

**NOT DESIGNATED FOR PUBLICATION**

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 SEPTEMBER 30, 2024

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

Claimant represented by the HONORABLE WILLIAM C. FRYE, Attorney, North Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondent appeals an opinion and order of the Administrative Law Judge filed May 6, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

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

**BATTLES – H301023**

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 entitlement 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 Commission Act.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's May 6, 2024 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

**BATTLES – H301023**

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, Claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715 (Repl. 2012). For prevailing on appeal to the Full Commission, the Claimant's attorney 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.

---

SCOTTY DALE DOUTHIT, Chairman

---

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion. In my *de novo* review of the record, I find that the Claimant has failed to prove by a preponderance of the credible evidence that she is entitled to additional medical treatment recommended by Dr. Rhodes and Dr. Bowen, and the

**BATTLES – H301023**

claimant has failed to prove that she is entitled to additional temporary total disability benefits.

The claimant was employed with the respondent employer when she tripped and fell, injuring her right hand, right shoulder, back, and right hip on January 29, 2023. The claimant received treatment for her hand from Jenna Pardoe, PA-C at OrthoArkansas and was treated by Dr. Victor Vargas, also of OrthoArkansas, for her hip and shoulder injuries. The claimant was released at maximum medical improvement (MMI) and full duty employment with no restrictions by Ms. Pardoe on April 10, 2023, and Dr. Vargas on May 22, 2023.

At the February 6, 2024 hearing on this matter, the claimant sought additional medical treatment recommended by Dr. David Rhodes and Dr. Scott Bowen, as well as additional temporary total benefits from May 2023 to a date to be determined. The administrative law judge agreed, granting the claimant the proposed medical treatment and additional TTD benefits.

Ark. Code Ann. § 11-9-508(a) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence that the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

**BATTLES – H301023**

What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

It is within the Commission's province to weigh all the medical evidence to determine what is most credible and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021).

In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept or reject medical opinions. *Williams v. Ark Dept. of Community Corrections*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.* In the present matter, the weight of the objective evidence proves the claimant is not entitled to additional medical treatment.

**BATTLES – H301023**

The claimant first reported an injury to her right hand after a fall on January 29, 2023. During the course of her treatment, the claimant underwent an X-ray with three views of her right hand and a nerve conduction study, both of which were interpreted as normal. A triple phase bone scan of the claimant's right wrist was also normal.

An X-ray and MRI of the claimant's right shoulder revealed only degenerative findings. An X-ray of the claimant's right hip and pelvis also revealed only degenerative findings.

According to the claimant's original treating orthopedic specialist, Dr. Victor Vargas, the electromyography studies of the claimant's upper extremities were normal. In addition, the findings in the claimant's right shoulder were degenerative as were the findings of the studies of the claimant's right hip and pelvis. This X-ray of the claimant's lower back only revealed degenerative osteoarthritis.

Dr. David Rhodes suggested surgery on the claimant's right upper extremity with no objective medical evidence to support the surgery. Dr. Rhodes acknowledged the nerve conduction study was unremarkable or normal. His physical examination revealed the claimant's right hand and elbow were basically normal with no objective medical findings. The X-rays he ordered of the claimant's right hand and elbow were both normal. Dr. Rhodes opined there was no fracture dislocation or bony involvement of the right elbow and no fracture dislocation or bony impingement seen.

**BATTLES – H301023**

There are no objective tests or findings whatsoever in the record to support his findings of right cubital syndrome or carpal tunnel syndrome. Subjective complaints and findings cannot be substitutes for objective medical findings. In any event, the claimant has refused and declined the surgery.

Likewise, Dr. Scott Bowen has supplied no objective medical evidence to support his suggestions for additional medical treatment. His physical examination did not reveal any objective medical findings.

According to Dr. Bowen, the studies of the claimant's right hip revealed only mild arthritis which he determined to be pre-existing osteoarthritis which is degenerative. Dr. Bowen opined that the findings in the claimant's right shoulder were not specified as traumatic, which means these findings are not related to the accident in question. All the findings of Dr. Bowen were degenerative and pre-existed the accident in question, and the respondents are not responsible for treatment of these unrelated medical issues.

While the claimant complained of ongoing pain throughout her treatment, no diagnostic studies revealed any objective source of the claimant's pain, numbness, and tingling.

After the claimant's physical therapist reported that the claimant was not making any progress, Physician Assistant Jenna Pardoe conducted a mini-validity test, which the claimant "essentially failed [as] she was unable

**BATTLES – H301023**

to participate in all the maneuvers.” Ms. Pardoe opined that as of April 10, 2023:

There have been many observed inconsistencies with the patient’s performance in therapy along with ultimately not participating. The patient is very capable and aware however she is regularly observed to maintain full/extreme extension of the digits/thumb/wrist when being observed and manually stretched. They have attempted passive range of motion, however she forces her digits into extension against their pressure avoiding any motion. She continues to have daily pain described as an 8 out of 10 on the pain scale and does not get any relief from her prescribed medications. When focused on another area of the hand or arm, she has been observed to rest the fingers or thumb and even move them, however once attention is paid to these areas they become very rigid in extension and immovable. She provides minimal efforts and only furlough (sic) certain directions.

At her current level, we cannot make any improvements for her condition . . . . At this time, there is no other treatment I would recommend.

She will be placed at maximal (sic) medical improvement and may return to work at full duty with her right hand.

The claimant was later returned to full duty regarding her shoulder and other complaints by Dr. Vargas on May 22, 2023.

There is simply no objective evidence that the claimant is entitled to additional medical treatment, including the surgery recommended by Dr. Rhodes, or pain management as recommended by Dr. Bowen.

All the objective medical testing has been normal with no objective medical findings. The only findings have been degenerative, pre-existing



**BATTLES – H301023**

conditions, or subjective complaints of pain. The claimant's condition has plateaued, and there is no indication in her records that this further treatment is reasonable and necessary.

The claimant has been released at MMI by her two initial treating practitioners and has shown extensive evidence of symptom exaggeration. Further, neither Dr. Rhodes nor Dr. Bowen has related the additional medical treatment to the claimant's work-related injuries. Thus, the claimant has failed to meet her burden of proof on this issue.

Our Rules require that to prevail on a request for additional temporary total disability benefits, the claimant must prove by a preponderance of the evidence that he is totally incapacitated from earning wages and remains in his healing period. *Hickman v. Kellogg, Brown Root*, 372 Ark. 501, 277 S.W.3d 591 (2008).

The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. The determination of when the healing period has ended is a factual determination for the Commission.

As discussed above, the claimant is indisputably no longer in her healing period. She has been released at MMI at full duty by her initial

**BATTLES – H301023**

treating practitioners for all relevant complaints and is no longer entitled to benefits for those subjective complaints.

Upon being released to return to work, the claimant elected to apply for FMLA and then ultimately retire rather than return to work. The claimant's own testimony reflects that she elected not to return to work and has not looked for work since her employment with the respondent employer ended. The claimant is currently drawing social security disability benefits and state retirement benefits. She should not be rewarded with additional income for her personal decision to retire.

Not only has the claimant magnified her symptoms as reported in the records of OrthoArkansas, but she refused the additional treatment suggested by Dr. Rhodes. It defies logic to award continued temporary disability benefits when the claimant has refused and declined the treatment suggested by her treating physician. Therefore, the claimant is not entitled to additional temporary total disability benefits from May 2023 to a date to be determined.

Accordingly, for the reasons set forth above, I must dissent.

---

MICHAEL R. MAYTON, Commissioner