

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H401401**

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| CRISTINA GARCIA-LOPEZ, EMPLOYEE            | CLAIMANT   |
| GEORGE'S PROCESSING INC., EMPLOYER         | RESPONDENT |
| CORVEL ENTERPRISE CLAIMS INC., CARRIER/TPA | RESPONDENT |

OPINION FILED **DECEMBER 31, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On October 9, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 20, 2025, and a pre-hearing order was filed on February 24, 2025. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on June 1, 2023.
3. The respondents have controverted the file in its entirety.

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

1. Whether claimant sustained a compensable injury on or about June 1, 2023.
2. If compensable, compensation rate.
3. If compensable, whether claimant is entitled to temporary total disability benefits from

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October 15, 2024, through January 6, 2025, and to additional medical benefits.

4. Attorney fees.

All other issues are reserved by the parties.

The claimant contends that “She is entitled to medical treatment for her left shoulder, including surgery by Dr. Christopher Dougherty. Claimant contends she is entitled to temporary total disability benefits. Claimant reserves all other issues.”

The respondents contend that “Claimant was working for George’s when she alleged a June 1, 2023, work related injury to her left shoulder. Respondents paid for initial treatment for the alleged injury including an initial evaluation with Dr. Robert Macleod on October 19, 2023, where claimant was referred for an MRI of her left shoulder. On November 14, 2023, claimant underwent another evaluation with Dr. Macleod at Ozark Orthopedics. According to Dr. Macleod, the left shoulder MRI revealed a small loose body with no evidence of a rotator cuff tear. Thus, Dr. Macleod diagnosed claimant with a loose body in the joint of the left shoulder region, and he opined, “she does not have the classic mechanism for loose body with any reported history of fall or trauma to the shoulder from the work...” Dr. Macleod went on to recommend a left shoulder arthroscopy removal of the loose body. On December 1, 2023, Dr. Macleod authored a letter addressing the major cause of claimant’s alleged left shoulder injury. Dr. Macleod stated, “she does not, again, have the normal mechanism for a loose body and considering her work duties and job description with prior video review, I do not think it is more than 51% likely that the foreign body is a result of her work as there is no one specific incident that seems to have started the pain... I think [it] is reasonable to have her proceed through her regular private insurance if not approved through work comp.” Thereafter, on March 3, 2024, respondents denied the claim for a left shoulder injury on the basis that it was not a work-related injury, as supported by Dr. Macleod’s causation letter. Arkansas law is well settled that the burden is

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on the claimant to establish by a preponderance of the evidence a causal connection between the employment and the claimed injury. *Kelly v. Courtyard Marriott*, 2011 Ark. App. 715, 386 S.W.3d 677 (2011). Respondent contends claimant has never suffered a compensable work-related injury or aggravation to her left shoulder, rather claimant's left shoulder symptoms are the result of a non-work-related, non-compensable personal medical condition. Therefore, medical benefits and indemnity benefits should be denied.”

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on February 20, 2025, and contained in a pre-hearing order filed February 24, 2025, are hereby accepted as fact.
2. Claimant has met her burden of proving that she suffered a compensable injury to her left shoulder on or about June 1, 2023, and is entitled to reasonable and necessary medical treatment for that injury as recommended by her treating physicians
3. Claimant has met her burden of proving she is entitled to temporary total disability from October 15, 2024, until January 6, 2025.
4. Claimant's compensation rate is based on her average weekly wage of \$728.21, yielding a temporary total disability rate of \$485.00 per week.

#### FACTUAL BACKGROUND

The prehearing order listed as the threshold issue “whether claimant suffered a compensable

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injury on or about June 1, 2023.” The order did not specify that this was a gradual-onset claim. However, before the testimony began, claimant pointed out that she alleged the injury was “on or about June 1, 2023” and was making a claim for a gradual-onset injury. Both affirmed they were there to present or defend those issues as clarified. I am satisfied respondent was aware the nature of the claim was a gradual-onset injury and was not surprised by the clarification of that issue at the hearing.

#### HEARING TESTIMONY

Claimant was the only witness to testify at the hearing. Her job involved sorting meat and placing the various pieces into boxes. When a box filled, she stacked it on top of another box, then put an empty box in its place. She testified that the meat was coming down in front of her rapidly and she spent all day in repetitive work. She had worked at this particular position for about a year and a half before her left shoulder started to bother her in June 2023. She reported the pain to her supervisor and to the plant nurse and initially was only given Tylenol for the pain. Claimant testified that the pain was bearable at first but continued to worsen over time. After complaining three or four times about the shoulder injury, she filled out the initial incident report which stated: "I have pain in my left arm. Started on June 10th with a little bit of pain. And now as the days go by, the pain gets stronger. I think it keeps getting more aggravated more and more with repetitive work." This report was completed on September 15, 2023.

Claimant was sent to see Dr. Robert Macleod. She said she was scheduled to have surgery on her left shoulder, but the claim was denied and that surgery was canceled. She then went on her own to see Dr. Chris Dougherty, who performed surgery on her shoulder on October 15, 2024. Claimant was off work from that date until January 7, 2025, when she returned to work for George's, but is now doing an easier job than before her shoulder surgery. She said her left shoulder is better now, but she is not able to lift it as she does her right shoulder and cannot tie her apron behind her back. She still

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does physical therapy exercises at her house. Claimant testified that before June 2023, she had no trouble with her left shoulder. She had been working at George's since 2005, and her previous jobs were less strenuous than the one she was doing on June 1, 2023.

On cross-examination, claimant testified that she is right-handed and had been managing four lines of meat. A whole breast would come before her and her duty was to separate the good part from the bad part. She was required to put good meat in one box, bad meat in another, and the skin and bones in a third box. She was the only person working at her station, filling plastic tote bins. Claimant first said that she only moved the boxes when they were empty but later described stacking boxes full of meat and believed that the boxes were stacked ten feet high. She used a stool to help her stack the boxes. Claimant acknowledged that she did not know that her estimate as to that height was correct.

When claimant saw Dr. Dougherty, she used her husband's insurance to pay for the treatment. She testified that she explained to Dr. Dougherty what was involved with her job.

On redirect examination, claimant explained that a man was supposed to come by and pick up the boxes she had filled and sometimes she had to get him because he was not at hand. If she was alone, she had to stack the full boxes. She was working on a flat surface which allowed her to have four boxes on it before she had to start stacking. She said it was a tight working area with no room for her to move around. Claimant clarified that she did not use any tools to get the chicken separated, as that was all done by hand.

When asked on cross-examination about how often she had to reach above shoulder level, she said it was both retrieving the empty boxes and stacking the full ones. After she had pulled an empty box off the top of the stack, claimant conceded that the next box was not as high. During her shift, claimant testified she was constantly using both of her arms, extending them when throwing meat into the bins and stacking/retrieving boxes.

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Dr. Christopher Dougherty's deposition was taken on July 8, 2025. He is an orthopedic surgeon at Arkansas Center for Arthroscopy in Bentonville. Respondent's attorney began the deposition by asking Dr. Dougherty to explain his dictation process. He said medical assistants (MA) gather information from the patient, he performs the physical exam, the MAs enters the notes, and he reviews the chart before signing off. He issues amendments to medical records when mistakes are identified. Sometimes he reviews his chart reports and realizes he said something wrong, so he amends it before signing off. On those occasions when he amends something months later, it is typically because someone has pointed out a mistake in the report; that information usually comes somebody from outside the office. Dr. Dougherty will issue an amendment only if he believes the requested change is verifiable.

Dr. Dougherty explained that he does not typically address causation in his dictations. Causation is done on intake where the MA gathers the data. He addresses causation in dictations only when he perceives a need for such. When determining causation, he believes the mechanism of an injury matters.

Dr. Dougherty saw claimant a total of six times for her left shoulder injury, which included the surgery. Prior to providing treatment, he knew she had been to Ozark Orthopedics and was denied surgery. He thought it was because she had not met Official Disability Guidelines because she had not been treated conservatively for a sufficient period of time. The only medical record he reviewed prior to treating claimant was the MRI from Ozark Orthopedics. He did not review any dictations from Dr. Macleod prior to the deposition because it is his practice to form his own opinion without seeing what another doctor had recorded. He reviewed Dr. Macleod's note of August 8, 2024, for the first time at the deposition, and quoted it: "She works pulling and packing. Has a lot of repetitive motion. States she was already having shoulder pain back then from her job. Actually, getting worse for the past

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several weeks. She reported to work comp and was referred there for evaluation and treatment."

Dr. Dougherty first saw claimant on September 4, 2024. The intake form noted that claimant said she had been lifting at work, that the injury was work related, but "Not work comp" and that she "was going to have surgery but plant did not cover it." Dr. Dougherty's diagnoses were loose body left shoulder, other specified arthritis left shoulder, bursitis left shoulder, and pain left shoulder. He saw claimant again on September 30, 2024, for pre-operative evaluation. He reviewed the MRI from Ozark Orthopedics performed on November 7, 2023, while she was still under the care of Dr. Macleod. Dr. Dougherty testified claimant "had an MRI done at Ozark Orthopedics in November of 2023 that was consistent with a loose body in the left shoulder. Her MRI is also consistent with bursitis of the left shoulder and arthritis of the left acromioclavicular joint;"

On October 15, 2024, Dr. Dougherty performed left shoulder arthroscopy with loose body removal, subacromial decompression, distal clavicle resection, and biceps tenotomy. The operative findings documented that the articular surfaces were pristine, the rotator cuff was intact, there was a split tear of the biceps at the base of its anchor compromising approximately 50% of its anchor which was released, a loose body was removed, there were very thickened bursal adhesions that were extremely erythematous, a large subacromial spur was resected, and the distal end of the clavicle was resected 8 mm.<sup>1</sup>

Dr. Dougherty saw claimant for post-operative visits on October 28, 2024, and December 2, 2024. On January 6, 2025, claimant reported she was doing much better and had minimal issues. Dr. Dougherty released her to return to work with no restrictions.

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<sup>1</sup> Dr. Dougherty explained that his operative report contained an error mentioning that claimant had a previous left shoulder surgery; she had not. Dr. Dougherty made the mistake because on the same day he had another shoulder surgery where that patient had a prior shoulder surgery. He inadvertently put that information in claimant's chart.

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Upon questioning from claimant's counsel, Dr. Dougherty addressed an amendment to his September 4, 2024, dictation that was made on February 26, 2025. In the original dictation, Dr. Dougherty did not address causation in the Assessment and Plan section. In the amended version, the Assessment and Plan section states: "She was injured in a lifting accident at work" and "The work-related injury is attributable to greater than 51 percent of the injury." While Dr. Dougherty did not specifically recall what prompted him to add the causation opinion to the dictation, he remembers typing the amendment himself. He agreed that a letter from claimant's counsel would have caused his MA to bring the chart to his attention. When asked whether his causation opinion was his honest opinion based on his examination of claimant and the history, Dr. Dougherty testified "Yes. Correct."

Dr. Dougherty testified that degenerative changes can be the result of repetitive work over years. If a person had been doing rapid, repetitive line work using their arms and hands for a period of years, it would be more likely than not that degeneration in the shoulder would occur. He explained that arthritis is the wearing down of a joint; a loose body can be generated by that process. If a loose body broke off in such a shoulder, he would expect that to lead to a rise in symptoms, which would create the need for surgery.

#### REVIEW OF THE EXHIBITS

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit #1, consisting of one index page and 31 numbered pages of medical records thereafter; Claimant's Exhibit #2, consisting of one index page and one page of the initial accident report; Claimant's Exhibit #3, the deposition of Dr. Christopher Dougherty with the exhibits introduced during that deposition; Claimant's Exhibit #4, the Payment Detail Listing, consisting of 13 pages; and Respondent #1 Exhibit #1, consisting of one index pages and nine numbered pages of medical records.

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Dr. Robert Macleod saw claimant twice, the first visit being on October 19, 2023. His notes reflect that he suspected a possible rotator cuff injury to claimant's left shoulder which he categorized as work-related. He ordered an MRI, prescribed meloxicam and cyclobenzaprine, and returned her to full duty with no restrictions.

On her return visit, Dr. Macleod recorded this in the history/physical section of his November 14, 2023, report:

“45-year-old female who presents for Evaluation of a left shoulder injury that began in June while she was working. She works at pulling and packing chicken and has a lot of repetitive motion and she states that she started having shoulder pain back then from her job. States her right shoulder hurts a little bit as well pain has been persistent and actually getting worse for the past several weeks, she reported to work comp and was referred here for further evaluation and treatment.”

His assessment and plan from that visit was as follows:

“45-year-old female intra-articular loose body stemming from a work injury. And at length discussion with she and her interpreter went over the MRI we talked about nonoperative and operative treatment alternatives she understands if we do not do something surgically that loose body will likely cause symptoms for her from time to time she does not have the classic mechanism for loose body with any reported history of fall or trauma to the shoulder from the work however states that she never really had any issues and believes her symptoms started at work and have continued since then. Things reasonable proceed with left shoulder diagnostic and operative arthroscopy removal of loose body. full duty until surgery.”

On December 1, 2023, Dr. Macleod wrote the following “To Whom It May Concern” letter:

“In regards to Mrs. Lopez's work-related injury to the left shoulder, she does not, again, have the normal mechanism for a loose body and considering her work duties and job description with prior video reviewed, I do not think it is more than 51% likely that the foreign body is a result of her work as there is no 1 specific incident that seems to have started the pain. I think it is reasonable to have her proceed through her regular private insurance if not approved through work comp.”

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A review of the records of Dr. Dougherty would be redundant in light of his deposition testimony which covered his entire chart.

#### ADJUDICATION

For an injury to be compensable under the gradual-onset, rapid-repetitive-motion law, a claimant must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) the injury was caused by rapid-repetitive motion; and (4) the injury was a major cause of the disability or need for treatment. *Lay v. United Parcel Serv.*, 58 Ark. App. 35, 40, 944 S.W.2d 867, 870 (1997); Ark. Code Ann. § 11-9-102(4)(A)(ii)(a). The injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(5)(D).

That claimant had an injury to her left shoulder is not in dispute; Dr. Dougherty's October 15, 2024, operative findings confirmed the loose body shown on the MRI of November 7, 2023, as well as a split tear of the biceps tendon, thickened bursal adhesions, and a large subacromial spur, thus satisfying the second and fourth elements of proof required to establish a compensable injury.

Respondents contended that claimant did not prove that her injury occurred in the course of her employment, relying on Dr. Macleod's "To Whom It May Concern Letter" of December 1, 2023, in which Dr. Macleod opined that he did not think "it is more than 51% likely that the foreign body is a result of her work as there is no one specific incident that seems to have started the pain." The reason Dr. Macleod composed this letter was not introduced at the hearing, but it is undoubtedly in response to an inquiry from the respondent employer or insurance carrier. I note that Dr. Macleod had mentioned in his November 14, 2023, record that claimant did repetitive work at her job, but his December 1, 2023, letter addressed only the likelihood of the injury being due to a specific incident.

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On that point, claimant agreed with that assessment—her claim was for a gradual-onset injury, not one due to a specific incident. As Dr. Macleod did not address the potential cause he documented in his own records--repetitive motion--I conclude that he simply answered the questions posed by the employer or carrier and was not asked about the likelihood of the injury being caused gradually. Dr. Dougherty did specifically address that issue and unequivocally said that in his opinion "The work-related injury is attributable to greater than 51 percent of the injury." I find Dr. Dougherty's opinion to be more persuasive on the issue before me, and therefore find claimant established that her injury occurred at work.<sup>2</sup>

While respondent did not specifically contest the rapid-repetitive nature of claimant's work, it is her responsibility to demonstrate that portion of her claim. In *Malone v. Texarkana Pub. Schs.*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court explained that because our legislature had not established guidelines necessary to the determination of what constitutes "rapid and repetitive motion," that determination is made on a case-by-case basis. To determine rapid repetitive motion

“The standard is a two-pronged test: (1) the task must be repetitive, and (2) the repetitive motion must be rapid. As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly.”

The only testimony I heard on the nature of claimant's work came from her; there was no witness called by the employer to provide a different description. Although a claimant's testimony is never viewed as uncontroverted, the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). I found

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<sup>2</sup> By the time Dr. Dougherty expressed his opinion on causation and attributed it to claimant's work, he had already performed the surgery on claimant's shoulder; claimant used her health insurance through her husband's group policy. Therefore, there was no financial motive for Dr. Dougherty to express this opinion in order for the claim to be paid by the workers' compensation carrier, nor do I suggest that he would allow such to influence his medical opinion.

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claimant credible in her testimony. She described sorting meat that came before her constantly through her shift at a rapid rate. She used her hands to tear the part of the chicken that needed to be separated, moving those pieces to boxes that were then stacked until another person arrived to remove them. Her testimony was that her arms were in constant use; although she was doing different tasks during the course of her workday, such does not preclude a finding that she was engaged in rapid repetitive work, *Baysinger v. Air Systems, Inc.*, 55 Ark. App. 174, 934 S.W.2d 230 (1996). Viewing the evidence as a whole, I find claimant has established by a preponderance of the evidence that she suffered a compensable gradual-onset injury on or about June 1, 2023.

There were two additional issues to be decided if this was determined to be a compensable claim. At the hearing, claimant announced her claim for temporary total disability benefits was from October 15, 2024, until January 6, 2025, which was the period following her shoulder surgery until she was released to full duty by Dr. Dougherty. In order to qualify for temporary total disability benefits, a claimant must prove by a preponderance of the evidence that she remains within her healing period and suffers a total incapacity to earn wages. *Allen Canning Co. v. Woodruff*, 92 Ark. App. 237, 212 S.W.3d 25 (2005). Nothing in the record indicates that claimant could have returned to meaningful employment before she was released from care, and I find she has proven she is entitled to an award of temporary total disability benefits from October 15, 2024, through January 6, 2025.

Having decided that claimant was entitled to a period of indemnity benefits, I now turn to a determination of claimant's compensation rate. The parties agreed on the admission of Claimant's Exhibit #4, the payment record from George's for the period of June 1, 2022, through June 1, 2023, but disagreed on the average weekly wage. The dispute is how to consider claimant's payment for the week of November 10, 2022. She did not work that week, and apparently only had eight hours of vacation time available to use. At the hearing, claimant argued that her gross pay should be divided by

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51 weeks; respondent agreed with that, but maintained the money paid for the vacation hours should be subtracted from the yearly total. I agree with respondent that if the week is not counted as a week worked, then the money paid to claimant should be deducted from the yearly total. Therefore, I find claimant's average weekly wage at the time of her injury was \$728.21, which yields a temporary total disability rate of \$485.00 per week.

Claimant's contentions included a request for additional medical care, but there was no evidence presented of any scheduled appointments or any future treatment needed at this time. Nonetheless, should the need for such arise, respondents are to pay medical benefits as required by Ark. Code Ann. § 11-9-508.

ORDER

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

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

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

If not already paid, respondent shall pay the court reporter's fee for preparation of the record in this case.

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

**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE