

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NOS: G703932 & G901952**

WANDA L. GRIGSBY, Employee

CLAIMANT

PULASKI COUNTY

SPECIAL SCHOOL DISTRICT, Self-Insured Employer

RESPONDENT NO. 1

ARKANSAS SCHOOL BOARDS ASSOCIATION

WORKERS' COMPENSATION TRUST, Carrier/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY TRUST FUND

RESPONDENT NO. 2

**OPINION AND ORDER FILED MAY 3, 2021**

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Pulaski County, Arkansas.

Counsel for the Claimant: HONORABLE C. MICHAEL WHITE, Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: HONORABLE KAREN H. MCKINNEY, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

The above-captioned matter came on for a hearing on February 2, 2021, before the undersigned Administrative Law Judge. A Pre-hearing Order was entered in this matter on November 25, 2020, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/TPA relationship existed on May 1, 2017, on which date the Claimant sustained a compensable right upper extremity and shoulder injury for which certain benefits have been paid by Respondents No. 1;
- (3) The employee/employer/TPA relationship existed on March 8, 2019, on which date the Claimant alleges that she sustained a compensable injury to her right upper extremity and shoulder in the form of an aggravation, recurrence, or new injury, as well as a compensable mental injury;

(4) Respondents No. 1 have controverted additional benefits in relation to the Claimant's compensable injury of May 1, 2017, and have controverted the Claimant's alleged compensable injuries of March 8, 2019, in their entirety; and,

(5) The Claimant's average weekly wage on May 1, 2017, was sufficient to entitle her to the maximum compensation rates in effect on such date for temporary total and permanent partial disability benefits, and the Claimant's average weekly wage on March 8, 2019, was sufficient to entitle her to compensation rates of \$642.00 and \$482, for temporary total and permanent partial disability benefits, respectively.

The Pre-hearing Order of November 25, 2020, also reflected the issues to be adjudicated, as set forth below:

(1) Whether the Claimant is entitled to additional benefits in relation to her compensable right upper extremity and shoulder injury of May 1, 2017, inclusive of additional reasonably necessary medical care and related expenses, additional temporary total disability benefits for as yet unspecified dates, and a 95% permanent anatomic impairment to the right upper extremity;

(2) Whether the Claimant sustained a compensable injury to her right upper extremity and shoulder on March 8, 2019, in the form of a recurrence, aggravation, or new injury, and is entitled to appropriate benefits associated therewith, inclusive of reasonably necessary medical care and related expenses, and temporary total disability benefits for as yet unspecified dates;

(3) Whether the Claimant sustained a compensable mental injury as a result of her alleged compensable injury of March 8, 2019, and is entitled to appropriate benefits associated therewith pursuant to Ark. Code Ann. §11-9-113;

(4) Whether the Claimant has been rendered permanently and totally disabled as a result of either her compensable injury of May 1, 2017, and alleged compensable injury of March 8, 2019; and,

(5) Attorney's fees with respect to controverted indemnity benefits.

All other issues were reserved. During preliminary discussions, the Pre-hearing Order of November 25, 2020, was introduced into the record as Commission's Exhibit No. 1 without

objection, with it noted as an amendment thereto that the Claimant sought temporary total disability benefits from March 9, 2020, through a date yet to be determined, as opposed to previously unspecified dates. (TR 6-7) In addition, the parties' Joint Exhibit Nos. 1, 2, and 3 (the last of which was retained in the Commission's file) were likewise introduced into the record without objection, as was Respondent No. 1's Exhibit One. (TR 8-10) Finally, it is noted that the Pre-hearing Order of November 25, 2020, reflects that Respondent No. 2 has waived its right to appear at the hearing and thus has deferred to the outcome of litigation. (Comm. Ex. 1 at 3)

### **Findings of Fact and Conclusions of Law**

- (1) The parties' stipulations as reflected in the pre-hearing Order of November 25, 2020, are accepted as facts herein, inclusive of the Commission's jurisdiction;
- (2) The Claimant has proven, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical treatment in relation to her compensable injury of May 1, 2017, with respect to her Complex Regional Pain Syndrome, but has failed to prove, by a preponderance of the evidence, that she is entitled to a 95% permanent anatomic impairment rating to her right upper extremity or to additional medical treatment or an impairment rating with respect to her compensable right shoulder injury of May 1, 2017;
- (3) The Claimant has failed to prove, by a preponderance of the evidence, that she sustained an additional compensable injury to her right upper extremity or shoulder on March 8, 2019, in the form of a recurrence, aggravation, or new injury;
- (4) The Claimant has failed to prove, by a preponderance of the evidence, that she has sustained a compensable mental injury in relation to her injury of March 8, 2019; and,
- (5) The Claimant has failed to prove, by a preponderance of the evidence, that she has been rendered permanently and totally disabled as the result of her compensable injury of May 1, 2017.

### **Applicable Law**

The party bearing the burden of proof in a workers' compensation matter must

establish such, by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3). In order to demonstrate a compensable “specific incident” injury, as alleged herein, a claimant must prove, by a preponderance of the evidence, that he or she sustained an “accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment,” and which is identifiable by time and place of occurrence. Ark. Code Ann. §§11-9-102(4)(A)(i) and (E)(i). The alleged injury must also occur at a time when “employment services” were being performed and must be established by medical evidence supported by “objective findings.” Ark. Code Ann. §§11-9-102(4)(B)(iii) and (D). In turn, “objective findings” are those findings “which cannot come under the voluntary control of the patient.” Ark. Code Ann. §11-9-102(16)(A)(i). An aggravation of a compensable injury or pre-existing condition must meet the same requirements. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998)

Further, Ark. Code Ann. §11-9-508(a)(1) provides that:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

With respect to claims for permanent total disability, Ark. Code Ann. §11-9-519(e) defines such as:

(1) “Permanent total disability” means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

(2) The burden of proof shall be on the employee to prove inability to earn any meaningful wage in the same or other employment.

Concerning alleged mental injuries, Ark Code Ann. §11-9-113 states, in pertinent part, that:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

(b)(1) Notwithstanding any other provision of this chapter, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits.

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244 (1981).

Finally, it is long-settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133 (2017)).

### Testimony

#### Wanda Grigsby

The Claimant, who was 54 years-old at the time of the hearing, acknowledged at the outset of her testimony that she had consumed "half of a pain pill...for anxiety" approximately nine hours prior to the hearing; however, both she and counsels for the appearing parties agreed that the Claimant was not impaired and thus the proceedings were allowed to go forward. (TR 11-14)

With respect to her background, the Claimant testified that she has a Bachelor of Science Degree in Criminal Justice. In addition to her employment for Respondent Employer, the Claimant has worked for "Tobacco Control" in an officer capacity, "D.H.S.," also in an officer capacity with

the primary responsibility of "going into jails and making sure that they were fit for juvenile detention facilities," and for Southwest Airlines in the capacity of a reservationist and in loss control. (TR 14-15) During her approximately eight years with Respondent Employer, the Claimant served in various capacities including security and later as a Training Officer. (TR 16-17) In the latter capacity, the Claimant testified with respect her duties that:

My duties as a Training Officer consisted of doing seminars and training...athletically-wise. I also did seminar trainings with the staff -- with the Principals through all -- throughout the district. I did drug -- I did all the drug testing for the district, as well. (TR 17)

With respect to her compensable injury of May 1, 2017, the Claimant testified that such had occurred while she and a Captain were attempting to off-load a 165-pound "dummy" for training purposes. (TR 18) According to the Claimant, she experienced immediate symptoms that consisted of uncontrollable shaking of her [right] arm and "severe pain." (TR 19) Ultimately, the Claimant came under the care of a "Dr. Riley," who performed surgery to repair her torn rotator cuff. (TR 23-24) The Claimant denied having any problems with her right arm or shoulder prior to May 1, 2017. (TR 26) The Claimant also testified that, following her compensable injury of May 1, 2017, and prior to March 8 [2019], she was never pain-free but that Dr. Riley had released her to light-duty work during the interim that she was able to perform. (TR 26-27)

With respect to March 8, 2019, the Claimant testified that she still experienced symptoms in relation to her right arm on such date, and described her duties as an Administrative Sergeant at that time as follows:

Again, I still did drug testing. I did some training sessions -- seminar trainings with kids, speaking to students throughout the district, payroll, and billing. I also dealt with state police in getting the security officers licensed for the district. (TR 28)

Concerning her ongoing symptoms on and prior to March 8, 2019, the Claimant explained

that she suffered a "sticking burning feeling," and had been diagnosed with CRPS/RSD in 2018. (TR 28-29)

In further regard to March 8, 2019, the Claimant testified that on such date she was involved in an altercation with an irate parent while conducting training sessions for students at Sylvan Hills Middle School and ended up being swung into a wall by said parent, who was shortly thereafter arrested. (TR 31-34) According to the Claimant, she struck her head and right shoulder upon being swung into the wall and experienced immediate swelling and tingling in her right arm, which she differentiated from her post-May 1, 2017, symptoms. (TR 34-37) The Claimant further testified that she has not worked since the March 8, 2019, incident, and can no longer use her right arm following such date. (TR 38; 42) The Claimant went on to describe various things that she can no longer do and that she is only able to presently enjoy listening to music or "watch a little television" in comparison to her pre-injury recreational activities. (TR 42-43)

At a subsequent point, and with apparent respect to her alleged mental injury, the Claimant testified that she struggles with "depression and anxiety...More so with this last incident in 2019," and went on to clarify that she had experienced no problems with depression and anxiety prior to the incident of March 8, 2019. (TR 47-48)

During cross-examination, *inter alia*, the Claimant acknowledged that she had denied injections for her CRPS/RSD which had been recommended by a "Dr. O'Malley" during the Spring of 2018. (TR 71) The Claimant further conceded that she had declined Dr. Riley's suggested nerve conduction study:

Q: Okay. And he says you do not have a permanent impairment because of the invalid functional capacity evaluation. Do you remember that?

A: From reading, yes.

Q: Okay. And that's all from Dr. Riley. And, again, you didn't do the testing that Dr. Riley wanted. He wanted the nerve conduction study and you didn't do that for him, did you?

A: No. I had already taken it.

Q: Right, but he didn't have that because that was at U.A.M.S. He was wanting his own.

A: Right. I took him the results and the reason bein' was because it was too painful. I had already had it. That's where they stick the needles in you. (TR 72-73)

Also upon cross-examination, the Claimant participated in the following exchange:

Q: Okay. And at this point in time you go and find a new Primary Care Physician. You start seeing Dr. Crystal Johnson. Do you remember that?

A: Yes.

Q: And I'm showing you see her for the first time on September the 14th, 2018. Does that sound about right to you?

A: Yes.

Q: And your complaints at that time are depression, anxiety, and headaches. Do you remember that?

A: Yes.

Q: All right. So you're seeing her in the fall of 2018 and you have headaches, right?

A: Yes.

Q: You're telling her the stressful work is getting too much for you, correct?

A: Yes.

Q: And you're telling her that you're having issues with co-workers; they are kind of making fun of you?

A: Yes.



Q: And all of that is in the fall of 2018, right?

A: Yes.

Q: Okay. And she takes you off work for this -- these stresses? Do you remember that?

A: Yes. Yes.

Q: All right. And she tells you we need to decrease your stress at work and she's talking to you about trying to get into a referral for a psychologist, right?

A: I don't recall this experience. (TR 73-74)

Dr. Kevin J. Collins

During his deposition taken on November 20, 2020, and *inter alia*, Dr. Collins most saliently testified as follows:

Q: All right. And back to the impairment rating that you assigned, you've testified that RSD or complex regional pain syndrome is not addressed in the guides. Is that your --

A: Very, very minimally. I mean, one thing that people don't seem to understand about the guides, the guides are like the best attempt. When it doesn't work, you progress to another book. Well, the State of Arkansas has decided to stay with the 4th Edition, even though there's been more editions made to correct the mistakes of the previous edition. Nothing I can do about that. So it doesn't really address RSD in its fullest sense. It gives you little things, like with the nerves and range of motion, etc., etc., and I was always unsatisfied with that. And I said, well, if you effectively can't use that limb, can use the concept of it's basically amputated? It's flail. You know, and that's where I came up with that. And over the course of years, it was accepted by most of the people that I used it for.

Q: But the guides do allow for you to evaluate the nerve damage?

A: Well, at that point, honestly, I didn't know that there was an EMG, so I'm going by what I think I know. You know, I'm in the middle of a movie. So if someone plops down and goes, here's my notes. You read them. There's no EMG and there's no reason to think there's one. So I'm like, I don't think maybe there's one in

there. Anyway, the point being is, I do the best with the hand I'm dealt. And you know, if you can't use it, you can't use it, so... (JX 3 at 33-34)

Shortly thereafter, Dr. Collins agreed that the impairment rating he had assigned to the Claimant's right upper extremity was intended to reflect an amputation at or below the elbow. (JX 3 at 36)

### **Medical and Documentary Evidence**

I have reviewed the entirety of the substantial medical and non-medical documentary evidence submitted herein, the most salient and relevant of which are discussed below in further detail.

Following her compensable injury of May 1, 2017, the Claimant underwent right shoulder surgery performed by Dr. Clayton Riley on November 13, 2017, to address a partially torn rotator cuff, SLAP tear, and acromioclavicular joint arthritis. (JX 1 at 23) Quite some time later, on February 28, 2018, the Claimant presented to Dr. Yohei Harada, with reports of "numbness/tingling and weakness of her right arm since when she got shoulder surgery for rotator cuff in Nov 2017. (JX 1 at 82) Dr. Harada further noted that the Claimant's MRI "came back negative without showing acute stroke" and that "pt would benefit from having outpatient NCS/EMG study and general neurology follow-up." (*Id.*) A subsequent electrodiagnostic study performed on or about March 22, 2018, by Dr. Antonio Howard revealed no evidence of peripheral neuropathy affecting the Claimant's right upper extremity; however, Dr. Howard commented that the "clinical picture is very suggestive of CRPS." (JX 1 at 99)

On April 24, 2018, the Claimant participated in a Functional Capacity Evaluation which reflected unreliable results. (JX 1 at 117-136) Following such, Dr. Riley opined as follows on May 22, 2018:

Ms. Grigsby had a functional capacity exam and an impairment rating evaluation at the Functional Testing Centers on April 24, 2018. It was determined that she was putting forth an unreliable effort. No consistent objective measures could be determined and therefore no impairment rating was given. This has been my general experience with Ms. Grigsby as well. There have been inconsistent physical exam findings and no effort given the physical exam which makes it impossible for me to assess her condition or progress. At the time of the functional capacity exam was ordered, a nerve conduction and EMG were ordered as well, although I have been informed that she did not show up for this appointment. She has reached maximal medical improvement as of the date of her functional capacity exam on April 24, 2018, and will follow-up as needed in the future. (JX 1 at 137)

Thereafter, the Claimant presented to Dr. Crystal Johnson on December 18, 2018, who penned a letter to "Whom It May Concern," that stated in pertinent part, that:

This letter is to inform you that I am currently treating Ms. Grigsby. She has been off work since September 14, 2018, and is scheduled to return to work January 1, 2019. Ms. Grigsby is under my care with restrictions of the right arm and reduction of stressor's (sic) until further notice." (JX 1 at 151)

On March 13, 2019, the Claimant returned to Dr. Johnson in relation to worsening anxiety and depression following an "altercation at work." (JX 1 at 155) Thereafter, on March 21, 2019, Dr. Johnson noted that the Claimant would "like to be referred to Dr. David Collins at orhto. Pt was referred to New Life by SVI for psych...work circumstances increase stress." (JX 1 at 158; see also JX 1 at 160)

Previously, on March 8, 2019, the Claimant had presented to Med Express in relation to the incident of the same day and was evaluated by Nurse Practitioner Gwendolyn Hart. (JX 2 at 2) Nurse Hart identified spasm and tenderness in the Claimant's neck, an injury to which is not alleged in the present matter, along with utterly non-specified "abnormal" musculoskeletal exam findings all along an unspecified upper extremity. (*Id.*) Radiographs performed on such date revealed no acute changes to the Claimant's right shoulder. (JX 2 at 5-6)

Two days later, on March 10, 2019, the Claimant presented to Dr. Ethan McCullar, an emergency physician, and among her other symptoms following the altercation of March 8, 2019, apparently made sure to advise him that "her right arm is cool to the touch and swollen. Patient has a history of CPRS (sic) diagnosed at UAMS." (JX 2 at 9) Dr. McCullar noted that the history he obtained was provided by the Claimant, and despite recording that the Claimant had no musculoskeletal edema and that her skin was "warm and dry," nonetheless went on to note "mild swelling to the right hand. The arm to mid forearm is cool to the touch." (JX 2 at 9-10) Once again, radiographs performed on March 10, 2019, revealed no acute changes to the Claimant's right shoulder. (JX2 at 13-14)

On March 13, 2019, the Claimant presented to yet another emergency physician, Dr. Christi Delcastillo-Hegy, with complaints of suicidal ideation of "chronic onset" with "exacerbating factors" which included "her job and chronic pain to L (sic) arm from old work injury when something fell on her on her arm." (JX 2 at 31) Also:

Got reinjured last Friday when she tried to intervene physically with a disgruntled parent of an athlete who threw her against a wall. Got XRs at Baptist, which were normal. Feels suicidal because she's tired of hurting and not being able to work effectively due to pain.  
(*Id.*)

Following hospitalization for further psychiatric evaluation, the Claimant was released from such on or about March 19, 2019. (JX 2 at 35-42) On June 2, 2020, the Claimant once again provided unreliable results with respect to an additional Functional Capacity Evaluation, although the examiner did note that the Claimant's right hand appeared swollen as compared to her left. (JX 2 at 74; see also JX 2 at 75-96)

### **Adjudication**

Injury of May 1, 2017

The Claimant presented with noted swelling to her right hand during her second Functional Capacity Evaluation (hereinafter "FCE") of June 2, 2020. While the results of said evaluation may have once again been unreliable, and in the absence of evidence that would otherwise suggest that the Claimant has reached maximum medical improvement for Complex Regional Pain Syndrome affecting her right upper extremity, I am left with little choice but to specifically find that she is entitled to additional reasonably necessary medical care in relation to such.

With such finding noted; however, and with due respect to his best efforts, I can afford no weight to Dr. Collins' assessment of a 95% permanent anatomic impairment rating to the Claimant's right upper extremity. As noted above, such was admittedly based upon his own methodology and upon the assumption of an amputation at or below the elbow -- neither of which is acceptable under the facts of this claim nor under Arkansas Workers' Compensation law. Accordingly, I specifically find that the Claimant has failed to prove that she is entitled to the rather exorbitant rating assigned by Dr. Collins.

Alleged Injury of March 8, 2019

There appears to be no dispute that the incident of March 8, 2019, occurred as described by the Claimant, and that she expended her best efforts during such. However, as noted above, there appears to have been no appreciable change in the Claimant's objective findings to her right shoulder or upper extremity that would be sufficient to establish a compensable injury either in the form of an aggravation or new injury on March 8, 2019. Accordingly, I specifically find that the Claimant has failed to prove that she sustained an additional compensable injury to her right shoulder on March 8, 2019, and further specifically find that she achieved maximum medical improvement from such with no permanent anatomic impairment pursuant to Dr. Riley's opinion

of May 22, 2018.

Alleged Mental Injury

Given that I have found that the Claimant has failed to prove that she sustained a compensable injury on March 8, 2019, and that her alleged mental injury is tied to such pursuant to the pre-hearing Order of November 25, 2020, this issue is rendered moot.

Temporary Total Disability & Permanent Total Disability

Once again, given that I have found that the Claimant has failed to prove that she sustained a compensable injury on March 8, 2019, and that her claim for additional temporary total disability benefits is tied to such pursuant to discussions on the record noted above, this issue is rendered moot. Further, given my finding that the Claimant reached maximum medical improvement in relation to her right shoulder on May 22, 2018, with no impairment, the issue of permanent and total disability is likewise rendered moot.

**Order**

Respondents No. 1 are ordered and directed to pay benefits consistent with the findings of fact made herein. Respondents No. 1 are further ordered and directed to pay the Court Reporter's fee within thirty (30) days of billing pursuant to Commission Rule 099.20.

IT IS SO ORDERED.

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HONORABLE TERRY DON LUCY  
Administrative Law Judge