

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H203103**

JENNIFER BRICKER, EMPLOYEE

CLAIMANT

DEPT. OF CORRECTION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA

RESPONDENT

OPINION FILED DECEMBER 15, 2025

Hearing before Administrative Law Judge, Steven Porch, on October 24, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant was represented by Mr. Daniel E. Wren, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Robert H. Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on October 24, 2025. A prehearing telephone conference took place on July 15, 2025. A prehearing order was entered on the same day, and subsequently entered into evidence as Commission Exhibit 1, with amendments. The parties confirmed the stipulations and the issues at the hearing. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier/tpa relationship existed on February 17, 2022, when Claimant sustained a compensable injury to her right shoulder.
3. The Respondents accepted the claim and has paid some benefits.
4. Claimant's average weekly wage was \$995.93, entitling her to temporary total disability (TTD) benefit rate of \$664.00 weekly, and a permanent partial disability (PPD) benefit rate of \$498 weekly.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Whether Claimant is entitled to additional reasonable and necessary medical treatment for her stipulated compensable right shoulder injury.
2. Whether Claimant is entitled to additional TTD benefits from September 12, 2024, until a date to be determined.
3. Whether Claimant is entitled to additional PTD benefits.
4. Whether Claimant is entitled to wage loss disability benefits¹.
5. Whether Claimant's attorney is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant contends:

Claimant sustained an on-the-job injury to her right shoulder on February 17, 2022, when she slipped and fell on the wet stairs. She has undergone three right shoulder surgeries: the 1st surgery being performed on August 23, 2022, by Dr. Guinn to repair a labral tear; and second surgery on August 21, 2023, and the third surgery on April 1, 2024, were performed by Dr. Eric Gordon for repairs of the same tear.

On August 5, 2024, Claimant had a 3-phase bone scan that indicated an atypical presentation of complex regional pain syndrome (CRPS). On August 20, 2024, the Claimant was seen by Dr. Gordon who recommended that she be seen by the following medical providers:

NEA Baptist Pain Management

St. Bernard's Physical Therapy

NEA Rheumatology

¹ The issue here is regarding wage loss benefits, not "lost wages" so this issue was re-written for clarity.

On August 30, 2024, Claimant received a message from Dr. Gordon's nurse, Rhonda, stating that she does not need to do formal therapy. Sometime later this order was changed, with the explanation that it was a mistake, and that Claimant needs formal therapy. On September 12, 2024, the Respondents discontinued temporary total disability benefits for the Claimant, alleging that she had not been cooperative with physical therapy.

Respondents have failed and refused to provide reasonable medical treatment for the Claimant and refused to make referrals to the medical providers as stated by Dr. Gordon. On October 9, 2024, Dr. Gordon released the Claimant at maximum medical improvement (MMI) but, again, Dr. Gordon suggested that she see a rheumatologist, which had been denied by the Respondents. Although Dr. Gordon placed the Claimant at MMI on October 9, 2024, he stated that she should see a rheumatologist and placed her on work restrictions until she saw a doctor for CRPS. The Respondents forced the Claimant to come to Little Rock and see Dr. Carlos Roman instead of the pain management doctor in Northeast Arkansas to whom she had been referred to by Dr. Gordon.

Eventually, the Claimant sought treatment on her own with Dr. Justin Rabinowitz. Dr. Rabinowitz indicated that the Claimant has signs of CRPS. He also noted that an MRI performed in April 2025 showed fraying of the interior inferior labrum and fraying of the adjoining chondral surface. The MRI also showed redundant suture material along the end, the inferior aspect of the glenoid. Dr. Rabinowitz has stated that he is somewhat reluctant to do another surgical procedure on the Claimant's shoulder for fear of aggravating her CRPS. Dr. Rabinowitz has referred the Claimant to Dr. Jianbin Zheung for ganglion blocks.

Respondents contend:

The Claimant reported injuring her right shoulder on February 17, 2022. The Respondents accepted the claim as compensable and have paid indemnity benefits to Claimant as well as related medical expenses. The Claimant came under the care of Dr. Spencer Guinn, and the Claimant was found to be at MMI and released to return to work on May 12, 2023. Dr. Guinn assigned a permanent impairment rating of three percent (3%) to the body as a whole, and Respondents paid appropriate PPD benefits towards this rating.

The Claimant then came under the care of Dr. Gordon, who performed surgery on August 21, 2023. The Respondents paid TTD benefits through September 11, 2024, and discontinued TTD payments at that time due to the Claimant's non-compliance with recommended medical treatment.

The Respondents contend that all appropriate indemnity benefits have been paid to the Claimant. The Claimant is not entitled to additional TTD benefits. The Claimant is not entitled to wage-loss disability benefits, and she is not permanently and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, and having the opportunity to hear testimony of the Claimant and to observe her demeanor, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has failed to prove by the preponderance of the evidence that she is entitled to additional medical treatment for her compensable right shoulder injury.

Moreover, the treatment the Claimant received from Nurse Practitioner Wray, Dr. Rabinowitz, Dr. Vecchiarelli, and Dr. Zheng, was unauthorized and the Respondents are not financially responsible for that treatment or associated expenses.

4. The Claimant has proven by the preponderance of the evidence that she is entitled to TTD benefits from September 12, 2024, to October 29, 2024, but has failed to prove by the preponderance of the evidence that she is entitled to additional TTD benefits after October 29, 2024.
5. The Claimant has failed to prove by the preponderance of the evidence that she is entitled to PTD benefits.
6. The Claimant has failed to prove by the preponderance of the evidence that she is entitled to wage loss benefits.
7. The Claimant's attorney is entitled to a controverted attorney's fee.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, medical records, consisting of 386 pages; Claimant's Exhibit 2, correspondence and transcription, consisting of 13 pages; Claimant's Exhibit 3, photographs of Claimant's hands, consisting of 3 pages; Respondents' Exhibit 1, correspondence, pleadings, medical reports, consisting of 33 pages; Respondents' Exhibit 2, medical records, consisting of 11 pages; Commission Exhibit 1, Pre-Hearing Order filed July 15, 2025, with amendments, consisting of 8 pages. The Claimant was the only witness testifying at the full hearing.

The Claimant was employed as a sergeant for the Respondent Employer. The Claimant injured her right shoulder on February 17, 2022, when she slipped on some wet stairs. This injury was accepted as compensable by the Respondents. On February 18, 2022, the Claimant went to the Paragould Urgent Care and was seen by Mr. Garrett Wray, Nurse Practitioner, for treatment of her right shoulder. CL Ex. 1, pp. 1-5. The Claimant underwent an x-ray that revealed no acute

fractures, that her bones maintained normal alignment, and that her soft tissues was unremarkable. *Id.* Despite this, Mr. Wray discussed the possibility of a rotator cuff injury and referred Claimant to an orthopedic specialist. *Id.* The Claimant was also provided anti-inflammatory medication during that visit. *Id.*

On March 9, 2022, the Claimant saw Dr. Ron Schecter at the Northeast Arkansas Baptist Clinic. CL Ex. 1, pp. 6-10. Dr. Schecter's physical examination revealed no obvious swelling, deformity, or atrophy noted to her right shoulder. *Id.* She did have tenderness to palpation anteriorly in the neck and over the shoulder. *Id.* Dr. Schecter assessed Claimant with contusions of multiple areas of her right shoulder and acute pain of the right shoulder. *Id.* Dr. Schecter treated her shoulder with a steroid injection since she did not want to go further into a diagnosis of a torn rotator cuff and possible surgery. *Id.* Dr. Schecter advised Claimant that if conservative measures were not helping, an MRI and surgery might be considered for relief. *Id.*

Eventually, Claimant was found to have a rotator cuff tear and underwent a right shoulder arthroscopy with anterior labral repair on August 23, 2022, by Dr. Guinn. Resp. Ex. 2, pp. 7-9. Dr. Guinn put Claimant on maximum medical improvement on April 24, 2023. *Id.* Dr. Gordon, an orthopedic surgeon, performed an arthroscopic surgery on Claimant's right shoulder to repair a recurrent labral tear on August 21, 2023; this was repeated on April 1, 2024. *Id.* and CL Ex. 1, pp. 79-84. On August 20, 2024, Claimant had a follow-up with Dr. Gordon complaining about difficulty with postoperative recovery and persistent pain. CL. Ex. 1, pp. 106-112. Prior to this visit, Dr. Gordon ordered a bone scan, administered on August 5, 2024, due to concerns for possible CRPS. *Id.* The report, per the radiologist, indicated decreased uptake in the right hand and wrist during the angiographic and blood pool phases of the exam. *Id.* This could, according to the report, represent atypical presentation of CRPS. *Id.* The report also noted an uptake in the right shoulder

that was likely degenerative or post-surgical in nature. *Id.* Claimant reported persistent pain in every joint in her body since the bone scan. *Id.*

Dr. Gordon believed Claimants right upper extremity pain was likely multifactorial with some contribution from CRPS or other yet-to-be-determined factors. *Id.* Dr. Gordon did not exclude suspicion for possible rheumatologic disease as well. *Id.* Therefore, Dr. Gordon recommended an evaluation with a pain specialist, a rheumatologist, and physical therapist at the Respondents' discretion. *Id.* While waiting on Respondents' approval of Dr. Gordon's recommendation, the Claimant took it upon herself to return to her original treating professional, Mr. Garrett Wray, nurse practitioner, on September 4, 2024, and again on October 2, 2024, for issues of pain. CL Ex. 1, pp. 113-123. On October 9, 2024, Claimant had a follow-up with Dr. Gordon, a little more than five months after her surgery. CL Ex. 1, pp. 124-131. There, she complained about having some continued difficulty with pain and limited use of her shoulder. *Id.* Claimant had not seen a physical therapist, rheumatologist, or a pain management specialist during the time of this visit. *Id.* However, since Claimant had basically achieved full shoulder range of motion, Dr. Gordon believed that physical therapy would not be necessary. *Id.* Dr. Gordon still maintained that the Claimant should continue work restrictions until she completes a pain management evaluation. *Id.* If the pain management specialist does not believe the Claimant has CRPS, Dr. Gordon further recommended a functional capacity evaluation. *Id.*

On October 9, 2024, Dr. Gordon opined that Claimant has reached MMI. CL Ex. 1, pp. 124-127. In a letter dated November 6, 2024, he reiterated the Claimant has reached MMI and sustained a five percent (5%) impairment to the right upper extremity and three percent (3%) impairment to the whole person. Resp. Ex. 2, p. 10. There was a miscommunication in dealing with Dr. Gordon's office and the need for physical therapy. See CL. Ex. 1, pp. 124-127. His nurse,

Rhonda Newton, incorrectly told the Claimant that she did not need any additional physical therapy. The Claimant did not attend physical therapy, which resulted in her losing her TTD benefits on September 11, 2024, due to her failure to comply with medical treatment. Respondents concede there may be a week or two of TTD benefits owed to the Claimant after September 12, 2024. TR-63. They stated on record that they will endeavor to determine what is owed to Claimant. *Id.*

During that October 9, 2024, clinic visit, Dr. Gordon was transparent and discussed seeing pictures from a private investigator that portrayed her carrying objects with her right arm - specifically, what appeared to be three 12-packs of soda and groceries. *Id.* Dr. Gordon did not note Claimant's response. Dr. Gordon also stated, from an orthopedic standpoint, that he thinks "she has reached basically the end of her treatment...." He added that he did not see "any other intervention" that he would perform on her. *Id.* Nevertheless, he concluded his visit with noting that seeing a rheumatologist is "not specifically related to her work injury necessarily, but something she could seek under her regular health care insurance." *Id.*

On October 29, 2024, the Claimant visited Dr. Roman, a pain management specialist, for an Independent Medical Evaluation (IME); and he opined that she is at maximal medical improvement and no further interventions or procedures need to be done. Resp. Ex. 2, pp. 7-9. He also opined that looking at her bone scan that she does not have CRPS of the right upper extremity but does have some ankylosis of the right shoulder and ongoing pain in the right shoulder. *Id.* Dr. Roman recommended home therapy and a regimen of meloxicam done daily for the next three to six months. *Id.* Based on Claimant's previous functional capacity test, Dr. Roman stated she is at a medium duty classification and that she "definitely needs" to find her way back to work. *Id.*

On December 4, 2024, Claimant met with Cecilia A. Brunson, a vocational rehabilitation consultant, at Systemedic, to work on getting Claimant employment. Resp. Ex. 1, pp. 24-32. Ms. Brunson opined that Claimant “will be able to return to the workforce in the future to a job that is within her work limitations.” *Id.* Ms. Brunson furnished Claimant a list of job openings that would suit the Claimant. *Id.* But the Claimant, as of the date of the full hearing, testified that she has made no efforts since resigning from the Respondent/Employer to secure employment, including applying for the job openings presented to her by Ms. Brunson. TR 45-46. Claimant admitted on the record that she stated in a July 24, 2025, deposition that unless she could find a job in law enforcement, she would not be going back to work. *Id.* and TR-46. Claimant also admitted on the record that she stated during her deposition that she does not see a future in her working anywhere. *Id.*

The Claimant further testified that she had to drop out of nursing school on the advice of Dr. Gordon. *Id.* However, there is no evidence confirming that Dr. Gordon stated the Claimant could not complete nursing school. The Claimant later admitted that she tried to re-enroll in school but could not because she did not have the funds to pay for the courses. TR-47-48. Nevertheless, Claimant still testified that she is willing to do any job. *Id.*

On January 17, 2025, Claimant again decided to return to Mr. Wray without the approval of Respondents, due to continuous right shoulder pain. CL Ex. 1, pp. 162-167. Mr. Wray made an ambulatory referral for orthopedic surgery for Claimant. *Id.* On March 11, 2025, Claimant met with Dr. Rabinowitz, an orthopedic surgeon, with complaints of shoulder pain. CL Ex. 1, pp. 168-233. Dr. Rabinowitz’s impression was that she was a “36-year-old female with concern for biceps tendinitis versus CRPS.” *Id.* Dr. Rabinowitz noted that the Claimant “does display signs of CRPS in the form of temperature changes, swelling, and reduced sensation when compared to the

contralateral upper extremity.” *Id.* He ordered an MRI arthrogram of the right shoulder to evaluate labral and biceps pathology. *Id.*

On March 18, 2025, Claimant met with Dr. Jonathan Vecchiarelli, a pain specialist, concerning muscle pain/myalgia and joint pain. CL Ex. 1, pp. 234-239. Dr. Vecchiarelli noted that he believes that most of Claimant’s total body pain is due to myalgia, possibly from a bad reaction to the dye used along with the significant dose of radiation from the bone scan. *Id.* The doctor concluded that her symptoms could be radiation-induced myalgia. *Id.* On April 16, 2025, Claimant had a follow-up visit with Vecchiarelli with the same complaint of pain. CL Ex. 1, pp. 240-259. He then diagnosed Claimant with CRPS of the right upper extremity based on the revised CRPS Budapest clinical diagnostic criteria. *Id.*

On May 6, 2025, Claimant met with Dr. Rabinowitz via telephone visit to review her MRI arthrogram. CL Ex. 1, pp.295-312. The doctor noted that he could not appreciate a significant re-tear. *Id.* He recommended that Claimant undergo further treatment for CRPS prior to considering a repeat arthroscopic shoulder procedure. *Id.* Dr. Rabinowitz noted that he was worried the surgery could make Claimant’s CRPS symptoms worse. *Id.* He recommended that Claimant go back to her local pain specialist and see about getting ganglion blocks. *Id.*

On May 14, 2025, the Claimant met again with Dr. Vecchiarelli concerning her pain and was scheduled for a ganglion block with Dr. Zheung for CRPS. *Id.* On May 21, 2025, and again on June 4, 2025, Claimant met with Dr. Zheng, who performed a right C6 cervical symptomatic ganglion block. CL Ex 1, pp. 319-334. On June 12, 2025, Claimant met with Dr. Vecchiarelli concerning her CRPS type 1 of the right upper extremity. CL Ex. 1, pp. 335-342. The Claimant reported that her pain did not decrease with the ganglion block. *Id.* On July 10, 2025, she visited with Dr. Vecchiarelli, complaining about CRPS of her right arm. CL Ex. 1, pp. 343-350. The

Claimant reported that the prescribed Narco medication reduces her pain from a 10 to a 9. *Id.* She also reported that the drug improves her daily function and quality of life. *Id.* The Claimant denied any use of the medication that is not in accordance with the provider's prescription or plan. *Id.* She stated that she was not interested in further injections for her pain. *Id.* Dr. Vecchiarelli wrote a letter, stating that the Claimant is not able to work due to her CRPS. CL Ex. 1, p. 351.

On August 8, 2025, the Claimant returned to Dr. Vecchiarelli concerning her CRPS pain. CL Ex. 1, pp. 352-359. She reported that her pain was a 10 on NRS without the medication, but a 5 with medication. *Id.* Claimant received acupuncture for her shoulder pain. *Id.* On August 21, 2025, the Claimant had another follow-up visit with Dr. Vecchiarelli concerning her shoulder pain. CL Ex. 1, pp. 360-368. Despite all the treatment received for her pain, the Claimant testified that her condition has not improved. The medical treatment administered by Mr. Wray, Dr. Rabinowitz, Dr. Zheng, and Dr. Vecchiarelli were not authorized, according to the Respondents. Moreover, the Claimant has not requested a change of physician for treatment by these medical providers. The Claimant signed a form AR-N on April 14, 2022. Resp. Ex. 1, pp. 1-2.

Adjudication

A. Whether Claimant is entitled to additional reasonable and necessary medical treatment for her compensable right shoulder injury.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo*

Specialty Chem. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Claimant has a compensable right shoulder injury in the form of a torn rotator cuff. She underwent three shoulder surgeries, one performed by Dr. Guinn and the other two by Dr. Gordon on August 21, 2023, and April 1, 2024. The Claimant also received pain treatment by Dr. Roman. These treatments were paid for by the Respondents. Dr. Roman stated in his IME report that Claimant reached maximum medical improvement for her injury on October 29, 2024. Resp. Ex, 2, pp. 7-9. I credit this report and find by the preponderance of the evidence that Claimant’s healing period ended on October 29, 2024. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

Despite having multiple surgeries, the Claimant continued to complain about pain in her right shoulder and subsequently visited Nurse Practitioner Wray, Dr. Rabinowitz, Dr. Vecchiarelli,

and Dr. Zheng, all without Respondents' authorization, after being released by Dr. Roman. The Claimant did, however, visit with Wray before she was released by Dr. Roman; but it, too, was unauthorized by the Respondents.

Nevertheless, it must be considered that the Arkansas Court of Appeals has held that a claimant may be entitled to additional treatment, even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*. A claimant is not required to furnish objective medical evidence of her continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

Without question, the Claimant was seeking relief from her right shoulder pain. However, Respondents have also argued that any treatment Claimant has undergone with Nurse Practitioner Wray, Dr. Rabinowitz, Dr. Vecchiarelli, and Dr. Zheng were unauthorized, and that Respondents are not responsible for the costs associated with that treatment. In *Tempworks Mgmt. Servs. v. Jaynes*, 2023 Ark. App. 147, 662 S.W.3d 280, the Arkansas Court of Appeals wrote:

Briefly, Ark. Code Ann. § 11-9-514(c)(1) requires an employer or insurance carrier to deliver a Commission-approved notice to the employee "which explains the employee's rights and responsibilities concerning change of physician." Unauthorized medical expenses incurred after the employee has received the notice are not the employer's responsibility. *Id.* § 11-9-514(c)(3). But if the employee is not furnished a copy of the notice, the change-of-physician rules don't apply.

The change-of-physician rules do not apply absent proof that the claimant received a copy of the rules from the Respondents either in person or by certified registered mail. Ark. Code Ann. § 11-9-514(c)(1)-(2) (Repl. 2012). *See also Jaynes, supra; Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000).

The preponderance of the evidence in this matter establishes that Claimant did receive a copy of these rules. Claimant, through her attorney, admitted at the full hearing that she was given and signed the two-sided Form AR-N, a copy of which is in evidence. TR-58-59; Resp. Ex. 1, pp. 1-2. Thus, I find by the preponderance of the evidence that the treatment received by Claimant from Nurse Practitioner Wray, Dr. Rabinowitz, Dr. Vecchiarelli, and Dr. Zheng, was in fact unauthorized; as a result, the Respondents are not responsible for the cost of those or any other unauthorized medical services.

B. Whether Claimant is entitled to additional Temporary Total Disability Benefits from September 12, 2024, until a date to be determined.

In this proceeding, Claimant has also claimed entitlement to additional temporary total disability benefits from September 12, 2022, until a date to be determined. Respondents stipulated that they did pay some benefits under the claim but maintained that Claimant was not entitled to additional temporary total disability benefits.

The injury to Claimant's right shoulder is unscheduled. *See* Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

I have previously found that Claimant's healing period ended on October 29, 2024. The Respondents admitted on the record that there was confusion regarding the need of physical therapy and may have prematurely ended Claimant's TTD benefits on September 11, 2024, instead of the end-date of the healing period. TR-63. Respondents further announced to the Commission that they will review and make good on this error by paying any TTD benefits they owe. *Id.* The evidence preponderates that Claimant was not capable of working and was still in her healing period when Respondents prematurely ended her benefits on September 11, 2024. Therefore, I find by the preponderance of the evidence that Respondents owe the Claimant TTD benefits from September 12, 2024, to October 29, 2024.

The Claimant, however, argues that she is still unable to work and remains in her healing period beyond Dr. Roman's MMI date of October 29, 2024. Thus, she claims she is entitled to additional TTD benefits beyond the October 29, 2024, healing period date that Dr. Roman prescribed. The Claimant relies on a letter by Dr. Vecchiarelli dated August 5, 2025, that states the Claimant has been his patient since March 2025, and that in his professional opinion, she is unable to work due to CRPS. CL Ex. 1, p. 351. On August 8, 2025, Dr. Vecchiarelli further opined that most of Claimant's total body pain is due to myalgia, possibly from a bad reaction to a dye that was used in conjunction with high radiation from the bone scan. CL Ex. 1, pp. 352-359.

Again, I have credited Dr. Roman's IME report in finding that the end of Claimant's healing period was October 29, 2024. Nothing has occurred to re-open the Claimant's healing period for her compensable right shoulder injury. Dr. Vecchiarelli stated that Claimant's total body pain is a result of myalgia. He also stated that the Claimant is unable to work due to her CRPS. However, the Claimant has not asked the Commission to consider whether Claimant's diagnosis of myalgia or CRPS is a compensable consequence of her compensable right shoulder injury. Thus, these

issues are reserved and shall not be considered in this opinion. Therefore, the Claimant has failed to show by the preponderance of the evidence that she has re-entered a new healing period or remained in her original healing period concerning her compensable right shoulder injury.

C. Whether Claimant is entitled to Permanent Total Disability benefits.

Claimant has further contended that as a result of her compensable right shoulder injury, she is permanently and totally disabled. Respondents have argued otherwise.

The term “permanent total disability” is defined in the statute as “inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.” Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2012).

Dr. Roman stated that Claimant reached the end of her healing period on October 29, 2024. The Claimant has provided a statement from Dr. Vecchiarelli that states the Claimant is unable to work due to pain from CRPS, not the compensable right shoulder torn rotator cuff. CL Ex 1, p. 351. Again, the Claimant’s CRPS is not a stipulated compensable injury, nor was I asked to rule on its compensability. As previously stated, the issues of myalgia and CRPS being compensable consequence injuries are reserved. Also, as previously stated, during the full hearing Claimant admitted that she stated in her deposition that she has no intention of finding a job unless it is in law enforcement. The Claimant testified that she has not sought out any meaningful employment of any nature. TR-46. After reaching MMI, the Claimant met with Ms. Brunson, a vocational rehabilitation consultant, to assist her in re-entering the workforce. Resp. Ex. 1, pp. 24-32. Ms. Brunson provided Claimant with multiple job leads, and Claimant refused to apply for any of the listed jobs, all of which fit her skill set. *Id.* and TR-46. Claimant testified that she wants to work but has made no effort to do so. Thus, Claimant has failed to prove by the preponderance of the evidence that she is entitled to permanent total disability benefits.

D. Whether Claimant is entitled to wage loss benefits.

The Claimant has asserted in the alternative, that she is entitled to wage loss disability benefits over and above her impairment rating. Respondents have argued otherwise. Claimant's entitlement to wage loss disability benefits is controlled by § 11-9-522(b)(1) (Repl. 2012), which states:

In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

See Curry v. Franklin Elec., 32 Ark. App. 168, 798 S.W.2d 130 (1990). Such "other matters" include motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *Id.*; *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). As the Arkansas Court of Appeals noted in *Hixon v. Baptist Health*, 2010 Ark. App. 413, 375 S.W.3d 690, "there is no exact formula for determining wage loss" Pursuant to § 11-9-522(b)(1), when a claimant has been assigned an impairment rating to the body as a whole, the Commission possesses the authority to increase the rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. *Cross v. Crawford County Memorial Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

To be entitled to any wage-loss disability in excess of an impairment rating, the claimant must prove by a preponderance of the evidence that she sustained permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). In considering factors that may impact a claimant's future earning capacity, the Commission considers his motivation to return to work, because a lack of interest or a negative

attitude impedes the assessment of his loss of earning capacity. *Id.* The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). Finally, as discussed above, § 11-9-102(4)(F)(ii) provides that permanent benefits can only be given to a claimant if the compensable injury was the major cause of the disability or impairment. “Disability” is the “incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury.” Ark. Code Ann. § 11-9-102(8) (Repl. 2012).

Dr. Gordon assessed Claimant with a three percent (3%) impairment rating to the body as a whole. Resp. Ex. 2, p. 10. I credit Dr. Gordon’s impairment assessment. Again, the Claimant reached the end of her healing period on October 29, 2024. Since then, she has made no effort to gain any meaningful employment even when provided with assistance by Ms. Brunson. Resp. Ex. 1, pp. 24-32. Ms. Brunson did an analysis of her work history and transferrable skills along with job market research and provided Claimant with several job openings. *Id.* Claimant did inform Ms. Brunson that she does not feel she can do any work at this time. *Id.* Claimant stated that she would eventually like to return to law enforcement or nursing. *Id.* When asked if she could not return to either one of those jobs “were there other jobs or industries she would like to work in,” she stated, “No, then I don’t want to work.” *Id.* However, at the full hearing, the Claimant testified, during direct examination, that she is willing to work any job. TR-48. I believe, as previously stated, Claimant’s statement during the hearing that she is willing to work any job was subterfuge. She has admitted on the record that she can write, work on a computer, drive a car, do laundry, load a dishwasher, cook meals, and operate a lawn mower. TR-55-57. Despite these transferable skills, the Claimant has refused to seek out meaningful employment due to an apparent lack of motivation

to work. Therefore, the Claimant has failed to prove by the preponderance of the evidence that she is entitled to wage loss benefits beyond what Dr. Gordon has accessed.

E. Whether Claimant's attorney is entitled to a controverted attorney's fee.

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). Claimant has proven herein her entitlement to additional temporary total disability benefits from September 12, 2024, to October 29, 2024; and because Respondents have controverted this by not paying, she has shown that her attorney should be awarded a controverted fee at their expense under Ark. Code Ann. § 11-9-715 (Repl. 2012) on the indemnity benefits awarded herein.

CONCLUSION AND AWARD

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2002). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012). *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2012).

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge