

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H406479**

**TIMOTHY LAMBETH,
EMPLOYEE**

CLAIMANT

**MERCY HOSPITAL OF HOT SPRINGS,
EMPLOYER**

RESPONDENT

**SAFETY NAT'L CAS. CORP./SEDGWICK CLAIMS
MGMT. SRVS. INC., INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 21, 2026

Hearing conducted on Friday, February 20, 2026, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Hot Springs, Garland County, Arkansas.

The claimant was represented by the Honorable Laura Beth York, Rainwater, Holt & Sexton, Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable Zachary F. Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed November 18, 2025, the parties agreed to the following stipulations, which they amended and affirmed on the record:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including August 8, 2024, when the claimant sustained compensable injuries to his right shoulder, right arm, and right hand, for which the respondents paid medical and indemnity benefits.
3. The claimant's average weekly wage (AWW) is sufficient to entitle him to the 2024 maximum weekly indemnity rates of \$893.00 for temporary total disability

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(TTD), and \$670.00 for permanent partial disability (PPD) benefits.

3. The respondents controvert only the claim for any additional benefits allegedly associated with the claimant's Reflex Sympathetic Dystrophy (RSD) claim.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Reporter's Hearing Transcript at 4-6). Pursuant to the parties' mutual agreement the issues litigated at the hearing were, as modified and affirmed on the record at the hearing:

1. Whether the claimant's diagnosed condition of Reflex Sympathetic Dystrophy (RSD) is related to or constitutes a "compensable injury" and/or a "compensable consequence" of the August 8, 2024, admittedly compensable injuries to his right shoulder, right arm, and right hand within the meaning of the Arkansas Workers' Compensation Act (the Act).
2. Whether the claimant is entitled to permanent partial disability (PPD) benefits based on the permanent anatomical impairment ratings Dr. Cordell assigned him on May 29, 2025, of 25% to the right upper extremity and 15% to the body-as-a-whole (BAW).
3. Whether and to what extent, if any, the claimant is entitled to interest, sanctions, and penalties pursuant to *Ark. Code Ann.* § 11-9-802 (2025 Lexis Replacement).
4. Whether the claimant's attorney is entitled to a controverted fee based on these facts.

(Comms'n Ex. 1 at 2; T. 4-6; 5). At the hearing the claimant withdrew his contention that he was required additional medical treatment in the form of the Clonidine patch Dr. Cordell had prescribed at one time. (Id.)

The claimant contends that on August 8, 2024, he was working within the course and scope of his employment with the respondent-employer, Mercy Hospital of Hot Springs (Mercy) when he was moving a patient from an operating bed to a regular bed and he injured his right shoulder,

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right arm and right hand. As stipulated above the claimant contends the respondents accepted these injuries as compensable and paid the claimant both medical and indemnity benefits. The claimant contends that after and as a result of his compensable injuries Dr. Cordell diagnosed him as having RSD, and prescribed a clonidine patch. The claimant contends that his RSD is related to and constitutes a compensable injury and/or a compensable consequence of his admittedly compensable right shoulder, right arm and right-hand injuries of August 8, 2024. The claimant further contends Dr. Cordell opined he reached maximum medical improvement (MMI) as of May 29, 2025, and stated the claimant was released to full duty as of that date. The claimant contends that Dr. Cordell assigned him permanent anatomical impairment ratings based on the *American Medical Association Guides to Permanent Impairment* (4th Edition, 1993), of ten percent (10%) or nine percent (9%) of the right upper extremity for his hand injury; six percent (6%) to the right upper extremity for his wrist injury; and ten percent (10%) of the right upper extremity for his right shoulder injury, all of which correspond to a 10% or 15% permanent anatomical impairment to his right upper extremity, and a 25% body-as-a-whole (BAW) permanent anatomical impairment for his right shoulder injury. The claimant contends the respondents have denied payment for the permanent anatomical impairment ratings, have controverted them, and should be deemed responsible for the payment of penalties and interest pursuant to *Ark. Code Ann.* Section 11-9-802, as well as the maximum statutory fee for the claimant's attorney. (Comms'n Ex. 1 at 3-4; T. 7-8; 57-59; and Claimant's Post-Hearing Brief).

The respondents contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating the RSD diagnosis of his hand and wrist are related to and/or caused by and/or constitutes a compensable consequence of the claimant's August 8, 2024, compensable injuries

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and/or his right shoulder surgery. The respondents contend they have to date paid the claimant all medical and indemnity benefits he is owed at this time, since the additional medical treatment the claimant has requested is related to the RSD diagnosis, which is not compensable. The respondents reserve the right to amend and supplement their contentions after the completion of any and necessary investigation and discovery. (Comms'n Ex. 1 at 4; 8-9; 57-59; Respondents' Post-Hearing Brief).

STATEMENT OF THE CASE

The claimant, Mr. Timothy Lambeth (the claimant), is a 61-year-old nurse manager for the operating room (OR) at Mercy Hospital Hot Springs, now known as CHI St. Vincent Hospital (Mercy or CHI). He has worked with Mercy on two (2) separate occasions. He began his current, second stint of employment with Mercy in 2013. His job as an OR nurse manager involves managing the OR and sterile processing department, managing the OR nurses, backing them up with and helping them in their jobs if and when needed, and performing other duties as needed. The claimant described his job as a heavy-duty job. (T. 16-17).

On August 8, 2024, the claimant was helping to move a large patient from an operating room bed to a regular bed when he injured his right shoulder. The respondents accepted this injury as compensable. (T. 17-18). The claimant initially was diagnosed with a right shoulder strain, placed on restricted work duty, and treated conservatively. (Claimant's Exhibit 1 at 1-3).

On August 30, 2024, the claimant underwent an MRI of his right shoulder which revealed a high-grade partial thickness bursal surface tear/fraying of his right supraspinatus tendon with pinpoint full thickness perforation. Dr. Steven Weiner assessed the claimant as having a traumatic

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rupture of the supraspinatus tendon. (CX1 at 6-8). Thereafter, the workers' compensation carrier referred the claimant to Dr. Cari Cordell, a surgeon at Hot Springs Orthopedics. Dr. Cordell treated the claimant conservatively from September 5, 2024, through October 2, 2024, but eventually recommended surgery to repair the torn rotator cuff in the claimant's right shoulder. (CX1 at 9-13).

On October 2, 2024, the claimant underwent surgery in the form of a right arthroscopic rotator cuff repair; right subacromial decompression; right bicep tenodesis; and extensive debridement of his right glenohumeral joint. (CX1 at 14-23). After his right shoulder surgery, the claimant attended post-operative visits with Dr. Cordell and underwent physical therapy (PT) for a period of time. (CX1 at 24-27). On December 3, 2024, the claimant returned to see Dr. Cordell in an unscheduled visit complaining of pain in his right arm, right forearm, and right hand. In her office note of 12/3/2024 Dr. Cordell noted swelling in the claimant's right arm, skin sensitivity, and color changes. Dr. Cordell also noted the claimant had a history of RSD in his lower extremity/foot that had been diagnosed with a bone scan, was treated, and resolved. Dr. Cordell began treating the claimant conservatively for RSD, with PT, occupational therapy (OT), and gabapentin, and ordered a Doppler test due to the swelling in the claimant's right arm. (CX1 at 28-29).

On December 18, 2024, the claimant underwent a Doppler test on his right arm which revealed a mild occlusive thrombus [blood clot] in his right brachial vein. (CX1 at 30-36) (Bracketed material added). On December 20, 2024, Dr. Whorton, another physician at CHI, diagnosed the claimant with acute deep vein thrombosis (DVT) of the brachial vein of his right upper extremity. (CX1 at 37-41). When the claimant returned to see Dr. Cordell on January 2,

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2025, she diagnosed him with RSD and DVT and both she and Dr. Whorton treated him accordingly with conservative treatment. (CX1 at 42-45). On January 22, 2025, the claimant underwent another Doppler test that revealed the DVT of his right upper extremity had resolved. (CX1 at 46). Dr. Cordell continued to monitor the claimant for any signs of additional DVTs, and to treat him conservatively for RSD from February 27, 2025, through November 20, 2025. (CX1 at 47-60).

In an office note dated May 29, 2025, Dr. Cordell stated the claimant was to continue his home therapy for his shoulder and hand, and she released him to return to work full duty without restrictions as of that date. (CX1 at 57-58). In this May 29, 2025, office note, Dr. Cordell stated under the heading, “**TREATMENT AND PLAN**”:

The patient will continue home therapy for his shoulder and will continue home therapy for his hand. He will continue treatment of the DVT. According to the Guides to the Evaluation of Permanent Impairment, 4th ed, due to limited motion of the long, ring and small fingers, wrist and shoulder, he has a hand impairment of 10% or 9% of the upper extremity, wrist 6% upper extremity, and shoulder 10% upper extremity impairment. This corresponds to an upper extremity impairment of 25% and whole person impairment of 15%. He will return with any issues or concerns...45 minutes was spent with the patient, reviewing the therapy records, performing and recording and exam and determining the impairment rating.

(CX1 at 56; 55-56).

In a separate office note dated June 17, 2025, once again under the heading “**TREATMENT AND PLAN**”, Dr. Cordell once again stated the claimant was released to return to work, would continue his home therapy for his right shoulder and right hand, and she again reiterated her conclusions concerning the extent of the claimant’s permanent anatomical impairment. (CX1 at

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57-58).

The OT's clinic notes dated April 10, 2025 – which logically and reasonably appear to have informed Dr. Cordell's opinion relating to the extent of the claimant's permanent anatomical impairment of his right wrist and right hand – indicate the measurements the OT made with respect to the claimant's physical impairment to his right wrist and right hand were based on a “**Treatment Diagnosis**” of “decreased ROM [range of motion], swelling, and hand pain” and “AROM” [active range of motion] and “strength”. (CX1 at 53-54; Respondents' Exhibit 1 at 1-2) (Bracketed material added).

On cross-examination the claimant candidly admitted that when assessing the physical impairment of his right wrist and hand, Dr. Cordell used AROM rather than passive range of motion (PROM) as well as his own personal assessment relating to the degree of right wrist and hand pain he was experiencing at the time of his visit. (T. 41-44; T. 28-29).

On a letter/questionnaire form from the claimant's attorney's office dated November 13, 2025 – to which Dr. Cordell responded in writing and signed and dated “11/20/2025” – Dr. Cordell stated she treated the claimant for a right shoulder rotator cuff tear and RSD, also known as Complex Regional Pain Syndrome (CRPS). She went on to opine within a reasonable degree of medical certainty that the conditions for which she had treated him – the right shoulder rotator cuff tear and RSD/CRPS – were the result of his work-related shoulder injury of August 8, 2024. (CX1 at 59-60).

The claimant testified he had never had any treatment on his right shoulder prior to the subject August 8, 2024, work injury. He testified further he had never had or been diagnosed with

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RSD/CRPS in his right arm prior to the August 8, 2024, compensable work injury. (T. 26-27). The claimant has returned to full duty work as an OR nurse manager at Mercy/CHI and that, with the accommodation of management and the assistance of his team members as needed he is able to perform his job duties. (T. 28-30).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2025 Lexis Replacement). There is no presumption that a claim is compensable, that an injury is job-related, or that a claimant is entitled to benefits. *Crouch Funeral Home v. Crouch*, 262, Ark. 417, 557 S.W.2d 392 (1977); *Okay Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979). The claimant has the burden of proving by a preponderance of the evidence that she is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially, without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987). The ALJ, the Commission, and the courts shall strictly construe the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

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All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Correc. v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); and *Farmers' Coop., supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and to resolve conflicting medical opinions; and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999); *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (Ark. App. 2001). Although it is within the Commission's province to weigh conflicting evidence, it may not arbitrarily disregard medical evidence or the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (Ark. App. 2004).

Compensable Consequence

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (Ark. App. 2000); *Hublely v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (Ark. App. 1996). The test is whether a causal connection exists between the two (2) episodes at issue. *Sword, supra*; *Jeter v.*

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McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (Ark. App. 1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, ___ S.W.3d ___ (Ark. App. 2009). This determination generally is a matter of reasonable inference and other relevant factors. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (Ark. App. 1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

Pursuant to *Ark. Code Ann.* § 11-9-705(a)(3) (2025 Lexis Repl.), a claimant has the burden of establishing the existence of a compensable consequence by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, ___ S.W.3d ___ (Ark. App. 2009) (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)). A compensable consequence must be established utilizing all of the statutory elements of compensability. This includes the requirement that there be medical evidence of an injury supported by objective findings. *See, e.g., Nichols v. Omaha School Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (Ark. App. 2010).

In this case the respondents accepted the claimant's right shoulder rotator cuff tear injury as an admittedly compensable injury. The claimant underwent surgery to repair the torn rotator cuff. Soon after his right shoulder rotator cuff repair surgery the claimant developed pain and swelling in his right arm, including his right wrist and right hand. After examination and testing the claimant's treating physicians diagnosed him with RSD/CRPS and with a DVT (which was revealed via a Doppler test) of the right brachial artery. (CX1 at 28-29). In addition to the pain the

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claimant was experiencing in his right arm wrist and hand, he also complained of noticeable and documented swelling which, of course, is an objective medical finding.

As the respondents noted in their brief the claimant's symptoms of swelling and pain are consistent with both RSD and a DVT (Resps.' Brief at 1-2). The totality of the medical record reveals the symptoms of right wrist and right hand swelling and pain continued to persist even after the claimant's DVT had resolved. And, significantly, Dr. Cordell opined within a reasonable degree of medical certainty that all the treatment she provided the claimant after his rotator cuff surgery – which would include treatment for the right arm DVT and the diagnosed RSD/CRPS – was related to his admittedly compensable right shoulder rotator cuff injury of August 8, 2024. (CX1 at 59-60). Also significantly, there exists no medical evidence to the contrary in the record relating to the etiology of either the RSD/CRPS or the DVT diagnoses.

Therefore, the preponderance of the evidence compels the conclusion that both the DVT and RSD/CRPS are compensable consequences of the claimant's admittedly compensable right shoulder rotator cuff injury later gave her medical opinion that she treated the claimant for a right shoulder rotator cuff tear and then he developed CRPS/RSD. Practically speaking, whether the swelling and pain in the claimant's right arm was a result of the DVT and/or the CRPS/RSD, the preponderance of the evidence reveals these conditions both meet all the criteria required to prove a compensable injury and, therefore, both diagnosed conditions constitute compensable consequences of the claimant's compensable August 8, 2024, right shoulder injury. Consequently, the respondents are responsible for payment of the claimant's medical bills and related expenses for these compensable consequences.

Permanent Anatomical Impairment

The claimant must prove by a preponderance of the evidence that he is entitled to an award of permanent physical impairment. *Ark. Code Ann.* § 11-9-102(4)(F)(ii)(a) (2025 Lexis Replacement) states that: "Permanent benefits shall be awarded only upon a determination the compensable injury was the "major cause" of the disability or impairment." "Major cause" is defined as more than fifty percent (50%) of the cause, and the claimant must prove the compensable injury was the "major cause" of his disability or impairment by the preponderance of the evidence. *Ark. Code Ann.* § 11-9-102(14). In addition, any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings. *Ark. Code Ann.* § 11-9-704(c)(1)(B). Finally, pursuant to *Ark. Code Ann.* § 11-9-522(g), the Commission has adopted the *American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment* (4th Edition 1993) (the *AMA Guides*), for assessing permanent anatomical impairment, "exclusive of any sections which refer to pain and exclusive of straight leg raising tests or range of motion tests when making physical or anatomical impairment ratings to the spine." And *see*, 11 *CAR Section 25-129 (Code of AR Regulations*, 2025 Lexis Repl.), formerly cited as Commission Rule 099.34.

Of course, the Commission is required to weigh the medical evidence and to translate this medical evidence into an appropriate finding regarding permanent impairment using the *AMA Guides*. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (Ark. App. 2001). Consequently, the Commission may assess its own impairment rating using the *Guides* rather than relying solely on its determination of the validity of ratings assigned by physicians. *Id.*

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Among the other criteria governing the assessment and assignment of a permanent anatomical impairment rating, the Commission must be determined when the condition – particularly when the condition is a soft tissue injury – becomes “permanent.” The *AMA Guides* define a “permanent impairment” as an “impairment that has become static or well stabilized with or without medical treatment and is not likely to remit despite medical treatment.” See *AMA Guides*, 4th Ed., page 315. Pursuant to the *AMA Guides*, 4th Ed., page 9: “An impairment should not be considered ‘permanent’ until the clinical findings, determined during a period of months, indicate that the medical condition at issue is static and well stabilized.”

In addressing the extent of the claimant’s permanent anatomical impairment, Dr. Cordell *confusingly* opined:

According to the Guides to the Evaluation of Permanent Impairment, 4th ed, due to limited motion of the long, ring and small fingers, wrist and shoulder, he has a hand impairment of 10% or 9% of the upper extremity, wrist 6% upper extremity, and shoulder 10% upper extremity impairment. This corresponds to an upper extremity impairment of 25% and whole person impairment of 15%. He will return with any issues or concerns...45 minutes was spent with the patient, reviewing the therapy records, performing and recording and exam and determining the impairment rating.

(CX1 at 55-56).

It is obvious Dr. Cordell intended to assess the claimant a BAW impairment rating based on his compensable right shoulder injury. Likewise, it is obvious that such a rating is based on objective measurable medical findings in light of the fact the claimant underwent a surgical repair of his right rotator cuff. What is problematic is Dr. Cordell’s attempt to also assign the claimant a scheduled permanent anatomical impairment rating based on the diagnosed

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RSD/CRPS condition. Indeed, as the respondents argue in their post-hearing brief, a preponderance of the evidence reveals that Dr. Cordell's right upper extremity rating is based either in whole or in part on subjective factors such as pain and active range of motion (AROM) rather than objective measurable physical findings such as passive range of motion (PROM) or other tests the results of which cannot be affected or controlled by the patient. *See, Ark. Code Ann.* Section 11-11-9-102(16)(A)(i) (2025 Lexis Repl.).

The OT's clinic notes dated April 10, 2025 – of which Dr. Cordell knew or should've known about, and which logically, reasonably and more likely than not informed her opinion concerning the extent of the claimant's permanent anatomical impairment to his right upper extremity related to the RSD/CRPS – reveal the measurements and findings the OT made with respect to the claimant's right wrist and hand were based on “decreased ROM, swelling, and hand pain”, as well as AROM [active range of motion] and “strength”. (CX1 at 53-54; RX1 at 1-2) (Bracketed material added). Significantly, all of these factors are *subjective* rather than *objective* and *all under the patient's voluntary control*.

The OT's clinic notes are consistent with the claimant's candid testimony when he admitted Dr. Cordell used AROM and his own personal assessment of the degree of his right hand and right wrist pain at the time of his impairment evaluation visit. (T. 41-44; T. 28-29). The claimant who, of course, is a registered nurse (RN) who has medical knowledge and was a pleasant and credible witness, admitted he was “surprised” he even received a rating for his right arm. (T. 41-42). Consequently, based on the preponderance of the medical evidence in the record it is impossible for a fact finder to find – without resorting to “sheer speculation and conjecture”

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(*Deana, supra*) – that Dr. Cordell’s scheduled ratings for the claimant’s right wrist and right arm were based on objective factors as the law requires rather than subjective factors as it appears from her office note and the OT’s notes mentioned above.

Finally, it is significant to note that Table 3 of the *AMA Guides*, entitled “Relationship of Impairment of the Upper Extremity to Impairment of the Whole Person”, provides that a 10% BAW permanent impairment rating – the amount of the whole-body permanent impairment the respondents admit they have accepted in this case – equates to a 16%-17% permanent impairment rating of the upper extremity. Therefore, my finding the claimant is entitled only to a 10% BAW permanent anatomical impairment rating and no scheduled rating on these facts is consistent with the applicable law, the medical and other evidence of record, and is more than fair to the parties on these facts.

Interest and Penalties

Ark. Code Ann. Section 11-9-802 (2025 Lexis Repl.) states:

(a) The first installment of compensation shall become due on the fifteenth day after the employer has notice of the injury or death, as provided in § 11-9-701, on which date all compensation then accrued shall be paid. Thereafter, compensation shall be paid every two (2) weeks except where the Workers' Compensation Commission directs that installment payments be made at other periods.

(b) If any installment of compensation payable without an award is not paid within fifteen (15) days after it becomes due, as provided in subsection (a) of this section, there shall be added to the unpaid installment an amount equal to eighteen percent (18%) thereof, which shall be paid at the same time as, but in addition to, the installment unless notice of controversion is filed or an extension is granted the employer under § 11-9-803 or unless such nonpayment is excused by the commission after a showing by the employer that, owing to conditions over which he or she had no control, the installment could not be paid within the period prescribed.

(c) If any installment payable under the terms of an award is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid installment an amount equal

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to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the compensation order making the award is had as provided in §§ 11-9-711 and 11-9-712.

(d) Medical bills are payable within thirty (30) days after receipt by the respondent unless disputed as to compensability or amount.

(e) In the event that the commission finds the failure to pay any benefit is willful and intentional, *the penalty shall be up to thirty-six percent (36%), payable to the claimant.*

(Emphasis added).

At the full hearing of February 20, 2026, the respondents admitted they accepted a ten percent (10%) to the body-as-a-whole (BAW) permanent anatomical impairment rating related to the claimant's admittedly compensable left shoulder injury. (T. 7). Furthermore, they admitted that as of the hearing date they had not paid any amount of PPD benefits based on any percentage of permanent anatomical impairment, scheduled or unscheduled, including the 10% BAW impairment rating they had accepted for the right shoulder rotator cuff tear. (T. 10).

The respondents did not articulate any justifiable or acceptable reason for not having paid the PPD benefits based on the 10% BAW permanent anatomical impairment rating they had accepted; however, admittedly and obviously, Dr. Cordell's office note addressing the extent of the claimant's permanent anatomical impairment is to say the least, incomplete and confusing. Nevertheless, while *Ark. Code Ann.* Section 11-9-803 (2025 Lexis Repl.) allows the respondents to request an extension from the Commission to grant them additional time to obtain relevant evidence justifying the payment of any indemnity benefits – in this case, payment of the PPD benefits based on the impairment rating(s) – there exists no evidence the respondents ever requested such an extension.

Consequently, the only reasonable conclusion that may be drawn is the respondents willfully

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and intentionally failed and/or refused to timely pay the claimant PPD benefits based even on the 10% BAW impairment rating they admitted they had accepted for the claimant's compensable right shoulder injury. Therefore, I am compelled to find the respondents owe to the claimant a penalty of 25% pursuant to *Ark. Code Ann.* Section 11-8-802(e).

My finding that the penalty percentage is 25% rather than the maximum penalty of 36% is based on the fact that, due to Dr. Cordell's obviously confusing opinion addressing the impairment rating(s) issue it is understandable and reasonable the respondents would be confused by the office note regarding impairment and decide to put the claimant to his burden of proof relating to the extent of his impairment. Still, the respondents knew or should have known from the subject office note that Dr. Cordell intended to assess the claimant a permanent anatomical impairment rating for his admittedly compensable right shoulder injury, and they should have paid the 10% BAW impairment rating long before the date of the hearing. This is especially true since they admitted on the record at the hearing they had accepted a 10% BAW rating for the claimant's compensable right shoulder injury.

Therefore, for all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations contained in the prehearing order filed November 18, 2025, which the parties modified and to which they agreed on the record at the hearing, hereby are accepted as facts.
2. The claimant has met his burden of proof pursuant to the Act in demonstrating the DVT and RSD diagnosed in his right extremity which manifested soon after his right shoulder rotator cuff repair surgery constitute "compensable consequences" of his August 8, 2024, admittedly compensable right shoulder injury. Therefore, the respondents are responsible for payment of the claimant's

medical bills and related expenses for treatment of these compensable consequences.

3. The claimant has failed to meet his burden of proof in demonstrating he is entitled to any amount of permanent anatomical impairment related to his right upper extremity based on either the DVT or RSD.
4. The claimant has met his burden of proof in demonstrating he is entitled to a 10% BAW permanent anatomical impairment rating for his compensable right shoulder injury of August 8, 2024.
5. The claimant has met his burden of proof in demonstrating he is entitled to payment of a 25% penalty pursuant to *Ark. Code Ann.* Section 11-9-802(e) based on the respondents willful and intentional failure to timely pay the 10% BAW permanent anatomical impairment rating related to the claimant's compensable right shoulder injury which they admitted they accepted on the record at the hearing.
6. Pursuant to *Ark. Code Ann.* Section 11-9-715(B) the claimant's attorney is entitled to the maximum statutory controverted attorney's fee based on the total amount of PPD benefits awarded herein

AWARD

The respondents hereby 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.* Section 11-9-809, and *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett*, 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer*, 358 Ark. 89, 186 S.W.3d 229 (2004).

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp

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