

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H102239

SANDRA K. SCOTT,  
EMPLOYEE

CLAIMANT

ARKANSAS ENTERPRISES FOR THE  
DEVELOPMENTALLY DISABLED,  
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 22, 2022

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

Claimant appears *pro se*.

Respondents represented by the HONORABLE CAROL LOCKARD  
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on November 29, 2021. The Administrative Law Judge found that the claimant has not proven by a preponderance of the evidence that she sustained a compensable left shoulder injury by specific incident in the form of a rotator cuff tear. After our *de novo* review of the entire record, the Full Commission finds that the parties stipulated that the claimant sustained a compensable left shoulder injury and that the claimant has proven by a

preponderance of the evidence that she is entitled to the additional medical treatment provided by Dr. Hussey.

I. HISTORY

On January 9, 2020, the claimant was working for the respondent-employer as an instructor/transporter when she was involved in an accident. According to the claimant, the accident occurred in the following manner:

Q Okay. Tell me what happened on January 9, 2020.

A Well, the transportation, I guess she's over the transportation, called me and asked me if I could go to Hot Springs to pick up some product for the clients.

...

Q Okay. So what happened when you did that?

A Well, when I – I got in the truck, the company truck, and realized there wasn't enough gas for me to go to Hot Springs and come back. So I stopped at the Exxon right down the street. So I got off to fill it up. When I got ready to get back on the truck, my foot slipped off. And to keep from hitting – from my body hitting the ground, I just grabbed hold of the hand bar and that's what jerked my shoulder.

Q Okay. Was that your left shoulder?

A Left shoulder.

The claimant initially sought treatment at Concentra on January 9, 2020. The claimant was assessed with “sprain of left shoulder” and was referred to physical therapy. The claimant was released to full duty work without restrictions by Concentra on January 17, 2020.

The parties stipulated that the claimant sustained a compensable injury to her left shoulder in the form of a sprain.

The claimant testified that between the time she was released in January and sometime in June of 2020, she experienced left shoulder pain but the pain was bearable. However, by the time she saw her primary care provider, Laura Sanders, for a routine checkup on June 30, 2020, the shoulder pain was intolerable.

The claimant testified that she was not involved in any accidents and did not have any injuries between January 2020 and June 2020.

Ms. Sanders referred the claimant to Dr. Michael Hussey. The claimant’s initial visit to Dr. Hussey was on August 3, 2020. Dr. Hussey ordered x-rays that revealed the following:

4 view x-ray left shoulder demonstrate decreased acromiohumeral distance consistent with Hamada grade 2 cuff tear arthropathy. Moderate redness of the AC joint and small inferior humeral head osteophyte seen consistent with early glenohumeral arthritis.

Dr. Hussey ordered an MRI, noting that he did so “since she has failed to improve with significant conservative treatment over the past 6 months to include physical therapy, rest, NSAIDs”.

The claimant underwent a left shoulder MRI on August 13, 2020. The MRI revealed the following:

**FINDINGS:**

Rotator cuff: Full-thickness, near full width tear of the supraspinatus tendon at the insertional footplate. Partial width, partial-thickness articular surface tear of the infraspinatus tendon. No tendinopathy or tear of the teres minor. No significant tendinopathy or tear of the subcapularis.

Long-head biceps tendon: Long head biceps tendon is not visualized.

Labrum: Abnormal signal morphology of the superior, posterior and inferior labrum.

Ligaments: Normal appearance of the inferior glenohumeral ligaments. Normal appearance of the middle glenohumeral ligament.

Bones and cartilage: Superior translation of the humeral head relative to the glenoid. Subchondral marrow edema signal in the glenoid suggests areas of full-thickness cartilage loss. Acromioclavicular alignment is normal. Moderate to advanced acromioclavicular osteoarthritis. Mild to moderate anterior and lateral acromial tilt.

Miscellaneous: Moderate joint effusion. Fluid and edema signal in the subacromial/subdeltoid bursa. No periarticular muscle strain or muscle tear.

IMPRESSION:

1. Full-thickness, near full width tear of the supraspinatus tendon.
2. Partial thickness, partial width articular surface tear of the infraspinatus tendon.
3. Degeneration/tear of the superior, posterior, and inferior labrum.
4. High-grade glenohumeral chondromalacia.

On December 4, 2020, the claimant underwent a left shoulder arthroscopic rotator cuff repair; arthroscopic long head biceps tenodesis; arthroscopic subacromial decompression with partial acromioplasty; and arthroscopic extensive debridement of the shoulder joint to include debridement of degenerative labral fraying, partial synovectomy, and subacromial/subdeltoid bursectomy.

The claimant testified that Dr. Hussey released her from his care on July 30, 2021.

Dr. Hussey offered an opinion regarding causal connection in a letter dated October 11, 2020. Dr. Hussey opined:

... it is my medical opinion that my surgical recommendation to Ms. Scott for her left shoulder is less than 51% directly related to the mechanism of injury causing left shoulder pain reported on 1/9/2020.

A Pre-hearing Order was filed on June 21, 2021. “The claimant’s contentions were as follows:

1. Claimant contends that on January 9, 2020, she injured her left shoulder in the

scope and course of employment when she was trying to get into the vehicle.

2. Respondents initially accepted the claim as compensable and sent the claimant to Concentra for treatment.
3. Claimant was diagnosed as having a sprain of the left shoulder and was sent back to work at full duty on January 17, 2020.
4. Respondents have denied the claim.
5. Claimant was forced to obtain treatment on her own and went to see Dr. Hussey. Dr. Hussey ordered an MRI, which revealed a massive rotator cuff tear.
6. Claimant underwent surgery to repair the rotator cuff tear in December of 2020.
7. Claimant contends she sustained a compensable left shoulder injury in the scope and course of employment that she is entitled to medical benefits, temporary total disability benefits, and a controverted attorney's fee.
8. All other issues are reserved.

The respondents made the following contentions:

1. Respondents contend that all appropriate benefits have been paid with regard to this matter.
2. Claimant was released to return to work in a full duty capacity on January 17, 2020, and no permanent impairment was assigned to this matter.

3. The claimant had no complaints of problems with her shoulder for 164 days.
4. Claimant continued to work in a full duty capacity during that timeframe.
5. Claimant had medical treatment during that time and did not mention any issues with her shoulder.
6. In light of this, it is Respondents' position that Claimant's request for medical treatment at this juncture is not reasonable and necessary.
7. The claim was not formally denied until November 13, 2020.

The parties agreed to litigate the following issues:

- (1) Whether Claimant sustained a compensable injury by specific incident in the form of a torn left rotator cuff.
- (2) Whether Claimant is entitled to reasonable and necessary medical treatment.
- (3) Whether Claimant is entitled to temporary total disability benefits.
- (4) Whether Respondents are entitled to an offset concerning short-term disability benefits allegedly received by Claimant.
- (5) Whether Claimant is entitled to a controverted attorney's fee.

After a hearing, an Administrative Law Judge filed an opinion on November 29, 2021. The Administrative Law Judge found:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she sustained a compensable left shoulder injury by specific incident in the form of a rotator cuff tear.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment of her left rotator cuff tear.
5. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits.
6. Claimant has not proven by a preponderance of the evidence that she is entitled to a controverted attorney's fee under Ark. Code Ann. §11-9-715 (Repl. 2012).

The claimant appeals these findings to the Full Commission.

## II. ADJUDICATION

We first note that the parties have stipulated that the claimant sustained a compensable left shoulder injury on January 9, 2020. The respondents have tried to limit that stipulation to a shoulder strain; however, the case law is clear that the respondents are responsible for any natural consequence that flows from the compensable injury. *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 basic test is whether there is a causal connection between the two episodes. *Id.*

Because the claimant's rotator cuff tear is causally connected to her work accident, we cannot separate it as a separate injury that requires a determination of compensability. Instead, in light of the stipulation of a compensable left shoulder injury, the question in this matter is whether the treatment the claimant received for the rotator cuff tear was reasonable and necessary.

A. Additional Medical Treatment

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 claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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 claimant suffered a compensable injury to her left shoulder that continued to worsen over time. An MRI revealed that the claimant had a left shoulder full-thickness rotator cuff tear. Dr. Hussey determined that surgical intervention was appropriate for the claimant's

injury and performed surgery on December 4, 2020. The claimant testified that she got some relief from the surgery. Therefore, we find that the additional medical treatment that the claimant received from Dr. Hussey was reasonably necessary.

We are not unmindful of Dr. Hussey's opinion that his surgical recommendation to that claimant for her left shoulder is "less than 51% directly related to the mechanism of injury causing left shoulder pain reported on 1/9/2020". However, the opinion offered by Dr. Hussey applies the major cause standard, which is not appropriate here. An employee is not required to prove that his compensable injury is the major cause for the need for treatment unless he is seeking permanent benefits; when the employee has suffered a specific injury and is only seeking medical benefits and temporary total disability, the major-cause analysis is not applicable and the employee need only show that the compensable injury was a factor in the need for additional medical treatment. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004).

For the aforementioned reasons, the Full Commission finds that the claimant is entitled to the additional medical treatment provided by Dr. Hussey.

**B. Temporary Total Disability Benefits**

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity

to earn wages. *Ark. State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Breshears, supra*; *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

“‘Healing period’ means that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Mad Butcher Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

“‘Disability’ means incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury.” Ark. Code Ann. §11-9-102(8).

The claimant underwent surgery to repair her left shoulder rotator cuff tear on December 4, 2020. Dr. Hussey’s operative report details the severity of the claimant’s left shoulder rotator cuff tear as follows:

... The patient also had a massive tear of the rotator cuff involving 3 of the 4 rotator cuff tendons ...

The claimant testified that her last day working prior to her surgery was December 2, 2020, and that Dr. Hussey released her from his care on July 30, 2021. The claimant also testified that she was terminated from her position with the respondent-employer in March of 2021 because she exhausted her sick time and PTO time. According to the claimant, she has not performed any paid work since December 2, 2020.

Both the claimant and the respondents' witness, Shendala Thomas, testified regarding the claimant's job duties. The claimant explained that her job duties included transporting clients in the facility van to the center in the morning and back home in the afternoon. In her capacity as a driver, the claimant was also required to push clients up a ramp at the center. When asked what kind of things she did as an instructor, the claimant responded as follows:

Sometimes I would have to pick up heavy things, if I don't have anybody in my area to do it for me. I would have to pick up like boxes that might weight 20, 30 pounds ... .

Ms. Thomas, who was the claimant's supervisor, agreed that the claimant was responsible for driving the van and that she had to do some lifting.

Considering the physical nature of the claimant's job duties and the severity of her compensable left shoulder injury, the Full Commission finds that following the surgery to repair her left shoulder rotator cuff tear, the claimant was totally incapacitated from earning wages in her same employment. The claimant was totally incapacitated from earning wages in other employment as well. This incapacitation continued until the claimant was released from Dr. Hussey's care.

Based on the foregoing, the Full Commission finds that the claimant proved by a preponderance of the evidence that she is entitled to temporary total disability benefits starting on December 4, 2020 (the date of the claimant's surgery) and continuing until July 30, 2021, when Dr. Hussey released her.

### III. Conclusion

Based on 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 additional medical treatment as provided by Dr. Hussey and temporary total disability benefits starting on December 4, 2020 and continuing until July 30, 2021. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2012). Although the claimant is currently *pro se*, for prevailing on appeal to the Full Commission, the claimant's previous counsel, who

perfected this appeal, is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

Claimant appeals the decision of the administrative law judge filed on November 29, 2021, finding among other things that Claimant did not prove that she sustained a compensable left-shoulder injury by specific incident in the form of a rotator cuff tear. The majority finds that (1) Claimant is not required to prove that the specific injury for which she seeks treatment (torn rotator cuff) is compensable because Respondents accepted compensability of a shoulder strain; and (2) that the surgery to repair the torn rotator cuff is reasonable and necessary in connection with a compensable injury. I respectfully dissent from the majority on these points.

Respondent stipulated that Claimant sustained a compensable shoulder strain on January 9, 2020. The majority opinion on this reads as follows:

The respondents have tried to limit that stipulation to a shoulder strain; however, the case law is clear that the respondents are responsible for any natural consequence that flows from the compensable injury. The basic test is whether there is a causal connection between the two episodes.

Without elaboration or citation to specific facts, the majority then concludes, “Because the claimant’s rotator cuff tear is causally connected to her work accident, we cannot separate it as a separate injury that requires a determination of compensability.” Wait! What? How is Claimant’s rotator-cuff tear causally connected to her workplace accident? What evidence exists in the record that supports a finding that these two injuries (shoulder strain and torn rotator cuff) are causally connected? No one argues that the strain somehow later caused the rotator cuff to tear. Nor does the record suggest that the rotator cuff was a natural consequence of the shoulder strain.

First, I know of no statute, case law, or other precedent that prevents an employer from accepting compensability of one type of injury (*e.g.*, a strain) to a particular body part (*e.g.*, a shoulder) while reserving its right to controvert other types of injuries (*e.g.*, a torn rotator cuff) to that same body part. The cases cited by the majority to do not support such a finding either.

*Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 160, 40 S.W.3d 333, 335 (2001), addressed whether an expert opinion that included the word “probably” was insufficient to support a finding of causation. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 59, 968 S.W.2d 645, 650 (1998), addressed whether two identical injuries (blockage in the same artery) three years apart were causally related. A physician offered an opinion, which the Commission translated as saying that the two injuries, albeit seemingly identical in location and nature, were a mere coincidence. The Commission declined to embark on a journey of impermissible speculation and found that the claimant had not proven causation. The Court of Appeals affirmed. *Id.* Lastly, *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 168, 11 S.W.3d 1, 4 (2000), addressed (1) whether a claimant who lost a toe in a compensable injury was entitled only to a “hook” or a “more costly and sophisticated” prosthetic toe; (2) whether there was substantial basis to award 11 weeks of scheduled benefits for the amputated toe; and (3) whether a claimant could contract away rights to compensation.

As for whether Claimant’s workplace injury (a shoulder strain) and the surgery at issue here (rotator-cuff surgery) are causally related, I join every single physician who offered an opinion in this case and find that they are not causally related. I have studied the entire record and cannot find any evidence that supports a finding that the torn rotator cuff and the workplace incident are related – other than the two involve Claimant’s



shoulder. There is, however, evidence aplenty to indicate that the two are not causally connected. Accordingly, I dissent from the majority on this finding as well.

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CHRISTOPHER L. PALMER, Commissioner