred:

Q Yeah, okay. And you've heard us talk about the injury November 22nd of '18?

A Yes, sir.

Q And they agree you were stocking dog food, picked up a smaller box, and felt a right shoulder pop, right?

A I guess.

Q Okay. Is that what happened when you felt the pop, you were –

A I – It was after the dog food.

Q Okay. And so the – but you also had issues with the neck, too?

A The – On the day it happened, it was the shoulder, went down into my arm, and to my hands.

Q Okay.

A At that particular point in time, the neck didn't bother me. That came later from how I had to articulate to get things done.

The claimant's right shoulder injury was accepted as compensable by the respondents. The claimant was diagnosed with a right shoulder rotator cuff tear and received treatment that included surgical intervention.

The claimant underwent an MRI of her right shoulder on January 7, 2019 that revealed the following:

IMPRESSION:

1. Small low-grade undersurface tear seen of the anterior supraspinatus tendon measuring 8x6 mm in size. There is mild tendinopathy of the supraspinatus tendon seen.

2. The non-arthrographic evaluation of the right shoulder shows no definite labral tear or paralabral cyst.

The claimant was seen by Dr. Dylan Carpenter on January 8, 2019 for right shoulder pain. During this visit, the claimant received a right shoulder injection and was placed on light duty work. Dr. Carpenter noted limitations of no overhead lifting and no lifting over ten (10) pounds. Dr. Carpenter also ordered physical therapy for the claimant.

The claimant returned to see Dr. Carpenter on March 26, 2019. At this visit the claimant complained of "having some arm/hand numbness and tingling and skin turning blue". Dr. Carpenter stopped physical therapy and planned to schedule a nerve conduction/EMG of the

right upper extremity. Dr. Carpenter also noted a plan to send the claimant to Dr. Yarnell to rule out thoracic outlet syndrome due to numbness and color changes to the right upper extremity.

The claimant underwent an EMG on April 4, 2019 which revealed the following:

IMPRESSION/CONCLUSIONS: This is an ABNORMAL study. Electrophysiologic evidence was recorded suggestive of:

1. A Moderate Median N compromise at the wrist on the right involving demyelination of sensory and motor fibers.

The claimant had a follow-up visit with Dr. Carpenter on April 11, 2019. Dr. Carpenter noted that the claimant “presents with NCV results in chart which shows moderate carpal tunnel”. Dr. Carpenter provided steroid injections to the claimant’s right wrist and right shoulder.

On May 3, 2019 the claimant exercised her one-time right to change physicians from Dr. Carpenter to Dr. Wesley Cox. The claimant initially saw Dr. Cox on June 11, 2019. Dr. Cox examined the claimant, reviewed her MRI, and determined that since conservative treatment had failed, surgical intervention was appropriate.

On August 19, 2019, the claimant underwent a right arthroscopic rotator cuff repair; a right arthroscopic subacromial

decompression; and a right arthroscopic extensive glenohumeral debridement including biceps tenotomy.

On October 7, 2019, Dr. Cox released the claimant to return to work. Dr. Cox placed the claimant under the following limitations:

No lifting, pushing, pulling greater than 2 pounds below shoulder level. Nothing above shoulder level.

The claimant was released by Dr. Cox at maximum medical improvement on June 24, 2020 and given a 3% impairment rating to the body as a whole.

The claimant underwent a Functional Capacity Evaluation on July 7, 2020. The claimant put forth a reliable effort with 52 of 52 consistency measures within expected limits. The claimant's functional abilities were noted as follows:

Ms. Dawson demonstrated the ability to perform material handling at the following levels during this functional capacity evaluation. **Ms. Dawson demonstrated an occasional bi-manual lift/carry of up to 35 Lbs. She also demonstrated the ability to perform lifting/carrying of up to 20 Lbs. on a frequent basis. Ms. Dawson also demonstrated an occasional RUE lift of 15 lbs. and a LUE lift of 20 lbs. when lifting unilaterally from knuckle to shoulder level.**

It was determined that the claimant demonstrated the ability to perform work in the MEDIUM classification of work.

The claimant presented to Dr. Cox on July 13, 2021 with complaints of left shoulder pain. The following history was noted:

Est pt presents today for evaluation of new issue left shoulder pain[.] She states pain in her left shoulder began after her right shoulder injury she had to use her left shoulder more during her recovery from right rotator cuff repair.

The claimant was diagnosed with biceps tendinitis of left upper extremity and referred to physical therapy.

Dr. Cox provided the following opinion by letter dated October 29, 2021:

Mary is a patient of mine. It is my belief within a reasonable degree of medical certainty that the current problems Mary is experiencing with her left shoulder are as a result of the injury on November 22, 2018 to her right shoulder. Due to this injury, Mary has had to overuse her left shoulder causing pain and dysfunction of her left shoulder.

It is my belief that Mary is entitled to medical treatment to her left shoulder since it is a compensable consequence injury stemming from her injury on November 22, 2018.

The claimant testified that despite being placed on light duty with limitations, she was performing the same duties as she had while on regular duty. According to the claimant, she quit the job on December 31, 2019, because she could not do the assigned work which was not within her restrictions. The claimant has not had any other jobs since working for the respondent-employer.

Regarding vocational rehabilitation, the claimant testified that she wants to pursue an associate of applied science degree in agriculture from Ozarka College at Ash Flat. The claimant provided an exhibit which showed the requirements for completion of this two-year program. The exhibit does not provide information as to the cost of the program.

The claimant and her husband, Tim Dawson, testified that they believe he is entitled to compensation for the additional assistance he provided to his wife during her recovery time after surgery. The claimant testified that Mr. Dawson assisted her eighteen (18) hours per day for six (6) weeks. Additionally, Mr. Dawson drove the claimant to and from physical therapy and doctor's appointments. The total number of drive time hours Mr. Dawson is claiming is two hundred forty-four (244) hours. Mr. Dawson believes he should be compensated at a rate of twelve dollars (\$12.00) per hour, which he indicated is a rate comparable to that of a home health aide. The total compensation sought by Mr. Dawson is twelve thousand dollars (\$12,000.00).

Dr. Cox provided the following opinion via letter dated January 14, 2021 regarding Mr. Dawson's compensation:

... With regard to compensation for Mr. Dawson's time off from work, it is difficult to provide a specific quantity that is typical for a surgical recovery of this nature. Certainly in the days and week following the surgery, many patients need significant help, certainly not around the clock care after the first several days

but help as needed with some basics of daily life, meal preparation, grooming, and so forth. In the weeks following her surgery, I cannot be certain as to how much time is typically required as many patients require very little care and live independently after surgery of this nature after the first week or two. I do think it certainly reasonable while she was in a sling for a total of six weeks that there may be periods during each day where she needed assistance with transportation and activities of daily living, certainly not around the clock care. I am speculating this would be in the hour to two hour a day range but again, this is a loose estimation.

A pre-hearing order was filed on September 28, 2021. The claimant contends that “she sustained compensable injuries to her neck, back, and right wrist and left shoulder while performing employment services for the respondent-employer.”

“Dr. Dylan Carpenter performed a nerve conduction test to the claimant’s right upper extremity which came back with abnormal results. The report dated April 4, 2019, concluded that there was electro physiologic evidence suggestive of: 1. A Moderate Median nerve Compromise at the wrist on the right involving demyelination of sensory motor fibers.”

“The claimant contends that she is entitled to Vocational Rehabilitation. She returned to work but was unable to perform her job duties. Since no bona fide job offer was extended to the claimant so that she could work within her restrictions, she had no alternative but to quit her job. The claimant will submit a Vocational Rehabilitation plan to the

Commission for its consideration. Alternatively, the claimant contends that if her Vocational Rehabilitation plan is denied by the Commission, she is entitled to permanent and total disability benefits and/or wage loss.”

“The claimant contends that her husband, Tim Dawson, is entitled to compensation for the care he provided the claimant during her recovery period from the surgery to her right shoulder.”

“The respondents contend that the claimant sustained an injury to her right shoulder on November 22, 2018, while in the course and scope of her employment. Respondents accepted that injury as compensable and have paid all appropriate medical and indemnity benefits related to it. The claimant initially was treated by Dr. Dylan Carpenter. She petitioned the Commission for a change of physician to Dr. Wesley Cox in Fayetteville, which was granted. Dr. Cox treated the claimant until June 24, 2020, when he released her from care and assigned a three percent (3%) whole-person impairment rating.”

“Dr. Cox referred the claimant for a Functional Capacity Evaluation (FCE), which was performed by Stuart Jones of Functional Testing Centers on July 7, 2020. Per the FCE results, the claimant demonstrated the ability to perform occasional bi-manual lift/carry of up to thirty-five (35) pounds; perform lifting/carrying of up to twenty (20) pounds frequently; and ability to occasionally lift up to fifteen (15) pounds with her right upper extremity and twenty (20) pounds with her left upper extremity

when lifting unilaterally from knuckle to shoulder. She demonstrated the ability to perform work in the medium classification of work as defined by the U.S. Dept. of Labor Guidelines over the course of a normal eight (8) hour workday with the limitations noted above.”

“On October 10, 2019, the respondents contend the claimant returned to work during her healing period. Dr. Cox placed the following work restrictions on the claimant, which the respondents contend it accommodated: no lifting, pushing, pulling greater than two (2) pounds below shoulder level and nothing above shoulder level. The respondents contend that the claimant chose to quit her job during this time, and as a result she is not entitled to vocational rehabilitation.”

“The respondents further contend that the claimant is not entitled to either PTD benefits or wage loss. The respondents contend that the claimant’s husband is not entitled to compensation for care allegedly provided to the claimant during her recovery.”

“The respondents contend that the claimant did not sustain a compensable injury to her neck, back, left shoulder, or right wrist and therefore is not entitled to any benefits related to those body parts.”

The parties agreed to litigate the following issues:

1. Compensability of the injuries to claimant’s neck, back, right wrist, and left shoulder.

2. Entitlement to reasonable and necessary medical treatment.
3. Entitlement to Vocational Rehabilitation.
4. Entitlement to permanent total disability (PTD) benefits or, in the alternative, an award of wage loss.
5. Entitlement to compensation for the care given to the claimant by her husband, Tim Dawson, during the recovery period related to the surgery to her right shoulder.
6. Attorney's fees.

After a hearing, an Administrative Law Judge filed an opinion on January 19, 2022. The Administrative Law Judge found that, *inter alia*:

(1) The claimant has proved by a preponderance of the evidence that her left shoulder injury is compensable as [a] result of [a] compensable work-related right shoulder injury on November 22, 2018, and she is entitled to reasonable and necessary medical for the treatment of the left shoulder.

(2) The claimant has failed to satisfy the required burden of proof that injuries to her neck, back, and right wrist are compensable work-related injuries.

(3) The claimant has failed to satisfy the required burden of proof that she is entitled to permanent total disability. In addition, the claimant has failed to satisfy the burden of proof that she is entitled to wage loss.

(4) The claimant has failed to satisfy the required burden of proof that she is entitled to §505 vocational rehabilitation, and specifically to

the payment of books and tuition to attend Ozarka College to obtain a degree in agricultural [sic].

(5) The claimant is entitled to the appropriate attorney fees pursuant to Ark. Code Ann. §11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809.

II. ADJUDICATION

A. Compensability

Left Shoulder Injury

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence 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, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The Arkansas Courts have on several occasions considered claims for benefits for alleged “compensable consequences” and in each case, the Court has essentially indicated that:

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes.

See generally Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001); *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The claimant sustained an admittedly compensable right shoulder injury that ultimately required surgical intervention. The claimant testified that because she had to use her left arm while her right shoulder healed, she began experiencing pain in her left shoulder. The claimant’s testimony is supported by Dr. Cox’s medical opinion that the claimant’s problems with her left shoulder are a result of the injury on November 22, 2018 to her right shoulder. Dr. Cox opined, “Due to this injury, Mary has had to overuse her left shoulder causing pain and dysfunction of her left shoulder.”

Based on the aforementioned, the Full Commission finds that the claimant proved by a preponderance of the evidence that her left

shoulder injury is a compensable consequence of the work-related accident. We further find that the claimant is entitled to reasonable and necessary medical treatment related to the left shoulder injury.

Neck, Back, Right Wrist Injuries

The record does not contain medical evidence supported by objective findings of injuries to the claimant's neck and back. Therefore, we find that the claimant failed to establish by a preponderance of the evidence that she sustained compensable injuries to her neck and back.

A claimant is not required in every case to establish the causal connection between a work-related incident and an injury by either expert medical opinion or by objective medical evidence. *See Wal-mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). The 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. *Hall v. Pittman Construction Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962).

Although there is medical evidence supported by objective findings of the claimant's right wrist injury (in the form of carpal tunnel), there is insufficient evidence to establish the causal connection between the

injury and the workplace accident. The right wrist injury was not an acute injury that can be logically attributable to her work accident. Instead, the demyelination seen in the claimant's EMG suggests a condition that is chronic in nature. Therefore, we find that the claimant failed to establish by a preponderance of the evidence that she sustained a compensable right wrist injury.

B. Permanent Total Disability Benefits

Pursuant to Ark. Code Ann. §11-9-519(e)(1) (Repl. 2012), "permanent total disability' means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." The burden of proof is on the employee to prove inability to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-9-519(e)(2). Permanent total disability shall be determined in accordance with the facts. Ark. Code Ann. §11-9-519(c).

The claimant has failed to establish by a preponderance of the evidence that she is entitled to permanent total disability benefits. The claimant suffered a compensable right shoulder injury on November 22, 2018. On June 24, 2020, Dr. Cox released the claimant to return to work with restrictions. Additionally, a Functional Capacity Evaluation conducted on July 7, 2020, indicates that the claimant is able to perform work in the Medium classification. Thus, the evidence preponderates that the claimant

is able to earn meaningful wages. Therefore, the Full Commission finds that the claimant is not entitled to permanent total disability benefits.

C. Wage Loss

Ark. Code Ann. §11-9-522 provides in pertinent part:

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

When a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the disability rating, and it can find a claimant totally and permanently disabled based upon wage loss factors. *Milton v. K-Tops Plastic Mfg. Co.*, 2012 Ark. App. 175, 392 S.W.3d 364 (Ark. App. 2012). The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Id.* The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Id.* In considering factors that may affect an employee's future earning capacity, the court considers the claimant's motivation to return to work, since a lack of interest or a

negative attitude impedes our assessment of the claimant's loss of earning capacity. *Id.*

The record supports a finding that the claimant is entitled to wage-loss benefits. The claimant was given a 3% whole-person permanent impairment rating for her right shoulder injury by Dr. Cox. At the time of the hearing, the claimant was fifty-four years old. The claimant's education consists of completion of high school and some college. According to the Functional Capacity Evaluation report, the claimant had no work experience outside of the home prior to working for the respondent-employer. The claimant worked for the respondent-employer as a part-time stocker.

After the workplace accident the claimant underwent a right arthroscopic rotator cuff repair. Following a recovery period, the claimant was returned to work with restrictions of "no lifting, pushing, pulling greater than two pounds". It appears from the claimant's testimony that her job duties following the accident exceeded those restrictions. The claimant worked for the respondent-employer until December 31, 2019. Since then, the claimant has not been able to earn meaningful wages in the same or other employment.

For the foregoing reasons, the Full Commission finds that the claimant's future earning capacity has been affected by her compensable injury and that she is entitled to a five percent (5%) wage-loss benefit.

D. Vocational Rehabilitation

Ark. Code Ann. §11-9-505(b) provides:

(b)(1) In addition to benefits otherwise provided for by this chapter, an employee who is entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or reemployment assistance shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation if the commission finds that the program is reasonable in relation to the disability sustained by the employee.

(2) The employer's responsibility for additional payments shall not exceed seventy-two (72) weeks, regardless of the length of the program requested.

The claimant wants to pursue an agriculture degree from Ozarka College. The program proposed by the claimant is a two-year program.

The claimant failed to provide information on the cost of the desired program. Thus, the Full Commission is unable to say without conjecture and speculation that this program is reasonable in relation to the disability sustained by the claimant. Therefore, we find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to the requested vocational rehabilitation benefits.

E. Claimant's Husband's Reimbursement

Ark. Code Ann. §11-9-508(a) provides the following:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

It is well settled that wives or relatives of an injured employee are entitled to compensation for nursing services. *See Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979); *Dresser Minerals v. Hunt*, 262 Ark. 280, 556 S.W.2d 138 (1977); *Sisk v. Philpot*, 244 Ark. 79, 423 S.W.2d 871 (1968). To be compensable, nursing services rendered by a spouse must embrace more than the ordinary care a wife is normally expected to render to a sick husband. *Dresser Minerals*, 262 Ark. at 284, 556 S.W.2d at 140. Nursing services do not include assistance with household and personal tasks which a claimant is unable to perform. *Pickens-Bond*, 266 Ark. at 333, 584 S.W.2d at 26. The entire question is one of fact. *Dresser Minerals*, 262 Ark. at 284, 556 S.W.2d at 140.

The claimant's husband, Tim Dawson, is seeking payment for nursing services provided to the claimant over a six-week period of recovery following her right shoulder surgery. The claimant and Mr. Dawson indicated the services provided included the additional household chores Mr. Dawson was required to perform, transporting the claimant to doctor's and physical therapy appointments, and assisting the claimant with

applying ice packs to her right shoulder. The exact time spent doing each task was not documented by Mr. Dawson.

We cannot say without conjecture and speculation to what extent, if any, the services provided by Mr. Dawson were reasonably necessary. Therefore, the Full Commission finds that the claimant failed to prove that Mr. Dawson is entitled to reimbursement for nursing services.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by the preponderance of the evidence that she is entitled to a five percent (5%) wage-loss benefit as a result of her compensable right shoulder injury and that she proved she sustained a left shoulder injury as a compensable consequence of her right shoulder injury. The Full Commission further finds that the claimant failed to prove by a preponderance of the evidence that she sustained compensable neck, back or right wrist injuries and failed to prove that she is entitled to permanent and total disability benefits. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner