

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H208579**

**KATHY L. CARROTHERS,
EMPLOYEE**

CLAIMANT

**SOUTHERN ARKANSAS UNIVERSITY,
EMPLOYER**

RESPONDENT

**STATE OF ARKANSAS/PUBLIC EMPLOYEE
CLAIMS DIVISION,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED FEBRUARY 19, 2026

Hearing conducted on Friday, November 21, 2025, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, LLP, Texarkana, Miller County, Arkansas.

The respondents were represented by the Honorable Charles H. McLemore, State of Arkansas, Public Employee Claims Division (PECD), Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the amended prehearing order filed October 3, 2025, the parties have agreed to the following stipulations which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including June 7, 2022, when the claimant sustained an admittedly compensable injury to her right shoulder for which the respondents paid only medical benefits, but no indemnity benefits.
3. The claimant's average weekly wage (AWW) is \$510.24, which is sufficient to entitle her to weekly compensation rates of \$340.00 for temporary total disability (TTD), and \$255.00 for permanent partial disability (PPD) benefits.
4. The claimant has not missed any time from work as a result of the June 7, 2022, compensable injury.

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5. The claimant requested and by Commission order filed November 12, 2024, the Commission granted, her one (1)-time-only change of physician (COP) request to Dr. D'Orsay Bryant.
6. The respondents controvert the claimant's claim for additional medical treatment and any PPD benefits for alleged permanent anatomical impairment.
7. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Reporter's Transcript at 4). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant was entitled to additional medical treatment in the form of an MRI, as well as any and all of Dr. Gati's medical treatment obtained before and/or after the date of the MRI.
2. Whether and to what extent, if any, the claimant is entitled to PPD benefits based on alleged permanent anatomical impairment.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

(Comms'n Ex. 1 at 2; T. 4).

The claimant contends she is entitled to the payment of the MRI she underwent, as well as any and all additional medical treatment and expenses Dr. Gati rendered to her both before and after the date of the MRI, as they constitute related and reasonably necessary treatment for her compensable injury. The claimant further contends she is entitled to PPD benefits based on a permanent anatomical impairment rating of five percent (5%) to the body-as-a-whole associated with her compensable right should injury, and that her attorney is entitled to a controverted attorney's fee. (Comms'n Ex. 1 at 3; T. 4; 42-43; 45).

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The respondents contend they have paid the claimant all medical benefits to which she is entitled based upon her “medical only”, no-lost-time claim and that she cannot meet her statutory burden of proof on either of the two (2) issues to be litigated herein. They contend that both the subject MRI as well as any and all medical treatment Dr. Gati provided to the claimant both before and/or after the MRI are unrelated to and not reasonably necessary for treatment of her compensable injury. The respondents further contend the claimant is not entitled to any PPD benefits based on alleged permanent anatomical impairment as she has a preexisting condition of arthritis in her right shoulder that is the “major cause” of her disability and/or need for medical treatment. (Comms’n Ex. 1 at 3; T. 4; 43-45).

The record consists of the reporter’s transcript and any and all exhibits contained therein or attached thereto.

STATEMENT OF THE CASE

The claimant, Ms. Kathy L. Carrothers, was 72 years old at the time of the hearing and was 69 years old at the time of her June 7, 2022, admittedly compensable “medical only”, no-lost-time right knee injury. On June 7, 2022, the claimant was working as an assistant specialist in the Student Activities Office at Southern Arkansas University (SAU) in Magnolia, a job that is light duty in nature as the claimant described it. On June 7, 2022, the claimant was working at a student casino night when she picked-up a box of *faux* gambling chips which she described as “heavy” when she felt pain and discomfort in her right shoulder and she knew “that something had happened.” (T. 10; 7-13). She continued to work but she did go to see the SAU nurse. When her right shoulder continued to hurt on the evening of June 7, 2022, the claimant testified the next day

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she went to the SAU Health Office and initiated the workers' compensation claim process. (T. 10-11).

The respondents accepted the June 7, 2022, work injury as a temporary aggravation of her preexisting arthritic condition and a "medical-only" claim. (T. 13-39). As stipulated the claimant never lost any time from work as a result of the June 7, 2022, work incident. (Stipulation 4, *supra*). Medical records show the claimant first sought medical treatment for her right shoulder on June 28, 2022, with Dr. Rodney Griffen. (Claimant's Exhibit 2 at 1-7). Since then she has undergone a number of diagnostic tests and various conservative treatment modalities including taking medications and undergoing physical therapy (PT). (T. 11-41; CX 1 at 1-8; Claimant's Exhibit 2 at 1-140; Respondents' Exhibit 1 at 1-12).

As a result of her continued complaints of pain in her right shoulder the claimant eventually came under the care of Dr. Kenneth G. Gati, an orthopedic surgeon at South Arkansas Orthopaedics & Sports Medicine. She first saw Dr. Gati on September 13, 2022. The clinic note for this date indicates the claimant was taking many prescription medications for various conditions, including Amytryptiline, a tricyclic antidepressant commonly used for treatment of chronic pain, nerve pain and fibromyalgia, among other complaints; Methylprednisone, a strong corticosteroid used to treat arthritis, inflammation and other conditions; and Tramadol, a narcotic pain relief medication. (CX1 at 43). X-rays taken on this date of the claimant's right shoulder showed "no acute bony abnormality", and Dr. Gati's initial "Diagnostic Code" was, "Complete rotator cuff tear or rupture of right shoulder, not specified as traumatic... ." (CX1 at 44).

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Consequently, Dr. Gati ordered an MRI of the claimant's right shoulder which was conducted on 9/15/2022.

The "IMPRESSION" section of the radiologist's interpretation of the 9/15/2022 MRI results of the claimant's right shoulder states the study revealed in relevant part, "1. High-grade interstitial tearing of the supraspinatus tendon at and near the footprint on a background of severe tendinosis...2. High-grade delaminating tear extends into the infraspinatus musculotendinous junction, on a background of severe tendinosis...5. Moderate glenohumeral osteoarthritis with degenerative labral tearing greatest posteriorly...6. Severe acromioclavicular osteoarthrosis. Small marginal osteophytes and possible subacromial enthesophyte may contribute to the clinical diagnosis of extrinsic impingement." (CX2 at 49; 48-49). Dr. Gati's 9/20/2022 clinic note summarizes the claimant's right shoulder problems under the heading "**DIAGNOSTIC TEST FINDINGS:** MRI shows high-grade tendinosis to the rotator cuff. There was also bicipital tendinitis There are [sic] degenerative tearing of the labrum. There is [sic] also degenerative changes to the glenohumeral joint and also the acromioclavicular joint. There is [sic] findings consistent with impingement." (CX2 at 52; 51-53) (Emphasis in original; Bracketed material added).

Thereafter, Dr. Gati treated the claimant's pain with injections and other conservative treatment modalities such as medications and PT. (CX2 at 51-115). The claimant testified she currently takes over-the-counter (OTC) medication to manage her pain complaints, and that she did not want to undergo the Dr. Gati had recommended in 2022 the June 2022, and she does not want to undergo any surgery at this time. (T.20-41).

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The claimant next treated with Dr. Charles E. Pearce. In a report dated October 18, 2022 (which also contains an addendum dated November 8, 2022), after having both examined the claimant in person and reviewing all her medical records and diagnostic studies including the 9/15/2022, MRI, Dr. Pearce attributed the claimant's right shoulder pain to a "probable exacerbation [sic] pre-existing arthritis." (RX1 at 3; 3-4) (Bracketed material added). Dr. Pearce went on to state as follows: "I suspect rotator cuff findings or [sic] age-related. I do not see evidence of a full thickness tear." (RX1 at 3) (Bracketed material added).

On November 2, 2022, the claimant underwent a Functional Capacity Evaluation (FCE) at Functional Testing Centers, Inc., which was interpreted as reliable and indicated she had reached maximum medical improvement (MMI) and was able to work in the LIGHT classification based on the United States Department of Labor Guidelines (the *DOL Guidelines*). The FCE report does not indicate the claimant sustained any percentage of permanent anatomical impairment as a result of the June 7, 2022, work incident. (CX2 at 84-104). Again, the claimant continued to work at her regular job at SAU after the June 7, 2022, work incident and again, as stipulated, she has never missed any time from work as a result of the June 7, 2022, work incident. (Stipulation 4, *supra*).

Dr. Pearce reviewed the FCE results and issued a November 8, 2022, addendum to his initial 10/18/2022, report. (RX1 at 4). In this addendum Dr. Pearce opines as follows:

Functional Capacity Evaluation (FCE) was completed on November 2, 2022.
The patient gave a reliable effort and was placed in the light category of work.
This is secondary to her pre-existing arthritis and not an on-the-job acute injury.
This is stated within a reasonable degree of medical certainty. Further, there is no impairment rating related to the reported injury date of June 7, 2022. The only objective findings are those of a glenohumeral acromioclavicular arthritis.

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Additionally, I have reviewed radiographs from June 28, 2022, and July 20, 2022, of the patient's right shoulder. There is no acute abnormality. She has preexisting arthritis. Patient was under the impression that she had AC separation but that is not shown. Again, this is stated within a [sic] degree of medical certainty.

The patient has reached maximum medical improvement as it pertains to the on-the-job injury.

(RX1 at 2) (Bracketed material added). Moreover, two (2) detailed and thorough reports – one (1) dated December 19, 2022, and a second dated January 17, 2023 – of orthopedic specialists from a third-party peer review company, Medical Review Institute of America, LLC, also in agreement with Dr. Pearce's opinions regarding the issues litigated at the subject hearing. (RX1 at 9-12).

The claimant did not pursue or actively prosecute her workers' compensation claim, and it appears her employer-sponsored health insurance was paying her bills, not the workers' compensation carrier. (T. 25-41). Consequently, the respondents filed a motion to dismiss this claim without prejudice for lack of prosecution (MTD). On August 8, 2024, a hearing was held on the respondents' MTD and the ALJ decided to hold a final opinion on the respondents' MTD in abeyance. (T. 18-19).

Soon thereafter the claimant requested and by an order filed November 12, 2024 (and apparently an amended order filed November 19, 2024) the Commission granted her one (1)-time-only COP request to see Dr. D'Orsay Bryant. Dr. Bryant ordered a new, updated MRI apparently to confirm or corroborate or update the condition of the claimant's right shoulder; however, he did not articulate in detail his reason for requesting the new MRI. (Stipulation 5, *supra*; CX2 at 117-

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119). In a clinic note dated April 22, 2025, Dr. Gati also suggested the claimant undergo an updated MRI to ascertain the current condition of her right shoulder. (CX2 at 121; 120-121). The respondents denied payment for this MRI as constituting unrelated treatment that is not reasonably necessary in light of the June 7, 2022, work incident, so the claimant's employer-sponsored health insurance paid for it.

None of the medical doctors who served as the claimant's treating physicians – Dr. Russell, Dr. Gati, or Dr. Bryant – ever issued her a permanent anatomical impairment rating. But in a report dated July 22, 2025, a chiropractor, Joe Hughhins, of Academy Rehab in Longview, Texas, prepared a document in which, among other things, he cites Texas law in support of his MMI opinion. (CX2 at 130-140). It appears Texas Chiropractor Hughhins examined the claimant and her medical records for 35 minutes on July 22, 2025, and, thereafter, he wrote his report of the same date opining the claimant is entitled to a permanent anatomical impairment rating of five percent (5%) to the body-as-a-whole (BAW). It is unclear from Chiropractor Hughhin's report whether he was familiar with or qualified to render such an opinion, and whether he either applied (or appropriately applied) the 4th Edition of the *AMA Guides*. (CX2 at 136-137).

The claimant testified she continues to experience subjective complaints of pain in her right shoulder, and to date none of the conservative treatment she has been offered has alleviated those complaints. She has also made it clear she does not want to undergo surgery on her right shoulder. (T. 12-41).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2025 Lexis Replacement). There is no presumption that a claim is compensable, that an injury is job-related, or that a claimant is entitled to benefits. *Crouch Funeral Home v. Crouch*, 262, Ark. 417, 557 S.W.2d 392 (1977); *Okay Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979). The claimant has the burden of proving by a preponderance of the evidence that she is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially, without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987). The ALJ, the Commission, and the courts shall strictly construe the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Correc. v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility

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of the witnesses and the weight to give their testimony. *Whaley v. Hardee's*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); and *Farmers' Coop., supra*. The Commission has the duty to weigh the medical evidence just as it does any other evidence, and to resolve conflicting medical opinions; and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999); *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (Ark. App. 2001). Although it is within the Commission's province to weigh conflicting evidence, it may not arbitrarily disregard medical evidence or the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (Ark. App. 2004).

Related, Reasonably Necessary Medical Care and Treatment

Ark. Code Ann. § 11-9-508(a)(1) (2025 Lexis Replacement) requires an employer to promptly provide an injured worker with, among other modalities, such medical treatment "as may be reasonably necessary in connection with the injury received by the employee." The burden of proof is on the claimant to prove the medical treatment he requests is reasonable and necessary for treatment of her compensable injury. *Lankford v. Crossland Constr. Co.*, 2011 Ark. App. 416, 384 S.W.3d 561 (Ark. App. 2011). What constitutes reasonably necessary medical treatment is a question of fact for the Commission and turns on the sufficiency of the evidence. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (Ark. App. 1984); *Gansky v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996).

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While injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence, Arkansas law is well-settled that such services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Ark. Code Ann.* § 11-9-705(a)(3); *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (Ark. App. 1995).

Our court of appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of problems emanating from his compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark App. 230, 184 S.W.3d 31, (Ark. App. 2004). A claimant is not required to support the alleged need for continued medical treatment with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (Ark. App. 1997).

Reasonably necessary medical services include those necessary to reduce or alleviate symptoms resulting from the compensable injury. *Ark. Code Ann.* § 11-9-705(a)(3); and *Jordan, supra*. Also, reasonably necessary medical services include those necessary to reduce or alleviate symptoms resulting from the compensable injury. *Ark. Code Ann.* § 11-9-705(a)(3); and *Jordan, supra*.

The preponderance of the credible medical evidence of record conclusively reveals the claimant sustained a minor injury which resulted only in a temporary aggravation of her long-standing preexisting arthritic condition in her right shoulder which was readily apparent to all of

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her authorized treating physicians, and to Dr. Pearce, as of – at the latest – November 8, 2022, the full extent of the condition of the claimant’s right shoulder, as well as the cause of her pain: the degenerative changes naturally associated with the aging process. Both the claimant’s diagnosis and the etiology of it were readily apparent to all her authorized treating physicians and to Dr. Pearce long before the claimant returned to Dr. Gati on her own initiative on April 22, 2025, the date he suggested the second MRI.

Moreover, the peer review reports of a medical doctor (MD) and orthopedic specialist, Dr. Kim Sloan, dated December 19, 2022, and January 7, 2023, are thorough, independent, and reflect a knowledge of the claimant’s medical history, treatment, and diagnostic testing following the June 7, 2022, minor work incident. I find Dr. Sloan’s reports to be credible and highly persuasive on these facts, especially when considered in light of the medical records of the claimant’s treating physicians, and Dr. Pearce’s opinions stated above which . (RX1 at 2). When considering all of the medical evidence as a whole, I find Dr. Pearce’s opinions to be well informed, highly persuasive, independent, clear and the most credible on these facts. And, again, note that Dr. Pearce finds that the claimant’s objective medical findings are all degenerative in nature, and are neither acute or the result of trauma.

The preponderance of the credible medical evidence of record reveals the claimant’s right shoulder problems were related to age-related degenerative changes which were only temporarily aggravated by the minor June 7, 2022 work incident (for which the claimant did not seek medical treatment until June 28, 2022 (CX2 at 3-7)); that she reached MMI from her June 7, 2022, injury as of November 8, 2022; and that no further diagnostic tests or medical treatment from that point

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forward could be related to, or reasonably necessary in light of, the obviously minor June 7, 2022, work incident. Indeed, even the claimant herself admitted that none of the medical treatment she has undergone for the last period of almost four (4) years, has alleviated her pain. And it is also interesting the claimant returned to see Dr. Gati only after the respondents filed their MTD.

Therefore, the claimant has failed to meet her burden of proof in demonstrating that either the additional MRI Dr. Gati suggested in April 2025, or any and all treatment – which the claimant has failed to specify at the hearing or in the record – is either related to or reasonably necessary in light of her minor injury of June 7, 2022, for which she reached MMI on November 8, 2022.

Permanent Anatomical Impairment

The claimant must prove by a preponderance of the evidence that he is entitled to an award of permanent physical impairment. *Ark. Code Ann.* § 11-9-102(4)(F)(ii)(a) (2025 Lexis Replacement) states that: "Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." "Major cause" is defined as more than fifty percent (50%) of the cause, and the claimant must prove the compensable injury was the "major cause" of his disability or impairment by the preponderance of the evidence. *Ark. Code Ann.* § 11-9-102(14). In addition, any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings. *Ark. Code Ann.* § 11-9-704(c)(1)(B). Finally, pursuant to *Ark. Code Ann.* § 11-9-522(g), the Commission has adopted the *American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment* (4th Edition 1993) (the *AMA Guides*), for assessing anatomical impairment, "exclusive of any sections which refer to pain and exclusive of straight leg raising tests or range of motion

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tests when making physical or anatomical impairment ratings to the spine.” And *see*, 11 *C.A.R.* Section 25-129 (*Code of AR Regulations*, 2025 Lexis Repl.), former cited as Commission Rule 099.34.

Of course, the Commission is required to weigh the medical evidence and to translate this medical evidence into an appropriate finding regarding permanent impairment using the *AMA Guides*. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (Ark. App. 2001). Consequently, the Commission may assess its own impairment rating using the Guides rather than relying solely on its determination of the validity of ratings assigned by physicians. *Id.*

Among the other criteria governing the assessment and assignment of a permanent anatomical impairment rating, the Commission must be determined when the condition – particularly when the condition is a soft tissue injury – becomes “permanent.” The *AMA Guides* define a “permanent impairment” as an “impairment that has become static or well stabilized with or without medical treatment and is not likely to remit despite medical treatment.” *See AMA Guides*, 4th Ed., page 315. Pursuant to the *AMA Guides*, 4th Ed., page 9: “An impairment should not be considered ‘permanent’ until the clinical findings, determined during a period of months, indicate that the medical condition at issue is static and well stabilized.”

For all the same reasons cited above and in the “Statement of the Case”, I also find the claimant has failed to prove she has sustained any percentage of permanent anatomical impairment as a result of the minor, June 7, 2022, work incident. Once again, it is significant to note that none of the claimant’s treating physicians as well as Dr. Pearce – and Arkansas orthopedic specialist well known to this ALJ and the Commission – did not find the claimant sustained any percentage

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of permanent anatomical impairment resulting from the minor June 7, 2022, work incident. I find Dr. Pearce's opinion stating and explaining that the degenerative condition as well as the objective medical findings of the claimant's right shoulder are not acute nor the result of any trauma, and that she has not sustained any percentage of permanent anatomical impairment as a result of the minor June 7, 2022, work incident to be well informed and highly credible. I find Texas Chiropractor Huggin's opinion assigning a 5% permanent anatomical impairment rating to be uninformed and not credible. The preponderance of the medical evidence conclusively demonstrates the claimant has failed to meet her burden of proof in demonstrating that the subject minor work injury is the "major cause" of any degree of impairment she may or may not have. *See Goyne v. Crabtree Contr. Co.*, 2009 Ark. App. 200, 301 S.W.3d 16 (Ark. App. 2009), rehearing denied, ___ Ark. App. ___, ___ S.W.3d ___, 2009 Ark. App. LEXIS 874 (Ark. App., April 22, 2009).

Therefore, for all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this claim.
2. The stipulations contained in the amended prehearing filed October 3, 2025, which the parties affirmed on the record at the hearing, hereby are accepted as facts.
3. The claimant has failed to meet her burden of proof in demonstrating she is entitled to additional medical treatment in the form of the second MRI at issue herein and unspecified treatment by Dr. Gati.
4. The claimant has failed to meet her burden of proof in demonstrating she sustained any permanent anatomical impairment as a result of her "medical only", no-lost-time admittedly compensable right shoulder injury of June 7, 2022.

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5. The claimant's attorney is not entitled to a fee on these facts.

Therefore, for all the aforementioned reasons this claim is denied and dismissed with prejudice subject only to the parties' statutory appeal rights.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp