

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H307524

KANEKALON BISHOP,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF CORRECTIONS,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JULY 3, 2025

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 CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

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

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed December 31, 2024. The administrative law judge found that the claimant's evaluation at Functional Testing Centers, Inc. was reasonably necessary. The administrative law judge found that the claimant proved she was entitled to a 1% permanent anatomical impairment rating. The administrative law judge found that the claimant proved she was entitled to additional compensation in accordance with Ark. Code Ann. §11-9-505(Repl. 2012).

After reviewing the entire record *de novo*, the Full Commission finds the claimant did not prove the evaluation at Functional Testing Centers, Inc. was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that the claimant did not prove she was entitled to a permanent anatomical impairment rating. However, the Full Commission finds that the claimant proved she was entitled to additional compensation in accordance with Ark. Code Ann. §11-9-505(a)(1)(Repl. 2012).

I. HISTORY

The record indicates that Kanekalon Bishop, now age 44, became employed with the respondents, Arkansas Department of Corrections, on April 3, 2023. The parties stipulated that the employment relationship existed at all pertinent times. The claimant testified that she was employed with the respondents on November 9, 2023, and that her job title on that date was Administrative Assistant for Maintenance. The claimant testified on direct examination:

Q. And did you sustain an injury on November 9, 2023?

A. Yes.

Q. Would you tell the judge what happened?

A. We have a thing called Employee Corporation. So that day, we was selling chili dogs and chili and cheese dogs for the employees and I went out to the Riot Gate to hand them – we had run out of cheese and I went to the Riot Gate to hand them something through the Gate and the lady that was in master control wasn't paying attention and she let the Gate back on my arm as I was handing something....I had to

scream. I was screaming for her to run back and push the button to open it back up on my arm.

Q. So it, automatically, closed on your right arm?

A. Yes, sir.

According to the record, the claimant treated at MedExpress on November 9, 2023:

Patient is a 43 yo female who presents with right forearm pain. States while at work gate closed on her arm causing immediate edema and pain....

A physician's assessment on November 9, 2023 was "1. Pain of right forearm" and "2. Contusion of right forearm." The record indicates that the respondents began paying temporary total disability benefits on November 10, 2023. Amanda Dinwiddie, a WCC Claims Specialist, informed the claimant on November 20, 2023, "Public Employee Claims Division (PECD) administers the workers compensation benefits for ADC – Maximum Security Unit/Tucker Max. PECD has accepted your injury of 11/09/2023 as compensable and will be responsible for the authorized necessary and reasonable medical treatment associated with this accident."

The claimant began treating with Dr. Brian Norton on January 2, 2024:

This is a 43-year-old female that comes today complaining of a right forearm pain....The pain began back in November after a gate slammed on her wrist/forearm. She has significant pain since that time. She was seen by Dr. Hussey who ordered an MRI of her wrist. MRI showed no obvious significant abnormalities....

Right Forearm

There is significant tenderness at the intersection of the first and second dorsal compartments.

There is significant swelling in this area as well....The patient continues significant pain in the forearm likely due to intersection syndrome. I recommended a steroid injection. Also recommended her go back into a wrist brace. I will place her on a 5 pound work restriction. She will come back to see me in a few weeks for repeat evaluation.

Dr. Norton noted on January 22, 2024, "1. The patient is doing better from her intersection syndrome. However, she is having some numbness and tingling. I recommended getting EMG/nerve conduction study to ensure she does not have carpal tunnel syndrome....I will place her on a 10 pound work restriction for the right side."

Nicholas C. Stewart, Human Resources/Training Administrator for the Arkansas Department of Corrections, corresponded with the claimant on January 23, 2024:

You have been absent from work since November 9, 2023. On January 12, 2024, you were mailed a letter via Fedex, instructing you to provide a return-to-work date within five days. You have been denied FMLA and we have been unable to get in contact with you. Regrettably, we must terminate your employment with the Arkansas Department of Corrections effective January 23, 2024....

The respondents' attorney cross-examined the claimant:

Q. Had you missed work, after November the 9th?

A. Yes.

Q. Okay. Did you feel like you were able to do your job at that time?

A. No....

Q. So between November the 9th and January 23rd, did you get in contact with the Department of Corrections?

A. I did....

Q. And as I understand it, you were still being paid temporary total disability.

A. Right.

A Nerve Conduction Study/EMG was performed on January 30, 2024 with the following impression:

Abnormal study.

1. Right median motor temporal dispersion with mild axonal mononeuropathy at the wrist (carpal tunnel syndrome).
2. Mild right ulnar motor conduction block at the elbow (cubital tunnel syndrome).

Dr. Norton noted on February 13, 2024, "Patient underwent nerve conduction study on 1/30/2024. The nerve study shows significant carpal tunnel syndrome as well as some cubital tunnel syndrome....I recommended proceeding with surgery. This will be in the form of right carpal tunnel release, intersection syndrome release, as well as radial tunnel release."

Dr. Norton performed surgery on March 13, 2024: "1. Right radial tunnel release. 2. Right carpal tunnel release. 3. Right second dorsal compartment tenosynovectomy." The pre- and post-operative diagnosis was "1. Right radial tunnel release. 2. Right carpal tunnel release. 3. Right second dorsal compartment tenosynovectomy."

Dr. Norton provided follow-up treatment after surgery, and he noted on April 23, 2024, "At this point I will allow her to return to work without restrictions. She will continue with therapy in the form of range of motion

and strengthening. She will come back to see me in 6 weeks.” Dr. Norton signed a Return to Work/School form dated April 23, 2024: “May return to work/school on: 4/23/2024....Work limitations: No restrictions.” The record indicates that the respondents paid temporary total disability benefits until April 23, 2024.

Amanda Dinwiddie corresponded with the claimant on April 25, 2024:

I have been notified by Dr. Norton’s office that you were released to return to work full duty on 4/23/2024. Your last temporary total disability (TTD) check in the amount of \$292.26 representing date 4/18/2024 to 4/23/2024 has been ordered. Please find this check enclosed. Public Employee Claims Division will continue to pay for any medical treatment that is reasonable and necessary related to your workcomp injury.

The claimant’s attorney corresponded with Amanda Dinwiddie on April 26, 2024:

My understanding is that Ms. Bishop was terminated by the Respondent Employer while she was off for her injuries. Now that she has been released to return to work, please accept this correspondence as the Claimant’s formal demand that his employment with Respondents be reinstated immediately. In addition, we must insist that her employment pick up where it left off regarding her probationary period and all benefits which had previously accrued. In other words, she should be reinstated with the same position, pay, seniority, and progress regarding her probationary period as if her employment had never been terminated in the first place. The Claimant demands to be returned to work with the same wages and benefits. Please advise as soon as possible whether the Respondent employer will meet our demands as outlined in this correspondence. It should be noted that her reinstatement should be done without causing her any

prejudice as a result of her termination which was the result of a work-related injury.

To the extent that the Respondents contend that they do not have any work available within the Claimant's physical and mental limitations, please advise of any and all positions currently available and/or posted on any job site or otherwise made known to the public.

Randall Watson, an Institutional Human Resource Manager with the respondent-employer, informed the claimant on May 3, 2024, "I received your application for an Administrative Specialist I. Your interview will be May 6, 2024, at 9AM, at the Maximum-Security Unit[.]..."

The respondents' attorney cross-examined the claimant:

Q. I see an e-mail addressed to you on Friday, May 3rd, that says, "Received your application." Had you applied?

A. Yes. They told me I had to reapply again. I had to restart when my attorney reached out to – they told me I had to reapply all over again. I had to start all over again....I had to interview.

Nicholas C. Stewart thereafter e-mailed Randall Watson and several others on May 3, 2024:

Randall, we are reinstating her employment. She does not have to interview. Just call her to come complete paperwork (computer based). She needs to complete the onboarding due to ARCareers protocol....

An e-mail from Randall Watson dated May 10, 2024 indicated that the claimant's employment with the respondents was to begin on May 13, 2024. The claimant testified that she returned to work on May 13, 2024.

The respondents' attorney cross-examined the claimant:

Q. So when you started May 13, you, actually, went back to your original job?

A. Yes, and then, they moved me – about three or four weeks later, they moved me to Commissary.

The claimant followed up with Dr. Norton on May 29, 2024: “1.

Overall patient is doing well. She was released from therapy. At this point I believe she can return to work without restrictions. I will also place her at MMI. She will come back to see me as needed.”

A pre-hearing order was filed on June 27, 2024. The claimant contended, “The Claimant contends that she sustained injuries to her right wrist in the course and scope of her employment on or about November 9, 2023. Respondents initially accepted the claim and paid medical and indemnity benefits. The Claimant was released by Dr. Norton on or about April 23, 2024. The Claimant has not yet been assigned a rating but she is entitled to PPD due to the surgery to repair her carpal tunnel syndrome and lesion of the radial nerve. Claimant was terminated by the Respondents while off of work per her Dr. Norton’s order. Once the Claimant was released, Respondents did not offer her a return to work despite a demand for reinstatement. Respondents finally reluctantly reinstated the Claimant on or about May 20, 2024. The Claimant contends that she is entitled to benefits pursuant to 11-9-505(a)(1) during the refusal and attorney’s fees. All other issues are reserved.”

The respondents contended, "The Respondent contends that the claimant reported having an injury to her right arm occurring November 9, 2023 which Respondent accepted as compensable. Respondent has provided medical treatment reasonable and necessary for the claimant's injury, including carpal tunnel release surgery performed by Dr. Brian Norton on March 13, 2024. Respondent paid TTD benefits to the claimant from November 10, 2023 until April 23, 2024 when she was released by Dr. Norton to return to work full duty. The claimant has not been assigned an impairment rating, but does have a follow up appointment with Dr. Norton. The claimant has in fact returned to work for her employer already since her release to work full duty, and therefore has no claim for benefits under §11-9-505(a)(1). The Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery."

The parties agreed to litigate the following issues:

1. Whether the claimant is entitled to PPD benefits.
2. Whether the claimant is entitled to benefits under §11-9-505 related to the time between her termination and reinstatement.
3. Whether the claimant is entitled to attorney's fees. All other issues are reserved.

Dr. Norton reported on July 1, 2024:

Kanekalon Bishop is a 43-year-old female that underwent right carpal tunnel release, intersection syndrome release, and radial tunnel release in March. Following the surgery the

patient completed a course of therapy. She did well during her therapy and has gotten progressively better. At her last visit on 5/29/2024 I released her to drive to work without restrictions. She will come back to see me as needed. Impairment rating is 0%. This impairment rating is based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. This statement is made with a reasonable degree of medical certainty.

The claimant testified that her attorney arranged a visit at Functional Testing Centers, Inc. Casey Garretson, an Occupational Therapist, provided an "IMPAIRMENT EVALUATION SUMMARY – Upper Extremity" at Functional Testing Centers, Inc. on August 16, 2024. Casey Garretson assigned the claimant a "Total Loss of Motion Impairment" of 1%. Mr. Garretson noted, "Measurement of passive maximum radial and ulnar deviation are recorded using goniometer readings using measurement technique below." Mr. Garretson measured the passive "Radial/Ulnar Deviation" to be 1%. The claimant testified that the respondent-carrier had not paid the 1% permanent impairment rating assigned by Casey Garretson.

Dr. Norton reported on August 21, 2024:

Patient follows up today after right radial tunnel release, right intersection release, and right carpal tunnel release performed on 3/13/2024. The patient had recurrent numbness and tingling in the hand as well as some cramping. [She] has a numbness and tingling ring and small finger....

Assessment

Status post right radial tunnel release, right intersection release, and right carpal tunnel release.

Right cubital tunnel syndrome.

Plan

1. The patient now seems to be having recurrent numbness and tingling as well as cramping in the hand. I did recommend a repeat EMG/nerve conduction study for evaluation. Patient remain on normal work without restrictions. Patient will come back see me after the nerve test.

The claimant contended the following on September 17, 2024:

The Claimant contends that she sustained injuries to her right wrist in the course and scope of her employment on or about November 9, 2023. Respondents initially accepted the claim and paid medical and indemnity benefits. The Claimant was released by Dr. Norton on or about April 23, 2024. Dr. Norton did not assign a rating but she is entitled to PPD due to the surgery to repair her carpal tunnel syndrome and lesion of the radial nerve. The Functional Testing Centers has assigned the Claimant a 1% rating to the upper extremity which has been controverted by the Respondents. Claimant was terminated by the Respondents while off of work per her Dr. Norton's order. Once the Claimant was released, Respondents did not offer her a return to work despite a demand for reinstatement. Respondents finally reluctantly reinstated the Claimant on or about May 13, 2024. The Claimant contends that she is entitled to the 1% impairment rating; benefits pursuant to 11-9-505(a)(1) during the Respondents refusal to return her to work and attorney's fees. All other issues are reserved.

The respondents corresponded with the administrative law judge on September 24, 2024:

Please accept the attached exhibits on behalf of the Respondent in this matter, Arkansas Department of Corrections and Public Employee Claims Division (PECD), included is Respondent's Medical Exhibit and Respondent's Documentary Exhibit which I will introduce into evidence at the hearing set Thursday October 3, 2024 at 12 noon in Pine Bluff. Thank you for your assistance with this filing.

The claimant has added new contentions that she is entitled to an impairment rating she obtained herself from an unauthorized physician, and that Respondent should have to pay for that unauthorized visit. Respondent contends that it is not liable for this unauthorized treatment, and that this was not a reasonable and necessary medical treatment since the treating physician has already addressed the claimant's permanent impairment and found that the claimant has 0% permanent impairment. The claimant had demanded on July 29 a return visit to Dr. Norton, who had performed the claimant's surgery. Respondent notified the claimant on July 30 that the return visit to Dr. Norton would be provided, on August 2 that the doctor's office was trying to reach the claimant, and on August 7 that an appointment was scheduled August 21. The claimant notified Respondent on August 20 that she had obtained her own impairment rating from an unauthorized provider on August 16. At the August 21 appointment, Dr. Norton ordered a new EMG study of the claimant, with a follow up visit afterward. These visits were scheduled September 19 and 24 respectively, however, the claimant elected to reschedule the appointments October 10 and 16, after the hearing set October 3, while continuing to contend that she needs treatment and that she has a permanent impairment. Respondent contends that the claimant's contentions are contradictory, that Respondent is not liable for treatment the claimant had from an unauthorized after she was given the appointment she demanded from the authorized provider, that permanent impairment is premature if the claimant is seeking additional treatment, and that the claimant has not established she is entitled to an impairment rating at this time.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on September 24, 2024. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was November 9, 2023: "The employee stated she was handing something to someone at

the gate. The gate went back and closed on her right arm, jamming it. She screamed and someone opened the gate for her to release her arm.”

A hearing was held on October 3, 2024. The claimant testified on direct examination:

Q. What is your job title and position now?

A. Commissary down at Tucker Work Release.

Q. So you're at a different facility?

A. Yes.

Q. Doing a different job?

A. Yes.

Q. Are you making the same amount of money, though?

A. Yes.

Q. Okay. And since returning to work in May, you've had additional problems with your right arm, correct?

A. That's correct....

Q. And as I understand it and from the records that have been introduced, Dr. Norton has ordered some additional testing. He's ordered a new EMG?

A. Yes.

Q. And a follow-up visit, after you have that nerve conduction study?

A. Yes.

Q. You have not had that?

A. No.

Q. But it's upcoming?

A. Yes.

Q. And you're still having problems with that arm?

A. Yes.

JUDGE HOWE: Well, is that treatment something that's at issue here?

MR. CALDWELL: The additional treatment, no.

JUDGE HOWE: Okay.

MR. CALDWELL: The respondents have accepted and they're paying the additional treatment by Dr. Norton.

The respondents' attorney cross-examined the claimant:

Q. Do you like the treatment that you've had so far with Dr. Norton?

A. Yes.

Q. Do you have any problems or issues with Dr. Norton's treatment?

A. No.

Q. Okay. What about that surgery? I understand that you had a surgery with Dr. Norton. We just discussed all the treatment you had. Do you feel like the surgery helped your symptoms?

A. No.

After the October 3, 2024 hearing, the respondents proffered EMG and NCV findings from OrthoArkansas, dated October 10, 2024 with the following impression:

Normal study.

1. No evidence of right median or ulnar mononeuropathy.
2. No evidence of right cervical radiculopathy.

Recommendations: Follow up with Dr. Norton. Thank you.

The respondents also proffered a report from Dr. Norton dated October 16, 2024:

Patient follows up today after right radial tunnel release, right intersection release, and right carpal tunnel release performed on 3/13/2024. Nerve conduction study was performed on 10/10/2024. I went over the nerve study with her today. The nerve study was normal. The patient continues to have vague symptoms in the right arm....

Assessment

1. Status post right radial tunnel release, right intersection release, and right carpal tunnel release – 3/13/2024.
2. Right cubital tunnel syndrome.
3. Likely right thoracic outlet syndrome.

Plan

1. I believe the patient likely has thoracic outlet syndrome. I am going to refer her to therapy for some scalene

exercises. I will see her back in 6 weeks for repeat evaluation....Patient will return to the office as needed.

On October 25, 2024, the respondents served a **MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE**. The respondents prayed “that the aforementioned newly discovered evidence be introduced into the record on this claim or that further hearing for the purpose of introducing additional evidence be granted pursuant to Ark. Code Ann. §11-9-705(c)(1)(C).” The claimant requested that the motion be denied.

The respondents then proffered yet another set of medical records, including a report from Dr. Norton dated December 11, 2024:

Patient follows up today after right radial tunnel release, right intersection release, and right carpal tunnel release performed on 3/13/2024. Nerve conduction study was performed on 10/10/2024. The patient continues to have vague pain and wrist in the hand. I recommended therapy for thoracic outlet syndrome. She states she has not started this yet....

Right wrist: The wound has healed without evidence of infection. There is no significant swelling, inflammation, erythema, or edema.

Right hand: The wound has healed without evidence of infection. There is no significant swelling, inflammation, erythema, or edema. There is full motion in the fingers.

Sensory exam is intact to light touch. There is no hyperesthesia or hypoesthesia along the palm of the hand.

Assessment

1. Status post right radial tunnel release, right intersection release, and right carpal tunnel release – 3/13/2024.
2. Right cubital tunnel syndrome.
3. Likely right thoracic outlet syndrome.

Plan

1. I confirm today that the fax was sent over to JRMC therapy. Will once again send another therapy order....I still recommend therapy for thoracic outlet syndrome. She

will continue to work without restrictions. She will see me back in 4 to 6 weeks.

On December 12, 2024, the respondents served a **SECOND MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE**. The respondents prayed “that the aforementioned newly discovered evidence be introduced into the record on this claim or that further hearing for the purpose of introducing additional evidence be granted pursuant to Ark. Code Ann. §11-9-705(c)(1)(C).” The claimant requested that the motion be denied.

An administrative law judge filed an opinion on December 31, 2024. The administrative law judge denied the respondents’ motions to introduce newly-discovered evidence. The administrative law judge found that the claimant’s visit at Functional Testing Centers, Inc. was reasonably necessary, and that the claimant proved she was entitled to a 1% permanent anatomical impairment rating. The administrative law judge found that the claimant proved she was entitled to additional compensation in accordance with Ark. Code Ann. §11-9-505(Repl. 2012).

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. 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). 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 70 (1984).

An administrative law judge found in the present matter, “4. The claimant has met her burden on proving that the impairment evaluation was reasonably necessary treatment for which the respondents are responsible for the cost.” The Full Commission does not affirm this finding. The claimant sustained a compensable scheduled injury on November 9, 2023. The claimant testified that an automatic gate closed on her right arm. An examining physician diagnosed right forearm pain and a right forearm contusion. The claimant began treating with Dr. Norton on January 2, 2024. A Nerve Conduction Study/EMG taken January 30, 2024 showed carpal tunnel syndrome and cubital tunnel syndrome.

On March 13, 2024, Dr. Norton performed a right radial tunnel release, right carpal tunnel release, and right second dorsal compartment

tenosynovectomy. Dr. Norton provided follow-up treatment after surgery. Dr. Norton determined on May 29, 2024 that the claimant had reached maximum medical improvement. 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 injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004), citing *Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Nearly three months after Dr. Norton's assessment of maximum medical improvement, the claimant's attorney arranged for an "Impairment Evaluation" at Functional Testing Centers, Inc. Casey Garretson, an Occupational Therapist, saw the claimant at Functional Testing Centers on August 16, 2024. Casey Garretson did not provide or recommend occupational therapy but instead assessed a purported anatomical impairment rating. The evidence does not demonstrate that the "Impairment Evaluation Summary" prepared by Casey Garretson can be interpreted as reasonably necessary medical treatment in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The record does not show that the impairment evaluation was "geared toward management of the claimant's injury." See *Patchell, supra*. The Full Commission therefore reverses the administrative law judge's finding that the impairment

evaluation was reasonably necessary in connection with the compensable scheduled injury sustained by the claimant on November 9, 2023.

B. Additional Compensation

Ark. Code Ann. §11-9-505(a)(Repl. 2012) provides, in pertinent part:

- (1) Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year.

An administrative law judge found in the present matter, "I find that the claimant is entitled to benefits under A.C.A. §11-9-505 for the time between her release, beginning 24 April 2024, and her eventual return to work on 13 May 2024." The Full Commission affirms this finding. Before Ark. Code Ann. §11-9-505(a)(Repl. 2012) applies, several requirements must be met. See, *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S.W.2d 237 (1996). The employee must (1) prove by a preponderance of the evidence that she sustained a compensable injury; (2) that suitable employment within her physical and mental limitations is available with the employer; (3) that the employer has refused to return her to work; and (4) that the employer's refusal to return her to work was without reasonable cause. *Id.*

In the present matter, the claimant (1) proved by a preponderance of the evidence that she sustained a compensable injury. The claimant sustained a compensable scheduled injury on November 9, 2023. The respondents began paying temporary total disability benefits on November 10, 2023. Dr. Norton subsequently performed surgery, and he released the claimant to return to work with no restrictions on April 23, 2024. The respondents paid temporary total disability benefits until April 23, 2024.

On April 26, 2024, the claimant's attorney corresponded with the respondents and "demanded" that the claimant immediately be returned to work. The record indicates that the claimant applied for resumed employment with the respondents, and that the respondent-employer initially planned to require the claimant to interview for re-employment. However, the respondents' Human Resources/Training Administrator communicated on May 3, 2024, "[W]e are reinstating her employment. She does not have to interview." The claimant testified that she returned to her former employment position with the respondents on May 13, 2024. The evidence of record indicates that (2) suitable employment was available with the respondents, (3) the employer for a time refused to return the claimant to work, and (4) that the employer did not present a reasonable cause for initially refusing to return the claimant to work. The Full Commission therefore affirms the administrative law judge's finding that "the

claimant is entitled to benefits under A.C.A. §11-9-505 for the time between her release, beginning 24 April 2024, and her eventual return to work on 13 May 2024.”

C. Anatomical Impairment/Admission of Newly-Discovered Evidence

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. See *Commission Rule 34*; Ark. Code Ann. §11-9-521(h)(Repl. 2012). It is the Commission’s duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(B)(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). Although it is true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is

required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(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).

An administrative law judge found in the present matter, "3. The claimant has met her burden on proving that she is entitled to PPD benefits consistent with a one percent (1%) impairment rating to the whole body." The Full Commission does not affirm this finding. We find, based on the current record, that the claimant did not prove she sustained a permanent anatomical impairment as a result of her compensable injury.

The claimant sustained a compensable injury on November 9, 2023 when an automatic gate closed on her right arm. A Nerve Conduction/EMG study taken January 30, 2024 was abnormal, showing carpal tunnel syndrome and cubital tunnel syndrome. Dr. Norton performed a right radial tunnel release, right carpal tunnel release, and second dorsal compartment tenosynovectomy on March 13, 2024. Dr. Norton opined on May 29, 2024 that the claimant had reached maximum medical improvement. Dr. Norton released the claimant to return to work without restrictions, and he did not assign a permanent anatomical impairment rating. Dr. Norton specifically reported on July 1, 2024, "Impairment rating is 0%. This impairment rating is based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. This statement is made with a reasonable degree of medical certainty."

The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). The Full Commission finds that Dr. Norton's opinion is corroborated by the record and is entitled to significant evidentiary weight. Dr. Norton, the treating surgeon, opined that the claimant did not sustain a permanent anatomical impairment as a result of the compensable injury and surgery. The Full Commission recognizes the opinion of occupational therapist

Casey Garretson, who stated on August 16, 2024 that the claimant had sustained permanent anatomical impairment in the amount of 1%. Mr. Garretson based his opinion in part on purported “Radial/Ulnar Deviation.” 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). In the present matter, the Full Commission places greater evidentiary weight on the opinion of the treating surgeon than we do a one-time evaluation by an occupational therapist. The claimant did not prove by a preponderance of the evidence that she sustained a permanent anatomical impairment as a result of the compensable injury and surgery.

The respondents have filed two motions to “Introduce Newly-Discovered Evidence.” In order to introduce newly-discovered evidence, the moving party must prove that the evidence is relevant, is not cumulative, would change the result, and the moving party must prove it was diligent. *Haygood v. Belcher*, 5 Ark. App. 127, 633 S.W.2d 391 (1982), citing *Mason v. Lauck*, 232 Ark. 891, 340 S.W.2d 575 (1960). An administrative law judge found in the present matter, “The respondents’ motions to introduce new evidence are denied.” The Full Commission does not affirm this finding. We find that the new evidence should be admitted into the record.

The claimant testified on October 3, 2024 that she approved of the treatment Dr. Norton had provided her, but that the claimant asserted that the surgery performed by Dr. Norton did not relieve her symptoms. The claimant testified that Dr. Norton had recommended additional diagnostic testing. The respondents have proffered the results of EMG/NCV findings performed at OrthoArkansas on October 10, 2024. This electrodiagnostic testing showed “no evidence of right median or ulnar mononeuropathy” and “no evidence of right cervical radiculopathy.” The respondents also seek to admit into the record examinations performed by Dr. Norton on October 16, 2024 and December 11, 2024. In these follow-up visits, Dr. Norton diagnosed “right cubital tunnel syndrome” and “Likely right thoracic outlet syndrome.”

The Workers’ Compensation Commission has broad discretion with reference to admission of evidence, and our decision will not be reversed absent a showing of abuse of discretion. *Brown v. Alabama Electric Co.*, 60 Ark. App. 138, 959 S.W.2d 753 (1998). The Commission is directed to “conduct the hearing in a manner as will best ascertain the rights of the parties.” *Bryant v. Staffmark*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). The Commission should be more liberal with the admission of evidence, rather than more stringent. *Id.*

The Full Commission finds in the present matter that the newly-discovered evidence proffered by the respondents should be admitted into the record. In said evidence, Dr. Norton described his additional diagnostic testing treatment about which the claimant had already testified at the hearing held October 3, 2024. Dr. Norton's follow-up diagnoses beginning October 16, 2024 included right cubital tunnel syndrome and likely right thoracic outlet syndrome. Dr. Norton did not assess a permanent anatomical impairment rating, which reiterates Dr. Norton's finding on July 1, 2024 that the claimant had not sustained a permanent anatomical impairment. Dr. Norton described his additional treatment efforts, which included physical therapy and a repeat evaluation. The Full Commission finds that the newly-discovered evidence is relevant, is not cumulative, and would change the result in that it reiterates Dr. Norton's earlier conclusion that the claimant had not sustained a permanent anatomical impairment. The Full Commission also finds that the respondents were diligent in introducing the newly-discovered evidence, which evidence was not yet in existence at the time of the October 3, 2024 hearing. The Full Commission therefore directs that the newly-discovered evidence proffered by the respondents shall be admitted into the record.

After our *de novo* review of the entire record currently before us, the Full Commission finds that the claimant's evaluation at Functional Testing

Centers, Inc. was not reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that the claimant did not prove she sustained a permanent anatomical impairment as a result of the compensable injury. The Full Commission affirms the administrative law judge's finding that the claimant was "entitled to benefits under A.C.A. §11-9-505 for the time between her release, beginning 24 April 2024, and her eventual return to work on 13 May 2024." Based on this award of additional compensation, the claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(1)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton Concurs, in part, and Dissents, in part.

CONCURRING AND DISSENTING OPINION

I concur with the finding that the claimant failed to prove the evaluation at Functional Testing Centers, Inc. was reasonably necessary in

accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012), that she failed to prove she was entitled to a permanent anatomical impairment rating, and that the respondents' Motion to Introduce Newly Discovered Evidence should have been granted. However, I must respectfully dissent from the finding that the claimant proved she was entitled to additional compensation in accordance with Ark. Code Ann. §11-9-505(a)(1)(Repl. 2012).

The claimant sustained a compensable injury on November 9, 2023. Between January 2, 2024, and May 29, 2024, the claimant underwent substantial treatment with Dr. Brian Norton. Dr. Norton released the claimant at MMI with a zero percent (0%) impairment rating on May 29, 2024.

The claimant was returned to work at full duty and her employment was reinstated on May 3, 2024. She resumed work on May 13, 2024.

Our Rules provide that any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year. Ark. Code Ann. § 11-9-505(a)(1).

Our Courts have ruled that for this provision to be applicable: an employee must prove by a preponderance of the evidence (1) that he sustained a compensable injury; (2) that suitable employment which is within his physical and mental limitations is available with the employer; (3) that the employer has refused to return him to work; and (4) that the employer's refusal to return him to work is without reasonable cause.

Roark v. Pocahontas Nursing & Rehab., 95 Ark. App. 176, 235 S.W.3d 527 (2006) (citing *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S.W.2d 237 (1996)).

In the present case, the respondent employer never refused to return the claimant to work. The claimant was released to work full duty by Dr. Norton on May 3, 2024. That day, the claimant's employment was reinstated to the same job she had prior to her injury. Her start date was May 13, 2024. While the claimant may have initially been told that she would need to apply and have an interview to return to employment, that was not the case, and her employment was reinstated to the same job she had prior to her injury on the same day. The claimant only needed to complete paperwork and onboarding before returning.

In his opinion, the ALJ seems to describe an uncertainty of employment as a basis for the award of benefits under § 11-9-505. There is no basis in our rules for this finding, nor was there any uncertainty that the

claimant's position would be reinstated after her release to return to work.

Factually, the respondent employer never refused to return the claimant to work.

The ALJ stated:

[t]he respondents argued at the hearing that the claimant's time without employment or any benefits should be excused as distinct from a "refusal" to reinstate her due to the nature of prison operations and the administrative time and process it takes to onboard someone into such a role. I do not find the caselaw supports such a distinction or demurrer from an employer's obligations under the law. The claimant should have been reinstated upon her release without restriction.

In this holding, the ALJ is carving out an area of our Rules that is not contemplated in the statute. It is untenable to expect that every employer in the state immediately return an injured employee to work without any processing delay. The statute requires for a claimant to be entitled to recovery under this statute, an employer must refuse to return an employee to work without reasonable cause.

The ALJ's findings far exceed the language of the statute, and it is clear that there was absolutely no refusal to return the claimant to work.

The ALJ should be reversed on this issue.

Accordingly, for the reasons set forth above, I concur, in part and dissent, in part.

MICHAEL R. MAYTON, Commissioner