

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H303571**

**MARY M. GINTHER, EMPLOYEE**

**CLAIMANT**

**VS.**

**EMERSON ELECTRIC COMPANY, EMPLOYER**

**RESPONDENT**

**OLD REPUBLICAN INSURANCE CO./  
MITCHELL, WILLIAMS, SELIG, GATES AND  
WOODYARD, P.L.L.C.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 1, 2024**

Hearing before Administrative Law Judge, James D. Kennedy, on the 26<sup>TH</sup> day of June, 2024, in Batesville, Arkansas.

Claimant is represented by Scott Hunter, Jr., Attorney at Law, Jonesboro, Arkansas.

Respondent is represented by Richard N. Dodson, Attorney at Law, Jonesboro, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 26<sup>th</sup> day of June 2024, to determine the issues of compensability of a claimed work-related right arm injury, medical in regard to the injury, temporary total disability from February 15, 2023, to a date to be determined plus attorney fees. All other issues were reserved. The respondents contended that the claim was not compensable. At the time of the hearing the parties stipulated that the claimant earned an average weekly wage of \$1,058.75, sufficient for a TTD rate of \$705.00 per week. A copy of the Pre-hearing 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 has jurisdiction of the within claim and that an

employer/employee relationship existed on or about February 15, 2023, the date of the claimed injury in question.

The claimant's and respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. 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 Ark. Code Ann. 11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on February 15, 2023, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$1,058.75.00 a week, sufficient for a TTD rate of \$705.00 per week.
3. The claimant has satisfied the required burden of proof to show that she sustained a compensable, work-related injury to her right arm on February 15, 2023.
4. The claimant is found to be entitled to reasonable and necessary medical for the treatment of the work-related right injury to her right arm.
5. The claimant has satisfied the required burden of proof to show that she is entitled to TTD for a period of three weeks, one day.
6. That all other issues are reserved.
7. The claimant is entitled to attorney fees pursuant to A.C.A. 11-9-715. This award shall bear interest at the legal rate pursuant to A.C.A. 11-9-809.
8. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

## **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties and the claimant's amended response to the Pre-hearing questionnaire were admitted into the record without objection. The claimant submitted one exhibit that was admitted into the record without objection and the respondents submitted seven exhibits that were admitted into the record without objection.

The claimant, Mary M. Ginther, testified that she was born on January 31, 1990, was 34 years old at the time of the hearing, and started working for the respondent in October of 2022, where she continues to work as a Paint technician. The job consists of training the painters, maintaining the Paint Line, and helping where needed, which can include filling out orders. In regard to the claimed job injury on February 15, 2023, the claimant testified she was working on the Paint Line where they were performing the 1000 Jack Stand Challenge, meaning 1000 jack stands were to be welded, painted, packed, and shipped out during the month. (Tr. 8, 9) "I was loading and unloading jack stands from the line, and then I heard a loud popping in my right shoulder, and I had an instant pain in my right shoulder down my right arm, my forearm." This occurred during the morning. Paige Jones, a painter on the Paint Line, was working with me at the time. The claimant stated she let Annie Stigall, the Operations Manager, who happened to walk up at that time, know what happened, and was instructed to go fill out an incident report. She then went to the Safety Coordinator to fill out the report and asked Paige Jones, who was working on the line with the claimant, to review it and sign it. The report was then returned to the Safety Coordinator, and the claimant then returned to work. (Tr. 10, 11) In regard to her injury, claimant stated she "took it easy the rest of the day. I wasn't lifting

any parts anymore. I believe I wrapped my arm up that same day. I mean, I was in pain.” She went on to state that although her job title did not change, her job duties did. She continued working for maybe three months, and during that time, her pain progressively got worse. She later told the Safety Coordinator that she needed medical attention and was sent to the available doctor for a workers’ compensation evaluation. The doctor was Doctor Terry Barns, who coincidentally was her primary care physician. She contended at the time of her testimony that she went to Doctor Barns through workers’ comp. Dr. Barns referred her to Doctor Dylan Carpenter, the doctor who performed surgery on her right bicep. She then received physical therapy for a minimum of three weeks. She stated she had lost strength and rotation in her arm, and if she used the wrist and forearm repeatedly, her forearm became sore. (Tr. 12 - 15) She missed three weeks of work due to the surgery. (Tr. 16)

Under cross examination, the claimant admitted that every employee of the respondent was required by their job description to be able to lift 50 pounds. She also admitted that she stated in her deposition that the person working next to her heard her arm pop. She also admitted the manufacturing area was one very large room, with dividers for the welding booths and paint booths, with forklifts running up and down beeping and honking at intersections. Additionally in manual machining, which was located behind her work area, they were blasting parts with glass beads, similar in method to sand blasting, along with running grinders, and there were approximately 130 people working during her shift. (Tr. 17 - 20) Hearing protection was provided for the employees, but not required. (Tr. 21)

The claimant was also questioned about the incident report that she filled out where she stated her shoulder popped but didn't state her elbow popped. She testified that she had "pain in my forearm and bicep" and she did not go to the doctor that day, after being asked if she needed to. (Tr. 22) She admitted she finished her shift and worked every shift day for the next three months, not making a request for the respondent to modify her job. (Tr. 23) She also admitted that she later scratched her hand on a blasting box and reported it to the respondent, but in her deposition when asked if she suffered any other injuries or falls in the three months following the accident and May 23<sup>rd</sup>, testified "Not that I recall." (Tr. 24, 25)

The claimant was also questioned about Dr. Burn's report which provided that her chief complaint was right shoulder pain. The report provided the claimant denied any specific injury. (Tr. 27, 28) She testified that Dr. Burns referred her to Dr. Carpenter as her personal primary physician. She also admitted not telling Natalie Wilson with Helmsmen that she was seeing her personal doctor, but then added that Natalie Wilson "was aware that I was supposed to see Doctor Carpenter and denied my claim, which is when I believe I went to see him myself." She went on to say that the referral to Dr. Carpenter was from Dr. Burns, as her worker's compensation doctor. In regard to Dr. Burns, she went on to respond, "I don't understand how I would know the difference if he's both my primary and because Emerson couldn't provide me their workers' comp doctor. Who is to say whether at that time he was my acting primary or workers' comp doctor." (Tr. 29 - 31)

She was also questioned about the report from Dr. Carpenter dated June 20, 2023, which provided that the referring physician was Dr. Burns, and which stated that her

current problem was of a “sudden” onset. (Tr. 32) She admitted that she told Dr. Burns that there was no specific incident, but after filing her Form C, she told Dr. Carpenter it was sudden. She admitted stating that the severity of her pain was mild to severe with use for four to six months, and also that six months predated her claim but affirmatively stated that four months would not. She also admitted she was off work for three weeks and a day, after the surgery on June 30, returning to work on July 24. (Tr. 33, 34)

On redirect, the claimant was questioned about Dr. Burn’s medical record of February 15, 2023, Respondent’s Exhibit 2, a document which provided she had been complaining of right shoulder pain and further down in the report, referred to Musculoskeletal and Extremities. The claimant read “Able to abduct right arm, normal internal rotation, painful at biceps tendon insertion and distal bicep.” (Tr. 39)

The claimant’s second witness who testified was Paige Jones, a coworker, who started working for the respondent during November, of 22 and was working there on February, of 23. She currently works as an Assembler, but on February 15, 2023, she worked on the Paint Line, working directly with the claimant, hanging jack stands, working probably two and a half feet from the claimant. She admitted hearing a pop with the claimant’s arm going limp and asking the claimant what happened. She stated that the claimant “wasn’t sure as to what had happened at that current moment. She just knew that her arm got hurt.” She denied socializing or interacting with the claimant outside of work. (Tr. 41, 42)

Under cross examination, Ms. Jones admitted she considered the claimant a coworker and friend but denied going to lunch with her during work hours. She went on to testify that the claimant stopped hanging jack stands and went to paperwork and then

returned and worked for the next three months on light duty. (Tr. 43 - 45). At this point the claimant rested.

The respondents called Alicia Justice, employed by the respondent as the HR Business Partner. She testified she deals with employee benefits, payroll, time keeping, workers' comp claims, and a change in job status. She admitted not being employed by the respondents on February 15, 2023, but had seen the claimant's incident report of February 15, 2023, and there was no record of the claimant going to the doctor on that date, or record of a request by the claimant stating she was unable to pick up 50 pounds. (Tr. 47 – 49) She was also aware that the claimant presented to Dr. Burns and that the respondent paid for the one visit to Dr. Burns but did not pay for any additional medical. In regard to employee absences, Ms. Justice was aware that the claimant had requested off on February 21, which was requested prior to the incident, and that she was later off on February 27 and March 21, which were both unexcused. She was also off on April 25, which had been scheduled by the claimant. She was also off work July 3, 4, 6, 7, 10, and maybe the 20<sup>th</sup>, and was off work due to surgery. Ms. Justice admitted the respondent's records provided the claimant had been off work three weeks and a day after the surgery. Since September 23, there have been no work restrictions. She also agreed the work area in the building was estimated to be over 200,000 square feet and that the noise levels in the building sometimes exceeded OSHA sound guidelines. (Tr. 51 – 55) She went on to state the reason the respondents were controverting the claim was due to inconsistencies with the claimant's different stories. (Tr. 57)

Under cross examination, Ms. Justice admitted starting work for the respondents on May 30<sup>th</sup>, 2023, a date after the work-related incident of the claimant. Ms. Justice was

questioned about the standard protocol after an injury and responded, “The policy says that you’re supposed to report the injury immediately and go to the doctor if needed, so the inconsistencies was kind of - - she didn’t go to the doctor or she didn’t say she needed medical attention til three months later, so what did she do during those three months?”

(Tr. 59) Ms. Justice was then asked the following question:

Q. “Well, I’m assuming that they paid for that because workers’ comp sent her there. I mean, they wouldn’t pay for her to go to her PCP, so I’m assuming they paid that because workers’ comp sent her there, is that right?”

A. “Yes.” (Tr. 60)

Under redirect, Ms. Justice stated that it concerned her that the claimant stated that her shoulder popped, and later stated that her elbow popped and that she earlier had stated in her deposition she had been off work for three months, rather than three weeks. (Tr. 61)

The claimant submitted 29 pages of medical records. The initial medical record of June 20, 2023, provided that the claimant presented to Dr. Burns at the White River Health Center. The report provided under assessment and plan that there was a tear of the distal tendon of the biceps with a strain of the muscle fascia and tendon of the biceps, along with right should pain. Right elbow distal biceps repair was discussed due to the injury occurring in February of 2023. The report further provided that the visit was the result of an accident/injury on February 15, 2023, while loading parts onto a line overhead, where the claimant heard a popping. The chief complaint was a right tendon tear. The



end of the report provided Cassie Miller LPN was scribing for and in the presence of Dr. Carpenter. (Cl. Ex. 1, P. 1 – 5)

The claimant returned to the White River Health Center on July 18, 2023, with the report providing for specified surgical aftercare, involving a strain of muscle, tendons and other parts of the right elbow, and providing that the date of the surgical procedure was June 28, 2023. The report referred to the same injury as the June 20, 2023, report, and was provided by Dr. Carpenter. (Cl. Ex. 1, P. 6 – 10) A progress note dated August 10, 2023, also by Dr. Carpenter, provided that the claimant had been performing therapy with no issues and was extending her arm at home and felt a huge pull with an audible pop. The report referred to right elbow pain and stated that the hardware was present with no obvious fracture. (Cl. Ex. 1, P. 11 – 16) The claimant again returned to the White River Health Clinic and Dr. Carpenter on August 17, 2023, and the right elbow was tender with no swelling. (Cl. Ex. 1, P. 17 – 21) On September 19, 2023, the claimant was again seen by Dr. Carpenter, and the right elbow was nontender with no swelling observed, but with a limited range of motion. (Cl. Ex. 1, P. 22 – 26)

The respondents also submitted various exhibits that were admitted without objection. The incident report dated February 15, 2023, provided that the claimant was suffering pain in her right shoulder and elbow and was injured while pulling parts off the line, heard her right shoulder pop, and suffered pain in her forearm, biceps, and shoulder since then. (Resp. Ex. 1, P. 1)

The respondents also introduced a medical report from Dr. Burns dated May 5, 2023, which provided that the claimant presented with a complaint of right shoulder pain off and on since February 15, 2023, denying a fall or injury, but the report providing that

the claimant stating she does a lot of repetitive lifting while at work. The report went on to provide that x rays would be obtained of the right shoulder and arm. (Resp. Ex. 2, P. 1, 2) A right arm MRI report review with the claimant dated June 20, 2023, provided for a discussion of the right elbow distal biceps repair since the injury was February of 2023. (Resp. Ex. 3, P. 1, 2) A report from White River Ortho and Sports Medicine provided that the claimant could return to work on August 11, 2023, on light one arm duty. Dr. Carpenter saw the claimant in his office on August 17, 2023, placing work restrictions on the claimant of one-handed duty with no lifting, reaching, pushing, or pulling involving the right arm. The claimant was again seen by Dr. Carpenter on September 19, 2023, and the report provided the claimant could return to work on September 20, 2023, with no lifting over 5 pounds. (Resp. Ex. 4, P. 1 – 4)

The respondents also submitted the deposition of the Claimant, taken on December 4, 2023. The deposition provided that the claimant had a previous workers' compensation claim involving a hip and had filed a claim for Social Security Disability for hip dysplasia and club feet, and possibly back pain, a number of years earlier. The claimant testified during her deposition that she heard a pop in her arm near her elbow on the inside of her arm in the morning during her shift. She initially told Paige Jones, a co-worker, who was standing next to her, and then told Annie Stegall, her supervisor. Ms. Stegall requested that the claimant fill out an incident report. The claimant testified she then filled out the report. The claimant was specifically asked about the incident report providing that she was pulling parts off the line and heard her right shoulder pop and that she had pain in her right forearm, bicep, and shoulder since then and she responded "Correct." She went on to state that she assumed that she had pulled a muscle and went

home and rested, after finishing her shift. She also stated at the time of her deposition that Dr. Burns referred her as her personal primary physician to Dr. Carpenter. She testified that she told the respondent she was going to see Dr. Carpenter, which was denied. (Resp. Ex. 7, P. 24 – 33)

### **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 right arm on February 15, 2023, 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. Cavanaugh'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 contends she injured her right arm at the time of a work-related incident on February 15, 2023, and is entitled to reasonable and necessary medical for the right arm injury, which would include the surgery already performed. The respondents controverted the claim in its entirety, contending that the claimant could not establish by a preponderance of the evidence that she sustained a compensable injury during the course and scope of her employment.

The claimant was born January 31, 1990, and was 34 years old at the time of the hearing. She started working for the respondent during October of 2022, where she continues to work as a Paint Technician. In regard to the claimed work injury on February

15, 2023, the claimant testified she was removing jack stands from an overhead line when she heard a popping she described occurring in her right shoulder at one point and also described occurring in her right forearm. Her co-worker, Paige Jones, performing the same actions on the same line and who was approximately two and a half feet away from the claimant, testified that she heard a pop and noticed that the claimant's arm appeared limp, and then asked the claimant at that time what had happened. The response from the claimant was that she did not know. The claimant went on to testify that as fate would have it, Annie Stigall, the Operations Manager, walked by about that time, and the claimant told her what had occurred. Ms. Stigall instructed the claimant to go to the Safety Coordinator and fill out an incident report. The claimant obtained the report form, filled it out, and brought it back to the line, where she requested that her co-worker sign the report, and then returned the incident report to the Operations Manager. The claimant continued to work that day and for approximately three more months thereafter, initially thinking that she had simply pulled a muscle.

