

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G901606

**LOUISA HAMPTON,
EMPLOYEE**

CLAIMANT

**UNIVERSITY OF ARKANSAS MEDICAL
SCIENCES/UAMS,
EMPLOYER**

RESPONDENT NO. 1

**PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/THIRD PARTY
ADMINISTRATOR (TPA)**

RESPONDENT NO. 1

**DEATH AND PERMANENT TOTAL DISABILITY
TRUST FUND**

RESPONDENT NO. 2

OPINION FILED MAY 30, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Mr. Charles McLemore, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On March 7, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, a prehearing telephone conference was conducted in this matter on January 11, 2023. On that same day, a Prehearing Order was filed.

A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record.

Stipulations

During the prehearing telephone conference, and/or hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-insurance carrier relationship existed at all relevant times, including on or about March 4, 2019.
3. At that time, the Claimant sustained a compensable injury to her right shoulder.
4. The Claimant's average weekly wage on the day of her accidental injury was sufficient to entitle her to a weekly compensation rate of \$372.00 for temporary total disability (TTD) compensation, and \$279.00 a week for permanent partial disability (PPD) benefits.
5. Respondents No. 1 have accepted and paid a 7% anatomical impairment to the Claimant for her compensable right shoulder injury.
6. The Claimant was released to return to work at maximum medical improvement (MMI) on October 20, 2022, by Dr. O'Malley.
7. A hearing was held in this matter on December 18, 2019, resulting in an opinion dated May 6, 2020, which was affirmed and adopted by the Full Commission on December 16, 2020. That opinion is the law of the case.
8. Respondents No. 1¹ have controverted this claim for additional benefits.

¹ There is a clerical error in the hearing transcript on page 8. It incorrectly reads that Respondent No. 2 has controverted this claim for additional benefits. Instead, it should reflect that *Respondents No. 1* have controverted the claim for additional benefits.

9. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant has been rendered permanently and totally disabled by her compensable right shoulder injury, or in the alternative suffered wage-loss disability.
2. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends that on March 4, 2019, pushing a cart when an elevator door slammed into her. She sustained an injury to her right shoulder, neck and back. Respondents initially accepted the claim as compensable and sent her to the doctor. Following a few visits to a nurse practitioner, the Respondents denied the claim in its entirety, citing no objective medical findings. The Claimant was forced to treat on her own. The Claimant underwent an ultrasound to her right shoulder, which revealed a massive rotator cuff tear. Dr. Shahryar Ahmadi performed surgery in June 2019.

The Claimant filed a Prehearing Questionnaire and went to a Full Hearing to address compensability. In an opinion dated May 6, 2020, the Administrative Law Judge (ALJ) found the Claimant to be credible and found that she proved by a preponderance of the evidence that she sustained a compensable injury. Medical and indemnity benefits were awarded. The Respondents

appealed the decision to the Full Commission. On December 16, 2020, the Full Commission Affirmed and Adopted the ALJ's opinion.

On March 17, 2021, Dr. Ahmadi released the Claimant at MMI with a 6% whole body impairment rating and no restrictions despite her complaints of pain. Dr. Ahmadi left UAMS, and the Claimant's care was transferred to Dr. O'Malley. She was diagnosed as having scapular dyskinesia. She underwent considerable physical therapy to address the condition. An MRI revealed considerable atrophy, despite months of physical therapy and strengthening. On August 18, 2022, Dr. O'Malley noted that no other surgery was needed but that she should continue her home therapy exercises.

On October 14, 2022, a Functional Capacity Evaluation was performed. The Claimant gave a reliable result and was given permanent light duty restrictions. On October 20, 2022, Dr. O'Malley released the Claimant at MMI with a 7% whole body rating and permanent light duty restrictions.

The Claimant is 67 years old with a high school education. She worked primarily in factory jobs on assembly lines until going to work for UAMS. Originally, she was hired to take supplies to patient rooms, and then moved over to the sterile instruments department where her job consisted of transporting carts of dirty instruments. The Claimant was terminated by the Respondent employer during the course of her treatment. The Claimant contends that she is permanently and totally disabled because of this work injury, or in the alternative that she sustained significant wage loss. Claimant further contends that her attorney is entitled to an attorney fee.

All other issues are reserved.

Respondents No. 1:

The Respondents contend that on March 4, 2019, the Claimant reported having an injury to her back and neck with symptoms down her right leg after an elevator door hit her in the back. The Respondents provided treatment for the Claimant's reported back and neck injury, but the claim was controverted after there were no objective findings of an injury to the Claimant's back or neck. The Claimant demanded a hearing, alleging a right shoulder injury requiring surgery to repair her rotator cuff on June 20, 2019, due to the March 4, 2019, injury. The Administrative

Law Judge ruled in favor of the Claimant, and this was affirmed by the majority of the Full Commission and is now res judicata and law of the case. Respondents No. 1 paid the Claimant the awarded TTD benefits and medical treatment, including the surgery the Claimant underwent by Dr. Shahryar Ahmadi in June 2019.

Dr. Ahmadi had released the Claimant at Maximum Medical Improvement on March 17, 2021, and assigned her a 6% permanent anatomical impairment to the body as a whole, which the Respondents accepted and paid to the Claimant.

The Claimant continued complaining of symptoms after her release by Dr. Ahmadi, and she was provided treatment after Dr. Ahmadi was no longer available with Dr. O'Malley, who treated her conservatively including a MRI, injection, and physical therapy. Dr. O'Malley released the Claimant at maximum medical improvement on October 20, 2022, with a 7% impairment rating to the body as a whole, which has been accepted by Respondents No. 1 for the additional 1% impairment rating.

The Claimant in fact returned to work after March 4, 2019, and worked through June 18, 2019. The Claimant's employment with the Respondent-Employer ended March 2, 2020. The Claimant is evidently collecting Social Security benefits now.

The Claimant performed reliably in the Light classification of work at a Functional Capacity Evaluation on October 14, 2022. Vocational rehabilitation has been offered to the Claimant by Respondents No. 1.

Respondents No. 1 reserves the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

Respondents No. 2:

The Trust Fund has deferred to the outcome of litigation on the above-named issues.

However, if the Claimant is found to be permanently and totally disabled, the Trust Fund stands ready to begin weekly benefits in compliance with A.C.A. §11-9-502. Therefore, the Trust Fund has not controverted the Claimant's entitlement to benefits.

The Death and Permanent Total Disability Trust Fund will state its remaining contentions upon completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the relevant evidentiary record, to include the documentary evidence listed below, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and observe her demeanor during the hearing, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to prove by a preponderance of the credible evidence that she is permanently and totally disabled due to her compensable right shoulder injury of March 4, 2019.
4. The Claimant proved she sustained wage-loss disability in the amount of 33% over and above her 7% permanent anatomical impairment rating.
5. The Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded on this claim.

Summary of Evidence

Ms. Louisa Hampton (referred to hereafter as the "Claimant") was the sole witness to testify at the hearing.

The record consists of the March 7, 2023, hearing transcript and the following exhibits, which were offered into evidence without objections: Specifically, Commission's Exhibit 1

includes the above referenced documents; the Claimant's Exhibit 1, includes six (6) pages of Medical Summary Report, and four hundred and twenty-three (423) numbered pages of Medical Records; Claimant's Non-Medical Index includes eight (8) numbered pages, which has been marked as Claimant's Exhibit 2; Respondents No. 1's Medical Exhibit consists of four (4) numbered pages and it has been marked as Respondents' Exhibit 1; Respondents No.1's Exhibit 2 consists of fourteen(14) numbered pages; the Hearing Transcript of December 18, 2019 has been marked Respondents' Exhibit 3 and is retained in the Commission's file; Former Chief Administrative Law Judge Barbara Webb's opinion of May 6, 2020 comprising of thirty-six (36) pages has been marked as Joint Exhibit 1; and Joint Exhibit 2 is the Full Commission's opinion of December 16, 2020, consisting of six (6) numbered pages was designated accordingly.

Testimony

The Claimant, Louisa Hampton, (DOB: 8/10/55) testified that she has a high school education. She worked for UAMS for over a year, in the dietary department after leaving high school. The Claimant also worked at Timex for over ten (10) years. She worked at Cliffs and Associates for eleven (11) years, and at New York Air Brake for over ten (10) years. The Claimant was laid off from there, before going back to work for UAMS, in their central supply sterilization department.

Per the Claimant, she first went to work in 1974 at UAMS in dietary. Her employment duties included transporting food trays to patients, doing the dishes, and keeping the tables clean. The Claimant worked at Timex on the assembly line, doing repetitive-type work, which included putting "little pieces" in watches. No lifting was needed for this job. The Claimant also worked on the assembly at Cliffs and Associates, assembling speakers/woofers and testing them on the

computer. The Claimant also put the networks on the board for the cabinets. Specifically, she painted, stained, glued, and soldered the cabinets.

While working for New York Air Brake, her job duties involved the rebuilding of air brakes for trains. She explained that they had to rebuild the valves. According to the Claimant, her work entailed the small body parts. Later, the Claimant went to work in an inventory position. The Claimant denied that she was a manager in any of these positions. She was the Inventory Coordinator before they closed the plant. The Claimant confirmed that New York Air Brake is no longer a viable business in Arkansas. In fact, she denied that any of the prior jobs that she previously performed are still around, except for the positions she performed at UAMS.

In that regard, the Claimant confirmed that she returned to work for UAMS in 2012. The Claimant worked in central supply, where she pulled supplies for the patients. In this position, the Claimant had to find the patient's location using the computer. However, someone else would pick up the supplies at the window and transport them to the patients. The Claimant explained that the majority of these items were very small. Following her work in central supply, the Claimant went to work in the sterilization department. She initially filled orders for the operating room (OR), which included lifting heavy trays. Per the Claimant, she transported the trays to the OR on a cart. Next, the Claimant became a transporter. After the doctor performed a surgical procedure, the Claimant had to transport the dirty instruments and utensils from the operating room to the sterilization area. She confirmed that she was working in this position when she got injured on March 4, 2019.

The Claimant confirmed that there was a determination of compensability for the injury that she sustained on March 4. She further confirmed she was injured when the elevator door slammed and knocked her over a small cart that she was pulling. The Claimant agreed that she

sustained an injury to her right shoulder during this incident. However, the Respondents denied the claim and it came on for a hearing before the Commission. She agreed that a determination was made that she sustained a compensable right shoulder injury, in the form of a massive rotator cuff tear. The Claimant confirmed that she has had extensive medical treatment since her injury.

On June 20, 2019, Dr. Ahmadi performed right shoulder surgery to repair the rotator cuff. The Claimant testified that following the surgery she was hurting and in constant pain in one area. As a result, Dr. Ahmadi ordered physical therapy. The Claimant had an ultrasound on August 20, 2020, and another one February 2, 2021. She confirmed that she had been treating and following up with Dr. Ahmadi throughout this period. The Claimant agreed that the first ultrasound showed atrophy and the second ultrasound showed bursitis.

On March 17, 2021, Dr. Ahmadi released the Claimant from care with a 6% whole body impairment rating and no restrictions. The Claimant confirmed that the Respondents started paying her for the rating. She admitted that during the time limit between her injury and when Dr. Ahmadi released her, the condition of her shoulder was getting worse.

The Claimant testified that she was terminated by UAMS, when she exhausted her FMLA. She confirmed that during the course of her treatment with Dr. Ahmadi, she was on light duty. The Claimant confirmed that she was released by Dr. Ahmadi on March 17, 2021. According to the Claimant, Dr. Ahmadi left his employment with UAMS. At that point, the Claimant began treating under the care of Dr. O'Malley. She confirmed that he ordered more physical therapy for her shoulder. The Claimant testified that the therapy gave her some relief, but the pain was still there.

She confirmed that Dr. O'Malley ordered an MRI of her right shoulder in February 2022. The Claimant agreed that it did not show a re-tear in her shoulder. As a result, Dr. O'Malley

ordered a functional capacity evaluation (FCE). According to the Claimant, she was down for two days after undergoing this evaluation. She explained that she used an icepack to help relieve the swelling and tightness. The Claimant agreed that the results of the evaluation revealed that she put forth a reliable effort, and it returned her to light duty work. She agreed that on October 20, 2022, Dr. O'Malley assigned her an added 1% impairment rating for her shoulder, which the Respondents accepted and paid.

The Claimant confirmed that she has not worked since her March 4, 2019, injury. She admitted that she met with a vocational rehabilitation specialist, Keondra Hampton. However, the Claimant denied that Ms. Hampton found any jobs for her. The Claimant testified that she told Ms. Hampton that she was willing to work if she could find a job that she could perform without being in pain. She further testified that it was her plan to work after full retirement as long as she could.

According to the Claimant, she is right-handed. She denied that there are any jobs she can perform. The Claimant also denied that she could perform any of her prior jobs that she named earlier, which were with Timex, Cliff and Associates, and New York Air Brake. The Claimant stated that she can only lift five (5) pounds using her right arm and ten (10) pounds with her left arm. She testified that if she lifts something too heavy, it causes her shoulder to swell and tighten. According to the Claimant, she is unable to remove items from the top shelf of her refrigerator with her right hand/arm. Instead, she explained that she must use her left hand.

The Claimant testified that a typical day for her includes taking a hot shower to allow the water to run over her shoulder. Then, she makes her bed. According to the Claimant, she does some basic household chores, including sweeping and mopping. However, the Claimant is unable to vacuum because of the vibrations. She eats and then she does some home exercises for her

shoulder as recommended by her physical therapist. According to the Claimant, sometimes after doing the exercises, she has tightness in her shoulder and must use an icepack on it.

She was asked about her living situation. According to the Claimant, she and two of her friends live together. They moved in together after her friends' wives passed away. The Claimant explained that one of her housemates has cancer and the other one has degenerative arthritis, and of course she has shoulder problems. According to the Claimant, the three of them help each other out. She confirmed she has difficulty using her right hand to do laundry. The Claimant takes ibuprofen and Tylenol. According to the Claimant, she takes four ibuprofens in the morning and four at bedtime. The Claimant sometimes takes a muscle relaxer. She confirmed that she is sixty-seven (67) years old. However, she denied that it was her plan to have to live with roommates. Instead, the Claimant explained she had planned to live on her own and continue working until she could not work anymore.

On cross-examination, the Claimant confirmed that she has not seen anyone for her right arm since she last saw Dr. O'Malley. The Claimant does not have a planned doctor's visit. She confirmed that she worked as an inventory coordinator for New York Air Brake. The Claimant testified that when a truck brought in a shipment, the guys would bring the inventory to her booth. She would input everything into the computer and put it on a shelf. When the bins ran low, the Claimant had to refill the bins. The Claimant confirmed that the inventory included small parts, such as valves and screws. She denied that she could perform any of her prior work, including her work at Timex due to the movements required of her arm and the walking involved in each position. The Claimant also stated that she has a five-pound weight restriction. She admitted that at the earlier hearing she said that she could perform her job at Timex. However, the Claimant explained that her shoulder condition has changed and gotten worse on a daily basis.

The Claimant confirmed that she has not looked for work anywhere besides UAMS since her release by her doctors. She confirmed that she is currently drawing Social Security Disability benefits. The Claimant began drawing these benefits in September or October 2021, when she turned sixty-five (65). She denied that she had planned to retire at the age of sixty-seven (67).

On redirect examination, the Claimant testified that she had planned to continue working and draw Social Security benefits.

On re-cross examination, the Claimant testified that she does not receive any retirement benefits from UAMS because she worked for them only nine years. According to the Claimant, had she reached ten (10) years of employment at UAMS, she would be collecting benefits from there but her injury prevented her from reaching the ten (10)-year mark.

Medical Evidence

The first record of medical evidence shows that on March 5, 2019, the Claimant sought initial medical treatment from UAMS, under the care of Lakendra Ready, APRN, CNP. The Claimant provided a history of pushing a cart into the elevator one day ago, when the doors closed on her back, and pushed her forward into the cart. She reported mid-thoracic pain and neck stiffness at that time. Ready placed the Claimant on modified work duty and prescribed a medication regimen.

On March 12, 2019, the Claimant returned to Ms. Ready, her nurse practitioner, for a follow-up evaluation. The Claimant reported continued pain in her scapula area that felt tight. Although the Claimant had been taking Flexeril at night and ibuprofen 600 mg twice a day, she reported that these medications had been only mildly effective in relieving her symptoms. Ready continued the Claimant on modified duty.

The Claimant presented to Dr. Gregory D. Sketas, with the UAMS Family Medical Center on March 20, 2019, with a complaint of an elevator door having closed on her shoulder. Dr. Sketas examined the Claimant's right shoulder, which resulted in an assessment of "scapular contusion." Therefore, Dr. Sketas opined that the Claimant could return to light duty for the next couple of weeks and then could try her normal duty afterwards.

On April 30, 2019, the Claimant returned to the Family Medical Clinic for follow-up care under Dr. Jamie Howard. The Claimant reported having been evaluated at St. Vincent's Emergency Department. During the Claimant's ER visit, they performed x-rays which revealed no fracture. However, the Claimant reported that she continued to have burning, aching pain in the right scapular area. The Claimant also reported intermittent swelling in that area. Yet, a repeat x-ray did not reveal any evidence of a fracture. Dr. Howard assessed the Claimant with "acute right shoulder pain," for which she referred the Claimant to the Orthopedic Surgery Department at UAMS.

The Claimant underwent an evaluation on May 7, 2019, by Dr. Shahryar Ahmadi, an orthopedic specialist. At that time, the Claimant complained of significant pain over the medial border of her right scapula. Dr. Ahmadi ordered an ultrasound of the Claimant's right shoulder that included the periscapular muscle and rotator cuff muscles.

On May 14, 2019, the Claimant underwent an ultrasound of her upper right extremity, which revealed:

Massive rotator cuff tear involving the entire supraspinatus, infraspinatus, and near complete tear of the subscapularis, as detailed above. Medial retraction of the tendons is seen. There is also focal partial tear of the lateral insertional fibers of the deltoid.

No definite evidence of intramuscular abnormality along the right periscapular region.

Dr. Ahmadi reviewed the results of the ultrasound with the Claimant on May 21, 2019. At that time, Dr. Ahmadi opined that the ultrasound revealed that she had sustained “a massive rotator cuff tear in her right shoulder.” The Claimant continued with pain with no improvement since her injury and for this reason she suffered significant weakness in her shoulder. Dr. Ahmadi discussed with the Claimant both operative versus nonoperative management methods of treatment. Dr. Ahmadi offered to perform a right shoulder arthroscopy and rotator cuff repair with the possibility of using allograft. The Claimant opted to go ahead with the surgery.

On June 20, 2019, Dr. Ahmadi performed “a right shoulder arthroscopy and rotator cuff repair, subacromial decompression and biceps tenodesis,” to repair a massive rotator cuff tear.

The Claimant followed-up with Dr. Ahmadi on July 3, 2019, for post-surgical care of her right shoulder arthroscopy and rotator cuff repair. At that time, Dr. Ahmadi ordered physical therapy, which the Claimant tolerated well. However, the Claimant continued with significant pain and stiffness around the shoulder.

She continued to present to Dr. Ahmadi for clinical reassessment of her ongoing pain and other related symptoms due to her right shoulder injury.

On January 8, 2020, the Claimant presented to the UAMS Orthopedic Clinic for reassessment of her right shoulder injury. Dr. Isaac B. Majors evaluated the Claimant’s right shoulder. At that time, the Claimant was seven (7) months out from right shoulder arthroscopy and rotator cuff repair. However, the Claimant had continued complaints of stiffness and pain in her right shoulder.

Subsequently on July 21, 2020, the Claimant returned to Dr. Ahmadi for clinical reassessment of her right shoulder. At that time, he noted that the Claimant was especially sore in the periscapular area. Therefore, Dr. Ahmadi ordered an ultrasound for further investigation.

Another ultrasound of the Claimant's right shoulder was performed on August 6, 2020.

Dr. Gitanjali Baja rendered the following impression:

Postsurgical changes from prior rotator cuff repair.

Moderate atrophy of the infraspinatus muscle belly, otherwise no focal abnormality noted at the site of point of tenderness.

Marked attenuation of the infraspinatus tendon at the footprint limiting detailed evaluation however no discrete re-tear noted. The remainder of the cuff appears grossly intact.

The Claimant returned to Dr. Ahmadi on August 19, 2020. He opined that the ultrasound showed a rotator cuff tear that had completely healed. However, the Claimant complained of continued right shoulder pain, especially with the procedure part of the shoulder. He reassured the Claimant about the healing of the tendon. At that point, Dr. Ahmadi instructed the Claimant to go back to her normal activity without any restriction and to follow-up with him on an as needed basis.

Five months later, on January 20, 2021, the Claimant returned to Dr. Ahmadi with continued complaints of right-sided posterior periscapular pain. At that time, he sent the Claimant for an ultrasound evaluation of periscapular pain generating area.

On February 2, 2021, Dr. Tarun Pandley opined that the ultrasound of the Claimant's right extremity revealed: "Periscapular ovoid hypoechoic area along the superomedial border of the scapula is noted that may represent mild periscapular bursitis. This coincided with area of probe tenderness upon examination."

The next day, Dr. Ahmadi saw the Claimant for a follow-up clinic visit. He stated that the ultrasound showed that the rotator cuff muscle seemed strong. However, Dr. Ahmadi opined that the Claimant was significantly tender over the medial border of the scapula. He assessed the Claimant with "Chronic periscapular pain on the right side." Therefore, Dr. Ahmadi performed a

steroid injection in the bursal tissue, which the Claimant tolerated well. After observation, Dr. Ahmadi discharged the Claimant home with instructions to follow-up with him for further clinical assessment.

Dr. Ahmadi declared on March 17, 2021, that the Claimant had reached maximum medical improvement for her shoulder injury. He assessed the Claimant with a 6% permanent impairment to the body as a whole for her shoulder injury utilizing the fourth (4th) edition of the AMA Guides. Despite the Claimant's ongoing complaints of the right shoulder, Dr. Ahmadi released the Claimant to normal activity without any restrictions.

On September 16, 2021, the Claimant presented to Dr. Lawrence O'Malley at the UAMS Orthopedic Clinic for evaluation of her continued right shoulder pain. At that time, Dr. O'Malley discussed with the Claimant that there was no surgical procedure was indicated. However, Dr. O'Malley recommended physical therapy to help improve the Claimant's symptoms and returned her to full duty.

The Claimant returned to Dr. O'Malley on January 20, 2022, for evaluation of her continued right shoulder pain and stiffness. The Claimant reported that her shoulder pain improved after rotator cuff repair surgery, but she continued to have pain in her right scapula. She also reported that she had completed physical therapy for her scapular dyskinesis since her last visit, but she continued to have worsening pain. His impression was "65-year-old female with persistent right shoulder pain in the setting of prior rotator cuff repair." Therefore, Dr. O'Malley ordered an MRI of her right shoulder.

An MRI was performed of the Claimant's right shoulder on February 13, 2022, with an impression of:

1. Postsurgical changes secondary to cuff-repair, with moderate fatty atrophy of the

supraspinatus and infraspinatus. Attenuation of the supraspinatus and infraspinatus tendons without evidence of tear.

2. Mild to moderate glenohumeral osteoarthritis.
3. Mild AC joint degeneration.

On February 17, 2022, the Claimant saw Dr. O'Malley for the results of her MRI. At that time, he noted that the Claimant had not improved with physical therapy and anti-inflammatories. Dr. O'Malley recommended that the Claimant undergo trigger point injections to her right shoulder blade.

The Claimant returned to Dr. O'Malley on June 9, 2022 with continued right shoulder pain. Therefore, Dr. O'Malley performed a trigger point injection on the Claimant's right shoulder and ordered more physical therapy.

On August 18, 2022, the Claimant returned for a follow-up visit with Dr. O'Malley for her right shoulder pain. The Claimant specifically complained of some medial scapular pain. Otherwise, she continued to improve. He discussed with the Claimant that surgical intervention was not needed. Dr. O'Malley suggested the Claimant continue with home physical therapy exercises.

However, on October 5, 2022, Dr. O'Malley recommended that the Claimant undergo a functional capacity evaluation (FCE).

On October 14, 2022, the Claimant underwent a functional capacity evaluation. The Claimant completed the evaluation with results demonstrating that she put forth a reliable effort with fifty-two (52) out of fifty-two (52) consistency measures within expected limits. Per this evaluation, the Claimant can occasionally bi-manual lift/carry up to twenty (20) pounds and the ability to lift/carry up to ten pounds on a frequent basis. She demonstrated the ability to perform reaching overhead occasionally. Overall, the Claimant demonstrated the ability to perform work

in the LIGHT classification of work as defined by the U.S. Department of Labor's guidelines over the course of a normal 8-hour workday with limitations noted above.

Dr. O'Malley saw the Claimant on October 20, 2022, following her FCE. He noticed that the Claimant continued to have pain in her shoulder but was continuing to improve. However, the Claimant reported that her pain was localized about the scapula. Based on the fourth (4th) edition of the AMA Guides, Dr. O'Malley assessed the Claimant with a 7% whole person permanent impairment. Dr. O'Malley placed the Claimant on permanent restrictions of no lifting greater than ten (10) pounds on her right upper extremity. He placed the Claimant at MMI. Dr. O'Malley's impression was: "... persistent right shoulder pain in the setting of prior rotator cuff, scapular dyskinesia." The Claimant elected to proceed with a right shoulder subacromial injection, which she tolerated well.

At the request of the Public Employee Claims Division, the Claimant underwent a complete Vocational Rehabilitation Initial Evaluation. The evaluation was performed on December 16, 2022, by Keondra Hampton, MS, CRC. Per this report, the examiner stated that the Claimant is capable of performing work in the light category. However, Ms. Hampton stated that due to the Claimant's limited work history profile of unskilled and semi-skilled occupations, she does not have any transferable skills that would transfer to many occupations within the *Light* category of work. Ms. Hampton did not offer the Claimant a job.

Adjudication

A. Permanent and Total Disability Benefits

"Permanent total disability" means the inability because of the compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1). Furthermore, the statute provides that the burden of proof shall be on the

injured employee to prove their inability to earn any meaningful wage in the same or other employment. Ark. Code Ann. §11-9-519 (e)(2).

A permanent impairment rating is not a prerequisite to consider the effects of a compensable injury or injuries in a claim for permanent total disability. *Rutherford v. Mid-Delta Community Services, Inc.*, 102 Ark. App. 317, 285 S.W.3d 248 (2008).

The first issue for determination is whether the Claimant has been rendered permanently and totally disabled due to her compensable right shoulder injury of March 4, 2019. The Claimant underwent right shoulder arthroscopy rotator cuff repair by Dr. Ahmadi due to a massive rotator cuff tear on June 20, 2019. Subsequently, the Claimant underwent extensive conservative treatment including physical therapy, various medication regimens, and steroid injections. She received some relief from the surgery. However, the Claimant has continued with significant right shoulder pain despite surgical intervention and extensive conservative treatment. Nevertheless, the parties stipulated that the Claimant has been assessed with a 7% permanent impairment for her right shoulder injury, which has been accepted and paid for by Respondents No. 1.

The Claimant underwent an FCE with reliable results on October 14, 2022. Per this evaluation the Claimant put forth a perfect effort, and she was released to LIGHT duty work, with applicable restrictions noted above. On October 20, 2022, Dr. O'Malley placed the afore light duty restrictions on the Claimant permanently. Although the Claimant has incurred significant physical restrictions due to her compensable right shoulder injury, she has not been rendered permanently and totally disabled due to her compensable right shoulder injury of March 4, 2019.

Here, the permanent effects of the Claimant's work-related injury prevent the Claimant from earning the same wages which she was receiving at the time of the injury. However, the Claimant has the ability to earn wages in other less strenuous employment, which would pay less given her

limited education of only a high school diploma. Her testimony demonstrates she is permanently and totally disabled. I did not find the Claimant credible in this regard. The Claimant's testimony that she has been rendered totally disabled by her compensable shoulder injury is not corroborated by the medical evidence (particularly Dr. O'Malley's expert opinion of her being placed on light duty restrictions), or the vocational specialist's evaluation of the Claimant's limited ability to return to work in the light category. Hence, the preponderance of credible evidence shows that the Claimant has the ability to perform work, at least in the LIGHT category. Moreover, no doctor has opined that the Claimant is incapable of returning to other employment in the sedentary category. Hence, there is no credible evidence of record whatsoever proving that the Claimant has been rendered permanently and totally disabled as a result of her compensable right shoulder injury of March 4, 2019.

Therefore, based on the evidence before me, I find that the Claimant failed to prove by a preponderance of the evidence that her compensable shoulder injury of March 4, 2019, has rendered her permanently and totally disabled.

B. Wage Loss

For a Claimant with an unscheduled injury who is not permanently and totally disabled, the Claimant's entitlement to permanent partial disability benefits is controlled by Ark. Code Ann. §11-9-522. Permanent disability compensation is paid where the permanent effects of a work-related injury prevent the worker from earning the wages which the worker was receiving at the time of the injury. A permanent impairment rating is a prerequisite for considering the effects of a compensable injury in a claim for permanent partial disability for wage loss. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 882 (2000).

When making a determination of the degree of permanent disability sustained by an injured worker with an unscheduled injury, the Commission must consider evidence demonstrating the degree to which the worker's anatomical disabilities impair the worker's earning capacity, as well as other factors such as the worker's age, education, work experience, and other matters which may reasonably be expected to affect the worker's future earning capacity. Such other matters may include, but are not limited to, motivation, post-injury income, credibility, and demeanor. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990).

Here, the Claimant has asserted her entitlement to wage-loss disability. The parties stipulated that the Claimant sustained a compensable injury to her right shoulder on March 4, 2019. They also stipulated that the Claimant sustained a total 7% permanent impairment rating to her shoulder. Respondents No. 1 have accepted and paid this rating. The Claimant underwent a functional capacity evaluation which revealed she has capabilities of performing work in the LIGHT category per U.S. Dept. of Labor's guidelines over the course of a normal eight-hour workday.

The Claimant is advanced (67) in age and has no transferable skills. My conclusion of this was confirmed by the vocational rehabilitation specialist's findings and my review of the Claimant's work history, education, and other relevant evidence. Specifically, the Claimant has a limited education (high school graduate) and has performed factory assembly line jobs over the course of her life. In fact, in December 2022, the vocational specialist opined that the Claimant has a limited work history profile of unskilled and semi-skilled occupations. This evaluator also opined that due to the afore reasons, the Claimant does not have any transferable skills that would transfer to many occupations within the *Light* category of work.

At the time of her injury, the Claimant had to lift heavy trays of operating instruments. She sustained an injury to her shoulder on March 4, 2019, which required surgery. Specifically, on June 20, 2019, Dr. Ahmadi performed “a right shoulder arthroscopy and rotator cuff repair, subacromial decompression and biceps tenodesis.”

Following surgery the Claimant underwent extensive conservative treatment, particularly in the form of physical therapy and a medication regimen. On March 17, 2021, Dr. Ahmadi opined that the Claimant had reached maximum medical improvement for her shoulder injury. Dr. Ahmadi assessed the Claimant with a 6% impairment rating to the body as a whole for her shoulder injury and released her to normal activities without any restrictions. Respondents No. 1 accepted this rating and have paid it in full.

However, the Claimant continued with pain and tightness of the right shoulder. She came under the care of Dr. O’Malley. He ordered additional diagnostic tests. Dr. O’Malley performed trigger point injections and ordered additional physical therapy. Ultimately, in October 2022, Dr. O’Malley released the Claimant from care and assessed her with an additional 1%, which has been accepted and paid. He placed permanent restrictions on the Claimant per her FCE, which revealed she could perform work in the LIGHT category.

I found the Claimant to be a somewhat credible witness although I am not persuaded by her testimony that she has been rendered permanently and totally disabled by her shoulder injury. Yet my review of the relevant evidence shows that the Claimant has suffered significant physical restrictions considering she is unskilled and right-handed. Her testimony shows that she is unable to reach objects on the top shelf of her refrigerator. The Claimant’s testimony also shows that her everyday activities have been severely restricted due to her compensable right shoulder injury. No evidence to the contrary has been presented.

Nevertheless, the Claimant testified that she continues to suffer pain and tightness in her right shoulder. She has not worked since her compensable injury. The Claimant testified that she had worked for UAMS nine (9) years at the point of her termination once she exhausted all of her FMLA. Her testimony shows that she draws Social Security Retirement. However, the Claimant denied receiving any type of retirement benefits from UAMS because she did not meet the ten (10)-year requirement of employment with them. The Claimant testified that she was a few months short of being qualified to draw a pension from UAMS. No testimony to the contrary has been presented. Conversely, the Claimant credibly testified that she had planned to work beyond full retirement. She stated that she intended to receive retirement and continue working as long as she could work. The Claimant readily admitted she has not looked for work because she does not believe she can work essentially because of ongoing chronic shoulder pain, for which she takes ibuprofen and occasionally she takes a muscle relaxer.

Based on my review of the evidence, including the Claimant's credible testimony, and when considering her advanced age; limited education; work experience; the nature and extent of her shoulder injury; the 7% permanent anatomical impairment rating to the body as a whole for her right shoulder injury; the vocational specialist assessment of no transferrable skills and limit light duty work options; her most recent primary work experience of heavy duty work; permanent LIGHT duty restrictions, lack of interest in looking for work within her restrictions; considering she had to take early retirement, and all other relevant matters reasonably expected to affect her future earning capacity, I find that the Claimant has proven by a preponderance of the evidence that she sustained a 33% wage-loss earning capacity in excess of her 7% permanent anatomical impairment rating to the body as a whole for her compensable right shoulder injury of March 4, 2019.

Of note, although the Claimant met with a vocational rehabilitation specialist, there is no evidence showing that she was ever offered a job by the respondent-employer within her physical restrictions. Moreover, there is no evidence whatsoever demonstrating that the vocational specialist found any potential employment opportunities for the Claimant.

C. Controverted Attorney's Fee

The parties stipulated that Respondents No. 1 have controverted this claim for additional benefits. Per this stipulation and the award of benefits herein, the Claimant's attorney is entitled to the maximum statutory attorney's fee on all indemnity awarded herein in accordance with Ark. Code Ann. §11-9-715(a) (2) (A) (Repl. 2012).

AWARD

Respondents No. 1 are directed to pay benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W. 2d 57 (1995).

Pursuant to Ark. Code Ann. §11-9-715(a) (2) (A) (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

IT IS SO ORDERED.

Hon. Chandra L. Black
Administrative Law Judge

