BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H402408

DEBRA PIATT, Employee	CLAIMANT
EDGEWOOD HEALTH & REHAB, Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED JULY 9, 2025

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On April 29, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 30, 2024, and a Pre-hearing Order was filed on January 7, 2025. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

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

2. The relationship of employee-employer-carrier existed between the parties on June 20, 2023.

3. The claimant sustained a compensable injury to her right shoulder on or about June 20, 2023.

4. The claimant’s weekly compensation rates will be determined at a later date.

5. The respondents have accepted a 2% permanent impairment rating to the right shoulder.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to payment of a permanent impairment rating greater than 2% for her compensable right shoulder injury.

2. Whether Claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

> "Claimant contends she is entitled to payment of a permanent impairment rating for her compensable injury. Claimant reserves all other issues."

The respondents' contentions are as follows:

> "Respondents contend that Claimant has received an 8% permanent partial impairment. That rating assigned by Dr. Heinzelmann is being questioned to address major cause. Once clarification is received, Respondents will pay permanent disability benefits associated with the claimant's acute injury."

The claimant in this matter is a 55-year-old female who sustained a compensable injury to her right shoulder on June 20, 2023, while employed by the respondent as a CNA. On direct examination the claimant described the incident in which she sustained a compensable right shoulder injury as follows:

> Q And what happened to you on June 20th of 2023?
>
> A I was taking care of a two-person assist on my hall that I was assigned and I was rolling this person over and I had overreached for the wipes and I felt a pull.
>
> Q And what is a two-person assist?
>
> A It is a person that needs two people in the room to assist on the changing, dressing, and getting up of the resident.

Q Any why would a person be a two-person assist or more specifically, why was this person a two-person assist?

A He had had a stroke and he was extremely heavy. He was – could not stand.

Q So I can't remember if you said. What service were you providing for him at this time?

A I was doing my two-your nightly rounds changing him.

Q Okay. And so you said you overreached. Could you explain why that happened?

A I went and rolled the resident over and I had realized that my wipes that I needed to perform my duty was at that time too far away and I overreached so I wouldn't have to pull him back and re-roll him.

Q So when you overreached, what happened? What did you feel?

A I felt a pull.

Q And where was the pull?

A On my shoulder.

Q Which shoulder?

A My right one.

Q Okay. And did you get the wipes successfully?

A I did, yes.

Q Okay. And then what did you feel?

A Pain.

The claimant reported her injury and was seen at Washington Regional Hospital's emergency room. The claimant was later seen by APRN Dominque Carver on June 22, 2023. At that time, APRN Carver diagnosed the claimant with a right shoulder sprain and gave the

claimant instructions to ice her right shoulder. The claimant was prescribed ibuprofen and Diclofenac gel. The claimant was returned to work with restrictions at that time.

APRN Carver referred the claimant to physical therapy on July 6, 2023, as the claimant's right shoulder failed to improve. On August 17, 2023, APRN Carver referred the claimant for a right shoulder MRI due to her minor improvement.

On August 30, 2023, the claimant underwent an MRI of the right shoulder at MANA Medical Associates. Following is a portion of that diagnostic report authored by Dr. Benjamin Lowery:

> IMPRESSION:
> 1. Low-grade partial-thickness articular surface tear involving the conjoined tendon of the supraspinatus and infraspinatus.
> 2. Tear of the interior labrum.

On September 13, 2023, the claimant was seen by Dr. Andrew Heinzelmann at Ozark Orthopedics. Following is a portion of the medical record from that visit:

> Assessment/Plan
> X-ray three-view right shoulder taken here today no fracture no dislocation
>
> MRI scan right shoulder demonstrates low-grade partial thickness rotator cuff tear. Tear of the inferior labrum.
>
> Right shoulder partial-thickness rotator cuff tear, labral tear
>
> We talked about the pathology and the treatment strategies. She reports that she really needs to keep working without restrictions. If there is a way to avoid the surgery that would be her preference. I explained to her that we certainly can treat this nonoperatively and see how she does. I would recommend maybe a steroid injection today she agrees physical therapy once a week for 6 weeks with a home program. No work restrictions come back in 6 weeks. I did explain as well that it is possible if she does not improve over time we could consider arthroscopic surgical options.
>
> 1. Partial thickness rotator cuff tear – Right.

M75.101: Unspecified rotator cuff tear or rupture of right shoulder, not specified as traumatic.

On April 15, 2024, the claimant was seen by Dr. Chad Songy at UAMS Orthopedics and Sports Medicine. Following is a portion of that medical report:

History of Present Illness:
Debra Piatt is a 54 y.o. female who is here today for evaluation of her right shoulder. This is a workers' Comp injury, date of injury was 06/20/2023. The patient states she was moving a heavy patient and sustained an injury to her right shoulder. She was initially treated with nonoperative management using oral medications and physical therapy, she did not make improvements and had an MRI which revealed a partial-thickness articular sided tear to her supraspinatus. She was then seen by Dr. Heinzelman who did a subacromial steroid injection and more physical therapy. Unfortunately the patient has not made improvements. Surgery was then recommended, patient is here today for a 2nd opinion.

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Imaging:
MRI from outside facility was reviewed and does show a partial articular sided tear to her supraspinatus.

Assessment
1. Traumatic incomplete tear of right rotator cuff, initial encounter
2. Activity involving caregiving involving lifting.

Plan
Debra Piatt is a 54 y.o. female here today for evaluation of her right shoulder, this is a 2nd opinion for a workers' Comp injury.

In my professional opinion, the patient's current diagnosis is a partial articular sided rotator cuff tear to the supraspinatus.

In my professional opinion, the mechanism of injury does correlate with her continued complaints and MRI findings.

Acute objective findings would be the partial articular sided tear of her supraspinatus on MRI.

I do think an injury like to patient had could lead to finding similar to her MRI.

> Since the patient has failed nonoperative management including steroid injections and extended physical therapy, I would recommend surgical intervention for a right shoulder arthroscopy with possible rotator cuff repair and other indicated procedures.
>
> At this time I would keep the patient limited at work to no lifting greater than 5 lb. and no overhead activities.
>
> Outside hospital records were reviewed, including notes from the workers' comp team, outside orthopedic, MRI, and report from the radiologist.

The claimant underwent surgical intervention for her compensable right shoulder injury on June 21, 2024, at the hands of Dr. Heinzelmann. Following is a portion of that operative report:

> PREOPERATIVE DIAGNOSES: Right shoulder rotator cuff tear, impingement, AC joint arthritis, possible labral tear.
>
> POSTOPERATIVE DIAGNOSES: Right shoulder high-grade partial thickness rotator cuff tear, labral tear with glenohumeral arthrosis, impingement, and AC joint arthrosis.
>
> PROCEDURES PERFORMED:
> 1. Right shoulder arthroscopic rotator cuff repair.
> 2. Right shoulder arthroscopic labral repair, anterior.
> 3. Right shoulder arthroscopic distal clavicle excision approximately 1 cm in size.
> 4. Right shoulder arthroscopic debridement to include subacromial decompression, glenohumeral debridement, and bursectomy anteriorly, posteriorly, and laterally.

On September 20, 2024, Dr. Heinzelmann again saw the claimant. At that time, he found the claimant to be at maximum medical improvement and referred the claimant for an impairment rating of her right shoulder. The claimant was assessed and rated by Casey Garretson, OTD, OTR/L, CFE, CEAS of Functional Testing Centers, Inc., on September 23, 2024. That "Impairment Evaluation Summary" can be found Claimant's Exhibit 1, pages 43-47.

It was determined at that time that the claimant had a 13% upper extremity impairment which converts to an 8% whole body rating.

On November 16, 2024, the respondent authored a letter to Dr. Heinzelmann regarding the impairment rating stated in the Functional Testing Centers, Inc. report. Following is the body of that letter authored by Ms. Jackie Cooper, BSN, RN, CCM with Integrity Consulting Services, LLC:

> Thank you for treating Ms. Debra Piatt for her injury of 6/20/23. This is an Arkansas Work Comp Claim. As you are aware, Ms. Piatt reported an injury to her right shoulder on 6/20/23 when she was holding a resident on their side with her left arm and reached for a wet wipe with her right arm and felt a pull in her right shoulder. Ms. Piatt underwent an MRI of the right shoulder on 8/30/23 which revealed a low-grade partial-thickness articular surface tear involving the conjoined tendon of the supraspinatus and infraspinatus and tear of the inferior labrum as well as mild to moderate degenerative changes in the AC joint. She underwent a right shoulder arthroscopic RTC repair, labral repair anterior, distal clavicle excision approximately 1 cm in size and debridement to include subacromial decompression, glenohumeral debridement, and bursectomy anteriorly, posteriorly and laterally performed by you on 6/21/24.
>
> The Functional Testing Center performed the impairment rating and assigned 13 percent to the upper extremity which equated to 8 percent to the body as a whole. In looking at the operative report, you noted she had mild to moderate pre-existing AC joint arthrosis, for which a distal clavicle excision was done.
>
> Would you agree the 10% upper extremity rating for the distal clavicle excision (arthroplasty) is 51% or greater related to her pre-existing AC joint arthritis versus the work injury?

Dr. Heinzelmann responded on December 6, 2024, by indicating "Yes" to the question, "Would you agree the 10% upper extremity rating for the distal clavicle excision (arthroscopy) is 51% or greater related to her pre-existing AC joint arthritis versus the work injury?"

The respondent in this matter has accepted a 2% impairment rating to the claimant's right shoulder. The claimant has asked the Commission to determine whether she is entitled to an impairment rating greater than 2% for compensable right shoulder injury.

Permanent impairment, which is usually a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Also, in *Wilson & Co. v. Christman*, 244 Ark. 132, 424 S.W.2d 863 (1968), the Arkansas Supreme Court held that physical functional loss may best be measured through physical examination by competent medical specialists. The Commission must first evaluate the medical evidence and determine if the permanent impairment is supported by objective and measurable findings. *Reader v. Rheem Mfg. Co.*, 38 Ark. App. 248, 832 S.W.2d 505 (1992). Ark. Code Ann. §11-9-704(c)(1)(B)(Repl. 1996) states that any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. In addition, permanent benefits may only be awarded upon a determination that the compensable injury was the major cause of the impairment, Ark. Code Ann. §11-9-102(5)(F)(ii)(Repl. 1996).

The claimant's compensable right shoulder injury's healing period came to an end on September 20, 2024, when Dr. Heinzelmann declared her to be at maximum medical improvement. Dr. Heinzelmann then referred the claimant for an impairment rating assessment, and one was performed by Casey Garretson, whom is an occupational therapist. His report in some detail explains his rating procedure, which appears to be in line with the *AMA Guidelines to the Evaluation of Permanent Impairment, 4th Edition* and the Arkansas Workers' Compensation Act. The impairment rating of 8% to the body as a whole is supported by subjective measurable findings, specifically the claimant's right shoulder MRI performed on

August 30, 2023, and the claimant's operative report from her June 21, 2024, right shoulder surgery. However, the claimant is only entitled to an award of permanent benefits upon a determination that her compensable right shoulder injury was the major cause of her impairment. Dr. Heinzelmann's response of "Yes" to the question, "Would you agree the 10% upper extremity rating for the distal clavicle excision (arthroscopy) is 51% or greater related to her pre-existing AC joint arthritis versus the work injury?" appears to be the basis of the respondent's belief that only 2% of the claimant's whole body impairment's major cause stemmed from her compensable right shoulder injury; associating the balance of the 8% whole body impairment assessed by occupational therapist Garretson with a major cause that stemmed from pre-existing AC joint arthritis.

I disagree with this position and find the claimant's compensable right shoulder injury was the major cause of the 8% whole body impairment assessed by occupational therapist Garretson. The claimant gave credible testimony that she had never previously had right shoulder difficulties on direct examination as follows:

> Q Now, before this incident, had you ever had any problem at all with your right shoulder?
>
> A No.
>
> Q Before June 20th of 2023, had you had any aches or pains in your right shoulder?
>
> A No.
>
> Q Before that time, had you had any restrictions of movement in your right shoulder?
>
> A No.
>
> Q Had you ever seen a doctor for your right shoulder before that date?

A No.

Q Had you ever missed work because of your right shoulder before that date?

A No.

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Q And prior to this injury, had you had any trouble using your arm with a full range of motion?

A No.

The claimant's testimony regarding having no prior right shoulder difficulties is supported by the medical evidence. There are no medical records in evidence that mention any issues or difficulties regarding the claimant's right shoulder prior to her compensable right shoulder injury on June 20, 2023. There are four medical records introduced by the claimant from the years 2015 and 2016 that primarily discuss knee pain, but no mention of the claimant's right shoulder, including portions of those records that discuss the claimant's past medical history.

Given Dr. Heinzelmann's response to the respondent's singular question in the November 16, 2024, letter authored to him, it is clear that he believes the claimant had pre-existing AC joint arthritis. That very well may be the case, but if that pre-existing condition existed it was most certainly asymptomatic prior to the accident and then symptomatic thereafter, satisfying the major cause requirement as it did in *Leach v. Cooper Tire and Rubber, Co.,* 2011, Ark. App 571 (2011). The claimant is able to prove that she is entitled to a whole body impairment of 8% due to her compensable right shoulder injury. I note the respondent has previously accepted 2% of that whole body impairment leaving a balance of 6% whole body impairment.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 30, 2024, and contained in a Pre-hearing Order filed January 7, 2025, are hereby accepted as fact.

2. The claimant is entitled to an additional 6% whole body impairment due to her compensable right shoulder injury. This, in combination with the 2% whole body impairment stipulated to by the respondents, gives the claimant a total whole body impairment of 8% regarding her compensable right shoulder injury.

3. The claimant’s attorney is entitled to an attorney’s fee in this matter.

ORDER

Respondent shall pay the claimant a total of 8% whole body impairment, which is made up of the 2% previously accepted and stipulated to by the respondent and the 6% whole body impairment awarded herein.

Respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE