

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F802998**

PAMULA MCCARLEY, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
ESIS, Carrier/TPA	RESPONDENT

**INTERIM OPINION FILED FEBRUARY 28, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas at the time of the hearing; now represented by ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On November 30, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 13, 2021, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained compensable injuries to her left and right shoulder and her left and right hands and wrists.
4. The claimant is entitled to a weekly compensation rate of \$504.00 for temporary total disability and \$378.00 for permanent partial disability.
5. All previous opinions are final and the law of the case.

By agreement of the parties at the pre-hearing conference the issue to be litigated at the hearing was limited to the following:

1. Whether claimant is entitled to additional medical treatment in the form of bilateral shoulder surgery and treatment by Dr. Chris Arnold.

At the time of the pre-hearing conference the claimant contended as follows:

“ Claimant contends she is entitled to additional medical treatment of her bilateral shoulders for her compensable injuries of March 2007 by Dr. Chris Arnold. The claimant reserves all other issues.”

At the time of the pre-hearing conference the respondent contended as follows:

“The respondents contend that the claimant is not entitled to additional medical treatment, and that the requested medical treatment is unreasonable and unnecessary and does not arise out of the compensable injury.”

On November 23, 2021, one week prior to the scheduled hearing, the respondent filed an amended pre-hearing questionnaire setting forth amended contentions as follows:

“The respondents contend that the claimant is not entitled to additional medical treatment, and that the requested medical treatment is unreasonable and unnecessary and does not arise out of the compensable injury. That any claim for medical treatment is barred by the applicable statute of limitations. The claimant filed her Form AR-C on or about December 14, 2009. Subsequently there have been two (2) hearings on the claimant’s entitlement of additional medical treatment and therefore the toll of the statute of limitations for additional medical treatment has been lifted. More than one (1) year has elapsed since the claimant’s last authorized treatment and therefore this claim is barred by the statute of limitations for medical treatment.”

There was no change listed to the issues to be litigated in the amended pre-hearing questionnaire.

At the start of the hearing the following exchange took place between myself and the parties:

“I have before me a Pre-Hearing Order filed October 13<sup>th</sup> of 2021, and that Order was signed by myself. In talks with the parties prior to going on the record, we have at least two alter-

ations that need to be made to the Pre-Hearing Order; particularly the first one is in the issue itself, and it now reads, “Whether the claimant is entitled to additional medical treatment in the form of bilateral shoulder surgery and treatment by Dr. Chris Arnold.

Also, Mr. Nebben has filed an Amended Pre-Hearing Questionnaire that was received by the Commission on November 23<sup>rd</sup>, 2021. I have marked through his contentions that appear in this Pre-Hearing Order and have made note to use his amended contentions and that Amended Pre-Hearing Questionnaire. Those are what will be placed in the opinion whenever it is written.

Any other changes or alterations to my Pre-Hearing Order?

MS. BROOKS: Not from the claimant, Your Honor.

MR. NEBBEN: Not from the respondent, Your Honor.

JUDGE WELLS: It will be admitted as Commission Exhibit 1.”

Thus, while there was never an additional issue raised by the respondent as to the Statute of Limitations, it is clear from counsel’s amended contentions that the respondent was contending that this claim was barred by the Statute of Limitations. Since the time of the hearing Mr. Nebben has retired from the practice of law and Mr. Eric Newkirk currently represents the respondent in this matter. Upon my review of the hearing transcript and evidence admitted into the record, it has become clear that I will be unable to decide the case without additional information. This lack of information is associated with the respondent’s contention that the Statute of Limitations has run regarding medical treatment. This makes a new hearing necessary so that the Commission has the proper information to justly decide this claim. I am particularly interested in additional evidence that will show dates of payments and dates of medical services provided by the respondent for the claimant’s benefit; thus, giving the Commission the ability to determine when the claimant last received authorized medical treatment. A.C.A. §11-9-705 provides the authority for a Commission hearing officer to, when necessary, require an additional hearing. Here, I believe an additional hearing is necessary.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 13, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The issue of whether the claimant is entitled to additional medical treatment in the form of bilateral shoulder surgery and treatment by Dr. Chris Arnold is not determinable by the evidence currently presented to the Commission. As such, I am requiring an additional hearing regarding specifically the claimant's treatment history which appears to be well provided in the current matter, but also any additional treatment records will be allowed along with documentation of payment for the claimant's medical treatment including testimony and/or documentary evidence.

**ORDER**

The claimant and respondent shall engage in the prehearing order and hearing process as soon as possible in order that a new hearing can be set in this matter so that the Commission can have the ability to make a determination as to whether the threshold issue of the Statute of Limitations has run and to determine whether the claimant is entitled to additional medical treatment in the form of bilateral shoulder surgery and treatment by Dr. Chris Arnold.

**IT IS SO ORDERED.**

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**ERIC PAUL WELLS**  
**ADMINISTRATIVE LAW JUDGE**