

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H301023

WILLIE MAE BATTLES, EMPLOYEE

CLAIMANT

**ARKANSAS DEPARTMENT OF CORRECTION/
(BENTON WORK RELEASE CENTER), EMPLOYER**

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 6, 2024

A hearing was held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable William C. Frye, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Honorable Robert H. Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 6, 2024, in Little Rock, Arkansas. A prehearing telephone conference was held on this matter on November 15, 2023. A prehearing order was entered into this matter on that same day. This prehearing order set forth the stipulations offered by the parties, their contentions, and the issues to be litigated.

Stipulations

The parties submitted the following stipulations, either per the prehearing order, or at the start of the hearing. I hereby accept the following stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-insurance carrier existed on January 29, 2023, when the Claimant sustained compensable injuries to her right hand, back, right shoulder and right hip.
3. That the Claimant's average weekly wage on January 29 was \$1,093.52, yielding weekly compensation rates of \$729.00 for temporary total disability compensation, and \$547.00 for permanent partial disability benefits.
4. The Respondents have controverted this claim for additional benefits in its entirety.
5. All issues not litigated here are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing are as follows:

1. Whether the Claimant is entitled to additional medical treatment for her injuries.
2. Whether the Claimant is entitled to temporary total disability (TTD) compensation from May 2023 until a date yet to be decided.
3. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The parties' respective contentions are outlined below:

Claimant:

The Claimant fell and injured her hand, back, and shoulder. She was treated by Dr. Thomas who referred the Claimant to Dr. Bowen who took her off work. Dr. Thomas then referred her to Dr. Kevin Collins who does not take workers' compensation patients and the Claimant is going back to her authorized treating medical doctor, Dr. Thomas, and will see him on October 25, 2023,

for her low back and referral for her torn rotator cuff. The Claimant was terminated on August 13, 2023, due to her restrictions and inability to do the essential functions of the job.

Respondents:

The Claimant alleges she injured her right hand, her right shoulder and right hip as a result of tripping and falling on or about January 29, 2023. The Claimant received medical treatment for her hand by Jenna Pardoe, PA-C, at OrthoArkansas. The Claimant was seen for her hip and shoulder injuries by Dr. Victor Vargas at OrthoArkansas. The Claimant was found to be at MMI for her hip and shoulder injuries by Dr. Vargas on April 3, 2023. The Claimant was found to be at MMI for her hand injury on April 10, 2023, by Ms. Pardoe. The Claimant was released to return to full duty work.

The Claimant received all appropriate medical treatment for her reported injuries. She was paid TTD benefits beyond her MMI date(s), and the Respondents are entitled to a credit in the amount of \$1,353.82. The Claimant has reached maximum medical improvement for her injuries and has received all appropriate benefits to which she might be entitled.

If it is determined that the Claimant is entitled to any benefits, the Respondents hereby request an offset for any benefits paid by the Claimant's group health carrier, any short-term disability benefits received by the Claimant, any long-term disability benefits received by the Claimant, and any unemployment benefits received by the Claimant. Respondents contend that it would be entitled to credit pursuant to A.C.A. §11-9-411 against any additional indemnity benefits that may be awarded to the Claimant.

The Respondents reserve the right to offer additional contentions, or to modify those stated herein, pending the completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant proved by a preponderance of credible evidence that all the authorized medical treatment of record by Dr. Bowen and Rhodes was reasonably necessary for her compensable injuries of January 29, 2023. I also find that the recommended surgery by Dr. Rhodes for her right arm/hand injury is reasonably necessary in connection with the injury received by the Claimant in January 2023.
4. The Claimant proved her entitled to temporary total disability compensation from May 2023 until a date yet to be decided, such as until the pronouncement of maximum medical improvement by Dr. Rhodes following her surgery.
5. The Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded in this opinion.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

Ms. Willie Mae Battles (referred to herein as the "Claimant"), was the only witness to testify on her behalf during the hearing.

Ms. Nichole L. Metott was the sole witness to testify on behalf of the Respondents.

The record consists of the February 6, 2024 hearing transcript and the following exhibits: Specifically, Commission’s Exhibit 1 comprises the Commission’s Prehearing Order filed on November 15, 2023, along with the parties’ responsive filings; Claimant’s Medical Exhibit consisting of fifty-five (55) pages was marked as Claimant’s Exhibit 1; Respondents’ Documentary Exhibit consisting of twenty-three (23) pages was marked as Respondents’ Exhibit 1; Respondents’ Medical Exhibit includes thirty-two(32) pages and it has been marked as Respondents’ Exhibit 2; and the Oral Deposition of Willie Mae Battles taken on November 7, 2023 has been marked as Respondents’ Exhibit 3. It has been blue-backed and made a part of the record.

Procedural Background

Willie Mae Battles/the Claimant

At the time of the hearing, Ms. Battles was 63 years old. She has a 12th grade education. Her deposition testimony shows that she previously worked at a nursing home, Holiday Inn, Kentucky Fried Chicken and then she went to work for Alexander Human Development Center. The Claimant worked there from 1985 until 2001, and then she quit working for a while. Ms. Battles returned to work for the Arkansas Department of Correction/ADC in 2006 as a correctional officer at the Wrightsville Unit. The Claimant specifically testified that from 2006 until 2015, she worked as a medical security officer at the ADC hospital. She left there in 2015. Ms. Battles returned to work for ADC in July 2021, and began working at the Benton Work Release Center. According to Ms. Battles, she worked for the State of Arkansas for a total of approximately 35 years.

Regarding her employment duties at the Benton Work Release Center, as a correctional officer, Ms. Battles explained:

A I did confiscation, looking for contraband, and I used to monitor them and go and check on ‘em every -- every hour. I was having to have to climb stairs every hour. Just going to the gun range – well, we did that once a yar, and just pretty much, you know, everything that correction officers do and checking the contraband mostly.

Q Are you required to be 100% for that job?

A I am required to be 100%.

Ms. Battles confirmed that on August 15, 2023, they ended her employment with ADC, as a correctional officer at the Benton Work Release Center. The reason given for her termination amounted to her inability to perform the essential employment duties for her job as a correctional officer. The Claimant specifically testified that she did not get proper medical documentation saying that she was able to return to work.

Regarding her work-related injury, the Claimant confirmed that the date of her accidental injury was January 29, 2023. Ms. Battles gave the following description of how her injury happened: “I had clocked in, and I was heading to my post, and I end up tripping over some uneven sidewalk and fell on my hand, which I end up rolling over to my right side.”

Ms. Battles testified that she injured her hands, but the primary injury was to the top of her right hand. She also injured her shoulder, hip and back. The Claimant testified that she has tingling and numbness in her hand and arm. Ms. Battles also testified that she is unable to raise her arm to her ear due to her shoulder. Per Ms. Battles, she has been told she will have to undergo rotator cuff repair surgery. According to the Claimant, her pain is located around the ball area of her shoulder. Her hip hurts on the right side. Per the Claimant, although she can walk, it takes her much longer to do everything. Ms. Battles confirmed that she occasionally uses a cane to walk. The Claimant testified that if she takes a lot of medicine, she can walk but just slowly.

As of the date of the hearing, the Claimant stated that she must take Ibuprofen every day to be able to “just do.” She confirmed that she sought medical treatment for her hand from Jenna Pardoe, who is an APN. Pardoe ordered physical therapy, but she ended up stopping the Claimant’s medical treatment. Ms. Battles testified that she has problems with her day-to-day activities due to her shoulder, arm, back, and hip injuries. She testified that she is unable to do any cooking. Per the Claimant, her granddaughter must help her with that task. Ms. Battles confirmed that she told Pardoe she had stiffness in her hand, wrist, and elbow. However, the Claimant testified that the focus of Pardoe’s medical treatment was geared toward her hand. Pardoe also noted that the Claimant had a contusion on her hand. According to the Claimant, she was referred to Dr. Vargas for her shoulder.

Ms. Battles confirmed that she received physical therapy at the Markham Injury Center. According to the Claimant, Public Employee Claims paid for some of her therapy. The other part of the bill is still outstanding. She was released by Dr. Vargas after the physical therapy sessions ended. The Claimant confirmed that Dr. Vargas recommended that she use a cane due to her hip issues.

Regarding Ms. Battles’ job duties, her attorney asked if she could do her job at the Department of Correction, given her use of a cane, she replied, “Absolutely not.” Specifically, the Claimant testified:

Q Tell Judge Black why you cannot do your job with a cane.

A I had 39 steps to climb every hour and there’s no way. And the inmates seeing’ me with a cane, it would’ve been difficult for - - you know, they can try to, you know, jump on me or anything with a cane.

Q So you couldn’t do the essential functions of the job. Is that a fair statement?

A That's fair.

Ms. Battles confirmed that she was taken off work on April 12 by Dr. Moore. Per a work note, the Claimant was taken off work due to right shoulder pain and a contusion. Ms. Battles confirmed that Dr. Moore had sent her to Dr. Bowen for further evaluation.

Under further questioning, the Claimant confirmed that she underwent evaluation by Dr. Bowen on April 25, 2023. He did x-rays of the Claimant's back, shoulder, arm, and hip. The Claimant confirmed that Dr. Bowen reported that she has an antalgic gait. Dr. Bowen ordered an MRI of her right shoulder. On April 25, 2023, Dr. Bowen gave Ms. Battles a letter saying she could return to work on July 3, 2023. Her restrictions included sedentary work of no lifting of the right upper extremity. However, the Claimant denied that she would be able to work for the Department of Correction with these light-duty restrictions. The Claimant admitted that Dr. Bowen is an orthopedic surgeon. She confirmed that Dr. Bowen showed that she had a torn rotator cuff in her right shoulder. Although Dr. Bowen referred the Claimant to Dr. Collins, she testified that they told her she was not a candidate. However, Ms. Battles did not explain this statement. She confirmed that on May 16, 2023, Dr. Bowen told her to remain off work until her appointment with Dr. Collins. The Claimant confirmed that Dr. Bowen ordered long-term physical therapy.

Dr. Vargas saw the Claimant on May 22, 2023. At that time, Dr. Vargas instructed the Claimant to refrain from walking for an extended period. He also told that the Claimant could not climb up and down ladders. Dr. Vargas also opined that the Claimant did not have the ability to respond to an emergency or carry an inmate. She confirmed that on May 25, 2023, Dr. Vargas said that she could not do all the above things, but changed everything to say she could do those things the next day after her job called them. The Claimant confirmed that there was no new physical examination, and her pain had not changed. Nor had the Claimant's overall condition

changed. She agreed that Dr. Vargas's recommendation was contrary to what Dr. Bowen had recommended.

The Claimant saw Dr. Brad Thomas on June 7, 2023, per a change of physician order. He referred the Claimant to Dr. Bowen for her back. The Claimant saw Dr. Bowen on June 22, 2023. At that time, Dr. Bowen noted that he had referred the Claimant to Dr. Collins for her back, but this did not go through because he does not take workers' compensation patients. Dr. Bowen also said in his report that the Claimant had made some progress with her shoulder while taking part in physical therapy. Dr. Bowen opined on June 22 that the Claimant could not do any of the functions of her job.

On November 2, 2023, the Claimant returned to Dr. Bowen, and he discussed the possibility of her undergoing an injection in her shoulder. The Claimant confirmed that she had one injection in her shoulder. Dr. Bowen wanted to switch her physical therapy to see if it could help her shoulder, back and hip. The Claimant was under active medical treatment with Dr. Bowen from May until November. Her medical treatment included physical therapy, diagnostic studies, and he referred her to Dr. Rhodes, who is in the same clinic. Dr. Bowen reported that the Claimant continued to have weakness in her right upper extremity, which had gotten worse over the last two months. The Claimant testified that she has a frozen shoulder, and as a result, Dr. Bowen referred her for surgery on her hand. Ms. Battles denied having undergone this treatment. Dr. Bowen specifically mentions in his progress report that the Claimant has "a right ulnar nerve decompression at the wrist, but it is in fact it is really in her elbow."

The Claimant confirmed that she started physical therapy again and it helped a little bit. Regarding her current symptoms, the Claimant was asked about her right arm, which is below the shoulder on the right side. Specifically, Ms. Battles testified that she has numbness, tingling and

burning in her fingers. The Claimant testified that her shoulder pain is a throbbing-excruciating pain, and she has difficulties raising her hand up. Per Ms. Battles, she has throbbing hip pain and can hardly move unless she takes a lot of medicine. The Claimant admitted that previously, she retired from work for six months but did not like just sitting around so she went back to work. The Claimant can drive. She confirmed that she wants the surgery and to get better. She is contemplating surgery on her shoulder but has been told to go back in a year. The Claimant testified that she has been told she will need hip replacement surgery in the future, but no one has said exactly when.

She denied that prior to falling on January 29, 2023, she had not seen a doctor for her right hip. The Claimant denied that she ever had problems with her right shoulder before her fall at work. She denied previously seeing a doctor for her right shoulder, elbow, or hand. The Claimant admitted that some years ago, she injured her left hand. Prior to January 29, 2023, the Claimant confirmed that she was able to do all the essential functions of her job at the Department of Correction.

On cross-examination Ms. Battles confirmed having had her deposition taken on November 7, 2023. She confirmed that her family physician is Dr. Thomas Moore. The Claimant admitted that her normal shift hours in January 2023 were from 6:00 a.m. until 6:00 p.m. She confirmed that her fall occurred at the beginning of her shift on January 29, 2023. The Claimant admitted that after her fall, she still pushed on and finished working her shift that day. However, the Claimant did report her injury to Sergeant Best.

The Claimant confirmed that she sought initial medical treatment on her own from Dr. Moore after her fall because he is her primary care physician. She testified that Sergeant Best called the 1-800 number to report her fall/claim. The Claimant admitted that she was present when

the call was made. She further admitted that she talked about her incident and the fact that she injured her right hand and took pictures. The report also talks about some bruising and numbness to the right hand. Management suggested the Claimant to go to MedExpress and then she was sent over to OrthoArkansas for her hand. She admitted that she saw Ms. Pardoe, who works with Dr. Jeanine Andersson. The Claimant denied that she ever saw Dr. Jeanine Andersson. She admitted to seeing Dr. Vargas for her shoulder.

During her deposition, the Claimant admitted she testified that she had an unpleasant experience with Ms. Pardoe because she kept bending/hurting her hand to get her to make a fist. The Claimant admitted that she had an x-ray done on her hand, and it did not show any kind of fracture. Instead, Ms. Pardoe assessed the Claimant with a hand contusion, and released the Claimant back to work at full duty. She agreed that Dr. Vargas released her from his care and back to full duty on May 23, 2023, with no restrictions. The Claimant admitted that she obtained the cane on her own. She confirmed that on May 25, 2023, Dr. Vargas did another statement saying that she could perform her job duties.

She admitted that she has received physical therapy since May of 2023 for her right hand and shoulder. As of the date of the hearing, she continued to receive physical therapy for her back as well. The Claimant testified that she goes to physical therapy twice a week. She admitted that no surgery is scheduled for her back, but it is a possibility in the future. The Claimant admitted that she has not tried to get her job back, nor has she looked for other work. Ms. Battles confirmed that Dr. Rhodes recommended surgery for her right wrist or elbow, following an EMG study.

On redirect examination, the Claimant admitted that she had hand surgery scheduled for December 27, 2023, with Dr. Rhodes. However, Ms. Battles talked to her family and her daughter

is a nurse, and she suggested the Claimant wait. She agreed that that she is expecting to go back and have the elbow and wrist surgery rescheduled, and have it done.

Nichole L. Metott

Ms. Metott testified on behalf of the Respondents. She has been the workers' compensation and FMLA coordinator at the Department of Correction for ten years. Ms. Metott confirmed that she has worked with the Claimant since January 2023. She was not aware of anyone calling the 1-800 number, except the Claimant. She confirmed that the company nurse's report of injury talked about the incident and/or the body part that was injured, and it lists the right hand. Ms. Metott confirmed that the Claimant began seeing various doctors. She admitted that she heard the Claimant's testimony about Ms. Pardoe and Dr. Vargas.

Specifically, Ms. Metott confirmed that she receives medical records from the doctors as they are treating workers' compensation patients. She admitted that she received medical records from Dr. Vargas and Ms. Pardoe. Per a return-to-work notice dated May 25, 2023, Dr. Vargas approved for Ms. Battles to return to work. According to Ms. Metott, upon receipt of this document, she must obtain from the treating doctor a form of the Essential Job Functions, which states there are no restrictions placed on the employee upon their return to work. She agreed that the Essential Job Function Questionnaire Forms are given to the employee to give to the doctor. Ms. Metott denied having received the form from Dr. Vargas dated May 22, 2023, which listed the Claimant's physical restrictions. However, Ms. Metott did recall having received the form dated May 25, 2023, wherein Dr. Vargas said that the Claimant could return to work with no restrictions. Ms. Metott testified that the Claimant's workers' compensation claims adjuster returned the form to her.

According to Ms. Metott, she contacted their HR department, Cheryl Carroll, who was the unit manager at the time that the Claimant had been medically cleared. According to Ms. Metott, there were some discussions with Ms. Carroll and the Claimant to which she was not privy. However, Ms. Metott testified that it was disclosed to her that the Claimant did not feel comfortable returning to work, so they tried working out FMLA to protect her job. She confirmed that they do have a light duty program to bring employees back to work at less than full duty. Ms. Metott confirmed that it was finally decided that the Claimant's employment was going to be ended.

She testified that they tried to work on ADA accommodations for Ms. Battles. However, Ms. Metott further testified that when she requested more documentation for the accommodations, they received the same restrictions from earlier. They also needed a note of an estimated time of when the Claimant could return to work. Per Ms. Metott, the Claimant was given a deadline for turning in this paperwork, but she did not meet the deadline. Ultimately, Ms. Metott explained that the department had to end the Claimant's employment. She confirmed that the Claimant did in fact file a grievance to get her job back. According to Ms. Metott, the Claimant withdrew her grievance prior to the date of her hearing because she had been approved for Social Security Disability benefits. Ms. Metott confirmed that prior to January 2023 she had not had any dealings with the Claimant.

On cross-examination Ms. Metott testified that she was not aware of the Claimant's change of physician to treat with Dr. Thomas. Nor was she aware of the fact that Dr. Thomas had sent the Claimant to an orthopedic surgeon. However, Ms. Metott was aware that a nurse from rehabilitation went with Ms. Battles to her appointments. She verified that she is not asserting that the Claimant in any way "doctored" the medical note on page 33 of Claimant's Exhibit 1.

Ms. Metott confirmed that the Claimant would not be able to do her job as a correctional security officer. She confirmed that she is aware that on May 25, 2023, Dr. Bowen Hefley, an orthopedic surgeon, has the Claimant down for being able to perform sedentary work. Ms. Metott confirmed that with those restrictions, the Claimant would not be able to perform her job duties. She admitted that they did not offer the Claimant any light duty work based on the off-work-slip. Ms. Metott further admitted that Dr. Bowen placed these restrictions on the Claimant again on June 22, 2023. She admitted that they had not received anything from Dr. Bowen saying that Ms. Battles could return to work. Ms. Metott agreed that if we accept Dr. Bowen's report, the Claimant is off work.

Medical Records

On February 27, 2023, Ms. Battles underwent a 3-phase bone scan on her right hand. The Claimant complained of numbness and swelling of the right since her injury. Dr. Ben J. Bartnicke rendered the following impression: "1. No abnormal blood flow, *blood pool activity and delayed uptake right or wrist* (symptomatic side). 2. Mild arthritic changes left hand wrist as discussed above."

On March 22, 2023, the Claimant underwent evaluation for physical therapy treatment by Tracy Wilson, OTR, due to a right-hand median nerve contusion. The Claimant presented to the clinic for weakness, abnormal sensation, loss of dexterity, stiffness, and pain. Ms. Battles complained of numbness, pain, decreased fine motor coordination, decreased strength, and loss of dexterity. The Claimant was treated due to "1. Contusion of right hand. 2. Pain right hand. Skin sensation disturbance. 4. Stiffness of the joint of right hand. 5. Stiffness of right wrist. 6. Stiffness of joint of right elbow. 7. Stiffness of right shoulder."

On April 12, 2023, Dr. Thomas Moore authored a Return to Work Note. He indicated that the Claimant's injury or illness was due to right shoulder pain/contusion. Dr. Moore directed the Claimant to remain off work until she was cleared by the ortho clinic that she was being referred for further evaluation.

Ms. Battles underwent evaluation on April 23, 2023, by Dr. W. Scott Bowen. At that time, the Claimant presented to Dr. Bowen for the low back pain and related symptoms. Dr. Bowen ordered MRIs of the Claimant's lumbar spine and right shoulder. He returned the Claimant to sedentary work with no use of her right arm based on her current issues.

On April 25, 2023, Dr. Bowen authored a letter: "To Whom It May Concern: Please be advised that Willie M. Battles is/has been under my orthopedic care. She was seen in the office for an appointment today. She may return to work July 3, 2023. Her restrictions included: "sedentary work only, no lifting of right upper extremity."

Dr. Bowen saw the Claimant for a follow-up visit on May 16, 2023, of her right hip and right shoulder and hand pain and weakness. He noted that the Claimant was referred by Dr. Moore and they were unaware this was workers' compensation case. He also noted that the Claimant had already been evaluated at OrthoArkansas by Dr. Vargas and she had gone through some physical therapy and had an EMG and nerve conduction study of her right shoulder and arm. However, those results were not available. Diagnostic test findings of the MRI of the Claimant's lumbar spine showed some mild canal stenosis from L3 to L4-L5 moderate bilateral foraminal stenosis at L4-L5. The right shoulder MRI shows a low-grade partial tear and tendinitis of the supraspinatus and tendinosis of the infraspinatus a small partial tear of the subscapularis and mild glenohumeral arthrosis without a significant rotator cuff tear. Per this medical note, earlier x-rays of the pelvis revealed moderate arthritis with cystic changes in the acetabulum. Dr. Bowen's impression was

“Traumatic injury from her initial fall producing right shoulder weakness and apparently a nerve injury to her hand.” His treatment plan included a referral to Dr. Collins to help manage her workers’ compensation claim and she was not in need of surgical intervention from his perspective at that time. The Claimant was given an excuse for her office visit. Dr. Bowen said that he would make a referral to a specialist and contact her with that appointment. At that time, he also said that the Claimant will remain off work until her appointment with Dr. Kevin Collins.

On May 22, 2023, Dr. Vargas returned the Claimant to full duty work with no restrictions. However, per the Essential Job Function Questionnaire provided by the Arkansas Department of Correction he checked several functions that the Claimant was restricted from engaging in several activities.

However, just two days later May 25, 2023, Dr. Vargas completed the Essential Job Function Questionnaire provided by the Arkansas Department of Correction. Dr. Vargas note checked all the boxes “Yes” saying the Claimant could perform all the essential job activities.

On June 7, 2023, Ms. Battles presented to the office of Dr. Brad Thomas with a chief complaint of a work accident. Dr. Thomas noted that the Claimant fell on an uneven concrete sidewalk and rolled over onto her right side. The Claimant reported having bruised her right hand very badly. According to this medical report, Ms. Battles originally thought she was going to be okay. A couple of days later the Claimant went to see her PCP/Dr. Thomas Moore. Dr. Thomas sent the Claimant for physical therapy on her right hip and right hand. Per this clinic note, although Ms. Battles reported she was unable to make a fist and the physical therapist documented this, the Claimant was then released from care. The Claimant reported to Dr. Thomas she was currently doing therapy at Markham Injury Clinic for her right hand and shoulder with some improvement. The Claimant was also released to work for her hand and shoulder. According to this report, Ms.

Battles has been walking with a cane since February due to mobility problems with her back. Dr. Thomas assessed the Claimant with “low back pain.” Although the Claimant had an MRI of her back done previously, Dr. Thomas was unable to view the images remotely. He planned to review the MRI and contact her later with his recommendation. Dr. Thomas stated that if he did not find an issue with her spine, he would refer her back to Dr. Bowen.

Ms. Battles presented to the clinic of Bowen Hefley Orthopedics on June 22, 2023, for a follow-up visit. During that clinic visit, the Claimant underwent reevaluation by Christian Perry, PA-C for right shoulder and back pain. The Claimant reported that she was taking part in physical therapy and had made progress with her shoulder but continued to have discomfort in her spine. Perry’s assessment was “Chronic right shoulder and back pain, for which she continued the Claimant’s formalized physical therapy.” She stated that the Claimant was not a surgical candidate and that she believed further conservative care was warranted. Per this note, Perry instructed the Claimant to stay off work until Dr. Kevin Collins evaluated her. According to this medical documentation, Perry said that they would make a referral to a specialist and contact the Claimant with that appointment.

Also on June 22, 2023, Dr. Bowen completed the Arkansas Department of Correction Essential Job Function Questionnaire for a Correctional Officer I/Corporal. He checked all the boxes for “No,” saying that the Claimant did not have the ability to perform any of the functions with or without reasonable accommodation. Dr. Bowen specifically said that the Claimant was temporarily disabled.

Dr. Moore reevaluated the Claimant in another follow-up visit for her hip and shoulder pain on July 17, 2023. He also reevaluated the Claimant on August 14, 2023.

Subsequently on November 2, 2023, Dr. Bowen saw Ms. Battles for evaluation of her right shoulder, lower back, right hip, and right-hand complaints. Dr. Bowen reported that physical examination of the Claimant's right shoulder revealed, "Right shoulder she is guarding and today and is tender globally but more so over the anterolateral acromial area with assistance, I am able to forward elevate to about 120 degrees and abduct to 90 and there is guarding and resistance beyond that. She is tender over the lateral acromial area referring to the deltoid. Mildly positive Jobe's and O'Brien sign noted." His examination of her right hip revealed "Tenderness in the anterior and lateral hip and groin area with rotation of her hip and forward flexion. Neuro intact." Dr. Bowen planned to change the Claimant's physical therapy treatment to their location, to see if she is responding to therapy. He also planned to obtain the results of the EMG nerve conduction studies and refer her to one of their hand specialists to figure out the next step for her hand and wrist. Dr. Bowen said that if the Claimant does not respond to conservative care for her shoulder, then she may be a candidate for arthroscopic surgery later. He stated that the Claimant's right hip is arthritic and predated her injury and was not caused by her fall but was possibly aggravated by the injury and she will face total hip replacement later in life. Additionally, Dr. Bowen said he would make a referral to a pain management specialist and contact the Claimant.

Dr. David Rhodes evaluated the Claimant right hand on November 30, 2023. He stated that the nerve conduction study performed on March 8, 2023, was unremarkable. However, Dr. Rhodes stated that the Claimant was diagnosed with possible early carpal and cubital tunnel syndrome. She treated conservatively with splints and continued to have numbness and tingling that is progressively getting worse. The Claimant reported that she had also noticed weakness in her right upper extremity that has gotten worse over the past two months. Dr. Rhodes' impression was "Right cubital tunnel Syndrome; and right-hand carpal tunnel syndrome," which he

recommended that the Claimant undergo “right median nerve decompression at the wrist and right ulnar nerve decompression at the elbow.”

On December 7, 2023, the Claimant returned to Dr Bowen’s office for a follow up visit. She returned after having started therapy which helped a lit bit. The injection to her shoulder did not help. Dr. Bowen’s impression was: “Right shoulder myofascial strain with mild bursitis. Right carpal tunnel syndrome, lower back spinal arthritis, and mild arthritis right hip.” As a result, Dr. Bowen stated, “I believe she needs to be under pain management.”

ADJUDICATION

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).

Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury, to reduce or alleviate symptoms resulting from the compensable injury, to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W. 2d 593 (1995).

Here, Ms. Battles, sustained admittedly compensable injuries on January 29, 2023, during and in the course of her employment with the Department of Correction, while working as a correctional officer at the Benton Work Release Center. She was injured when she tripped and fell on over some uneven concrete sidewalk, injuring her right side. The Claimant’s primary injury was to her hand. In particular, Ms. Battles sustained compensable injuries to her right hand/arm,

right shoulder, hip and back. The Claimant has received conservative treatment for her compensable injuries. Most of the Claimant's initial medical care was done at OrthoArkansas by Dr. Vargas and Jenna Pardoe, PA-C. The Respondents paid for this treatment. Dr. Vargas provided the Claimant with treatment for her hip and shoulder injuries. On April 3, 2023, Dr. Vargas found the Claimant to be at maximum medical improvement/MMI for her hip and shoulder injuries. Pardoe primarily treated the Claimant's hand and found her to be at MMI for that injury on April 10, 2023. However, these conservative treatment modalities in the form of medications and physical therapy have provided the Claimant with only minimal relief from her pain and other related symptomatology resulting from her compensable fall of January 29, 2023.

As a result, the Claimant sought additional medical care for her injuries on her own and some of the medical treatment was not pursuant to a valid referral and was thus unauthorized. At the beginning of the hearing, the Claimant's attorney acknowledges that this occurred. Therefore, it is Claimant's position that the Respondents are not liable for the initial treatment the Claimant received from Dr. Bowen. However, the Claimant received a change of physician to treat Dr. Thomas, who in June of 2023 referred the Claimant back to Dr. Bowen after performing diagnostic studies. (TR. 9)

Therefore, at issue it is the medical treatment of record that the Claimant received from Dr. Bowen beginning in June 2023 when Dr. Thomas referred the Claimant back to Dr. Bowen as part of the authorized physician chain of referral. Also, the Claimant was referred to Dr. Rhodes for treatment of her injuries.

Despite extensive conservative medical treatment, the Claimant has continued with significant pain and other related symptoms since her fall. However, this treatment modality only intensified the Claimant's symptoms, particular her right hand and arm symptoms. The Claimant

credibly testified that prior to her accidental fall at work she was able to perform her job duties as a correctional officer without any difficulties. Her testimony proves that she had not had any prior problems with her right hand, hip, shoulder or back. Nor had the Claimant ever sought any earlier medical treatment for these bodily parts. No evidence whatsoever has been presented to conflict Ms. Battles' testimony in this regard.

The Claimant has also treated conservatively with splints, but she has continued to have numbness and tingling in her hand that is progressively getting worse. The Claimant reported that she had also noticed weakness in her right upper extremity that has gotten progressively worse. There is no evidence showing that the Claimant sustained a subsequent accident after her work-related fall in January of 2023. In November 2023 Dr. Rhodes evaluated the Claimant. His impression was "Right cubital tunnel Syndrome; and right-hand carpal tunnel syndrome," for which he recommended that the Claimant undergo "right median nerve decompression at the wrist and right ulnar nerve decompression at the elbow." Although the Claimant scheduled to undergo this surgery, she cancelled the surgery. However, Ms. Battles testified that she is now willing to undergo this surgery. Additionally, Dr. Bowen has recommended that the Claimant undergo pain management for her other injuries.

In light of the persistent nature of the Claimant's symptoms despite various conservative treatment modalities, the lack of any of these symptoms prior to her injury, and there being no independent intervening cause, I find that the Claimant has established by a preponderance of the credible evidence that her work-related incident of January 29, 2023, has resulted in her need for additional medical treatment provided and recommended by Dr. Rhodes to include the above surgical intervention, as well as the recommendation for pain management as indicated by Dr. Bowen.

In other words, I this find that all the medical treatment of record made on valid referral per the recommendation of Dr. Thomas beginning in June of 2023 is reasonable and necessary treatment in connection with the Claimant's compensable fall January 2023. Hence, I further find that this additional medical treatment of record and that which has been recommended by Dr. Bowen is reasonably necessary to reduce and/or alleviate the Claimant's compensable hip, back and shoulder injuries, and their resulting symptoms.

I realize that Dr. Vargas and Ms. Pardoe have assessed the Claimant to be at MMI for her work injuries, however, minimal weight has been assigned to these assessments based on all of the above cited evidence to contrary.

B. Temporary Total Disability Compensation

In the present matter, the Claimant has asserted her entitlement to temporary total disability compensation from May 2023 to a date yet to be decided. The Claimant sustained both unscheduled and scheduled injuries. However, the Claimant's most significant injury has been to her right hand/arm, which is a scheduled injury. Therefore, for the purpose of temporary total disability compensation, the Claimant's right-hand injury will be addressed in this regard since the Claimant is allowed to recover for only one period of temporary total disability. The Claimant's hand injury is a scheduled injury.

An employee who has suffered a scheduled injury is entitled to compensation for temporary total disability during her healing period or until the employee returns to work, whichever occurs first. Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more

stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Id. Whether an employee's healing period has ended is a factual determination to be made by the Commission. Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

Here, the Claimant sustained a compensable injury to her right hand/arm,” on January 29, 2023. Since this time, the Claimant has continued in significant pain, tingling and numbness of her right hand. After the Claimant failed conservative treatment to her right hand, Dr. Rhodes recommended surgery, which she is now willing to undergo. Because of her right-hand injury, the Claimant has not returned to work as a correctional officer at least since May of 2023.

Hence, the Claimant’s testimony and the documentary medical reports support a finding that the Claimant’s healing period for her hand injury has not ended since the date of her injury. Under these circumstances, I find that the Claimant has remained in her healing period since January 29, 2023, and continuing.

Therefore, based on the record, I further find that the Claimant proved by a preponderance of the evidence her entitlement to temporary total disability from May of 2023, and continuing until the pronouncement of maximum medical improvement by Dr. Rhodes following her surgery.

C. Attorney’s Fee

The Respondents have stipulated that they controverted this claim for additional benefits in its entirety. Therefore, the Claimant’s attorney is entitled to a controverted attorney’s fee on all indemnity benefits awarded to the Claimant, pursuant to Ark. Code Ann. § 11-9-715.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Per Ark. Code Ann. §11-9-715, the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE