

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G804528

REGINA PAREDES, Employee	CLAIMANT
WALMART ASSOCIATES, INC. Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED DECEMBER 3, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 10, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 22, 2021 and a pre-hearing order was filed on September 23, 2021. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The prior opinion in this matter is final.

The parties have agreed to stipulate that claimant earned sufficient wages to entitle her to compensation at the rates of \$277.00 for temporary total disability benefits and

\$208.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Temporary total disability benefits from date last worked through a date yet to be determined.
2. Payment of outstanding medical bills.
3. Attorney's fee.

The parties have agreed that respondent intends to pay all medical bills and that payment of medical is no longer an issue. In addition, claimant clarified that she is requesting temporary total disability benefits from July 8, 2021 through August 15, 2021.

The claimant contends she is entitled to temporary total disability benefits from July 8, 2021 through August 15, 2021 as well as an attorney's fee. Claimant reserves all other issues.

The respondents contend that based on present medical evidence, the claimant has been paid all benefits to which she is entitled.

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 a pre-hearing conference conducted on September 22, 2021 and contained in a pre-hearing order filed September 23, 2021 are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from July 8, 2021 through August 13, 2021.

3. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

### FACTUAL BACKGROUND

The claimant is a 50-year-old woman who began working for respondent in its deli department in March 2014. Claimant suffered an admittedly compensable injury to her head, neck, upper back and right shoulder on December 18, 2017 when she was struck by a cart.

Claimant received treatment from a number of physicians for her compensable injuries. One of those physicians claimant saw for treatment of her right shoulder was Dr. Arnold. His initial evaluation occurred on March 3, 2020, at which time he diagnosed claimant's condition as a sprain and impingement of the right shoulder. He recommended an MRI scan to assess her rotator cuff and biceps tendon. In addition, he also placed some work restrictions on the claimant.

Following Dr. Arnold's initial evaluation, respondent denied any additional medical treatment from Dr. Arnold. A prior hearing was conducted on August 12, 2020, and in an opinion filed September 2, 2020 this administrative law judge found that claimant had met her burden of proving by a preponderance of the evidence that she was entitled to additional medical treatment by Dr. Arnold. That opinion was not appealed.

Subsequent to the September 2, 2020 opinion, claimant returned to Dr. Arnold. In a report dated March 24, 2021, he noted that rest, anti-inflammatories, physical therapy

and injections had not improved claimant's right shoulder condition. Therefore, Dr. Arnold recommended surgery on claimant's right shoulder which he performed on July 8, 2021. Dr. Arnold performed a subacromial decompression and distal clavicle excision.

Claimant continued working for respondent until the day of her surgery. She has not received payment of any temporary total disability benefits from respondent. Claimant has filed this claim requesting payment of temporary total disability benefits beginning July 8, 2021 (the date of her surgery) and continuing through August 15, 2021 (the day she returned to work for respondent).

#### ADJUDICATION

Claimant is requesting payment of temporary total disability benefits for an unscheduled injury. In order to be entitled to those benefits, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant is entitled to temporary total disability benefits beginning July 8, 2021, and continuing through August 13, 2021.

First, I find based upon the medical evidence of record that claimant remains within her healing period for her compensable injury. Dr. Arnold's medical records indicate that he is still providing treatment for the claimant and claimant testified at the hearing that she is still receiving treatment from Dr. Arnold and still undergoing physical therapy. Therefore, I find that claimant remains within her healing period for her compensable right shoulder

injury.

The primary issue in this case is whether claimant has suffered a total incapacity to earn wages such that she would be entitled to payment of temporary total disability benefits. Claimant testified at the hearing that after her surgery she did not return to work for respondent until August 15, 2021. Respondent contends that claimant actually returned to work less than one week after her surgery and since she has not been paid temporary total disability benefits previously, she is still within the waiting period and not entitled to payment of any temporary total disability benefits. Alternatively, respondent contends that claimant returned to see Dr. Arnold approximately one week after her surgery and that he released claimant to return to work with restrictions; therefore, she did not suffer a total incapacity to earn wages.

First, I note that claimant testified that she did not return to work for respondent until August 15, 2021, and that she missed more than one week of work. No wage records were introduced showing that claimant actually returned to work in July 2021. In fact, there is no evidence in the record supporting respondent's contention that claimant returned to work approximately one week after her surgery. Therefore, I find no merit to this contention.

Second, the claimant did return to see Dr. Arnold on July 16, 2021, and he stated in his report that claimant should begin physical therapy and return for a follow-up visit in five weeks. The July 16, 2021 report does not mention claimant being returned to work.

The documentary evidence also contains a "PLAN YOUR RETURN/RETURN TO WORK CERTIFICATION" form (Claimant's Exhibit Page 64) which was signed by Dr. Arnold on July 14, 2021. Dr. Arnold on that form does indicate various activities that claimant is capable of performing and those activities she is incapable of performing due to

her injury. While Dr. Arnold signed this document on July 14, 2021, it was not a release to return to work effective on that day. Significantly, the form also contains the following language:

I certify that the associate named above is medically  
able to resume work on: 8/13/21

Thus, while Dr. Arnold may have completed a form on July 14, 2021 setting forth various work restrictions which would be applicable to the claimant, he also stated that claimant could not resume working until August 13, 2021. This was two days prior to the date claimant testified that she returned to work.

In summary, in order to be entitled to temporary total disability benefits claimant has the burden of proving by a preponderance of the evidence that she remained within her healing period and that she suffered a total incapacity to earn wages. Here, I find based upon the evidence presented that claimant has remained within her healing period. I also find based upon the return to work form completed by Dr. Arnold on July 14, 2021, that claimant suffered a total incapacity to earn wages through August 13, 2021. Accordingly, I find that claimant is entitled to temporary total disability benefits beginning July 8, 2021 and continuing through August 13, 2021.

### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning July 8, 2021 and continuing through August 13, 2021. Respondent has controverted claimant's entitlement to unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

The respondents are ordered and directed to pay the court reporter's charges for preparing the hearing transcript in the amount of \$353.55.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE