

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H300401

TINA JOHNSON, EMPLOYEE

CLAIMANT

CONWAY REGIONAL HEALTH SYSTEM,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, INC.,
TPA

RESPONDENT

OPINION FILED MARCH 4, 2026

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 17, 2025, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, a pre-hearing telephone conference was held in this matter on October 8, 2025. A Pre-hearing Order was entered that same day pursuant to the telephone conference. Said order was admitted into evidence along with the parties' pre-hearing information filings without objection by the parties as Commission's Exhibit 1.

Stipulations

During the pre-hearing telephone conference, and/or at the hearing, the parties proposed the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed among the parties on or about September 6, 2022, when the Claimant sustained a compensable injury to her right shoulder.

3. On the date of the Claimant's accidental injury, she earned an average weekly wage of \$505.80 which entitles her to a weekly temporary total disability/TTD benefits rate of \$337.00, and a permanent partial disability/PPD rate of \$253.00 per week.
4. The Claimant was assigned a 21% permanent impairment rating to the body as a whole for her compensable right shoulder injury, which has been accepted and is being paid by the Respondents.
6. This claim for additional benefits has been controverted by the Respondents.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

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

1. Whether the Claimant has permanently and totally disabled due to her admittedly compensable right shoulder injury of September 6, 2022, or in the alternative whether the Claimant sustained wage-loss disability over and above her 21% impairment rating as a result of her compensable shoulder injury.
2. Whether the Claimant's attorney is entitled to a controverted attorney's fee on any indemnity benefits awarded herein.

Contentions

The Claimant's and the Respondents' contentions are delineated below:

Claimant:

The Claimant contends that on or about September 6, 2022, she was in the scope and course of her employment when she fell, landing on her right shoulder. The Respondents accepted the injury as compensable and began paying for treatment. An MRI revealed a complete full thickness tear of the supraspinatus tendon and infraspinatus tendon. Dr. O'Malley described the tear as "massive." On January 10, 2023, Dr. O'Malley performed a right shoulder arthroscopy with rotator cuff repair, arthroscopic bicep tenodesis, extensive debridement, distal clavicle excision and a subacromial excision and a subacromial excision. On March 22, 2023, the Claimant was given a lifting restriction of one pound and one arm duty only. On April 13, 2023, the Claimant's employer

asked that she resign her employment so that she would be eligible for rehire as there was no work within her restrictions. The Claimant refused to resign her employment and was therefore terminated on April 13, 2023. Claimant continued to receive her TTD benefits.

On September 6, 2023, the Claimant underwent a Functional Capacity Evaluation/FCE with 51 out of 51 consistency measures, returning her to the light duty category of work. Claimant was still in pain and was sent to Dr. Charles Pearce, who noted that she was not at MMI and ordered a reverse shoulder arthroplasty. Respondents then sent the Claimant for another opinion with Dr. Hussey, who opined that a shoulder arthroplasty was both reasonable and necessary. On March 19, 2024, Dr. Hussey performed the surgery. On October 15, 2024, Claimant underwent a second Functional Capacity Evaluation with 47 of 48 consistency measures and returned the Claimant to medium duty work. On November 22, 2024, Dr. Hussey released the Claimant with a 21% whole-as-a-whole rating and permanent restrictions.

Claimant is 61 years old with a high school education. Her work history consists of mainly physical labor jobs at hospitals. Claimant contends that she is permanently and totally disabled or in the alternative that she has wage loss and that her attorney is entitled to an attorney fee.

All other issues are reserved.

Respondents:

The Respondents contend that all appropriate benefits are being paid with regard to the Claimant's compensable shoulder injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to listen to the testimony of both witnesses and after having been given the opportunity to 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. The proposed stipulations set forth above are reasonable and hereby accepted.
3. The Claimant failed to prove by a preponderance of the credible evidence that her compensable right shoulder injury of September 6, 2022, rendered her permanently and totally disabled from earning meaningful wages in the same and/or other employment. However, the Claimant proved her entitlement to wage loss disability in the amount of 15% over and above her 21% permanent anatomical impairment rating.
4. All issues not litigated herein or addressed in this Opinion are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

The witnesses were the Claimant, Ms. Tina Johnson, and Ms. Cecilia Brunson.

The record consists of the hearing transcript of December 17, 2025, and the exhibits held therein. In addition to the Pre-hearing Order discussed above, the exhibits admitted into evidence in this case include Claimant's Exhibit 1 consisting of a Medical Index comprising seven numbered pages along with 126 numbered pages of medical records; Claimant's Exhibit 2 encompasses a Non-Medical Exhibit comprising of five numbered pages; Respondents' Exhibit 1 is a Respondents' Hearing Exhibit Index Medicals consisting of three pages; and Respondents' Exhibit 2 encompassing six number pages of Non-Medical documentary records.

Testimony

Ms. Tina Johnson, now age 62, graduated from high school in 1981. The Claimant confirmed that she attended Petit Jean Mountain Vocational School for one year. According to the Claimant, she also attended one year of technical training school in Russellville, Arkansas, but she did not complete the program. The Claimant stated that she later attended a program at Eastern

College, in Little Rock and obtained certification as a medical assistant approximately twenty years ago. However, the Claimant testified that she no longer holds the medical assistant certification.

About her employment history, after leaving high school, the Claimant went to work for Kimberly Clark and worked there for thirteen years. While at Kimberly Clark, the Claimant's employment duties included work as a machine operator and backup line leader on an assembly line. She left her employment with Kimberly Clark after her twins were born prematurely. The Claimant stayed at home to care for her children for about seven years. She returned to the workforce and began working at AmTran as a spot welder. The Claimant worked there for over a year and then went to work for Frigidaire. There, she worked on the assembly line for over a year.

The Claimant confirmed that then, she moved to Tulsa, Oklahoma, and began working as a mental health technician. Her employment duties consisted of caring for patients to protect them from harming themselves and others. The Claimant was also responsible for providing basic care for the patients, which involved direct patient care related to maintaining their emotional well-being. Specifically, her primary duties included assisting patients with their activities of daily living, such as personal hygiene, mobility, checking their vitals, and making sure they were properly nourished and dressed. She worked in that position for about seven years.

The Claimant moved to Dallas, Texas, and obtained employment at Medical City. She worked as a patient representative admitting patients into the hospital. The Claimant left that position and went to work at Green Oaks Hospital. She testified that she worked at Green Oaks as a mental health technician, performing identical employment duties that she had done at the Tulsa Center for Behavioral Health. The Claimant worked there for twelve years. She left that position after she got married and moved back to Conway. Around 2018, the Claimant obtained

employment at Conway Regional, as a mental health technician. She performed similar duties that she had at Tulsa Behavioral Health Center and Green Oaks Hospital. As a mental health patient technician, the Claimant's primary daily focus was on direct patient care, which included helping them with their artwork, grooming, and monitoring their physical and emotional well-being. The Claimant testified that she had a requirement that she be able to lift 50 pounds.

With respect to the Claimant prior medical conditions, she testified that she had pre-existing problems in her lower back that included spinal stenosis, at L5; A-fib; lymphedema; high blood pressure; and cholesterol problems. The Claimant admitted that she sustained a foot injury in a motor vehicle accident several years ago. However, the Claimant denied having surgery on her foot. The Claimant confirmed that she takes pain medications prescribed for her back, which include Tramadol and Hydrocodone. However, the Claimant denied that her back condition ever prevented her from working. She further denied that while working at Conway Regional, her back condition caused her to have difficulty performing her job duties prior to the date of her injury.

The Claimant described what happened to her on September 6, 2022:

A. I walked down to the cafeteria to get some breakfast, and I got my breakfast and I was walkin' out of the door, comin' through the door, and I fell.

Q. Okay. You tripped and fell and injured that right shoulder; is that correct?

A. Correct.

Q. Are you right-handed?

A. I am.

She confirmed that she underwent an MRI of her right shoulder, which revealed a massive supraspinatus and infraspinatus tear, and a bicep tear. This MRI was done on October 14, 2022. The Claimant confirmed that she treated Dr. O'Malley. He performed surgery on the Claimant's right shoulder on January 10, 2023. The Claimant denied that the surgery provided any relief of

her symptoms. Instead, the Claimant testified that the surgery made her symptoms worse. As a result, another MRI was obtained of her right shoulder, which showed she had tearing again. The Claimant was sent for her first functional capacity evaluation/FCE, which revealed reliable results. It was performed on September 6, 2023, and the Claimant performed 51 out of 51 consistency measures and was returned to the light category of work. Following the FCE, the Claimant underwent an IME with Dr. Charles Pearce. He opined that the Claimant was at maximum medical improvement, and he wanted to refer her to another doctor for a reverse shoulder arthroplasty. At that point, the Claimant underwent evaluation by Dr. Hussey. He performed a total right reverse shoulder surgery in March 2024. The Claimant confirmed that the second surgery helped to improve her right shoulder condition. She underwent a second FCE and it showed that she again put forth a reliable effort with a 47 out of 48 consistency measures. At that point, the Claimant was returned to work in the medium classification of work.

On November 22, 2024, Dr. Hussey released the Claimant to be at maximum medical improvement and assigned her a 21% whole body impairment for her shoulder injury. The Claimant confirmed that the impairment rating is still being paid to her by the Respondents. She confirmed that she recently followed up with Dr. Hussey, and no additional medical treatment was recommended at that time. The Claimant confirmed that they ended up letting her go at her job at Conway Regional. She agreed that she applied for FMLA leave and once that ran out, they terminated her. The Claimant testified that she was terminated from Conway Regional by Holly, in Human Resource. She testified that she went into the office and talked to Holly, and she told her that they no longer had any more work for her. However, Holly told her if anything came up, she could apply, and she did so. The Claimant testified that she was told if there was a job she was qualified to do, they would call her. According to the Claimant, this occurred prior to her second

surgery. The Claimant confirmed that after the second surgery, her doctor released her to medium duty work. She testified that she applied for medical assistant work and a patient representative position at Conway Regional. The Claimant denied that they ever called her back about any of those jobs. Per the Claimant, previously, she received an email from them on one of the jobs saying she was not qualified for the position.

The Claimant denied having performed any work elsewhere since her termination from Conway Regional. She further denied having applied for Social Security Disability benefits. The Claimant verified that she agreed to do vocational rehabilitation. However, the Claimant denied that she was ever offered vocational rehabilitation with Ms. Cecelia Brunson. According to the Claimant, she has never met Ms. Brunson or talked to her on the phone. The Claimant admitted that she is familiar with the vocational report submitted into evidence with a list of potential jobs. Said vocational report was signed by Ms. Brunson on June 2, 2025. The Claimant confirmed that she applied for majority of the jobs in the report. However, the Claimant testified that some of the jobs that she applied for in the report were not available. She testified that she found this out after she had applied for them.

Ms. Brunson provided the Claimant with a report on December 6, [2025] which also identified some jobs. She testified that she applied for most of the jobs listed in that report. The Claimant confirmed that she provided her attorney with three pages of jobs for which she had applied. Specifically, the Claimant testified that she applied for a front desk receptionist job at Reach Therapy Services. She also applied at Pulaski County for an Enforcement Clerk II position, and for an office assistant position at Arkansas Lymphedema Therapy. Per the Claimant, she applied for another position as a patient service representative at RelateCare in Sherwood. According to the Claimant, she called two of the places on the list because they did not have a

website or anything showing where to send the application, but she was unable to contact them. The Claimant affirmed she has received no employment offers from any of her job search efforts. According to the Claimant, she believes that she could do a receptionist job if she is trained to do the position.

Although the Claimant is 62 years old, she does not want to retire. Instead, she wants to continue working. The Claimant explained how her injury has changed her life:

A. A lot. I don't do a lot of things that I used to do. When I first had my first surgery, I couldn't do anything had it not been for my husband. He had to do everything for me. I couldn't even raise this arm [indicating] up. This is as far as it would go.

Q. You're talking about your right arm.

A. My right arm, mm-hmm.

Q. And you're moving it maybe 15 degrees away from your body.

A. Right. It – it wouldn't – and I did that for about a year or 'til the next surgery, and then when Dr. Hussey did it, I was able to raise [sic] up, but I still have, like, pain in it. But if it had not been for him –

Q. Your husband?

A. Mm-hmm.

Q. Is that a yes?

A. And my family and my daughters, I couldn't do anything.

Q. Following the surgery with Dr. Hussey, has it gotten better?

A. It is better, thank God.

The Claimant testified that sometimes when she is mopping or sweeping the pain is not as bad as other days. According to the Claimant, she does some volunteer work at her church. However, she is not paid for this work. According to the Claimant, she has not done any volunteering in almost a month and a half. They distribute clothes to the homeless or people in

need of clothes. They also pass out food to the needy. She admitted that she has been doing this work since the accident. The Claimant testified that when she does volunteer work for a day, it depends on the day, but sometimes she is in pain around her shoulder area, and at other times she is not in pain. She does not take pain medicine. Instead, the Claimant takes Tylenol.

On a daily basis, the Claimant testified that she visits her mother in Conway. She can cook, but her husband does most of the cooking. The Claimant is right-handed. She testified that she cannot reach up with her right hand and do her hair the way she likes to do it. The Claimant testified that she has learned to use her left hand and compensate with it. She agreed that she has been using her left hand more often than her right hand to get things done.

Under cross-examination, the Claimant confirmed that the Respondents took her deposition on March 19, 2025. She confirmed that during her deposition they covered all the jobs except for maybe the one at Medical City, where she worked in admissions. The Claimant explained that in that position, when people came to be admitted to the hospital, she would register them in and interact with patients and get them where they needed to be.

She admitted that she has prior lower back problems, for which she has treated with Dr. Kent. The Claimant confirmed that she has been on Tramadol for years. She admitted that prior to her deposition, Dr. Kent put her on Hydrocodone. The Claimant confirmed that she takes both medications.

Her employment at Conway Regional was that of a patient care technician. That particular unit of the hospital has a capacity of up to twelve patients. Her job duties included checking vitals, doing group activities, and sometimes helping the patients with getting dressed. She worked from 7:00 a.m. until 7:00 p.m. The Claimant confirmed that she worked three days in a row and then

she was off four days. She admitted that the surgery with Dr. Hussey helped quite a bit, and she could now raise her arm again.

The Claimant testified during her deposition that she stated she did not apply for the receptionist position she had found out about three weeks before. However, the Claimant explained that she did apply for a receptionist position on the day shift. She confirmed she was released the first time from Dr. Hussey's care on November 22, 2024. From that date until her deposition was taken, the Claimant admitted that she testified that she had not applied anywhere since leaving Conway Regional. The Claimant acknowledged that she does not take any prescription pain medications for her shoulder. She confirmed that if she decides to file for early retirement Social Security Disability benefits, she will list her shoulder and back as reasons for needing these benefits. The Claimant confirmed that her husband is retired and she hangs out with him during the day. She also has two children in the Conway area. The Claimant admitted that she continues to do sisterhood with her church. They have women's day programs and things of that nature. She admitted that she testified during her deposition testimony that she had taken a trip with her husband to Florida around Christmas time and they stayed for three weeks to a month. They also traveled to Memphis for a week and a half. At the time of her deposition testimony, the Claimant agreed that she had started going back to the gym. She admitted that she stated during her deposition that she had not gone to the gym for two weeks because of her back. The Claimant agreed that she also testified that her arm did not keep her from doing anything around the house because she knows her limits. She confirmed that she recently applied for quite a few jobs. The Claimant admitted that if she gets an offer from someone to go back to work, she will return to work.

On redirect examination, the Claimant admitted that her deposition was taken on March 19, 2025. She verified that she applied for jobs at Conway Regional before the vocational rehabilitation report came out. However, the Claimant was not offered any of those jobs. The Claimant believes that she was qualified for those jobs if training is provided. She specifically agreed that one of the jobs was a nighttime receptionist job, and she fits the qualifications for that position. According to the Claimant, the heaviest thing that she can lift at the gym is ten (10) pounds. The Claimant denied having been to the gym recently.

Cecilia Brunson

The Respondents called Ms. Brunson as a witness. She is a Vocational Consultant. According to Ms. Brunson, she reviews medical records and sometimes interviews Claimants to establish her opinion and put it in a report. She gave an overview of her qualifications. Ms. Brunson holds a master's degree in Rehabilitation Counseling. She has worked as a Vocational Consultant since 2018 and done job placement since 2013. Ms. Brunson has owned her own company since 2018.

She confirmed that she reviewed some of the Claimant's records. Ms. Brunson confirmed that she documented in her June 2, 2025, report what all she reviewed. These documents included the Claimant's deposition and the functional capacity evaluation. According to Ms. Brunson, she documents the Claimant's restrictions, work history, and educational history. She confirmed that she identified some job openings from Indeed, Conway Regional and UAMS websites. Ms. Brunson agreed that the jobs identified in her report fit within the Claimant's physical restrictions. She confirmed that all of the jobs reflect that the Claimant could make the same or more money than what she was making at the time of her injury.

According to Ms. Brunson, the main factors or skills that the Claimant possess that should lead to her return to work including working in the medical profession, ability to deal with the public, negotiating and persuasion skills with the patients, which are some of those skills that are very important in the healthcare field. Ms. Brunson opined that the Claimant's shoulder injury should not keep her from working, or a barrier to keep her from getting a job.

On cross-examination, Ms. Brunson admitted that she did not interview the Claimant. She stated that she did not interview the Claimant because the insurance company did not ask her to interview her.

Ms. Brunson explained:

Q. And did they ask you to provide assistance with helping her find these jobs or apply for these jobs?

A. If she wanted assistance.

Q. Okay. Was this conveyed to her by you at any point?

A. No.

Q. Do you have a medical background?

A. No.

Medical Evidence

A review of the medical records shows that the Claimant sought medical treatment on September 27, 2022, from Dr. Gil Johnson at the College Family Park Clinic. At that time, the Claimant reported a history of an injury that happened on September 6, 2022, when she fell while walking out of the cafeteria. She reported the following complaints: "1. Right shoulder pain has persisted since the injury. 2. Left hand and thumb pain that has improved." Dr. Johnson noted that physical examination of the Claimant's right shoulder was suggestive of a suspected rotator

cuff injury and contusion to the left hand, wrist, and thumb. He ordered x-rays of the Claimant's right shoulder and also of her left hand, wrist, and thumb. Dr. Johnson placed the Claimant on light duty restrictions of no heavy lifting over 20 pounds until he had had a chance to re-evaluate her.

X-rays performed of the Claimant's right shoulder on September 27, 2022, showed "No dislocation. There was moderate osteoarthritis of both the acromioclavicular joint and glenohumeral joint."

On October 14, 2022, an MRI performed on the Claimant's right shoulder with an impression of:

1. Complete full-thickness tear of the supraspinatus tendon.
2. Full-thickness tear of the anterior half of the infraspinatus tendon.
3. Moderate grade partial thickness tear of the subscapularis tendon.
4. Medial subluxation of the long head of the biceps tendon from the bicipital groove.
5. Degenerative tears of the superior, posterior, and inferior labrum.
6. Moderate degenerative arthrosis of the glenohumeral joint effusion with synovitis.
7. Large glenohumeral joint effusion with synovitis.
8. Moderate degenerative arthrosis of the acromioclavicular joint.
9. Probable 23 mm enchondroma in the lateral humeral head. Radiographic correlation recommended.

Dr. Johnson saw the Claimant on October 24, 2022, for a follow-up for results of the MRI. He opined that the results revealed the following: "Complete full thickness tear of the supraspinatus tendon. Full thickness tear of the anterior half of the infraspinatus tendon. Medial subluxation of the long head of the biceps tendon from the bicipital groove. Degenerative changes

were noted.” At that time, the Claimant continued in significant pain. Dr. Johnson referred the Claimant to an orthopedist and continued her current medications and work restrictions.

On November 7, 2022, the Claimant was evaluated by Dr. James T. Howell due to shoulder pain and related symptoms. Dr. Howell assessed the Claimant with “Right shoulder rotator cuff tear, right shoulder mass, likely enchondroma, and right shoulder glenohumeral OA, for which recommended “right shoulder scope.”

Dr. Lawerance O’Malley evaluated the Claimant’s right shoulder on December 9, 2022. He had a long discussion with the Claimant regarding her diagnosis and treatment options. They discussed that the Claimant would likely benefit from surgery. From a work standpoint, Dr. O’Malley continued her on a five-pound lifting restrictions with her right arm.

On January 10, 2023, Dr. O’Malley authored an Operative Note:

PREOPERATIVE DIAGNOSES:

1. Right shoulder massive supraspinatus and infraspinatus rotator cuff tear.
2. Biceps tearing.
3. Subacromial impingement.
4. Distal clavicle arthritis.
5. Labral tearing.

POSTOPERATIVE DIAGNOSES:

1. Right shoulder massive supraspinatus and infraspinatus rotator cuff tear.
2. Biceps tearing.
3. Subacromial impingement.
4. Distal clavicle arthritis.
5. Labral tearing.

PROCEDURES PERFORMED:

1. Right shoulder arthroscopy with arthroscopic rotator cuff repair.

2. Arthroscopic biceps tenodesis.
3. Extensive debridement intraarticularly and also subacromial space.
4. Distal clavicle excision.
5. Subacromial decompression.

Dr. O'Malley saw the Claimant in follow-up clinic on January 27, 2023, due to her right shoulder arthroscopy with massive rotator cuff repair, biceps tenodesis distal clavicle resection, subacromial decompression, and extensive debridement. Overall, the Claimant was doing well with her pain being controlled. Dr. O'Malley placed the Claimant on one-hand duty using only the left arm and started her physical therapy at that time.

On February 22, 2023, the Claimant presented to Sarah Barlow, PA, at Baptist Health Medical Center in Little Rock, for follow-up clinic for her right shoulder surgery. At that time, the Claimant reported that she was doing "okay." Her pain was improving and she had no complaints or concerns. Barlow noted that on ortho examination the focus was of the right shoulder. Specifically, Barlow opined that the Claimant's incisions were observed to be well healed. Barlow further opined that the Claimant was resting comfortably in her arm sling, and her right upper extremity was neurovascularly intact.

IMPRESSION: 6 [sic] weeks out right shoulder arthroscopy with massive rotator cuff repair, biceps tenodesis, distal clavicle resection, subacromial decompression and extensive debridement.

PLAN: Overall I think the patient is doing well. We will get her prescription to start formal physical therapy today. We will see her back in 1 month for follow-up evaluation. From a work standpoint we will keep her on 1 arm duty using only the left arm. We will see her back in 4 weeks for follow-up evaluation. All of her questions were answered today she understands and agrees with this plan.

The Claimant was seen again on March 22, 2023, in follow-up clinic with Barlow for her one-month in clinic evaluation due to her right shoulder surgery. At that time, the Claimant reported that her pain was improving and she had no complaints or concerns. The Claimant stated

that she was happy with the progress she was making. In a separate letter dated March 22, Dr. O'Malley wrote to Whom It May Concern: It is my medical opinion that Tina Johnson needs to remain on a 1 lb. lifting restriction below shoulder until further evaluation..."

On April 28, 2023, the Claimant presented to Dr. O'Malley for follow-up evaluation of her right shoulder. The Claimant stated that she was doing physical therapy at McMasters. However, the Claimant reported that she did not believe she was making good progress. She still complained of a lot of pain. Dr. O'Malley opined that the Claimant seemed to be pseudo paralytic. He stated that a lot of her decrease in motion was secondary to pain. Specifically, Dr. O'Malley opined, "As her deltoid strength improves, I do believe the patient's motion will get better." He continued her physical restrictions.

Dr. Jared Bishop, at Baptist Health Medical Center in Conway, evaluated the Claimant on May 28, 2023, due to right shoulder injury. He stated in progress notes that the Claimant was not making much progress at that point. She still had significant pain. Dr. Bishop stated that he would like to get a repeat MRI of the Claimant's right shoulder to evaluate the status of her surgical repair.

On May 31, 2023, the Claimant saw Physician Assistant, Barlow, due to right shoulder pain, with unspecified chronicity. The Claimant presented to discuss the results of the MRI done since her last visit. Barlow opined that her MRI findings really were not that impressive. As a result, she continued the Claimant's physical therapy. The Claimant chose to undergo subacromial injection. Her one-arm duty was continued, and she was scheduled for a follow-up visit in six weeks. The Claimant tolerated the procedure well with no immediate complications.

An MRI of the Claimant's right shoulder was done W/O contrast on May 31, 2023, with an impression of:

1. Severely limited evaluation of the rotator cuff due to the severe motion degradation. This can be evaluated with repeat to MRI or potentially CT arthrography if needed.
2. Severe attenuation of the supraspinatus and infraspinatus tendons at the footprint with a probable full-thickness defect between the posterior supraspinatus and anterior margin of the infraspinatus tendons proximal to the critical zone. Severe muscular volume is present.
3. Articular sided tearing and attenuation of the superior subscapularis tendon without full-thickness tear.
4. Probable biceps tenodesis.
5. Severe glenohumeral osteoarthritis with circumferential labral degeneration/tearing.
6. Remodeling of the humeral head and glenoid with retroversion of the glenoid.
7. Large effusion and subacromial/subdeltoid bursal distention containing debris.
8. Acromioclavicular joint arthritis and probable debridement or resorption of the distal clavicle with os acromial.
9. 2.4 similar cartilage lesion at the humeral head similar.

Dr. O'Malley saw the Claimant in a follow-up clinic on August 25, 2023, due to her right shoulder complaints. At that time, the Claimant was struggling with active motion of her right shoulder. Overall, the Claimant continued to work hard with physical therapy. She continued to struggle with active motion but passively her range of motion was improving in her shoulder. Dr. O'Malley continued the Claimant's one-arm duty and ordered a functional capacity evaluation to assess the Claimant's progress.

The Claimant underwent an FCE on September 6, 2023, at the Functional Testing Centers in Mountain Home. The results of this evaluation showed that a reliable effort was put forth during this evaluation, with 51 of 51 consistency measures within expected limits. Analysis of the data collected during this evaluation showed that the Claimant did put forth a consistent effort and

passed all criteria for a reliable effort indicating that a significant degree of effort was put forth. Per these results of this evaluation, the Claimant demonstrated the ability to perform the LIGHT duty classification of work.

Dr. Charles Pearce saw the Claimant for an office visit on October 10, 2023, to evaluate her continued right shoulder pain and weakness. His impression was “Right shoulder rotator cuff arthropathy. I suspect this is at least a grade IV or an IV B. Dr. Pearce opined that the Claimant was not at maximum medical improvement. He also opined that the Claimant could perform light category work only, which is a permanent restriction. Dr. Pearce specifically stated that the only way to address her pain and dysfunction would be with a reverse shoulder arthroplasty. He went on to state that this was the only surgical option.

Dr. Micheal Hussey evaluated the Claimant for her right shoulder complaints on November 13, 2023. He recommended that the Claimant undergo a total right reverse shoulder replacement. Dr. Hussey noted that the Claimant had pre-existing glenohumeral arthrosis based on the MRI scan in 2022 which predated her work injury. However, Dr. Hussey stated that the Claimant did not complain of any symptoms and had never sought orthopedic care of her shoulder prior to her injury. He also stated that the Claimant did have significant rotator cuff damage after her injury and due to the re-tear this led to worsening instability arthropathy of the shoulder joint. Dr. Hussey stated: “It is my medical opinion that the majority of the Claimant’s continued pathology and problem seen on exam and imaging are more than 51% related to her work injury.” Restrictions include those recommended on the FCE for light duty. He also stated that the Claimant would be at MMI around six months postoperatively.

On March 19, 2024, Dr. Hussey performed the surgical procedure on the Claimant's right shoulder: "1. Right reverse total shoulder arthroplasty. 2. Right shoulder removal of nonabsorbable deep implant material."

The Claimant underwent follow-up care under for her right shoulder condition postoperatively under the care of Dr. Hussey.

On October 15, 2024, the Claimant underwent a second FCE. The results of this evaluation indicate that a reliable effort was put forth, with 47 of 48 consistency measures within expected limits. Analysis data collected during the evaluation show that the Claimant put forth a consistent effort and passed all criteria for a reliable effort indicating that a significant degree of effort was put forth. The Claimant showed the ability to perform MEDIUM classification of work per the U.S. Department of Labor guidelines as a frequency level when taking into account a normal workday.

Dr. Hussey saw the Claimant for a follow-up visit on November 22, 2024. He opined that the Claimant could return to work at the medium classification of work with the restrictions described in the FCE performed on October 15. He stated that if the Claimant returned to work in her earlier job, accommodation would need to be made to prevent her from using the right upper extremity beyond the stated restrictions in the report of the FCE. Dr. Hussey placed the Claimant at MMI as of November 22 with a 35% impairment rating to the right upper extremity, which corresponds to a 21% whole person impairment rating according to the 4th Edition of the AMA Guides to the Evaluation of Permanent Impairment. According to this clinic note, Dr. Hussey stated that the impairment was calculated based off of range of motion deficit of the shoulder joint, as well as impairment given for the shoulder total joint arthroplasty noted on Table 27 of page 61. Using the combined values chart on page 322, this conferred to a 35% impairment to the right

upper extremity. He stated no further follow-up was necessary. Dr. Hussey specifically stated, “All statements given above are within a reasonable degree of medical certainty.”

On October 15, 2025, the Claimant saw Dr. Hussey for an office visit regarding her right shoulder. At that time, the Claimant stated she was pleased overall with the outcome of her shoulder surgery. She reported that her shoulder was doing relatively well and she was still pleased with the results overall. However, the Claimant stated that she was having some unusual complaints of numbness tingling from her upper shoulder radiating down her shoulder, arm, and hand. X-rays of the Claimant’s right shoulder demonstrated well aligned reverse shoulder replacement without sign of loosening or failure. Normal AC alignment. Dr. Hussey opined that the paresthesias from her upper shoulder and neck down the arm were most likely from possibly coming from her neck or neurologic derangement. He specifically stated “I do not think this is coming from her shoulder. She is still at MMI, and no further follow-up is necessary.”

Adjudication

A. Permanent and Total Disability Benefits

The Claimant asserts that she has been made permanently and totally disabled because of her compensable right shoulder injury of September 6, 2022.

Ark. Code Ann. §11-9-519(e)(1) (Repl. 2002) provides: "Permanent total disability" means an inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Furthermore, the statute provides that the burden of proof shall be on the injured employee to prove their inability to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-9-519(e)(2) (Repl. 2002).

The burden of proving permanent total disability is on the Claimant. The Claimant must prove entitlement to these benefits by a preponderance of the evidence. Preponderance of the

evidence means the evidence that has greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

The first issue for determination is whether the Claimant has been rendered permanently and totally disabled due to her compensable right shoulder injury of September 6, 2022. Dr O'Mally performed right shoulder surgery on January 10, 2023. Specifically, Dr. O'Malley performed right shoulder arthroscopy rotator cuff repair, among other things, as described above due to a massive rotator cuff tear being demonstrated on an MRI. However, the Claimant continued with significant right shoulder pain despite surgical intervention and extensive conservative treatment. Subsequently the Claimant came under the care of Dr. Hussey. On March 19, 2024, Dr. Hussey performed "1. Right reverse total shoulder arthroplasty. 2. Right shoulder removal of nonabsorbable deep implant material." Following this surgical procedure the Claimant did well and was very please with the results. The Claimant underwent an FCE with reliable results on October 15, 2024. Per this evaluation the Claimant put forth a reliable effort of 47 of 48 consistency measures within expected limits, and she was calculated to be capable of performing MEDIUM duty work, with applicable restrictions. On October 22, 2022, Dr. Hussey placed the medium duty work restrictions on the Claimant permanently. He also evaluated the Claimant to be at maximum medical improvement for her right shoulder injury. Dr. Hussey also assessed the Claimant with a 21 % whole body rating permanent impairment due to her injury, which the Respondents have accepted. As of the date of the hearing, the Claimant continued to receive payment for the rating.

Here, the permanent effects of the Claimant's work-related shoulder injury would prevent her from returning to work as a mental health technician, however, the Claimant has the ability to earn wages in other less strenuous employment. Her testimony proves she is not permanently and

totally disabled. The Claimant has applied for several positions within her restriction. She testified that she believes she could return to work as a receptionist provided, she receives training for the position. I found the Claimant's testimony to be credible in this regard. The Claimant's testimony is corroborated by the medical evidence (particularly Dr. Hussey's expert opinion of her being placed permanently on medium duty work restrictions), and the Vocational Consultant, Ms. Brunson's, identification of numerous jobs within the Claimant's physical limitations and prior work experience in the medical profession. Moreover, no doctor has opined that the Claimant is incapable of returning to other employment in the medium duty category of work. Accordingly, the preponderance of the credible evidence before me clearly proves that the Claimant has at least the physical capacity to earn meaningful wages in the *medium* classification of work. Hence, there is no credible evidence of record before me whatsoever proving that the Claimant has been rendered permanently and totally disabled as a result of her compensable right shoulder injury of September 6, 2022. Therefore, based on the evidence before me, I find that the Claimant did not prove by a preponderance of the evidence that her compensable shoulder injury of September 6, 2022, has rendered her permanently and totally disabled.

B. Wage-loss Disability

When a Claimant has sustained a permanent impairment rating to the body as a whole, the Commission is authorized to increase the disability rating based on wage-loss factors. The wage-loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Grimes v. North Am. Foundry*, 316 Ark. 295, 872 S.W.2d 59 (Ark. 1994). Ark. Code Ann. §11-9-522(b) (Repl. 2012) provides, in pertinent part:

- (1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of

permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

Such other matters are motivation, post injury income, credibility, demeanor, and a multitude of other factors. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990); *Cross v. Crawford County Memorial Hosp.*, *supra*. It is well established that a Claimant's prior work history and education are factors to be considered in determining eligibility for wage-loss benefits. *See Cross v. Crawford County Memorial Hosp.*, *supra.*; *Glass v. Edens*, *supra.*; *City of Fayetteville v. Guess*, *supra.*; *Curry v. Franklin Electric*, *supra.*

In the present matter, the Claimant is 62 years of age. She graduated from high school in 1981. After graduating high school, the Claimant attended technical school in Russellville for about a year but did not complete the program. The Claimant worked at Kimberly Clark for thirteen years. She worked as a machine operator and back-up line leader. After having premature twins, the Claimant left the workforce for about seven years. When the Claimant returned to the workforce, she went to work at AmTran as a spot welder for about a year and a half. While working there, the Claimant began going to school for the medical assistant program and quit her employment with AmTran. The Claimant attended Eastern College in Little Rock about twenty years ago where she earned certification in the medical assistant program. She no longer has this certification. Other employment includes work at Frigidaire on the assembly line for over a year. She moved to Tulsa and began working at the Tulsa Center for Behavioral Health. She worked as mental health technician. The Claimant's job duties included the basic care for mental health patients. She performed those duties for seven years. She moved to Dallas, Texas and went to work for Medical City for approximately two years. At Medical City, the Claimant worked as a

patient representative, doing hospital admissions. She left there and went to work at Green Oaks as a mental health technician performing similar work that she had performed in Tulsa. The Claimant worked at Green Oaks for twelve years. She got married and moved back to Conway. She went to work for Conway Regional in 2018, as a mental health technician.

The parties stipulated that the Claimant's average weekly wage at the time of her injury on September 6, 2022, was \$505.80. At the time of the hearing, the Claimant was not working. Although she has reached the minimum age for retirement, the Claimant testified that she would like to continue work. As of the date of the hearing, the Claimant had not applied for Old Age Retirement Social Security benefits. The Claimant has made applications for several jobs, but she has not been offered a position as of the date of the hearing.

As noted above, the Claimant has undergone two surgeries due to her compensable right shoulder injury. The Claimant initially underwent surgery by Dr. O'Malley after an MRI revealed a complete full thickness tear of the supraspinatus tendon and the infraspinatus tendon. Dr. O'Malley described this as a massive tear. Following this surgery, the Claimant continued in significant pain. Ultimately, the Claimant came under the care of Dr. Hussey. On March 19, 2024, Dr. Hussey performed a "1. Right reverse total shoulder arthroplasty. 2. Right shoulder removal of nonabsorbable deep implant material." The Claimant credibly testified that she did well postoperatively. Her testimony is corroborated by the medical records.

The Claimant's husband is retired, and they have been able to travel with no problems or issues relating to her shoulder. The Claimant can perform medium category of work. She received a 21% impairment rating which the Respondents have accepted and are paying. Ms. Brunson has named several jobs that the Claimant can perform within her physical restrictions. Dr. Hussey has opined that the Claimant's restrictions for the most recent FCE are permanent. Since her last

shoulder surgery, the Claimant has continued to show interest in returning to the workforce. Her skills are primarily in the mental health profession, which would potentially require her to be capable of physically restraining a patient. However, the Claimant is clearly not physically capable of performing this task without posing a safety risk to herself and others. Given the nature of this work and the safety risks involved, I am persuaded that the Claimant is unable to return to type of work. Ms. Brunson identified several jobs that the Claimant is potentially capable of performing, but she has not been able to obtain employment from any of her job searches. Ms. Brunson confirmed that she did not personally interview the Claimant, nor was she asked to provide any vocational rehabilitation help for the Claimant.

Therefore, considering the Claimant's advanced age, permanent impairment rating of 21%, her medium physical restrictions, limited education, prior work experience, and all other matters before me, I find that the Claimant sustained a 15 % wage loss disability over and above her 21% impairment rating.

C. Attorney's Fee

The parties stipulated that the Respondents have controverted this claim for additional benefits in its entirety. As such, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to the Claimant, pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012).

AWARD

Based on the foregoing findings of facts, this claim for permanent and total disability benefits is hereby respectfully denied and dismissed in its entirety.

However, in the alternative, the Claimant proved she sustained wage loss disability in the amount of 15% over and above her 21% impairment rating.

Accordingly, 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 a discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012).

Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), 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 insurance carrier and one-half by the Claimant.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge