

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H109799**

GINA SALLEE, EMPLOYEE

CLAIMANT

UNIVERSAL HEALTH SERVICES INC., EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES INC., CARRIER/TPA

RESPONDENT

OPINION FILED **OCTOBER 9, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 14, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 24, 2025, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 employee/employer/carrier relationship existed on December 7, 2021.
3. Claimant sustained a compensable injury on December 7, 2021.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant is entitled to temporary total disability benefits for her left shoulder injury from March 14, 2024, to September 11, 2024.

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2. Attorney's fee.

All other issues are reserved by the parties.

The claimant contends that "She is entitled to temporary total disability after her left shoulder surgery by Dr. Dougherty in March of 2024. Claimant reserves all other issues."

The respondents contend that "All benefits related to her left shoulder injury have been paid."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant 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 a pre-hearing conference conducted on April 24, 2025, and contained in a pre-hearing order filed on that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability from March 4, 2024, through September 11, 2024.

FACTUAL BACKGROUND

This is the third time I have heard this case. In an Opinion that was issued on November 3, 2022, I found that claimant failed to prove that she suffered a compensable injury on December 7, 2021, as she did not provide convincing evidence that she was acting in the course of her employment at the time of the accident. On June 9, 2023, the Full Commission reversed that decision, finding claimant did prove by the preponderance of the evidence that she was acting within the course of her employment duties with the respondent on December 7, 2021, when she had an automobile accident. The Full Commission then found that claimant proved she suffered compensable injuries to her neck

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and left knee. All other issues were reserved. That decision was not appealed to the Arkansas Court of Appeals and therefore is *res judicata* on the issue of whether claimant suffered a compensable injury on December 7, 2021.

The second hearing was held on April 10, 2024, with an opinion issued on May 16, 2024, in which I found claimant proved by a preponderance of the evidence that her left shoulder injury was compensable, entitling her medical benefits for that injury. In March 2024, claimant had undergone a subacromial decompression with biceps tenotomy and distal clavicle co-plane procedure the month before that hearing and was still being treated for it. Claimant did not seek any temporary total disability (TTD) benefits for her left shoulder injury at the April 2024 hearing, reserving that issue. That decision was not appealed to the Full Commission and therefore is *res judicata* on the issue of whether claimant suffered a compensable left shoulder injury on December 7, 2021.

The above recitation of the issues and contentions of the parties reflects how the parties amended or clarified their respective positions before the hearing. At the hearing, respondent requested that the transcripts and exhibits from the prior hearings be included in the present proceeding. Claimant objected because respondent had not identified those records prior to trial as potential exhibits and did not review them to prepare for this hearing. I took the request under advisement, and after reviewing the prehearing order, I note that the parties were to identify exhibits at least seven days before the hearing and provide them to opposing counsel. While I believe the better practice would be to advise opposing counsel if records from a prior hearing were going to be referenced at the present hearing¹, the requirement to provide them to opposing counsel presupposes that counsel did not already have those records. Over claimant's objection, I will consider the

¹ The best practice would have been for me to inquire of the parties during the prehearing conference if either wanted the previous testimony and exhibits considered when determining the issue before me, but I failed to do so.

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testimony and exhibits from the previous hearing that are germane to the issue before me in this hearing.

HEARING TESTIMONY

Claimant was the only witness to testify at this hearing. At the April 10, 2024, hearing in this matter, claimant had already had surgery on her left shoulder and pursuant to the Court's Order of May 16, 2024, that surgery was deemed necessary treatment for that injury. Claimant testified that following the surgery on March 14, 2024, she received physical therapy, pain medication, and two cortisone shots. She said after the second cortisone injection, her left shoulder pain subsided. Claimant testified between March 14, 2024, and September 11, 2024, she did not work because of the pain she was having from her shoulder.

On cross-examination, claimant said that the pain in her shoulder made it difficult to type as she could not lift her arm high enough to do so without excruciating pain; her computer was on a table. She was able to do some cooking with her right hand.

REVIEW OF THE MEDICAL EXHIBITS

The only exhibits provided by claimant were 54 pages of medical records, most of which were those of Dr. Dougherty from January 24, 2024, through September 12, 2024. Respondents submitted no additional exhibits.

Dr. Dougherty's operative report of March 14, 2024, shows he performed a subacromial decompression with biceps tenotomy and distal clavicle co-plane procedure. On March 19, 2024, Montye Crawford, assistant to Dr. Dougherty, said claimant could go without her sling and try to use her arm normally, but not to lift over five pounds with it. Dr. Dougherty referred claimant to a therapist for a home exercise program (HEP) on March 27, 2024.

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On June 9, 2024, Dr. Dougherty saw claimant and gave her a cortisone injection in her left shoulder. She was told to limit her activities for the next 24-48 hours, after which she was to continue the HEP and have a weight restriction of no more than 20 pounds. Claimant returned to Dr. Dougherty on July 31, 2024, at which time the weight restriction was raised to 30 pounds. Claimant was still complaining of pain in her left shoulder when she saw Dr. Dougherty on September 11, 2024. He scheduled claimant for another MRI on her shoulder and reduced her lifting restrictions to five pounds.

Respondents requested that the records and testimony of Dr. James Blankenship that were introduced at the previous hearing be reviewed. In doing so, I saw Dr. Blankenship discussed cervical spine surgery with claimant, and there are references to claimant having bilateral radicular pain in her arms. However, Dr. Blankenship did not treat claimant for the injury for which Dr. Dougherty performed surgery. I found those records from the previous hearing are inapplicable to the issue before me, as claimant is not seeking any benefits in this action that relate to her cervical spine injury.

ADJUDICATION

As set forth above, the only issue before me is claimant's request for temporary total disability (TTD) benefits from March 14, 2024, through September 11, 2024. At the time of the previous hearing (April 10, 2024), she had already undergone a subacromial decompression with biceps tenotomy and distal clavicle co-plane procedure that hearing and was still being treated for it. Claimant did not seek any TTD benefits for her left shoulder injury at the April 2024 hearing, reserving that issue for this hearing.

An injury to a left shoulder is an unscheduled injury. To be entitled to TTD benefits for an unscheduled injury, a claimant must prove by a preponderance of the evidence that she remains within her healing period and suffers a total incapacity to earn wages. *Allen Canning Co. v. Woodruff*, 92 Ark.

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App. 237, 212 S.W.3d 25 (2005). Claimant proved that she remained in her healing period from March 4, 2025, through September 11, 2024; Dr. Dougherty was still treating her post-surgery. The question then is whether she proved she suffered the necessary incapacity to earn wages.

From March 4, 2024, through June 5, 2024, I have no question that claimant qualified for TTD. The period from June 5, 2024, through September 11, 2024, is not as clear, because Dr. Dougherty released her with weight restrictions of twenty and then thirty pounds. Claimant said it was too painful to type or use the arm opening the refrigerator. However, Dr. Dougherty did give her an injection for bursitis on June 5, 2024, which would be consistent with claimant's description of her symptoms. I was not provided with the record of the second injection she was given, which from the testimony was after she had an MRI on October 2, 2024, but claimant testified that the second injection relieved the pain she was having in the surgical area.

In *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002), the Arkansas Court of Appeals held: "If, during the period while the body is healing, the employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, his temporary disability is deemed total." In the first two hearings, I found many instances in which I did not think claimant was a credible witness, but when I view her testimony in this hearing with the records from Dr. Dougherty, he did not record that she was exaggerating but instead treated her with a cortisone injection. Based on her testimony and the medical records, I find claimant has proven by a preponderance of the evidence that she is unable to work without pain and discomfort and is therefore entitled to TTD from March 4, 2024, until September 11, 2024.²

² Claimant submitted a "return to work/school" note from Dr. Dougherty dated September 12, 2024, that contradicted his 30-pound lifting restriction from the day before, stating that claimant was to lift no more than 5 pounds with her upper extremities. As Dr. Dougherty was not treating claimant's right arm, it may be that he simply misspoke with the plural reference, but regardless, that note was issued after the relevant dates of the scope of this hearing.

ORDER

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

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to [Ark. Code Ann. § 11-9-809](#). 3

Pursuant to [Ark. Code Ann. § 11-9-715](#), the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one half by the carrier and one half by the claimant.

The respondent shall pay the court reporter's fee in the amount of \$ 460.50.

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

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE