

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. G802908**

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| SILVIA PEREZ, Employee                  | CLAIMANT   |
| OZARK MOUNTAIN POULTRY, INC., Employer  | RESPONDENT |
| BRIDGEFIELD EMPLOYERS INS. CO., Carrier | RESPONDENT |

**OPINION FILED APRIL 27, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

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

Respondents represented by JAMES A. ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On February 22, 2022, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 26, 2021, and a Pre-hearing Order was filed on May 26, 2021. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her left shoulder on January 8, 2018.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to additional medical treatment for her left shoulder from Dr. Arnold.

Claimant's contentions are:

“Claimant contends she is entitled to additional treatment for her compensable left shoulder injury. The claimant reserves all other issues.”

Respondents’ contentions are:

“Respondents contend we have provided all reasonably necessary Medical evaluation and treatment for the left shoulder injury of 1/8/18.”

The claimant in this matter is a 41-year-old female who is employed by the respondent in its poultry processing facility. The claimant sustained a compensable injury to her left shoulder on January 8, 2018. At that time the claimant’s job duties for the respondent centered around deboning chicken thighs. The claimant gave direct examination testimony about her compensable left shoulder injury, her reporting of that injury and medical treatment as follows:

Q And what happened to your left shoulder in January of 2018?

A I had already been working about six hours and I was just working normally and then I felt a pulling in the left side of my chest. But it was just like a really strong pull, but there wasn’t any pain so I just kept working normally. But then about five or six minutes later, I felt the same thing again very strongly. So I stopped because it was just so strange, but it wasn’t that strong. And it was the next day that the shoulder started hurting, but it wasn’t something – it was just like a bother. But about halfway through the shift, then it started getting stronger. So then I just kept working like that and the next day I tried to work, but I couldn’t. My arm was asleep all the way down to my fingertips.

Q Did you report the injury?

A Yes. That’s when I informed them.

Q And did Ozark Mountain Poultry provide medical treatment for your left shoulder?

A Yes.

The claimant eventually underwent surgical intervention at the hands of Dr. Christopher Arnold on June 21, 2019, at Physicians Specialty Hospital. Following is a portion of Dr. Arnold’s operative report:

PREOPERATIVE DIAGNOSES:

1. Left shoulder partial rotator cuff tear.
  2. Left shoulder AC arthropathy.
  3. Left shoulder anterior acromial spur – impingement syndrome.
- Secondary diagnosis: None.

POSTOPERATIVE DIAGNOSIS:

1. Left shoulder high-grade partial tear of supraspinatus, 80% thickness.
  2. Left shoulder acromioclavicular arthropathy.
  3. Left shoulder anterior acromial spur – impingement syndrome.
- Secondary diagnosis: None.

PROCEDURE:

1. Left shoulder arthroscopic rotator cuff repair using a double row technique.
2. Left shoulder arthroscopic acromioplasty.
3. Left shoulder arthroscopic distal clavicle resection.

The claimant initially began to improve following her June 21, 2019, left shoulder surgical intervention. However, by her November 12, 2019, visit to Dr. Arnold the claimant was reporting decreased range of motion and “pain is worse than before surgery.” Dr. Arnold ordered an MRI of the left shoulder at that time. On November 26, 2019, the claimant underwent an MRI of the left shoulder without contrast at Physicians Specialty Hospital. Following is a portion of that diagnostic report:

IMPRESSION:

1. Postsurgical changes from rotator cuff tendon repair. Moderate supraspinatus tendinosis is present with irregular, relative low-grade, predominately bursal aided degenerative fraying. Rotator cuff is otherwise intact.
2. Mild glenohumeral joint osteoarthrosis. No appreciable labral tear.
3. Intact long head of biceps tendon.
4. Postsurgical changes from acromioplasty and partial distal clavicular resection.

