

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H400020

AMANDA GRAYHAM, Employee	CLAIMANT
PRESTONROSE FARM & BREWING, Employer	RESPONDENT
EMPLOYERS PREFERRED INSURANCE CO., Carrier	RESPONDENT

OPINION FILED NOVEMBER 25, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Russellville, Pope County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 7, 2024, the above captioned claim came on for hearing at Russellville, Arkansas. A pre-hearing conference was conducted on August 14, 2024, and a pre-hearing order was filed on that same date. 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 the within claim.
2. The employee/employer/carrier relationship existed among the parties on August 26, 2023.
3. The respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left arm on August 26, 2023.
2. Related medical.
3. Temporary total disability benefits from November 9, 2023 through April 1, 2024.
4. Compensation rates.

The claimant contends she suffered a compensable injury to her left arm on August 26, 2023. She requests payment of medical benefits and temporary total disability from November 9, 2023 through April 1, 2024.

The respondents contend the claimant's condition does not meet the definition of a compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their 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 August 14, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left arm on August 26, 2023.
3. Respondent is liable for payment of all reasonable and necessary medical

treatment provided connection with claimant's compensable injury.

4. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning November 15, 2023, and continuing through March 11, 2024. Respondent is entitled to a credit for the period of time in which claimant received unemployment compensation benefits.

5. Claimant earned an average weekly wage of \$382.00 which would entitle her to compensation at the rates of \$255.00 for temporary total disability benefits and \$191.00 for permanent partial disability benefits.

FACTUAL BACKGROUND

Claimant began working for respondent in July 2022 as a waitress. She testified that her job duties required her to seat customers, take orders, process orders, and deliver orders as well as beverages to customers.

Claimant testified that on August 26, 2023, she was unloading a rack of pint glasses that had been washed and dried. While she was in the process of taking glasses out of a wet rack and putting them into a dry rack the following occurred:

So from a standing position, I am standing like this (indicating), pint glass in my right hand, rack is to my left where I was placing them. This top rack was full. I reached out with my left hand, took my two middle fingers and slid them into the opening in the rack that would allow me to lift that full rack up and place the glass in an empty spot down in the bottom.

When I did that, I felt a pulling, popping sensation. It caused tingling, burning from here to here (indicating).

On the interior of my left arm between the crease in my elbow and my thumb, about two inches from the crease in my elbow.

Claimant reported the injury to her supervisor, Elizabeth Preston, and was asked whether she wanted to seek medical treatment. Claimant indicated that she did not wish to seek medical treatment at that time and continued performing her job for the rest of the day.

In fact, claimant continued performing her job for the respondent as a waitress until November 9, 2023. At that time, the respondent was in the process of closing its facility in Paris and moving to a location in Clarksville. On its last day of business at the Paris location, claimant testified that she was extremely busy and had increased pain in her arm. As a result, she did request medical treatment on that day and was eventually seen by William Walker, a nurse practitioner, on November 15, 2023. It should be noted that claimant did not return to work for respondent after November 9, 2023.

Walker diagnosed claimant's condition as a strain of muscles, fascia, and tendons in the claimant's forearm.

Claimant was subsequently seen by Antoinette Johnson, a nurse practitioner, on November 27, 2023, and at that time was referred for an orthopedic evaluation. Claimant was eventually seen by Dr. Michael Hussey, an orthopedic surgeon, on December 20, 2023. Dr. Hussey noted that an x-ray of the claimant's elbow showed no obvious signs of trauma, deformity, or lesions around the elbow joint. He also noted that the ulnohumeral and radiocapitellar joints were well aligned. Dr. Hussey assessed claimant's

condition as lateral epicondylitis versus a partial-thickness extensor tear. He ordered an MRI scan of the claimant's left elbow which was performed on December 29, 2023. The MRI scan contains the following impression:

1. Lateral epicondylitis, manifested by focal low-grade intrasubstance tearing of the common extensor tendon group, on a background of moderate tendinosis.
2. Mild common flexor tendinosis.
3. Mild distal biceps tendinosis.

Following the MRI scan Dr. Hussey referred claimant to physical therapy for lateral epicondylitis. Claimant testified that she was not confident in Dr. Hussey and as a result she sought medical treatment from Dr. Owen Kelly, another orthopedic surgeon. Claimant's initial evaluation with Dr. Kelly occurred on March 11, 2024. Dr. Kelly acknowledged that while claimant's MRI scan showed lateral epicondylitis, it was his opinion that claimant's pain was localized more in her bicep tendon. Furthermore, he opined that her examination and the mechanism of injury was more consistent with a bicep strain/sprain. He recommended that claimant discontinue the use of her elbow brace and instead use anti-inflammatories and therapy exercises.

On that same date Dr. Kelly authored a letter to claimant stating as follows:

As you know, we had the opportunity to talk about your left elbow and I really believe that you partially strained or sprained your biceps tendon when you were lifting. I know you have been told you have lateral epicondylitis and I am not disagreeing with that, but your pain seems to localize more to your bicep tendon.

Claimant has filed this claim contending that she suffered a compensable injury to her left arm on August 26, 2023. She seeks payment of related medical benefits as well

as temporary total disability benefits from November 9, 2023 through April 1, 2024.

ADJUDICATION

As previously noted, claimant contends that she suffered a compensable injury to her left arm while lifting a rack on August 26, 2023. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

Initially, I note that respondent does not dispute that an incident was reported on August 26, 2023. Testifying at the hearing was Elizabeth Preston, the owner/operator with her husband of the respondent. Preston acknowledged that on August 26, claimant reported an injury to her left arm and Preston asked claimant if she needed to seek medical treatment. Claimant indicated that she did not need to go to the doctor but would be fine. Preston further testified that during the period of time claimant continued to work there she repeatedly asked claimant how her left arm was and offered to send her to the doctor on several occasions, but claimant refused. Finally, Preston testified that on

November 9, 2023, the last day of respondent's operation in Paris, claimant indicated that her left arm was hurting worse than ever and at that point Preston informed claimant that she had to go to the doctor. Claimant subsequently sought medical treatment from William Walker, a nurse practitioner, on November 15, 2023.

Based upon the claimant's testimony as well as the testimony of Preston and the history contained in the medical records which is consistent with claimant's testimony, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has proven that her injury caused internal harm to her body that required medical services or resulted in disability and that she has offered medical evidence supported by objective findings establishing an injury. Respondent's primary contention in this case is that there are no objective findings establishing a specific injury to claimant's left arm. In support of this contention, respondent relies in part upon a report written by Dr. Theodore Hronas, a board certified radiologist. Dr. Hronas reviewed claimant's radiographs as well as the MRI scan of her left elbow. In a report dated July 10, 2024, he stated:

Radiographs of the left elbow, 12/20/23, were performed
Approximately four months after the date of injury. The
radiographs are normal with no evidence of a fracture or
soft tissue injury.

The MRI of the left elbow, 12/29/2023, was performed
approximately four months after the date of injury. The
exam shows no evidence of fracture or bone marrow
edema. There is normal radial head articulation and
maintenance of the articular cartilage. There is no
evidence of osteoarthritic change or osteochondral

injury. The medical, lateral, and radial collateral ligaments are intact. There is increased T2 signal intensity and mild thickening of the common extensor tendon at the attachment with the lateral epicondyle consistent with lateral epicondylitis. The common flexor tendon is intact. There is mild increased signal intensity involving the biceps tendon insertion at the radial tuberosity. The brachialis and triceps tendons are normal. There is no evidence of muscle injury or soft tissue contusion.

In summary, there is evidence of mild chronic lateral epicondylitis and mild chronic distal biceps tendinosis. These changes are secondary to overuse syndromes and not related to a single injury event. Specifically, there are no objective findings of either a recent or remote injury of the left elbow.

While Dr. Hronas does acknowledge that objective findings are present, it is his opinion that those findings are secondary to overuse syndromes and not related to a specific injury. Accordingly, respondent contends that since claimant is alleging a specific injury there are no objective findings supporting a specific injury. However, the MRI scan from December 29, 2023, was interpreted as showing a tearing of the common extensor tendon group as well as lateral epicondylitis and biceps tendinitis. Following that MRI scan Dr. Hussey diagnosed claimant's condition as lateral epicondylitis and referred her to physical therapy.

In addition, claimant sought medical treatment from Dr. Owen Kelly, an orthopedic surgeon, who evaluated the claimant on March 11, 2024. Dr. Kelly stated that although the MRI scan showed lateral epicondylitis, it was his belief that claimant's exam and mechanism of injury was more consistent with a biceps sprain/strain. In his letter to claimant dated March 11, 2024, he stated that he believed the claimant had partially

strained or sprained her biceps tendon when she was lifting. Dr. Kelly specifically stated that claimant's MRI scan of her left elbow revealed lateral epicondylitis and some tendinitis of the bicep. This objective finding coupled with his opinion that claimant partially strained or sprained her biceps tendon when she was lifting satisfies the requirement of compensability.

While Dr. Hronas is of the opinion that these findings do not support a specific incident but rather a cumulative type injury, Dr. Kelly's opinion indicates that the objective findings do support a finding that claimant partially strained or sprained her biceps tendon when she was lifting on August 26, 2023. Dr. Kelly is an orthopedic surgeon as opposed to a radiologist, and I find that his opinion is entitled to great weight. With respect to the issue of compensability, I further note that there is no indication that claimant had any prior complaints with her left arm before August 26, 2023. Furthermore, claimant continued to have complaints involving her left arm even after the incident on August 26, 2023. This is evident not only from claimant's testimony but also from the testimony of Preston who testified that after August 26, 2023, she repeatedly asked claimant how her arm was and offered to send claimant to the doctor on several occasions. If claimant were not continuing to have issues involving her left arm, there would have been no reason for Preston to repeatedly ask her if she needed to seek medical treatment.

In summary, after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left arm on August 26, 2023.

In making this finding, I have relied on the testimony of the claimant, the testimony

of Preston, and the medical records. I have not given any weight to two transcripts submitted by the claimant which purport to be reflections of her conversations with Drs. Hussey and Kelly. Claimant testified at the hearing that she had concerns about being able to accurately remember and inform her family about her discussions with Drs. Hussey and Kelly. As a result, claimant secretly recorded those conversations. Neither Dr. Hussey nor Dr. Kelly were aware that their conversations were being recorded. I find that these recordings are hearsay. They are statements made out of court for the purpose of proving the matters asserted therein. Neither Dr. Hussey nor Dr. Kelly were present at the hearing and neither was provided a copy of these transcripts to determine whether they accurately reflected the conversation or whether further clarification was needed. While they are purportedly transcripts of conversations between claimant and her medical providers, they are not medical reports and therefore do not come within the hearsay exception under Arkansas Workers' Compensation law. Ordinarily, medical reports are submitted as an exception to the hearsay rule; however, in this case, these are not medical reports prepared by the treating physicians but instead purport to be transcriptions of conversations between claimant and Dr. Hussey and claimant and Dr. Kelly which were taken without their knowledge or consent. Therefore, I have given no weight to statements made in those transcripts.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. I also find that claimant is entitled to temporary total disability benefits beginning November 15, 2023, and continuing through March 11, 2024. Claimant's injury to her left arm is a scheduled injury. An employee who has suffered a scheduled injury is entitled to receive temporary

total disability benefits during the healing period or until they return to work, regardless of whether they are totally incapacitated from earning wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). In this particular case, I find that claimant entered her healing period and was taken off work when she initially sought medical treatment from Walker, the nurse practitioner, on November 15, 2023. In a follow-up note dated November 27, 2023, Antoinette Johnson, a nurse practitioner, indicated that claimant was unable to return to work and stated that an estimated return date was unknown. Claimant testified that she did not return to work for any employer until after she was seen by Dr. Kelly on March 11, 2024. Accordingly, based upon this evidence, I find that claimant remained in her healing period and that she had not returned to work beginning on November 15, 2023, and continuing through March 11, 2024, when she was seen by Dr. Kelly.

Claimant testified that during January, February and March she received unemployment compensation benefits. Pursuant to A.C.A. §11-9-506, compensation for temporary total disability benefits shall not be payable to an injured employee for any week during which they drew unemployment compensation benefits. Therefore, while claimant has been awarded temporary total disability benefits from November 15, 2023 through March 11, 2024, claimant is not entitled to benefits for any weeks during which she also drew unemployment compensation benefits.

The next issue for consideration involves claimant's compensation rate. The claimant submitted into evidence paystubs for her earnings dating from November 10, 2022 through November 17, 2023. In addition, claimant attached a sheet summarizing her payments for the last 51 weeks of work with a total of \$19,362.28. However, average

weekly wages are to be determined at the time of the accident and wages earning after the accident are not to be considered. Accordingly, I have based claimant's average weekly wage on the wages she earned beginning with the date of November 10, 2022, and continuing through August 25, 2023, the date before her injury. Claimant's wages reflect that she earned a total of \$15,295.86 during 40 weeks of work. This results in an average weekly wage of \$382.00 per week which would entitle claimant to compensation at the rates of \$255.00 per week for total disability benefits and \$191.00 per week for permanent partial disability benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left arm on August 26, 2023. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits from November 15, 2023 through March 11, 2024. Claimant is not entitled to temporary total disability benefits for any weeks during which she received unemployment compensation benefits. Finally, claimant earned an average weekly wage of \$382.00 which would entitle her to compensation at the rates of \$255.00 for temporary total disability benefits and \$191.00 for permanent partial disability benefits.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$613.65.

All sums herein accrued are payable in a lump sum without discount.

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IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE