BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G703932 & G901952

WANDA GRIGSBY, EMPLOYEE	CLAIMANT
PULASKI COUNTY SPECIAL SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 2, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE C. MICHAEL WHITE, Attorney at Law, North Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals and Respondent No. 1 cross-appeals an administrative law judge's opinion filed May 3, 2021. The administrative law judge found that the claimant failed to prove she was entitled to a permanent anatomical impairment rating. The administrative law judge found that the claimant failed to prove she sustained a compensable aggravation or recurrence on March 8, 2019. The administrative law judge found that the claimant failed to prove she was permanently totally disabled.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on March 8, 2019. We find that the claimant proved she was entitled to temporary total disability benefits from March 9, 2019 through September 14, 2019. The Full Commission finds that the claimant proved she sustained a 95% permanent anatomical impairment rating to her right upper extremity. The Full Commission finds that the claimant did not prove she was permanently totally disabled.

I. HISTORY

Wanda Latrice Grigsby, now age 55, testified that she had earned a bachelor's degree in Criminal Justice. Ms. Grigsby's testimony indicated that she had worked primarily in law enforcement-related jobs. The claimant testified that she became employed as a Security Officer for the respondents, Pulaski County Special School District, in 2014, and that she was eventually promoted to Training Officer. The parties stipulated that the employment relationship existed on May 1, 2017, "on which date the claimant sustained a compensable right upper extremity and shoulder injury."

The claimant testified on direct examination:

> Q. Tell the judge what happened on May 1st, 2017.
> A. On that date my Security Director told me and a Captain to go out to the SUV and get the 165-pound full-body dummy out of the vehicle and bring it inside to the office where we had a

> – we had our equipment for training….We were on the back dock trying to – trying to put the dummy on the dock and in doing so he kinda slipped or did somethin' and the – the end of the dummy fell over on my right shoulder and side and knocked me down, but it landed on my right side….
> Q. What did you experience?
> A. Immediately after that happened, my arm started to shake….

According to the record, an MRI of the claimant's right shoulder was taken on May 15, 2017 with the impression, "Partial-thickness bursal sided tear/fraying of the anterior fibers of the distal supraspinatus tendon. No full-thickness tear detected. Superior labral tear. Smaller posterior labral tear. Consider further evaluation with MR arthrography, if clinically indicated. Moderate DJD about the AC joint with mild undersurface osteophyte formation."

Dr. Clay Riley performed surgery on November 13, 2017: "Right arthroscopic posterior labral repair, biceps tenodesis, rotator cuff debridement, and acromioclavicular joint resection." The post-operative diagnosis was "Right shoulder pain, partial rotator cuff tear, SLAP tear, acromioclavicular joint arthritis, and posterior labral tear." Dr. Riley arranged follow-up treatment after surgery, which treatment included physical therapy at Ortho Rehab & Specialty Centers. The claimant testified that she did not benefit from surgery performed by Dr. Riley.

The claimant sought emergency medical treatment on February 27, 2018 for complaints of numbness. A physician's impression was "1. Right

arm weakness. Right arm numbness." It was noted at that time, "**Patient's RUE is cool to touch compared to LUE, up to shoulder**."

An MRI of the claimant's right shoulder was taken on or about March 19, 2018 with the following impression:

> 1. Severely frayed and attenuated anterior fibers of the supraspinatus with partial thickness articular surface tear measuring about 0.8 cm with differential retraction of fibers.
> 2. Postsurgical changes from prior biceps tenodesis with edema around the distal anchor screw.
> 3. Thickening of the inferior glenohumeral ligament with edema suggestive of capsulitis. Small joint effusion.

Dr. Antonio T. Howard examined the claimant at UAMS on March 22, 2018:

> Wanda L. Grigsby is a 51 y.o. female who is referred for electrodiagnostic evaluation with complaint of RUE numbness/tingling, weakness and pain.
> Well until May 2017. She was storing away a PT dummy in SUV when it fell onto the right side of her body. After the incident she had some tingling in the posterior elbow to medial hand. Nov. 13, 2017 she had rotator cuff repair. Her numbness and tingling persists. 2 weeks ago she was admitted to hospital because the entire RUE turned purple/blue and seemed to lack a pulse. Also described weakness throughout the entire RUE….
> **Clinical and Electrodiagnostic Impression:**
> 1. No electrodiagnostic evidence of peripheral neuropathy or radiculopathy affecting the right upper extremity on this study.
> 2. Minor motor unit abnormalities observed on EMG are inconclusive, but *may* indicate a recovering brachial plexopathy.
> 3. The clinical picture is very suggestive of CRPS.

Dr. Lawrence O'Malley gave the following impression on March 22, 2018: "Right shoulder pain following shoulder arthroscopy with complex

regional pain syndrome. PLAN: With a long discussion concerning options. I do not believe that she reoperation (sic) of her right shoulder. Recommend stellate ganglion block for her complex regional pain syndrome. The EMG and nerve study there is no evidence of peripheral neuropathy or radiculopathy. Question whether there may be some recovering brachial plexopathy."

Dr. Daniel Atkinson examined the claimant on April 13, 2018 and reported, "**RUE cool to the touch, edematous, sec cap refill, no allodynia, + hyperalgesia from finger tips to elbow**….**RUE cool to touch compared to L**. **Edematous RUE**."

The claimant participated in a Functional Capacity Evaluation on April 24, 2018:

> The results of this evaluation indicate that an unreliable effort was put forth, with 24 of 54 consistency measures within expected limits….
> Ms. Grigsby completed functional testing on this date with **unreliable** results.
> Overall, Ms. Grigsby demonstrated the ability to perform work in at least the **SEDENTARY** classification of work using her LUE over the course of a normal workday with limitations as noted above.

It was also noted on April 24, 2018, "due to an inability to measure consistent OBJECTIVE findings, no impairment could be rated to Ms. Grigsby at this time for the work related RUE injury."

Dr. Riley reported 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 during the physical exam which makes it impossible for me to assess her condition or progress. At the time 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 maximum medical improvement as of the date of her functional capacity exam on April 24, 2018 and will follow-up as needed in the future.

The claimant testified that she returned to light-duty work for the respondents at an undetermined date. The parties stipulated that the employment 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." The claimant testified on direct examination:

> Q. Wanda, let's jump forward to March 8th of 2019. What job where you performing then? March 8th of 2019?
> A. Administrative Sergeant….
> Q. When you went to work that morning were you still experiencing any problems with your right arm or shoulder?
> A. Yes.
> Q. What kinds of problems were you still experiencing?
> A. My arm – with CRPS [my] arm hurt every day. A sticking burning feeling….
> Q. Did you sustain an injury on that day, as well?
> A. Yes.
> Q. Okay. Tell the judge what happened.

> A. On this particular day I was doing a training for the students at Sylvan Hills Middle School….At that particular time, after letting some students out getting for my next session of students, a gentleman came in being very irate, cussin' and sayin', "Where's Fawcett? Where's Fawcett?"...He just pushed [the door] open and came in to the door to where Mr. Fawcett was and I said – I told – I screamed out to the secretary to call security and to call the – Officer Brown….He looked at me and he took me and swung me around and I hit the wall and went to the floor, and Mr. Fawcett was able to get to his office….
> Q. Wanda, what part of your body did you hit?
> A. As I recall correctly, he – he – when he flung me to the wall I hit my head, I – I hit my shoulder [indicating] –
> Q. And you're pointing to your right shoulder?
> A. Yes, sir….My arm began to swell immediately.

According to the record, the claimant treated at MedExpress North Little Rock on March 8, 2019:

> Patient comes in today for a Pain, Neck, Pain, proximal arm, Pain, Shoulder, Pain, Forearm, Pain and Pain, Hand. A parent at the school she works at starting (sic) a fight with principal and she intervened and now she is having pain right side of her neck down to her hand, she has had rotator cuff surgery before….
> Altercation at her school getting irrate (sic) parent off the vice principal who had been attacked she grabbed him from behind and tried to pull him off the principal, she then fell into the wall on her right shouldker (sic) head and forearm are painful. Has had previous surgery on her right shoulder, is being evaluated for CRPS nerve damage in the right hand, it is cold and different color – seeing PCP for this issue[.]…

A Nurse Practitioner examined the claimant and noted, "Has spasm on the right side of her neck that is tender into the Trap." The Nurse Practitioner assessed "Contusion of right shoulder, initial encounter. Contusion of right elbow, initial encounter." An x-ray of the claimant's

cervical spine was taken on March 8, 2019 with the impression, "There is straightening of normal cervical lordosis. Degenerative spondylosis. No fracture or subluxation." An x-ray of the claimant's right shoulder was taken on March 8, 2019: "There is normal alignment of the glenohumeral joint. The humeral head is unremarkable. There is no evidence for fracture or other acute osseous abnormality. The AC joint is normal in appearance, without significant degenerative spurring. The acromion is nearly horizontal. IMPRESSION: No acute bone abnormality or significant degenerative disease." An x-ray of the claimant's right elbow was taken on March 8, 2019 with the impression, "No acute bone abnormality."

A MedExpress Worker's Compensation Duty Form dated March 8, 2019 indicated that the claimant could return to "Modified Duty" beginning March 11, 2019. However, the claimant testified that she had not returned to work since March 8, 2019. The claimant sought emergency treatment on March 10, 2019. An RN noted at that time, "Pt reports right shoulder pain after physical altercation with a parent at school on Friday. Pt reports she has a hx of shoulder surgery on right shoulder and pain has become even more severe." The diagnosis at that time was "Complex regional pain syndrome type 1 of right upper extremity. Strain of right shoulder, initial encounter. Alleged assault."

An x-ray of the claimant's right shoulder was taken on March 10, 2019 with the following impression:

> 1. No evidence of fracture or malalignment involving the right shoulder shoulder girdle.
> 2. There is a 10 mm circumscribed rounded lesion with sclerosis at the margins in the proximal right humerus. This has a benign appearance but if the patient has unprovoked Pain at this site further evaluation with bone scan may be of benefit.

Dr. Ethan M. McCullar reported on March 10, 2019:

> Wanda L. Grigsby is a 52 y.o. female who presents ambulatory to the emergency department with right shoulder and right arm pain since an altercation at work 2 days ago. Patient states that she was thrown against a wall striking her right shoulder against a wall 2 days ago and has had worsening pain radiating down the right arm since that time and is experiencing extreme pain with movement of the right arm. Patient was seen at urgent care that day and given muscle relaxers that she has not had filled yet. Patient has a history of rotator cuff repair 1 year ago on the right shoulder. Patient states her right arm is cool to the touch and swollen. Patient has a history of CPRS diagnosed at UAMS….
> **Right upper extremity with some mild swelling to the right hand. The arm to the mid forearm is cool to the touch…**.
> Patient is a 51 year old female with history of right rotator cuff repair in Nov. 2017 who initially presented to the emergency department with the complaint of sudden onset right arm numbness, tingling, and weakness yesterday around 1500. Stroke pager activated in the ED and patient was evaluated by neurology….Right arm was found to be cooler than left, so CTA chest and CTA right upper extremity….CTA chest without evidence of aortic dissection, but does show postsurgical changes to right shoulder joint with mild lucency around biceps tendon anchor concerning for loosening….She was evaluated by neurology this morning, who believed symptoms may be related to brachial plexopathy r/t shoulder surgery….Will plan to discharge patient home with outpatient follow up….

> Since the patient's had good workup with this same history previously after traumatic injury. Her hand is cool to touch. Patient states she has had Neurontin for that did not help. Up-to-date shows that NSAIDs and referral to pain management is recommended. I will give her referral back to orthopedic doctor and to neurology. Patient would like to see new neurologist for further workup. Patient arm was placed in a sling. On her x-ray there was a little lucency on the proximal humerus by looking at the CT scan previously it looks like it was there when she was seen at UMS (sic) and I thought it was loosening of an anchor from a previous shoulder surgery. Will discharge with something for pain, naproxen and follow-up information. Strict return instructions given.

Dr. David Collins examined the claimant on April 24, 2019:

> 52-year-old right-handed lady evaluated for right shoulder and right upper extremity pain and dysfunction dating from 2017 at which time 165 pound dummy fell on top of her. She is an administrative sergeant for the Pulaski County school district. She had no problems until that event. She apparently was seen at Concentra and then saw Dr. Gordon. Thereafter she saw Dr. Riley who performed a rotator cuff procedure by her account. There were no complications. Arm never felt right and she was released to return to work in January or February of this year. At work or arm (sic) became swollen. They thought she had a stroke and she was seen at the University where testing was done. She was diagnosed with regional pain syndrome and is been (sic) treated with therapy. She experiences significant pain and dysfunction. She last worked in March 2018. She notices that her upper extremity burns, swells, is discolored and spasms. There is an aggravating event of a physical encounter prior to last working. She [has] undergone extensive testing at the University. Records are reviewed. She went to the emergency room on 2/27/18 at the University and diagnosed to have right arm weakness and right arm numbness. This was more or less of sudden onset. Weakness, coolness of the limb with no other signs was noted. She is admitted for observation where she underwent MRI and other studies that included right upper extremity angiogram and CT angiogram which proved negative….MRI on March 19, 2018 revealed fraying of the supraspinatus with

> postsurgical changes of the biceps and suggestion of capsulitis. Electrodiagnostic testing was done on March 22, 2018 she saw Dr. O'Malley on March 22, 2018 with commentary about the results of electrodiagnostic testing which proved negative. Question whether or not there may have been some recovering brachial plexopathy. Impression was complex regional pain syndrome. Recommendation was for stellate ganglion block. She had follow-up with Dr. Choi who had clinical impression of complex regional pain syndrome. She did not want a block because she was afraid of needles. She was placed on gabapentin. Physiotherapy was initiated. Apparently there [has] been very little change in her symptoms since then. It does not appear that she has had [triple] phase bone scan.
>
> 5 feet 6 inches, 150 pounds. Cervical spine shows physiologic motion without provocation of neck, shoulder or arm pain. Left shoulder motion, power, smoothness and stability are physiologic. Neurovascular is intact. Right shoulder is held rather lifeless. Assisted and passive motion limited. She has irritability to touching the arm. There seems to be coolness with respect to the other side as well as some swelling although no pitting edema….
>
> Radiographs show postsurgical changes including biceps tenodesis site. Otherwise unremarkable.

Dr. Collins' impression was "Right shoulder girdle and upper pain syndrome compatible with regional pain syndrome but unsure of why bone scan was not done. Possible lingering disorder in the shoulder." Dr. Collins recommended additional diagnostic evaluation.

Dr. Kevin J. Collins noted on May 14, 2019 that the claimant complained of "1. R extremity pain & swelling." Dr. Carlos Roman performed a series of stellate ganglion blocks beginning May 20, 2019. Dr. Kevin J. Collins noted on June 18, 2019, "Pt is here for follow up to an IME.

I am treating her for CRPS on the right upper ext. She [received] 6 stellate ganglion block on the right medial branch 6/3 and has had another set last week. Pt without relief at all. No reason for a third. I can give her meds for spasm." Dr. Collins examined the claimant and reported, "no real benefit pt with spams (sic) of the right hand." Dr. Collins assessed "1. Complex regional pain syndrome I of right upper limb. 2. Spasm, muscle."

The claimant continued to follow up with Dr. Kevin J. Collins, who reported on an unspecified date in 2019:

> The claimant was initially injured on the job in 05/2017 when a 160-pound physical training dummy crashed down on her right shoulder/upper extremity proximal and lower extremity, and hand. The claimant apparently filed worker's compensation due to the injury. They recommended therapy, released back to work on and off with light duty. The claimant had no specific benefit and requested change of physician in 09/2017. Her new physician began to see her and scheduled therapy in 2017. He finally performed surgery on 11/2017. The first postop appointment was 11/2017 looked like she had shoulder surgery from my understanding, Dr. Riley was not pleased with her progress apparently. They started to notice extreme bouts of swelling of her entire right arm with changing colors and becoming cold. Of note, she is right hand dominant….The claimant was released back to light duty on 02/27/2018 where she works in law enforcement. On the day after she went back she had some difficulties with her arm after a school event and was sent by the nurse to the emergency room where she was assessed for stroke and CT scan of the head and arm at UAMS in Little Rock. She was diagnosed by Dr. Amali, an orthopedic surgeon at UAMS with complex regional pain syndrome as a result of the blunt trauma she had at work. On fourth postop visit with Dr. Riley on 03/26/2018, he felt there may be an issue as well, but subsequently released her from his care on the fifth postop visit on 05/13/2018.

She was on and off from work, apparently she was to get an impairment rating, does not look like it happened. On 03/07/2019, employer sent her to a local school to perform a bully training class, the same arm was then injured again when a physical fight happened between assistant principal and parent of one of the students, the assailant threw her over his back and slammed her into the wall during the altercation. She has had more difficulty with her upper extremity, as well as anxiety and depression, and was actually seen at a mental treatment facility for roughly a week and then followed up as an outpatient. She saw Dr. David Collins, who confirmed the diagnosis of complex regional pain syndrome in the right upper extremity and eventually recommended the nerve blocks, which at this point was relatively late in the scheme of things. She is here today for an independent medical evaluation and rating in order to go forth with her case. Presently for me, she cannot move her right upper extremity. She holds it out to the side away from her body so it does not touch. The claimant states that she only uses it to hold things, looks like a prop and the pain is 24/7, though does ebb and flow. She has had constant pain for two years. Tension, anxiety aggravates her pain. She has pain around proximal shoulders as well. Her fingers get numb at night, she cannot grab anything….

She has the sites where she had the scope and pretty much from the shoulder down you can start noticing atrophy and some dystrophic changes distally in her hand with lack of function, decreased grip strength. The claimant with MCP tenderness. Decreased range of motion of her fingers. No real sausaging for me today, but is hard to see the vascularity in her hand compared to that of the left. It looks to be stage 3 or 4 to me at this point. Range of motion in her shoulder is decreased forward flexion/abduction, internal/external rotation in the shoulder. Elbow range of motion is pretty much normal.

ASSESSMENT AND PLAN: This is a 52-year-old female, status post work-related injury that had a protracted course without getting Stellate ganglion blocks until later, which is presently the treatment of choice, usually the faster they happen the better you do, that is not always the case, but is more the case than not.

The two years after the injury, she continues to hold her arm in a protective fashion. She cannot perform domestic tasks

> that she relies on for activities of daily living and hygiene. She no longer takes part in social activities for the most part. She is intense constant pain, pretty much from the elbow down with marked Reflex Sympathetic Dystrophy (RSD) findings and impairment is due to constant marked pain. She has become totally focused on her pain, it has consumed her lifestyle at this point and makes it difficulty (sic) for her to use her dominant hand for any activities of daily living or self-care, much less working in law enforcement for city schools.
> She is dysfunctional from the elbow down, which you could relate conceptually to having an amputation in my opinion.
> So, according to the guidelines, Page 13 3.1, if you have an amputation at the level of the elbow distal to the biceps insertion it would be consistent with 95% loss of the upper extremity, 57% of whole person.
> Please allow this letter to serve as an impairment rating as it relates to RSD. She is functionally not able to use her arm from the elbow down, which would be consistent with an amputation. If this does not work let me know and I will modify.

Dr. Collins noted on April 7, 2020:

> Patient is back today to go over further information we have some information here from the [Pulaski] County special school district's attorney apparently they did not have the exact date for the IME and that is (sic) been rectified. Under the portion where they asked about the 95%
> Upper extremity please advise objective medical findings the use of sepsis rating my feeling about it was that she fundamentally cannot use her arm below her elbow based on my exam she holds a straight down out to the side patient is almost flail not hand she has some atrophy notable in the hand some dystrophic changes notable temperature changes and today she has sausage and so those are my objective findings. In the physical exam portion of my note I do the actual exam so I do it objectively the only portion of the history and physical that subjective is the history portion where the patient provides information so she gave me information and I examined her. I was able to do some passive range of motion but was not active and she did not show to be very functional for me today [or] the day that I examined her.

> On further discussion with the patient she has not had a triple phase bone scan. That is 1 of the ways that can be diagnostic or suggestive rather complex regional pain syndrome. Not always positive patient certainly has physical features suggestive there than it was notable by other physicians. She [has] also had stellate ganglion blocks that can also be diagnostic as well as therapeutic.
> It stated that felt that she had decreased range of motion shoulder which she does as far as her elbow is concerned active range of motion was diminished should have set but passively I was able to move it more than I can today she is very guarded today and more painful so she no longer has full range of motion of the right elbow. As far as her wrist and fingers and hands her range of motion is limited very painful cannot describe her hand and twisted around so she has limited range from her elbow down and all phalanges. Patient's range of motion wrist are also decreased. And that strictly passive range no active range. So hopefully this answers all the questions if not feel free to contact my office….
> Exam is worse today with persistent swelling and sausaging today of her fingers. She is non functional below the elbow.

Dr. Collins assessed "1. Complex regional pain syndrome 1 of right upper limb. 2. Spasm, muscle." Dr. Collins stated, "Note changes to letter. My exam is consistent with objective findings as well. Follow up as per pt."

The claimant participated in another Functional Capacity Evaluation on June 2, 2020:

> Ms. Grigsby completed functional testing on this date with **unreliable** results.
> Overall, Ms. Grigsby demonstrated the ability to perform work **in at least the LIGHT** classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal 8-hour workday with limitations as noted above….
> An impairment rating was requested and multiple attempts were made to perform Passive range of motion testing of Ms. Grigsby's RUE but Ms. Grigsby would not allow for any

passive movement. Therefore, no impairment rating could be accurately determined.

The parties deposed Dr. Collins on November 20, 2020. The respondents' attorney examined Dr. Collins:

Q. When you say sausaging, what does that mean?
A. Swelling primarily. It's some of the findings you can have with, at least the early stages of, complex repetitive pain syndrome.
Q. And did you reach a diagnosis?
A. Yeah. I endorsed the preexisting diagnosis of reflex sympathetic dystrophy, i.e., complex repetitive – CRPS….
Q. And you assessed her with a 95 percent impairment of loss to the right upper – to the upper extremity. Is that correct?
A. Correct. Uh-huh.
Q. And which copy of the *Guides* did you use?
A. It should have said the 4th Edition, but I'll make sure. Page 13, 3.1….I used the 4th Edition.
Q. Okay. Can you explain to me what aspect of the 4th Edition you relied upon in reaching this impairment?
A. Well, the problem with reflex sympathetic dystrophy and the 4th Edition is, they don't really address it. So I have to kind of come up with, functionally, what do we have, and what we have is someone who can't use their arm pretty much from the elbow down. So you can effectively – I've used this in the past, effectively use it as an amputation conceptually. Like, well, I can't use it. It's just a prop. And this is how I came up with that….
Q. You would agree with me though that her arm is not amputated?
A. Yes. I would agree with that….
Q. Doctor, I sent you a letter on March the 15th, 2020, and it looks like you may have tried to answer some of those in your April examination?
A. Oh, April….
Q. And I asked for the objective findings that you used to assess Ms. Grigsby with a 95 percent impairment rating. What would those objective findings be?

A. The objective findings would be the – the sensory changes, the atrophy or the dystrophic changes in her hands, the MCP tenderness, the sometimes sausaging, sometimes not. Those are the types of things that we look at….
Q. And can RSD or complex regional pain syndrome resolve eventually?
A. Yes. Uh-huh. Well, let me just say, the first two stages are the most apt. Once you get to the third and fourth stage, it's a little more challenging, so –
Q. Do you know what – do you know what stage Ms. Grigsby is in?
A. She had – to me, she probably presented more with the later stages, because she had what we call dystrophic changes, and those are changes you see in a limb that hasn't been used in a long time. So you may initially have a hand that's normal when they first start to have it, and they'll have the swelling, temperature changes….
Q. So your impairment is below the elbow?
A. Uh-huh….Like she had an amputation at the elbow.
Q. At the elbow or below the elbow?
A. Well, you can go right below, I suppose.
Q. Below the elbow?
A. Yeah.
Q. And that's what your impairment rates?
A. That's what I was attempting to do, yes.
Q. But, again, it hasn't been amputated?
A. No….

The claimant's attorney examined Dr. Collins:

Q. One of the questions we have today is whether your rating is based on objective findings as defined by the Arkansas Workers' Compensation law….What findings can you point to that your rating is based on that would be independent of anything that Ms. Grigsby could control?
A. Oh, well, the dystrophic changes are something that happens that would be objective….Objectively, I guess you could look at discoloration. You could look at the sausaging. You could look at the dystrophic changes. But you have to take away some of your key findings, because that's going to be based on patient interaction….

> Q. So is it your opinion that she's lost all use, all function of the arm below the elbow?
> A. That's my opinion. Yes….
> Q. Doctor, having – with a patient who has RSD, as you've opined that Ms. Grigsby has, that's limited to a specific limb, like the right extremity, would that affect her ability to be able to work in a meaningful job in the workplace?
> A. Well, I think, based on what she's trained to do, it may have some impact. Yeah. Now, there's always an argument that you can find jobs somewhere that just – you know, you can sit for two minutes and just use your left hand, but I've never found that really to be the case in Arkansas, to have those kind of jobs available….

A pre-hearing order was filed on November 25, 2020. The claimant contended that she "sustained a compensable injury to her right upper extremity and shoulder" on March 8, 2019 "in the form of an aggravation, recurrence, or new injury." The claimant also contended that she sustained "a compensable mental injury" on March 8, 2019. The parties stipulated that Respondent No. 1 "has controverted additional benefits in relation to the claimant's compensable injury of May 1, 2017 and has controverted the claimant's alleged compensable injuries of March 8, 2019."

The parties agreed to litigate the following issues:

> 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 anatomical 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 the alleged compensable injury of March 8, 2019, and is entitled to appropriate benefits associated therewith pursuant to Ark. Code Ann. §11-9-113(Repl. 2012).
> 4. Whether the claimant has been rendered permanently and totally disabled as a result of either her compensable injury of May 1, 2017 and/or her alleged compensable injury of March 8, 2019.
> 5. Fees for legal services.

After a hearing, an administrative law judge filed an opinion on May 3, 2021. The administrative law judge found, among other things, that the claimant failed to prove she sustained a compensable mental injury. The claimant does not appeal that finding. The administrative law judge found that the claimant failed to prove she sustained "a recurrence, aggravation, or new injury" on March 8, 2019, that the claimant failed to prove she was entitled to a permanent anatomical impairment rating, and that the claimant failed to prove she was permanently totally disabled. The claimant appeals those findings to the Full Commission. The administrative law judge found that the claimant proved she was 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[.]" Respondent No. 1 appeals that finding to the Full Commission.

II. ADJUDICATION

A. <u>Compensability</u>

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body … arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An aggravation is a new injury resulting from an independent incident. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). A recurrence is not

a new injury but rather another period of incapacitation resulting from a previous injury. *Atkins Nursing Home v. Gray*, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. *Weldon v. Pierce Bros. Constr.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

An administrative law judge found in the present matter, "(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[.]" It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support an administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). It is duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a

compensable injury on March 8, 2019. The parties stipulated that the claimant initially sustained a compensable injury to her shoulder and right upper extremity on May 1, 2017. The claimant testified that a "training dummy" fell on her right shoulder while the claimant was performing employment services. Dr. Riley subsequently performed a right shoulder posterior labral repair, and he opined that the claimant reached maximum medical improvement on April 24, 2018. The claimant testified that she eventually returned to light-duty work for the respondents.

The parties stipulated that the employment relationship existed on March 8, 2019. The claimant testified that she was employed with the respondents as an Administrative Sergeant. The claimant testified that an individual came onto the school campus that day and attempted to confront an administrator. A noisy disturbance ensued, and the claimant testified that she was flung into a wall while trying to assist with security. The claimant testified, "My arm began to swell immediately." The medical evidence corroborated the claimant's testimony. A Nurse Practitioner examined the claimant on March 8, 2018 and assessed "Contusion of right shoulder" as well as "Contusion of right elbow." The claimant was diagnosed with "Strain of right shoulder" on March 10, 2019. Dr. McCullar examined the claimant on March 10, 2019 and reported "Right upper

extremity with some mild swelling to the right hand." Dr. Collins reported "spasms" in the claimant's right hand on June 18, 2019.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity on March 8, 2019. The claimant proved that she sustained an accidental injury causing physical harm to the body. The injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on March 8, 2019. The claimant also established a compensable injury by medical evidence supported by objective findings, namely, the examining medical providers' reports of "swelling" and "spasm" in the claimant's right hand. The Full Commission finds that these objective medical findings were causally related to the March 8, 2019 compensable injury and were not the result of a prior injury or nonwork-related pre-existing condition.

B. Temporary Total Disability

For scheduled permanent injuries the injured employee is receive compensation for temporary total disability during the healing period or until the employee returns to work, whichever occurs first. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is

as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). Whether an employee's healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

In the present matter, the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity on March 8, 2019. The claimant was thrown against a wall while she was performing employment services, and the claimant testified that her right arm immediately began swelling. The Full Commission finds that as a result of her compensable injury the claimant was physically unable to return to work and remained within a healing period beginning March 9, 2019. The claimant treated with physicians including Dr. McCullar, Dr. David Collins, and Dr. Kevin J. Collins. Dr. Kevin Collins assigned a permanent impairment rating in 2019 correspondence which was labeled in part, "INDEPENDENT MEDICAL EVALUATION." Dr. Collins testified that the date of the Independent Medical Evaluation was September 14, 2019. Permanent impairment is any permanent functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Full Commission finds that the claimant reached the end of her healing period no later than

September 14, 2019, the date Dr. Collins assigned a permanent anatomical impairment rating. The claimant therefore proved she was entitled to temporary total disability benefits for her compensable scheduled injury beginning March 9, 2019 and continuing through September 14, 2019.

C. Anatomical Impairment

Permanent impairment is any permanent functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics, supra*. The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule* 099.34; Ark. Code Ann. §11-9-521(h)(Repl. 2012); Ark. Code Ann. §11-9-522(g)(Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to

establish a compensable injury, it does not follow that such evidence is required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter that the claimant "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[.]" The Full Commission finds that the claimant proved she sustained a 95% permanent anatomical impairment rating to her right upper

extremity. The parties stipulated that the claimant sustained a compensable injury to her right upper extremity and shoulder on May 1, 2017. The claimant thereafter underwent right shoulder surgery, and Dr. Riley opined that the claimant reached maximum medical improvement on April 24, 2018. No permanent anatomical impairment rating was assessed at that time.

The Full Commission has determined *supra* that the claimant proved she sustained a compensable injury to her right upper extremity on March 8, 2019. Dr. McCullar reported on March 10, 2019, "Right upper extremity with some mild swelling to the right hand. The arm to the mid forearm is cool to the touch." Dr. Collins thereafter assigned a 95% permanent rating to the claimant's right upper extremity which equaled a 57% whole person rating. The Full Commission finds that the rating assessed by Dr. Collins is wholly consistent with the 4th Edition of the *Guides*, page 3/20, Table 3. The rating assessed by Dr. Collins is supported by objective medical findings not within the claimant's voluntary control, which objective medical findings include swelling and spasms in the claimant's right hand following the March 8, 2019 compensable scheduled injury. Dr. Collins testified and reported that he observed "sausaging" in the claimant's right hand, which condition he described as "swelling." There are therefore patent objective medical findings of record to support Dr. Collins' 95% anatomical

impairment rating. *See Singleton, supra*. We find that Dr. Collins' medical opinions addressing permanent impairment were stated within a reasonable degree of medical certainty in accordance with Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

The Full Commission finds that, with regard to an assessment of permanent anatomical impairment, Dr. Collins' opinions are entitled to more evidentiary weight than the opinion of Dr. Riley or the evaluators at Functional Testing Centers, Inc. *See Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Finally, the Full Commission finds that the March 8, 2019 compensable injury was the major cause of the 95% anatomical impairment rating assessed by Dr. Collins. The Full Commission's award of permanent anatomical impairment renders moot the claimant's argument that application of the 4th Edition of the *Guides* is unconstitutional or violative of any statutory provision of Act 796 of 1993.

D. Permanent Total Disability

An employee who has sustained a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of her permanent physical impairment. *McDonald v. Batesville Poultry Equip.*, 90 Ark. App. 435, 206 S.W.3d 908 (2005). However, an employee who has sustained a scheduled injury may claim entitlement to permanent total disability benefits. *Id.*

Ark. Code Ann. §11-9-519(Repl. 2012) provides, in pertinent part:

> (e)(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 wages in the same or other employment.

An administrative law judge found in the present matter, "(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." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to her right upper extremity and shoulder on May 1, 2017. The Full Commission has not awarded a permanent impairment rating in accordance with the unscheduled right shoulder injury, and the claimant does not contend that she is entitled to a wage-loss award (less than permanent total disability) in accordance with Ark. Code Ann. §11-9-522(b)(Repl. 2012).

The claimant underwent surgery following the May 1, 2017 compensable injury. The result of a Functional Capacity Evaluation performed on April 24, 2018 indicated that the claimant could return to at least "sedentary" work. The treating surgeon, Dr. Riley, opined that the claimant reached the end of her healing period on April 24, 2018. The claimant was eventually able to return to light-duty work for the respondents. We therefore affirm the administrative law judge's finding that

the claimant did not prove she was permanently totally disabled as a result of the May 1, 2017 compensable injury.

Additionally, the Full Commission finds that the claimant did not prove she was permanently totally disabled as a result the March 8, 2019 compensable scheduled injury. The claimant is relatively young, only age 55, and holds a bachelor's degree in the field of criminal justice. The claimant has varied experience in the area of law enforcement and became employed with the respondents in 2014. The claimant sustained a compensable injury to her right upper extremity on March 8, 2019. The claimant reached the end of the healing period for her compensable injury no later than September 24, 2019. The claimant has not attempted to return to any appropriate gainful employment since that time. We have determined that the claimant proved she sustained a permanent anatomical impairment to her right upper extremity in the amount of 95% as assessed by Dr. Collins.

The determination of witnesses' credibility and the weight to be given their testimony are matters exclusively within the province of the Commission. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000). In the present matter, the Full Commission finds credible the conclusion of the Functional Capacity Evaluation carried out on June 2, 2020, that is, to the extent that the evaluators determined that the claimant

was able to perform at least light work. Yet, the claimant's demonstrated lack of interest in returning to appropriate work is an impediment to a full assessment of the claimant's contention that she is permanently and totally disabled. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). The Full Commission finds that the claimant did not prove she was permanently totally disabled.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on March 8, 2019. The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits from March 9, 2019 through September 24, 2019. We find that the claimant proved she sustained a 95% permanent anatomical impairment to her right upper extremity. The claimant did not prove she was permanently totally disabled as a result of her May 1, 2017 compensable injury or March 8, 2019 compensable injury.

The claimant proved that the medical treatment of record provided in connection with both compensable injuries, including treatment related to the diagnosis of Complex Regional Pain Syndrome, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The record currently contains no recommendations for additional medical treatment.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority that Claimant sustained a compensable injury on March 8, 2019 and that she did not prove that she is entitled to permanent-disability benefits. I respectfully dissent from the majority's findings that, in relation to the March 8, 2019 workplace injury, Claimant is entitled to temporary total disability benefits from March 9, 2019 to September 14, 2019, and that Claimant sustained a 95% anatomical impairment rating to her right upper extremity.

I. BACKGROUND

In 2017, Claimant sustained a compensable workplace injury when a 165-pound dummy fell onto her, causing her to fall onto her right shoulder and arm. Since then, Claimant has had trouble with her right upper extremity. Specifically, Claimant was diagnosed with complex regional pain syndrome, swelling, and dystrophy. Multiple examinations following the 2017 incident revealed Claimant's right upper extremity was cool to the touch, swollen, and suffered from dystrophy. Claimant underwent a functional capacity evaluation; however, the testing indicated that Claimant was putting forth unreliable effort and, therefore, she was not given an impairment rating at that time.

On March 8, 2019, she was working at a school when a man came in and tried to attack the school's principle. Claimant intervened and was thrown against the wall. Claimant was treated following this incident and her right hand had some "mild swelling" and her right mid forearm was cool to the touch. She was diagnosed with complex regional pain syndrome (not a new diagnosis), and strain of right shoulder. Importantly, at the time of this incident (before, really), Claimant's right hand was cool to the touch and a different color.

Eventually, Claimant underwent another functional capacity evaluation. Again, she produced unreliable effort, so no impairment rating was assessed.

Dr. Kevin J. Collins performed an independent medical evaluation, diagnosed Claimant with reflex sympathetic dystrophy (another term for complex regional pain syndrome, which as pointed out throughout is not a new diagnosis), and assessed Claimant with a 95% impairment rating to her right upper extremity (which calculates to 57% to the body as a whole). When asked how he reached his impairment rating, Dr. Collins explained that his diagnosis and impairment ratings were based on Claimant's "marked pain," upon which she "has become totally focused on." Dr. Collins explained that because of Claimant's pain and her fixation upon that pain, she is "dysfunctional from the elbow down, which you could relate conceptually to having an amputation in my opinion." Dr. Collins stated that the Guides do not address reflex sympathetic dystrophy, so Dr. Collins referred to the section of the Guides addressing amputation. Claimant's 95% upper extremity rating assumes amputation from the elbow down or below the elbow.

Dr. Collins was again asked about his diagnosis and rating. He referred to his diagnosis as complex regional pain syndrome (again, which Claimant sustained as a result of the 2017 workplace injury), and muscle spasm. Dr. Collins also noted that Claimant's fingers were swollen and "sausaging" (*i.e.*, dactylitis). When asked what Dr. Collins believed caused Claimant's fingers to swell, he stated that swelling is "some of the findings

you can have with, at least the early stages of, complex repetitive [sic] pain syndrome." Dr. Collins was asked about the objective findings upon which he based his impairment rating. He answered that his findings were based upon Claimant's dystrophic changes, discoloration, and swelling (these are the symptoms of complex regional pain syndrome, or as Dr. Collins sometimes refers to it, reflex sympathetic dystrophy). Dr. Collins also said that "you have to take away some of your key findings, because that's going to be based on patient interaction . . .." Lastly, Dr. Collins also noted that Claimant's diagnosis might not be permanent as her condition might improve over time.

II. STANDARD

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a).

Ark. Code. Ann. § 11-9-102(4)(A)(i) defines a compensable injury as "an accidental injury causing internal or external physical harm to the body... arising out of and in the course of employment and which requires medical services or results in disability or death." Section 11-9-102(4)(A)(i) goes on to define an accidental injury as one that is caused by a specific incident and is identifiable by time and place of occurrence.

A claimant has the burden of proving, by a preponderance of the evidence, that his injury is compensable. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code. Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the claimant. Ark. Code. Ann. § 11-9-102(16).

An employee is entitled to temporary-total-disability benefits for a scheduled injury during the healing period or when the employee returns to work. Ark. Code Ann. § 11-9-521(a); s*ee*, *e.g.*, *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. Accordingly, to be entitled to temporary-total-disability benefits, a claimant must prove that she or he remains within the healing period and suffers a total incapacity to earn wages. *Smallwood v. Ark. Dept. of Human Servs.*, 2010 Ark. App. 466, *7, 375 S.W.3d 747, 751. *Hope Sch. Dist. v. Wilson*, 2011 Ark. App. 219, *2, 382 S.W.3d 782, 785.

The healing period is that period for healing of an accidental injury that continues until an employee is as far restored as the permanent character of the injury will permit. The healing period ends when the

condition causing the disability has become stable and nothing in the way of treatment will improve the condition.

Generally, liability for medical treatment may extend beyond the healing period as long as the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). The persistence of pain, however, is not sufficient in itself to extend the healing period. *See Bray v. International Wire Group*, 95 Ark. App. 206, 235 S.W.3d 548 (2006), *Smallwood*, *supra*. Likewise, pain management that does not improve the underlying condition does not extend the healing period. *Id.*

The Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

III. DISCUSSION

I agree with the majority that Claimant proved that she sustained a compensable injury on March 8, 2019—specifically a right shoulder strain as evidenced by the muscle spasm in her neck and shoulder region. The complex regional pain syndrome, dystrophy in her forearm (which causes it to be cool to the touch and discolored), and the swelling in her fingers are all undisputedly attributable solely to the 2017 workplace injury. Claimant

was actively being treated for all of these conditions at the time of her 2019 workplace incident.

As for the temporary total disability benefits, the question should only be focused on Claimant's shoulder strain. Claimant was prescribed muscle relaxers, which she did not fill. She was released by Dr. Johnson on May 21, 2019. Accordingly, temporary total disability benefits after May 21, 2019 would not be appropriate.

With regard to Claimant's permanent impairment rating, most of Dr. Collins' findings were admittedly based on Claimant's subjective complaints of pain. The Arkansas General Assembly has made clear that pain cannot be considered when determining impairment. Ark. Code Ann. § 11-9-519(g). The only remaining factors are attributable to Claimant's preexisting complex regional pain syndrome and not attributable to the March 2019 workplace injury. Moreover, Dr. Collins admitted that her condition may not be permanent. But perhaps most problematic with Dr. Collins' rating is that it is based on amputation because Dr. Collins mistakenly believes that the Guides do not address complex regional pain syndrome. As mentioned above, Dr. Collins used the terms "complex [regional] pain syndrome" and "reflex sympathetic dystrophy" interchangeably. The Guides specifically address reflex sympathetic dystrophy; however, Dr. Collins ignored that section and instead treated

Claimant as an amputee when clearly, she is not. Accordingly, I defer to the functional capacity evaluation and assign Claimant a 0% impairment rating. Given that Claimant failed to show that she is permanently partially disabled because of her muscle strain, I would find that she failed to prove she is entitled to permanent partial disability benefits.

Lastly, Claimant asserts (for the first time on appeal) that the Guides creates two classes of people: those with conditions addressed in the Guides and those with conditions not addressed by the Guides. Thus, Claimant argues, the Commission's use of the Guides violates the Equal Protection Clause of the Constitution. Accordingly, even assuming that she has not waived this argument by failing to raise it to the ALJ at her hearing, Claimant has no standing to assert this claim because, as discussed above, her condition is addressed by the Guides.

IV. CONCLUSION

For the reasons set out above, I concur with the majority's finding that Claimant sustained a compensable injury on March 8, 2019; however, I respectfully dissent from the remaining findings.

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CHRISTOPHER L. PALMER, Commissioner