The claimant continued treatment with Dr. Arnold for her left shoulder complaints. The claimant’s condition did not improve and on February 28, 2020, the claimant underwent a second surgical intervention at the hands of Dr. Arnold. Following is a portion of that operative note:

PREOPERATIVE DIAGNOSIS: Left shoulder arthrofibrosis, status post rotator cuff repair, arthroscopic.

POSTOPERATIVE DIAGNOSIS: Left shoulder arthrofibrosis,  
status post rotator cuff repair – intact.

PROCEDURE: Left shoulder arthroscopic lysis of  
adhesions/manipulation.

Following her second surgery, the claimant reported improvement in her left shoulder. The claimant underwent postsurgical care including physical therapy at Advanced Orthopedic Specialists. On April 7, 2020, the claimant was seen again by Dr. Arnold. Following is a portion of that medical record:

Impression

Follows up for post op recheck of left shoulder, s/p LT Shoulder scope, lysis of adhesions/Manipulation 2/28/2020 x6 weeks s/p rtc, dce 6/2019. Doing well and feels better than before surgery.

Patient Plan

Continue with formal PT per protocol. Will see back in 6 weeks. If doing well will plan to send for FCE and IR.

The patient was advised to call the office if symptoms worse or do not improve. The risks, benefits, and side effects of treatment were discussed with the patient. The Patient verbalized an understanding of the care plan.

FOLLOW UP WITH APN IN 6 WEEKS FOR RECHECK OF  
LEFT SHOULDER.

On May 13, 2020, the claimant, at the recommendation of Dr. Arnold, underwent an FCE at the Functional Testing Centers in Mountain Home, Arkansas. Following is a portion of the report issued by Stewart Jones, PT, DPT, CDA, CFE and Jaime Mann Psy. D, CDA, CFE regarding the claimant:

RELIABILITY AND CONSISTENCY OF EFFORT

The results of this evaluation indicate that a reliable effort was put forth, with 53 of 55 consistency measures within expected limits. Analysis of the data collected during this evaluation indicates that she did put forth consistent effort and passed all criteria for a reliable effort indicating that a significant degree of effort was put forth. She was consistent with repeated trial testing, distraction based testing and she exhibited appropriate responses to material handling and strength testing.

FUNCTIONAL ABILITIES

Ms. Perez demonstrated the ability to perform material handling at the following levels during this functional capacity evaluation. Ms. Perez demonstrated an occasional bi-manual lift/carry of up

to 40 lbs. She also demonstrated the ability to perform lifting/carrying of up to 20 lbs. on a Frequent basis. Ms. Perez also demonstrated an occasional RUE lift of 30 lbs. and a LUE lift of 15 lbs. when lifting unilaterally from knuckle to shoulder level.

On May 19, 2020, the claimant was again seen by Dr. Arnold. At that time, Dr. Arnold determined the claimant to be at maximum medical improvement and released the claimant to return to work with “restrictions per FCE/impairment results.” The claimant was also advised “to call the office if symptoms worsened or did not improve.”

The claimant returned to see Dr. Arnold on October 1, 2020, with complaints of left shoulder pain. Following is a portion of that medical record:

HPI: This is a 39 year old female who is being seen for left shoulder pain. Onset or Duration: 2 weeks ago. Symptoms began gradually without specific injury. She describes the symptoms as constant and aching and associated with pain, stiffness, weakness, and swelling. Symptoms are provoked by bringing arm across body, getting dressed and undressed, moving the shoulder, reaching behind the back, reaching into the back seat of car, reaching overhead, repetitive activity, and sleeping on the symptomatic side. Treatment has consisted of rest, ice, NSAIDs, and surgery for 3/2020.

Dr. Arnold ordered an MRI of the claimant’s left shoulder at that time.

On October 22, 2020, the claimant underwent an MRI of the left shoulder without contrast at Northwest Medical Center in Bentonville. The report from that diagnostic test was issued by Dr. Michael Flick. Following is a portion of his report:

Impression:

1. Postsurgical changes of rotator cuff repair. The repaired supraspinatus demonstrates tendinosis and there is fraying of the distal supraspinatus without evidence of recurrent full-thickness tear.
2. Tendinosis of the distal infraspinatus.
3. Mild degenerative arthrosis of the glenohumeral joint.

The claimant was again seen by Dr. Arnold on November 12, 2020. Following is a portion of that visit note:

Chief Complaint: follow up of the left shoulder

HPI: This is a 39 year old female who is right hand dominate and is being seen for follow up of the left shoulder. Onset or Duration: 1/15/2018. Symptoms began after an injury at work (Deboning chicken and felt a sharp pain). She describes the symptoms as activity-related and aching and associated with pain, instability, loss of motion, and stiffness. Symptoms are provoked by job-related activity, lifting away from body, performing tasks above eye level, reaching overhead, and repetitive activity. Treatment has consisted of rest, physical therapy, and surgery for Left shoulder, RCR, DCR 06/21/2019 – Left shoulder lysis of adhesions and manipulation 02/2020. She has had the following diagnostic studies: plain radiographs and MRI. Relevant history includes remote shoulder surgery. Since the last visit, her symptoms are unchanged.

**HISTORICAL SUMMARY:**

WC deboning a chicken and felt a sharp pain 01/15/2018.

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**Impression/Plan**

S/p left shoulder RTC repair s/p lysis of adhesions/manipulation:

PT has reached MMI.

Work restrictions per FCE and impairment rating.

The claimant in this matter has asked the Commission to determine her entitlement to additional medical treatment for her compensable left shoulder injury from Dr. Arnold. During the hearing in this matter, it became clear that the claimant had already undergone the additional medical treatment that she was requesting at the time of the hearing. There are three medical bills that are in dispute, which are from visits with Dr. Arnold dated April 8, 2021, July 1, 2021, and October 7, 2021. Following is a portion of the hearing transcript in which the Commission and counsel for both parties clarified the issue before the Commission:

THE COURT: Thank you. Ms. Brooks, just for clarification as to what you are requesting.

MS. BROOKS: Yes, sir.

THE COURT: I had some opportunity to thumb through the medical as we have sat here throughout the course of the hearing. I think it's been your Claimant's testimony and Mr. Arnold's stipulation that no medical bills were paid in 2021. I have found three medical bills: One from April the 8<sup>th</sup>, 2021; one from July

the 1st of 2021; and one from October the 7<sup>th</sup> of 2021. I think also the documented Blue Cross Blue Shield card, I think that confirms that is probably when the Claimant began to pay for her own medical treatment. There is a cortisone shot in the July the 1<sup>st</sup> of 2021 visit.

Other than those three visits and whatever treatment was provided during these visits, what other medical treatment are you requesting that I consider? I don't find any active recommendation in any of those three medical records. It either hasn't been provided during the course of those three visits or anything in that last visit where he says I want to do this or that.

MS. BROOKS: Well, we are not stipulating that no treatment might be due in the future.

THE COURT: As of today, though.

MS. BROOKS: As of today, and I tried to make that clear in my email, but I may not have, I am asking that whatever medical has not been paid up to today's date by Dr. Arnold.

THE COURT: So we are here about those three visits unless there is something in the past, but it doesn't appear to be.

MR. ARNOLD: If there is anything before 2021 from an authorized provider that has not been paid, that was due to an oversight.

THE COURT: You guys will pay it?

MR. ARNOLD: Yes. If we hadn't paid anything from Arnold or something that Arnold has referred her to, then it's an oversight. It's only those medical bills and treatment in 2021.

THE COURT: Which I have thumbed through.

MR. ARNOLD: Yes. And it is my understanding that nothing further is being requested at this time.

THE COURT: That is understanding as well. Anything else, Ms. Brooks?

MS. BROOKS: I was trying to say, yes, just whatever has not been paid up to this point. And if Mr. Arnold is correct about that and he probably is, I just don't have those records, then that would be correct, it would be the last three visits.

THE COURT: Well, on Mr. Arnold's stipulation that they are going to pay anything before 2021, I am only going to consider those three visits and decide whether she should be reimbursed

for those or not and not consider anything that is future because we don't have anything current.

MS. BROOKS: Yes. That is not our issue today. Thank you.

On April 8, 2021, the claimant was again seen by Dr. Arnold. Following is a portion of that visit note:

Chief Complaint: follow up of the left shoulder

HPI: This is a 40 year old female who is right hand dominant and is being seen for follow up of the left shoulder. Onset or Duration: 1/15/2018. Symptoms began after an injury at work (Deboning chicken and felt a sharp pain). She describes the symptoms as mild, constant, dull, interfering with every day activity, interfering with work, and tens pain and associated with pain and weakness. Symptoms are provoked by heavy lifting, reaching behind the back, reaching into the back seat of car, and repetitive activity. Treatment has consisted of rest, NSAIDs, topical creams, and surgery for shoulder RCR, DCR 06/21/2019 – Left shoulder lysis of adhesions and manipulation 02/2020. She has had the following diagnostic studies: plain radiographs. Since the last visit, her symptoms are stable.

Historical Summary:

W/C deboning a chicken and felt a sharp pain 01/15/2018.

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Impression/Plan

1. S/P Rotator cuff repair: better than before the surgery but still stiff and weak; NSAIDs, home exercises, follow up in 3 months if no better inject and consider repeat MRI.

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Note: Status post left shoulder rotator cuff tear treated surgically. Worker's Compensation. Repeat MRI no recurrent tear. Given rating. States better than before the surgery but weak exam left shoulder flexion 180 extension 30 abduction 180 abduction 30 ER strong, slightly weak. Cuff repair system pain and weakness. I would recommend counter anti-inflammatories aggressive home strengthening program recheck in 3 months if no better inject better MRI.

On July 1, 2021, the claimant was again seen by Dr. Arnold. Following is a portion of that visit note:



Impression/Plan

Pt follows up today recheck of left shoulder s/p RTC repair. She continues to have bothersome left shoulder pain although she is better than before surgery she is not where she wants to be. NSAIDs helping mildly. Additional treatment options discussed observation vs injections vs further work up. Will plan for CSI today continue HEP. Follow up in 3 months if not better consider further work up with mri.

Continue current work restrictions.

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Note:

Worker's Comp. injury left shoulder status post better. Jack today no better repeat MRI. Current work restrictions.

On October 7, 2021, the claimant was again seen by Dr. Arnold. Following is a portion of that visit note:

Chief Complaint: follow up of the left shoulder

HPI: This is a 40 year old female who is being seen for evaluation of follow up of the left shoulder. Onset or Duration: 1/15/18. Symptoms began after an injury at work. She describes the symptoms as constant and aching. Symptoms are associated with pain, loss of motion, and weakness. Symptoms are provoked by lifting away from body and repetitive activity. Treatment has consisted of rest, NSAIDs, surgery for shoulder RCR, DCR 06/21/2019 – Left shoulder lysis of adhesions and manipulation 02/2020, and home exercises. She has had no diagnostic studies.

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Impression/Plan

Patient continues full duty at work, ordered MMI and FCE, office will call to schedule.

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Note:

This year status post rotator cuff repair postop arthrofibrosis. Status post lysis of adhesions. Doing great: no complaints. Happy.

Exam normal.

Assessment plan:

1 status post rotator cuff repair with subsequent lysis of adhesions. Full motion good strength pains improved. She is at MMI. Sent for FCE, impairment right. The current time she is doing full duty.

At the hearing in this matter the claimant gave direct examination testimony about the additional medical treatment that is in dispute and her work status as follows:

Q And what kind of treatment has he given you?

A He recommended and actually gave me an injection in my arm and exercises to do at home.

Q And was that injection in your left shoulder?

A Yes.

Q And was it helpful?

A Yes.

Q And the exercises that he prescribed for you, have you been doing those?

A Yes.

Q Did you also have an MRI?

A Yes.

Q And how is your shoulder doing now?

A It is getting better. I mean I feel like it is getting better, but I have to – well, I have to be a lot more careful about the things that I do or how I do them. It doesn't have the same strength as my other arm anymore.

Q Okay. And how often do you do these home exercises that you are prescribed?

A I try to do them at least every three days. I do stretching. Sometimes I have to do the exercises with the bands. Sometimes it is just muscular stretching. Sometimes I do them every day.

Q And are you still working at Ozark Mountain Poultry?

A Yes.

Q And what is your job there now?

A I operate a machine.

Q Are you able to do that job?

A Yes.

The claimant was also questioned on cross-examination about the medical treatment in question as follows:

Q Okay. You went to see Dr. Arnold on your own, this doctor who did the surgery, and he last saw you according to the medical records we have in October of 2021; is that correct?

A Yes, I believe so.

Q And when he last saw you, did you tell him that you were doing great; had no complaints and were happy?

A Did I say that? I had gotten a lot of better, but I never said that I was doing great and that I was happy. He told me, "That's everything I can do for your arm," so that is why I kept going to the appointments because until he told me that, you know, as long as there was an option for treatment, I was going. And he told me he was going to send me for another exam that I've done, but I didn't say that. He told me, "This is all I can do for you." What he said to me is, "Are we friends? Are you happy?" And I said, yes, because compared to where I was before surgery until the way I was after the surgery, sure, I'm happy. I would like for my arm to get back to 100 percent. Will that happen some day? It hasn't happened yet.

Q Okay. If you didn't tell him you were doing great and were happy in October of 2021, what did you tell him?

A I told him I felt better. You know, at the appointment before that is when he had given me the injection and it helped a lot. The appointment before that I had been in a lot of pain, but because of the injection, everything had gotten better.

Q Okay. We are here today about additional medical treatment, some of it that you've already had, but I want to know do you want additional medical treatment right now? And if so, for what?

A So I can't tell you what treatment I want because I am not a doctor. If there is another treatment, I would like to take it. So I am not say I want this treatment because I don't know what it is.

Q So you will agree as we sit here today no doctor or medical provider has recommended any additional treatment for your left shoulder, correct?

A Well, right now the doctor has not told me if there is another treatment.

Q No. As a matter of fact, Dr. Arnold has told you that he can't do anything else for you, right?

A If that's what he said that that is all he can do for my arm.

Q I thought you told me just a minute ago that is what he told you in October of 2021 is, "I have done everything I can do for you"?

A Yes, that was the last appointment I had with him.

After my review of the medical records, testimony and deposition of the claimant submitted into evidence, I find the treatment provided to the claimant by Dr. Arnold in 2021 was reasonable and necessary medical treatment for her compensable left shoulder injury. It appears from the claimant's testimony and the medical records that those medical visits improved the claimant's medical condition and at the time of the hearing in this matter, she needed no additional treatment after her October 7, 2021, visit with Dr. Arnold.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 26, 2021, and contained in a Pre-hearing Order filed May 26, 2021, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment which she has already received from Dr. Arnold in 2021, specifically the visits dated April 8, 2021, July 1, 2021, October 7, 2021, as they provided reasonable and necessary medical treatment for the claimant's compensable left shoulder injury.

**ORDER**

The respondents shall pay for the medical treatment provided to the claimant by Dr. Arnold on April 8, 2021, July 1, 2021, and October 7, 2021. The respondents shall also reimburse the claimant for out-of-pocket expenses associated with the above stated treatment.

**IT IS SO ORDERED.**

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**ERIC PAUL WELLS**  
**ADMINISTRATIVE LAW JUDGE**