The claimant either self-imposed light duty for herself or light duty was provided to her by her supervisors. In any case, the uncontroverted testimony is that the claimant later notified the Safety Coordinator that she needed medical attention and was then sent to the clinic that provided workers' compensation care for the respondent, White River Health Center. The doctor who normally treated workers' compensation claims for the respondent was apparently unavailable, and the claimant saw Dr. Burns who worked in the same clinic, and who also happened to be her personal primary care physician. Dr. Burns referred the claimant to Dr. Carpenter, who after various imaging modalities, and a clinic visit, recommended surgery for a tear of the distal tendon of the right bicep, and

the surgery was later performed. The initial visit to Dr. Burns was treated and paid for by the respondent as a workers' compensation doctor's visit, but that was the only health care that was treated as a workers' compensation related matter. Testimony from both the respondent and claimant provided that the claimant was off work three weeks and one day due to the surgery and a healing period after the surgery on the forearm.

The respondent based their denial of the claim on the fact that the claimant initially stated that she heard her shoulder pop in a noisy, large manufacturing center, and that she waited approximately three months before requesting health care in regard to the injury.

Discrepancies were noted in the claimant's testimony during her deposition and her testimony during the actual hearing in regard to where the heard pop emanated, although the claimant and her coworker who was working near here, both testified to hearing a pop. However, Paige Jones, the co-worker, also testified that she noticed that the claimant's right arm appeared limp immediately after the incident.

The actual incident report signed by the claimant and witnessed by co-worker Paige Jones, who was less than three feet away at the time of the incident, was filed on the date of the injury and provided that the claimant injured her right bicep and shoulder while pulling parts off of an overhead line, when the claimant heard her right shoulder pop, and then suffered pain in her right shoulder, forearm, and biceps. This report filed shortly after the incident on February 15, 2023, corresponds with the medical report by Dr. Burns on June 20, 2023, and the findings of Dr. Carpenter, who later performed surgery for a tear involving the distal right bicep.

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 A.C.A. 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. A.C.A. 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 incident report of February 15, 2023, and the findings in the later medical records are found to be causally related to the same incident. The testimony of the claimant, even with the noted discrepancies, and the testimony of the coworker are found to be believable, providing that an injury was caused by a specific incident. It is also

noted that Arkansas law does not require in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See Wal-Mart 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) That is found to be the case in the matter currently before the Commission.

A workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. A.C.A. 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 it grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ar. App 21, 732 S.W.2d 496 (1987) Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has satisfied the required burden of proof by a preponderance of the credible evidence to show that the injury to her right forearm on February 15, 2023, is in fact work related and 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. A.C.A. 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). In the present matter, the initial treatment by Dr. Burns, and the follow-up treatment and surgery by Dr. Carpenter, along with the physical therapy, are found to be both reasonable and necessary.

It is also found that the claimant has satisfied the burden of proof that she is entitled to temporary total disability for a period of three weeks and one day, based upon the testimony the claimant missed that period from work, starting on the date of the surgery and returning to work three weeks and one day later. It is noted that the claimant had worked up to the time of the surgery, only missing a very limited amount of work. Temporary total disability is the period of time within the healing period in which an employee suffers a total incapacity to earn wages. Arkansas State Highway and Transportation Department v. Brashears, 272 Ark. App. 244, 613 S.W.2d 392 (1981). Disability means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. Here, the claimant continued to work after the injury of February 15, 2023, until finally being examined by a physician, where it was determined that surgery would be required to correct the issue involving her right forearm. It appears that the surgery actually occurred on the date of June 28, 2023, based upon a medical



report, and from the testimony of both the claimant and the witness for the respondent, claimant returned to work in some capacity three weeks and one day later.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied her burden of proof to show that she suffered a work-related injury to her forearm on February 15, 2023, and that her claim is found to be compensable. She is also found to be entitled to both reasonable and necessary medical care, which includes the surgery to her right forearm performed by Dr. Carpenter, as well as follow up physical therapy and is also entitled to temporary total disability for a three-week, one-day period.

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in A.C.A. 11-9-715

This award shall bear interest at the legal rate pursuant to A.C.A. 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge