

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300548

LILLIAN J. REICHART, EMPLOYEE

CLAIMANT

v.

SAINT JEAN INDUSTRIES, INC., EMPLOYER

RESPONDENT

**AMERISURE MUTUAL INSURANCE COMPANY
WORKERS' COMPENSATION CARRIER**

RESPONDENT

OPINION FILED DECEMBER 12, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 26th day of September 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Daniel A. Webb, Attorney-at-Law, Little Rock, Arkansas.

Respondent is represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 26th day of September, 2023, to determine the issues of compensability and medical for an injury to the claimant's left arm, shoulder, and back on September 23, 2022. In addition, TTD was requested for two (2) separate time periods relating to the injury, with the first time period being from November 7, 2022, to April 3, 2023, and the second time period being from May 19, 2023, to July 12, 2023, plus attorney fees. A third period of TTD from September 5th, 2023, to a future date, was reserved. The respondents contended that the claimant did not sustain a compensable injury on September 23, 2022, for which she is entitled to benefits. The parties stipulated that the claimant earned an average weekly wage of \$728.66 sufficient for a TTD/PPD rate of \$486.00 / \$365.00 per week, respectively. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the within claim

and that an employer/employee relationship existed on or about September 23, 2022, the date of the claimed injury in question.

The claimant's and respondents' contentions are set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The sole witness was Lillian Reichart, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Arkansas Code Annotated §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on September 23, 2022, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$728.66 a week, sufficient for a TTD/PPD rate of \$486.00 / \$365.00, respectively, per week.
3. That the claimant has satisfied the required burden of proof to show that she sustained a compensable work-related on September 23, 2022.
4. That the claimant is found to be entitled to reasonable and necessary medical treatment for the work-related left shoulder injury which would include the surgery to the left shoulder.
5. The claimant has satisfied the required burden of proof to show that she is entitled to TTD for the period beginning on November 11, 2022, up to and including the date of December 11, 2022. In addition, the claimant has satisfied the required burden of proof to show that she is entitled to a second period of TTD beginning on May 19, 2023, up to and including July 11, 2023. The issue of additional TTD from September 5th, 2023, to a future date to be determined was reserved.
6. The claimant is entitled to 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.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the prehearing questionnaires of the parties' responses to the prehearing questionnaire were admitted into the record without objection. The claimant submitted an exhibit of medical records that consisted of thirty-seven (37) pages that were admitted without objection.

The claimant, Lillian J. Reichart, testified she had obtained her GED and attended some college. She had worked as a boat captain and then obtained her Electrical One Mechanical Design Engineering Job License. She had managed and owned a hotel. In regard to her work for the respondent, she started there working for a staffing agency and when the contract with the staffing agency ran out, she was hired directly by the respondent. She was trained as a machine operator and could load the machines and check for flaws of the finished products, which consisted of aluminum automobile parts. On September 23, 2022, she was loading the W-L automated line and checking quality to determine if there were any flaws. (Tr. 6-9)

She stated she injured herself when she picked up a fifteen (15) pound part to place it up over the spindles and down in a tray, and in the process heard a pop and felt "excruciating pain" in her left shoulder. She told her employer and then finished out the day. The pain was excruciating, and she was given ibuprofen. When she got home, she took some additional ibuprofen, mixed her a drink, and slid down in a hot tub to soak her shoulder. She testified she was hurting primarily in her left shoulder and up her neck. In regard to returning to work the next day, she responded, "I certainly did." In regard to her working the next day, she stated, "We decided that if I felt like doing work, I felt like working and I felt like maybe it was just a pulled muscle or something, so I worked, and I worked it. And I wanted to work it out so I could continue to work. I work seven days a week. I'm good at my job."

“After a while, it just got to where I couldn’t pick my arm up high enough to get the parts up over the spindles and down in the trays to send them to the robot.” (Tr. 10-12)

The respondents sent her to Dr. Herring on the 7th of November who told her that the first step was physical therapy. She received physical therapy, but it did not help. She admitted receiving an x-ray and MRI and stated she still had the pain in her shoulder. She testified that the doctor took her off work on November 7, 2022, and she took the letter to HR and started physical therapy the following week. In regard to the physical therapy, she stated it was horrible. “It was -- I had natural childbirth and the same day a total hysterectomy, and let me tell you what, that was a lot easier than what I was experiencing then.” She remained off work and was not paid for being off of work. She returned to the doctor on February 20, 2023, with the pain in her shoulder becoming worse. She was told she needed an orthopedic specialist and went to see Dr. Wallace. She finally received a shot in her shoulder and more physical therapy. (Tr. 13-16) She stated Dr. Wallace had her work eighteen (18) days prior to her surgery on May 19. (Tr. 17) The surgery consisted of three (3) incisions which were healing up really well and she was doing physical therapy twice (2) a day, six (6) days a week. The shots worked great and she was doing a lot better since the surgery. She returned to work on July 12, 2023, and was not paid any money for being off work. (Tr. 18)

The claimant stated her shoulder was doing a lot better, but that it still hurt. She again stated she hurt herself while loading parts on an automatic line. (Tr. 20) She thought that workers’ compensation had paid for her visit to Dr. Herring and for some physical therapy, but had not paid for the surgery by Dr. Wallace. (Tr. 21, 22)

Under cross-examination, the claimant admitted she did not seek medical treatment when she told the respondent she was injured. She also contended she went through the proper channels with HR in regard to the injury and was sent for medical treatment, paid for by the workers’ compensation carrier. She admitted that physical therapy had been

authorized, when shown an email from Tina Swanson, and in addition, the injury date noted was November 2, 2022. However, the claimant stated that she had turned in paperwork back in September to her boss Wynona Richardson and, “We decided that if I could work, maybe it was just a pulled muscle or something, it might work out. Well, it didn’t.” The claimant also admitted she had received the employee handbook which provided she should report any injury she had sustained at work and contended that she did report it to her supervisor. (Tr. 23-26) The claimant was asked about declining any medical treatment and she responded that it was late at night, she would have been required to go to the emergency room, and she wanted to attempt to work it out. (Tr. 27)

The claimant agreed her medical treatment was originally paid for by the respondents. She also agreed that many times when she went to the office of Dr. Herring, she would actually see Justin Matthew Sharp, his nurse practitioner. (Tr. 28) The claimant was questioned about a medical note signed by Nurse Sharp that provided, “It is my medical opinion that Lillian Reichart’s shoulder pain in her left shoulder is from tendonopathy, that it is likely related to the repetitive motions at work and the tiny intral tear, not the arthritis noted on the MRI.” The claimant responded “all right.” “They quit paying for my medical when Dr. Herring said he wanted me to see an orthopedic specialist, whatever day that was.” (Tr. 29) Claimant was also questioned about the Form AR-2 which provided that the, “Carrier denies claim in its entirety” and where Nurse Sharp related the findings to repetitive work for the respondent. Claimant responded “That’s what, yes, that’s what he said. I’ve done it for many months before that.” (Tr. 30-31)

On redirect, the claimant again stated when she injured her shoulder, she reported it to her supervisor and was not made aware of anything else that she needed to do at that time in regard to her claim. (Tr. 32)

On recross, the claimant admitted the physical therapy was ordered after a new incident which occurred when she returned to work. She stated she was doing physical therapy when she returned to work in July. She had been provided physical therapy every day between July when she was released to return to work and the new incident that occurred in September. (Tr. 33)

In regard to medical records, the claimant received an MRI at Baptist Health on November 11, 2022. The report provided under impression a finding of subscapularis tendinopathy with a tiny interstitial tear at the superior margin and a likely tiny bursal sided footplate tear at the lesser tuberosity attachment with no full thickness tear. There was no measurable tear at the supraspinatus with infraspinatus tendinopathy. Biceps long head tendinopathy was found with a probable split tear at the intertubercular groove with degeneration without a defined tear on this non arthrographic assessment. Mild acromioclavicular joint and moderate glenohumeral arthritis was found along with cystic changes and marrow edema regional to the intertubercular groove. The report was signed by Dr. Hale. (Cl.Ex.1, PP.1-2)

Baptist Health progress notes authored by Justin Mathew Sharp, APRN, with e-signature verification by Dr. Justin Long, and the report also mentioning Dr. Herring, with the initial note dated November 7, 2022, provided the claimant complained of left shoulder pain after hearing a pop while at work back in September when lifting fifteen (15) pounds of auto parts. The report provided that the accident occurred at work more than a week earlier. It mentioned a complete tear of the left rotator cuff, and stated under assessment and plan it was unspecified whether it was traumatic. The report referred to the MRI and the x-rays of the left shoulder and stated the injury method was repetitive motion. (Cl.Ex.1, PP.3-15)

A letter from Dr. Herring, dated February 20, 2023, referred to a left shoulder injury that occurred in September and referred to the MRI that showed a partial rotator cuff tear and

a partial bicep tear with significant pain to passive range of motion of the left shoulder. It further provided that the claimant was not able to work at the time of the letter and she should be seen by an orthopedic surgeon. (Cl.Ex.1, P.16)

Additional medical notes from the Baptist Health Family Clinic also with a visit date of February 20, 2023, stated under assessment that the claimant returned with left shoulder pain with shoulder biceps tendinitis and a partial tear. It further provided that the history and examination were reviewed with the claimant and that she had tendinosis on the MRI without evidence of a full thickness tear or rupture with no surgical intervention at the time of the report needed or warranted. Confusingly and apparently in conflict with the letter from Dr. Herring of the same date, this report provided that the claimant could return to work, and this was signed off by Kyle Cotton, PA. (Cl.Ex.1, PP.17-19)

On May 19, 2023, the operating note by Dr. Wallace, provided under post-operative findings, rotator cuff tendinosis, partial-thickness intra-articular biceps tear and tendinosis, partial-thickness rotator cuff tear of the articular surface with an arthroscopic partial thickness rotator cuff tear of the articular surface with arthroscopic subacromial decompression and acromioplasty, and subpectoral biceps tenodesis. (Cl.Ex.1,PP.20- 21)

The claimant then presented to OrthoArkansas for an office visit follow-up on May 25, 2023, with the report referring to a partial thickness rotator cuff tear, with a disorder of a tendon of the biceps, and an impingement syndrome of the shoulder region, all on the left side, which was signed by Dr. Henry Wallace. (Cl.Ex.1, PP.22-27)

A note dated September 5, 2023, provided a lifting tolerance for the claimant while at work. (Cl.Ex.1,P.28). A note dated August 10, 2023, provided for no heavy lifting, pushing, or pulling. (Cl.Ex.1,P.29) An earlier note from OrthoArkansas dated July 11, 2023, provided the claimant may return to work full-duty with no work restrictions. (Cl.Ex. 1,P.30) An email dated November 29, 2022, provided authorization for twelve (12) visits of physical

therapy. (Cl.Ex.1,P.30) An email dated July 20, provided the claimant had missed 1072 hours of work since September 1st and that she did not start missing work until November 7, 2022. It additionally stated that her leave started on November 7, 2022, and went to April 3, 2023, with the second period beginning on May 19, 2023, and going until July 12, 2023. (Cl.Ex.1,P.32) Another note provided the claimant was seen at a Baptist Health Clinic on November 11, 2022, and that she should be excused from work on that date while she was being seen by Justin Mathew Sharpe, APRN. (Cl.Ex.1,P.34) An additional note dated November 11, 2022, provided that the claimant should remain off of work until December 12, 2022, and at that time she would be evaluated to return to work. (Cl.Ex.1, P.35) Another note dated June 8, 2022, provided the claimant should be excused from work on June 8, 2022, and June 9, 2022, and finally a note on June 9, 2022, provided that the claimant was seen by Dr. Herring on June 9, 2022, and she should be able to return to work on June 14, 2022. (Cl.Ex.1,PP.36-37).

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving, by a preponderance of the evidence, that she is entitled to compensation benefits for the injury to her left shoulder under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained 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. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The claimant in this matter was a sixty-eight (68) year old woman at the time of the hearing and a former boat captain, whose testimony did show something of an independent

streak, but was also found to be believable. Her testimony in regard to the injury was basically un rebutted. She testified she injured her left shoulder when she picked up a fifteen-pound automobile part and felt a pop with “excruciating pain” in her left shoulder and up her neck. She testified that she told her employer about the injury and continued to work on the day of the injury. When she returned home that night, she took some ibuprofen, mixed herself a drink, and slid down into a hot tub to soak her shoulder and then returned to work the next day. The claimant continued to work until November 7, 2022, when after continued shoulder issues, the respondents sent her to a doctor, who took her off work on the date of the visit, per the claimant’s testimony. She testified she brought the note taking her off work to HR. The claimant started receiving physical therapy and gave a somewhat colorful description of the pain involved in the therapy that started the following week. She remained off work without pay. An email provided she was on leave from November 7, 2022, with a return on May 3, 2023. The second leave period per the email provided she was off work from May 19, 2023, with a return on July 12, 2023.

She returned to her treating physician on February 20, 2023, which resulted in a referral to Dr. Wallace. Under cross-examination, the claimant admitted she did not seek medical treatment at the time she initially told the respondent of her injury and admitted that those medical records provided an injury date of November 2, 2022. She also admitted her original medical treatment had been paid for by the respondents and that Nurse Sharp related the medical findings in regard to her shoulder problems to a repetitive injury. She also stated Dr. Wallace had her work eighteen (18) days prior to her surgery.

The claimant was provided an MRI on November 11, 2022, shortly after her first doctor visit, which showed a subscapularis with a tiny interstitial tear at the superior margins and a likely tiny bursal sided footplate tear at the lesser tuberosity attachment with no full thickness tear and also with a probable split tear along the biceps. On May 19, 2023, Dr. Wallace’s

operating note stated under post-operative findings of post rotator cuff tendinosis, a partial-thickness intra-articular biceps tear tendinosis, a partial-thickness rotator cuff tear of the articular surface with an arthroscopic partial thickness rotator cuff tear.

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish, by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external 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(16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

An injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. *Lambert v. Gerber Products Co.* 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here the medical records clearly mentioned many issues that could be attributed to the claimant's sixty (60) plus year old shoulder, which would be typical for a person of her age. However, under Arkansas Workers' Compensation law, it is also clear that an employer

takes the employee as it finds her and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003).

Further, a claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See, *Walmart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). 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. *Hail v. Pitman Construction Co.* 235 Ark. 104, 357 A.W.2d 263 (1962)

A workers' compensation claimant bears the burden of proving the compensable injury, by a preponderance of the evidence. Arkansas Code Annotated §11-9-102(4)(E) (i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that grew out of or resulted from the employment. See, *Moore v. Darling Store Fixtures*, 22 Ar. App 21, 732 S.W.2d 496 (1987) In the current matter it is noted that the claimant had received healthcare and off work slips prior to the claimed injury on a couple of occasions. However, based upon the available evidence in the case at bar, there is no alternative but to find that the medical evidence clearly supports the finding of a traumatic tear of some of the left shoulder muscles and this credible evidence supports a finding that the claimant's left shoulder injury is in fact a work related injury that occurred when the claimant initially felt the pain on September 23, 2022, while lifting a fifteen (15) pound part and consequently, it is compensable under the Arkansas Workers' Compensation Act.

In regard to the medical, the Arkansas Compensation Act provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably

necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The employee has the burden of proving, by a preponderance of the evidence, that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). 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. 263, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). The medical treatment that has been provided, including surgery, is found to be reasonable and necessary.

Temporary total disability (TTD) 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). The determination of when the healing period has ended is a question of fact for the Commission. *Dallas County Hospital v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001)

Here, the claimant contends that she is entitled to two (2) separate periods of TTD, with the first one being from November 7, 2022, and returning to work on April 3, 2023, with the second period running from May 19, 2023, with the claimant returning to work on July 12, 2023. An email provided that the claimant was on leave during these two (2) time periods. The evidence is somewhat confusing at best with at one point a doctor's report providing that the claimant should remain off of work and the medical report from the same clinic on the same date providing that the claimant could return to work.

In regard to the first claimed time period running from November 7, 2022, and returning to work on April 3, 2023, the claimant testified that Dr. Herring stated she should not return to work from the date of November 7, 2023. However, the medical records from that date only

provided the claimant received a note from Justin Sharpe, APRN, that excused her from work on the day of the actual doctor's visit, and this report is found to be controlling. A second note from Nurse Sharpe APRN, dated November 11, 2022, provided the claimant should remain off work until December 12, 2022. This would include the date when the claimant had to present to Little Rock for an MRI. There are no other notes of record for the initial time period in question except for notes providing that the claimant should be allowed off work for a day of a doctor's visit, and the confusing letter from the treating doctor stating the claimant should remain off of work on February 20, 2023, with his clinic providing a report on the same date that the claimant could return to work. Consequently, during the first time period it is found that the claimant is entitled to TTD for the days beginning on November 11 of 2022, and up to and including December 11 of 2022.

In regard to the second time period running from May 19, 2023, to July 12, 2023, the claimant had surgery on her shoulder performed by Dr. Wallace on May 19, 2023. A doctor's note from Dr. Wallace provided that the claimant could return to work full duty on July 12, 2023. It is found that the claimant would be entitled to TTD from May 19, 2023, the date of her surgery up to and including July 11, 2023. Temporary total disability is not based on the claimant's healing period in all cases, but is awarded where the claimant's injury-caused incapacity prevents him from earning wages he was receiving at the time of the injury. *County Mkt. v. Thorton*, 27 Ark. App. 235, 770 S.W. 2d 156 (1989)

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. §11-9-715.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the burden of proof that her claim for the left shoulder injury is found to be compensable and the claimant is entitled to reasonable and necessary medical care for the left shoulder injury which would include the left shoulder

surgery by Dr. Wallace. In addition, the claimant has satisfied the required burden of proof to show that she is entitled to TTD from a starting date of November 11, 2022, up to and including the date of December 11, 2022, and also for the period beginning on May 19, 2023, up to and including the day of July 11, 2023.

She is also entitled to attorney fees as spelled out by the Arkansas Workers' Compensation Act. This Award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge