

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009300

KIMBERLY TAYLOR,
EMPLOYEE

CLAIMANT

HINO MOTORS MFG. USA, INC.,
EMPLOYER

RESPONDENT

SOMPO AMERICA INSURANCE CO.,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 19, 2024

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal an administrative law judge's opinion filed January 24, 2024. The administrative law judge found that the claimant did not prove she sustained a compensable low back injury. The administrative law judge found that the claimant proved she was entitled to additional medical treatment provided in connection with her compensable right shoulder injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder. We find that the claimant proved the medical treatment of record related to her right

shoulder was reasonably necessary. The Full Commission finds that the claimant did not prove she sustained a compensable low back injury. We find that the claimant did not prove she was entitled to additional temporary total disability benefits. The respondents are not liable for fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(2)(B)(ii)(Repl. 2012).

I. HISTORY

The parties stipulated that the employee-employer-carrier relationship existed on or about October 21, 2020. Kimberly Taylor, now age 43, testified on direct examination:

Q. And where were you employed back on October 21, 2020?

A. At Hino Motors.

Q. How long had you been there?

A. Three days.

Q. And what was your job title?

A. Rear-axle....Put the seals on the axle and screw down the bolts....

Q. And did you have an incident at work on October 21, 2020?

A. Yes, sir.

Q. Briefly tell the judge what happened.

A. I was getting trained by Kadesia Wilson, and the line kept stopping. And the line – the line leader came over and told her not to pull the call wait and stop any more, show me what to do when the line – when it jams. So with that being said, she showed me what to do, and that consists of pulling the part to unjam it so it can go down the conveyor belt. And so then she – she showed me, and then once it was my turn, I went to go and do the same as I was showed, pulled the part, but when I pulled the part, I pulled – my body – I was on my

tiptoes because it was jammed - I immediately felt a pinch but I didn't think anything of it....

Q. And what body parts did you hurt at that time?

A. My lower back and my right shoulder.

According to the record, the claimant treated at Coast to Coast Medical on October 21, 2020 where it was reported, "States hurt lower R side back pulling on part."

A Form AR-3, PHYSICIAN'S REPORT dated October 21, 2020 indicated the following: "Patient was working on the line and tried to pull an axel (sic) that had gotten stuck. Felt a little pull and sting to her right upper back. As she continued to work the pain became worse....Tender to palpation to right upper back." Christopher Gross, APN reported on the Form AR-3 that the diagnosis was "Right upper back strain." The claimant testified that she did not return to work for the respondents following the specific incident occurring October 21, 2020.

Christopher Gross reported on November 6, 2020, "Patient was working on the line on 10/21 and tried to pull an axel (sic) that had gotten stuck. Felt a little pull and sting to her right Lower back. As she continued to work the pain became worse. When she woke up on 10/22 she noticed a pain to right shoulder also which caused decreased function of the shoulder. States she has been working but the pain is worse than when the injury occurred." Mr. Gross diagnosed "Right upper back strain. Right shoulder pain, Lower back Pain." The claimant was treated conservatively.

A radiologist reported on November 6, 2020:

RIGHT SHOULDER (two views, external and internal):

There are no fractures or dislocations identified. The soft tissues appear normal. No destructive lesion or significant arthritic change is identified.

IMPRESSION: Normal right shoulder.

LUMBAR SPINE WITH OBLIQUES (four views, AP, both obliques, lateral):

Osteophytes are present anteriorly involving L3 through S1. There is joint space narrowing with sclerosis at L5-S1. No fracture or dislocation is identified.

IMPRESSION: Mild arthritic changes involving L3 through S1. No acute abnormality is identified.

The parties stipulated that the respondents paid temporary total disability benefits beginning November 6, 2020. An Occupational Therapist reported on December 1, 2020, "Observation: swelling continues to R upper trap and R anterior deltoid." An MRI of the claimant's right shoulder was taken on March 23, 2021:

HISTORY: Right shoulder pain. Pulling injury 10/21/2020....

FINDINGS: The AC joint is normal. A trace of fluid and edema is present in the subacromial bursa compatible with mild bursitis. The tendons of the rotator cuff are intact. Biceps tendon is intact. Irregularity of the mid to posterior portion of the superior labrum is compatible with SLAP tear. The labrum is otherwise intact.

There is no fracture or pathologic osseous lesion. There is no soft tissue mass. There is no significant joint effusion.

OPINION: 1. SLAP tear.

2. Mild subacromial bursitis.

Dr. David Brown examined the claimant on May 6, 2021:

This is a 40 year old female who is being seen for a chief complaint of right shoulder pain. The pain began on 10/21/20 after she pulled on a piece of equipment at work that strained her shoulder. She describes a sharp, throbbing pain located

diffusely throughout the shoulder that radiates down the arm. The pain worsens when getting dressed and with reaching motions. She also complains of swelling....

X-rays of the right shoulder reveal no obvious fractures. Her glenohumeral joint is reduced. She has a downsloping acromion.

The patient continues to complain of pain over 6 months out from her injury. She has tried physical therapy, rest, and anti-inflammatories. She describes her pain as sharp. Her medical records state that she has a possible SLAP tear. I will obtain the patient's right shoulder MRI and make further recommendations....I will place her on light duty with no use of her right arm restriction.

Dr. Brown's impression was "Shoulder Pain, Right."

The claimant followed up with Dr. Brown on May 18, 2021: "I am concerned about proceeding with surgery with the patient's current stiffness. I will give the patient a steroid injection. I will get her started back into a formal physical therapy program. I will see her back in 4 weeks to see how she is doing. I will keep her on light duty at work for now." The claimant testified that she underwent physical therapy recommended by Dr. Brown.

The claimant continued to follow up with Dr. Brown, who noted on August 12, 2021, "I am very hesitant to proceed with any sort of surgery considering the amount of patient's stiffness and apprehension with range of motion. She has evidence of a SLAP tear that occurred in October 2020. I recommend the patient undergo an independent medical exam with an option to treat via a second opinion. I will keep her on light duty at work."

Dr. Brown's impression was "1. Superior Glenoid Labrum Lesion (SLAP), Right."

The claimant treated with Denise Purnell, APRN on February 7, 2022: "Pt comes into clinic with c/o low back pain, hip pain....Overall findings low back tenderness." Denise Purnell assessed "Allergic rhinitis" and "Lumbago."

Dr. Charles E. Pearce noted on February 28, 2022:

The patient is a 40-year-old right-handed employee of Hino Motors who was injured the 1st day of training/work when she was instructed to pull an axle off of a line. She says she could not pull the axle despite leaning over the part and as she did so she felt a pinch and pull in her right shoulder. She has been on light duty restrictions since. She was seen and evaluated by Dr. Davis Brown who prescribed diclofenac and ordered an MRI scan of her shoulder. Additionally she had a cortisone injection. Prior to that visit she had had a course of therapy, modification activities and anti-inflammatories. She has never had similar problems in the past. She complains of neck and right shoulder pain. MRI scan was done and by report showed a SLAP tear. Surgery apparently was discussed but there was concern that she had not gained motion despite the above modalities to include the steroid injection. Dr. Brown asked for a 2nd opinion. Currently, she is complaining of shoulder, shoulder girdle, right neck and arm pain to about the elbow....

IMAGING: X-rays ordered and interpreted by me surgical spine and right shoulder show no significant acute abnormality. There may be slight straightening of her lordotic curve. MRI scan from March 23, 2021 is a noncontrast scan and shows some possible undercutting of her superior labrum that was labile (sic) a slap tear. However this can be a normal finding as well.

Dr. Pearce gave the following impression: “Right shoulder, shoulder girdle, arm pain and weakness not consistent with MRI finding of slap tear.” Dr. Pearce recommended a Functional Capacity Evaluation and stated, “2. Patient can continue with light duties, anti-inflammatories in the interim time.”

Dr. Camdin M. Gray’s assessment on March 4, 2022 included “Lumbago....Low back pain – referral to PT as suspect muscle spasm. XR as above, will trial cyclobenzaprine.”

The claimant participated in a Functional Capacity Evaluation on April 6, 2022: “Ms. Taylor completed functional testing on this date with **unreliable** results. Overall, Ms. Taylor demonstrated the ability to perform work **in at least the SEDENTARY** classification of work[.]”

Dr. Gray noted on April 13, 2022, “Still having low back pain, attending PT. Had worsening of her back pain the other day after doing traction at PT.”

Dr. Pearce provided an Addendum on April 18, 2022:

The patient completed a functional capacity evaluation on April 6, 2022. She gave an unreliable effort only meeting 27 of 52 consistency measures. She was placed in a least the sedentary classification of work. However this is not valid because of her unreliable effort. The patient has reached maximal medical improvement. The patient can return to regular work duties without restriction. There is no indication for further diagnostic testing and/or treatment.

The patient has sustained 0% permanent partial impairment as it relates to her upper extremity.
The statements are made within a degree of medical certainty.

Dr. Gray planned on April 26, 2022, "Due to intermittent urinary incontinence based on positionality, concern for spinal cord pathology, so ordered MRI to assess. Also back pain has been ongoing for 8 weeks, so another clinical indication of MRI."

The parties stipulated that the respondents paid temporary total disability benefits through May 12, 2022. Dr. Gray referred the claimant to Pain Treatment Centers of America. The record indicates that the claimant received a Lumbar Medial Branch Block at Pain Treatment Centers of America on October 6, 2022.

Dr. Ted Shields performed a "Suprascapular Nerve Block for shoulder pain" at Pain Treatment Centers of America on October 24, 2022. The claimant continued to occasionally follow up with Dr. Shields for various "nerve block" procedures.

A pre-hearing order was filed on July 24, 2023. The claimant contended, "The Claimant contends that she sustained injuries to her back and right shoulder in the course and scope of [her] employment on October 21, 2020, when she was removing parts from a machine. The Respondents initially accepted the right shoulder as compensable and paid medical and temporary total disability benefits from November 6, 2020 through January

14, 2021. Respondents have now controverted the claim in its entirety. The Claimant was under the treatment of Christopher Gross, APN with Coast to Coast Medical who diagnosed the Claimant with a SLAP tear of the right shoulder and low back pain with radiculopathy and he recommended an MRI of the lumbar spine and a referral to an orthopedist. Claimant was treating with Dr. David Brown for her shoulder. Dr. Brown opined that the Claimant sustained a SLAP tear of the right shoulder. He was concerned with performing surgery due to the Claimant's stiffness and he recommended a second opinion with an option to treat and he kept the Claimant on light duty. The Respondents have denied the recommendations of Dr. Gross and Dr. Brown. Claimant contends that she sustained compensable injuries to her back and right shoulder; she is entitled to the recommended MRI of the lumbar spine, physical therapy and a repair of her right shoulder SLAP tear, payment/reimbursement of medical and out of pocket expenses. All other issues are reserved."

The parties stipulated that the respondents "initially accepted Claimant's alleged right shoulder injury as compensable and paid medical and temporary total benefits pursuant thereto; but they have now controverted this claim in its entirety." The respondents contended, "This respondent will assert the following defenses: The claimant did not suffer a compensable back injury. Her right shoulder was accepted and all

reasonable and necessary benefits were paid. Claimant gave an unreliable effort in an FCE, failed to attend Physical Therapy appointments and then was released at MMI with 0% impairment by Dr. Pearce on 2/28/22.

Respondents have not controverted the claim in its entirety and do not owe attorney's fees on previous indemnity."

The parties agreed to litigate the following issues:

1. Whether Claimant sustained compensable injuries by specific incident to her back and right shoulder.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to additional temporary total disability benefits.
4. Whether Claimant is entitled to a controverted attorney's fee, including a fee on all indemnity benefits previously paid in this claim. All other issues have been reserved.

An MRI of the claimant's right shoulder was taken on September 13, 2023 with the following impression:

1. Tiny low-grade interstitial partial infraspinatus tendon tear. No full-thickness rotator cuff tear.
2. Anterosuperior to posterosuperior labral tear.

After a hearing, an administrative law judge filed an opinion on January 24, 2024. The administrative law judge found, among other things, that the claimant proved she sustained a compensable injury to her right shoulder. The administrative law judge awarded reasonably necessary medical treatment provided in connection with the compensable right shoulder injury. The administrative law judge found that the claimant did

not prove she was entitled to additional temporary total disability benefits.

The administrative law judge found that the claimant did not prove she sustained a compensable low back injury. The claimant appeals to the Full Commission and the respondents cross-appeal.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
 - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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. 269, 101 S.W.3d 252 (2003).

1. Right Shoulder

An administrative law judge found in the present matter, “6. Claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right shoulder by specific incident.” The Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder. The parties stipulated that the employment relationship existed on October 21, 2020. The claimant testified regarding her job description, “Rear-axle....Put the seals on the axle and screw down the bolts.” The claimant testified that, while performing employment services, she injured her lower back and right shoulder while pulling on an industrial part.

The medical evidence corroborated the claimant’s contention that she injured her right shoulder on October 21, 2020. Christopher Gross, APN reported that the claimant’s right shoulder began hurting as a result of the accident which occurred on October 21, 2020. Mr. Gross’ diagnosis on November 6, 2020 included “Right shoulder pain.” An Occupational Therapist treated the claimant on December 1, 2020 and observed swelling in the area of the claimant’s right trapezius. “Swelling” can be an objective medical finding establishing a compensable injury. *White Cnty. Med. Ctr.*

LLC v. Johnson, 2022 Ark. App. 262, 646 S.W.3d 245. In addition, an MRI of the claimant's right shoulder on March 23, 2021 showed a "SLAP tear." Dr. Brown diagnosed this objective finding as "1. Superior Glenoid Labrum Lesion (SLAP), Right." Dr. Brown reported that the claimant injured her right shoulder while performing employment services on October 21, 2020. The "SLAP tear" was confirmed in the MRI of the claimant's right shoulder which was taken on September 13, 2023.

In accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012), the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a "compensable injury" to her right shoulder. The claimant proved that she sustained an accidental injury causing physical harm to her right shoulder. The injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident which was identifiable by time and place of occurrence on October 21, 2020. In addition, the claimant established a compensable injury by medical evidence supported by objective findings, namely the occupational therapist's observation of right shoulder swelling and the documented "SLAP tear" shown following the accidental injury. The claimant proved that these objective medical findings were causally related to the accidental

injury occurring October 21, 2020 and were not the result of a prior injury or pre-existing condition.

2. Back

An administrative law judge found, “5. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury to her back by specific incident.” The Full Commission finds that the claimant did not prove she sustained a compensable injury to her low back. As we have discussed, the parties stipulated that the employment relationship existed on October 21, 2020. In addition to her right shoulder, the claimant testified that she injured her lower back while reaching for an industrial part. The claimant did not establish a compensable injury to her back by medical evidence supported by objective findings. Christopher Gross reported on October 21, 2020 that the claimant was “Tender to palpation to right upper back.” “Tenderness” is not an objective medical finding establishing a compensable injury. *Rodriguez v. M. McDaniel Co., Inc.*, 98 Ark. App. 138, 252 S.W.3d 146. An x-ray of the claimant’s back was taken on November 6, 2020 with the impression, “Mild arthritic changes involving L3 through S1. No acute abnormality is identified.” The evidence does not demonstrate that the “mild arthritic changes” described in the November 6, 2020 x-ray were causally related to the October 21, 2020 accident, and these arthritic changes cannot be interpreted as objective findings establishing a

compensable injury. There is no probative evidence before the Commission demonstrating that the claimant established a compensable injury to her back by medical evidence supported by objective findings. Nor is there any credible evidence demonstrating that the claimant suffered from “muscle spasm” in her low back as a result of the October 21, 2020 incident in which the claimant sustained a compensable injury to her right shoulder.

Pursuant to Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012), the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a “compensable injury” to her low back. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her back. The claimant did not prove that she sustained an injury to her low back which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her low back as the result of a specific incident identifiable by time and place of occurrence on or about October 21, 2020. Finally, the claimant did not establish a compensable injury to her low back by medical evidence supported by objective findings.

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). The determination of when the healing period has ended is a question of fact for the Commission. *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996).

An administrative law judge found in the present matter, “9. Claimant has not proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits.” The Full Commission affirms this finding. The claimant proved by a preponderance of the evidence that she sustained a compensable right shoulder injury on October 21, 2020. The claimant did not prove that she sustained a compensable low back injury on that date. The claimant testified that she did not return to work for the respondents following the compensable injury. The respondents paid temporary total disability benefits beginning

November 6, 2020. As we have discussed, an MRI of the claimant's right shoulder on March 23, 2021 showed a "1. SLAP tear." The claimant received conservative medical treatment.

Dr. Pearce examined the claimant on February 28, 2022 and recommended a Functional Capacity Evaluation. The claimant participated in a Functional Capacity Evaluation on April 6, 2022. It was concluded that the claimant performed during the Functional Capacity Evaluation "with unreliable results," and the claimant was returned to Sedentary work. Dr. Pearce reported on April 18, 2022: "The patient has reached maximal medical improvement. The patient can return to regular work duties without restriction....The patient has sustained 0% permanent partial impairment as it relates to her upper extremity." The parties stipulated that the respondents continued to pay temporary total disability benefits through May 12, 2022. The claimant's testimony indicated that she subsequently returned to work for another employer for a brief time.

Based on the current record before us, the Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability benefits after May 12, 2022. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Full Commission finds in the present matter that Dr. Pearce's

opinion is credible, is corroborated by the record, and is entitled to significant evidentiary weight. We find that the claimant reached the end of a healing period for her October 21, 2020 compensable right shoulder injury no later than April 18, 2022. Dr. Pearce opined on April 18, 2022 that the claimant had reached maximal medical improvement and could return to regular work duties without restriction. There are no credible medical opinions of record contradicting Dr. Pearce's opinion. Temporary total disability benefits cannot be awarded after the healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). Persistent pain does not extend a claimant's healing period, provided that the underlying condition has stabilized. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The Full Commission finds in the present matter that the claimant's condition stabilized no later than April 18, 2022, the date Dr. Pearce opined that the claimant had reached maximal medical improvement and could return to unrestricted work.

C. Medical Treatment

The 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. Ark. Code Ann. §11-9-508(a)(Repl. 2012). 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). What constitutes reasonably necessary medical treatment is a question of fact. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

An administrative law judge found in the present matter, “8. Claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment of her compensable right shoulder injury. Moreover, she has proven by a preponderance of the evidence that all of her treatment that is in evidence was reasonable and necessary.” The Full Commission finds that the medical treatment of record related to the claimant’s right shoulder was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

The Full Commission has found that the claimant proved she sustained a compensable right shoulder injury on October 21, 2020. The claimant did not prove that she sustained a compensable low back injury. We find that the medical treatment of record related to the claimant’s right shoulder on and after October 21, 2020 was reasonably necessary. Said reasonably necessary medical treatment includes the treatment of record provided by Dr. Brown. Dr. Brown eventually recommended an Independent Medical Evaluation and second opinion. On April 18, 2022,

Dr. Pearce opined that the claimant had reached maximum medical improvement and he stated, "There is no indication for further diagnostic testing and/or treatment."

The record therefore shows, as we have found *supra*, that the claimant reached the end of a healing period related to her compensable right shoulder injury no later than April 18, 2022 as opined by Dr. Pearce. However, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). The Full Commission finds that the "Nerve Block for shoulder pain" administered by Dr. Shields on October 24, 2022 was geared toward management of the claimant's injury and was reasonably necessary. The claimant did not prove that any treatment related to her low back was reasonably necessary, including treatment provided by Denise Purnell beginning February 7, 2022 and following.

D. Fees for legal services

Ark. Code Ann. §11-9-715(Repl. 2012) provides, in pertinent part:

(a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee....

(2)(B)(ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

An administrative law judge found in the present matter, “10.

Claimant has proven by a preponderance of the evidence that her counsel is entitled to a controverted attorney’s fee on the indemnity benefits previously paid under this claim, pursuant to Stipulation No. 3 and Ark. Code Ann. §11-9-715(Repl. 2012).” The Full Commission does not affirm this finding.

The parties stipulated that the employment relationship existed on October 21, 2020, on which date the claimant sustained a compensable injury to her right shoulder. The parties stipulated that the respondents paid temporary total disability benefits beginning November 6, 2020 and continuing through May 12, 2022. A pre-hearing order was filed on July 24, 2023. The claimant contended, among other things, that she sustained injuries in the course and scope of her employment. The parties stipulated, “3. Respondents initially accepted Claimant’s alleged right shoulder injury as compensable and paid medical and temporary total disability benefits pursuant thereto; but they have now controverted this claim in its entirety.” Yet the respondents also contended in part, “Respondents have not controverted the claim in its entirety and do not owe attorney’s fees on previous indemnity.”

A hearing was held on October 27, 2023. At that time, the respondents stated that they initially accepted compensability of the claimant's right shoulder injury and had paid temporary total disability benefits until the claimant reached maximum medical improvement. The respondents stated that they had not controverted the claim in its entirety. The administrative law judge denied the respondents' proposition to modify the agreed stipulation. It is well-settled that a stipulation is an agreement between attorneys respecting the conduct of the legal proceedings. *Dinwiddie v. Syler*, 230 Ark. 405, 323 S.W.2d 548 (1959). The Commission has the discretion to allow a party to withdraw a stipulation. *Jackson v. Circle T Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995). Since the respondents in the present matter initially provided medical treatment and paid temporary total disability benefits, the Full Commission finds that the respondents should be allowed to withdraw the earlier stipulation that they controverted the claim its entirety.

Moreover, a fee is payable from the employer or carrier only if benefits are controverted and awarded. *Eldridge v. Pace Indus., LLC*, 2021 Ark. App. 245, 625 S.W.3d 734, citing *Burton v. Chartis Claims, Inc.*, 2014 Ark. App. 47. See also *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445. A maxim of workers' compensation law is that when the Commission finds that a case has been controverted, in whole or in part,

the Commission shall direct the payment of legal fees by the employer or carrier in addition to the compensation awarded. Ark. Code Ann. §11-9-715(a)(2)(B)(ii)(Repl. 2012; *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). One of the purposes of the statute and case law is to put the economic burden of litigation on the party that makes litigation necessary by controverting the claim. *Id.*, citing *Prier Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1988). In the present matter, litigation was not necessary in order for the claimant to receive temporary total disability benefits voluntarily paid by the respondents beginning November 6, 2020 and continuing through May 12, 2022. In the subsequent pre-hearing order filed July 24, 2023, the claimant did not contend that she was entitled to an award of this period of temporary total disability benefits. Nor did the administrative law judge award this period of temporary total disability benefits or any other period. We find that the claimant's attorney is not entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)((2)(B)(ii)(Repl. 2012).

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her right shoulder. We find that the claimant proved the medical treatment related to her right shoulder was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). There are currently no recommendations

of additional treatment related to the claimant's compensable right shoulder injury. The Full Commission finds that the claimant did not prove she sustained a compensable low back injury. Based on the current record, we find that the claimant did not prove she was entitled to additional temporary total disability benefits. The respondents are not liable for fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(2)(B)(ii)(Repl. 2012). However, for prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved the medical treatment of record related to her right shoulder was reasonably necessary.

Ark. Code Ann. § 11-9-508(a) (Repl. 2012) requires an employer to provide an employee with medical and surgical treatment "as may be

reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence that the additional treatment is reasonable and necessary.

Nichols v. Omaha Sch. Dist., 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

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

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

In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept or reject medical opinions. *Williams v. Ark Dept. of Community Corrections*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts

into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.*

Although the claimant admittedly injured her right shoulder on October 21, 2020, she was released at MMI by Dr. Charles Pearce on April 18, 2022, after demonstrating an unreliable effort during her functional capacity evaluation. He released her to return to work at full duty with no impairment, stating unequivocally:

The patient completed a functional capacity evaluation on April 6, 2022. She gave an unreliable effort only meeting 27 of 52 consistency measures. She was placed in at least the sedentary classification of work. However, this is not valid because of her unreliable effort.

The patient has reached maximum medical improvement

The patient can return to regular work duties without restriction

There is no indication for further diagnostic testing and/or treatment

The patient has sustained 0% permanent partial impairment as it pertains to her upper extremity.

Although the claimant underwent an MRI on September 13, 2023, this took place nearly a year and a half after reaching MMI. The report from Dr. Ezekiel Shotts reflected a “[t]iny” low-grade partial interstitial

infraspinatus tear. Based on this finding, Dr. Shields recommended an orthopedic consult with no indication the MRI findings were the cause of the claimant's complaints of pain in her shoulder and with no course of treatment. In fact, he gave no reasoning as to how this referral is causally related to the claimant's 2020 injury.

Dr. Shields did not offer an opinion as to whether the right shoulder tear was a result of the claimant's 2020 injury or whether there was a later, intervening injury after the claimant reached MMI. There is no way to determine the source of this tear which was not discovered until nearly a year and a half after the claimant reached MMI and nearly three years after the accident in question.

Dr. Shotts and Dr. Shields provided no unequivocal statements that the claimant's right shoulder tear, which was discovered nearly three years after the claimant's initial injury, was the source of her alleged pain. However, Dr. Pearce was firm in his statement that the claimant did not require any further diagnostic treatment and had reached maximum medical improvement as of April 18, 2022. As a result, the claimant is not entitled to additional medical treatment for her right shoulder injury.

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

MICHAEL R. MAYTON, Commissioner