

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE № G808579**

**JURMICKA PUCKETT, EMPLOYEE**

**CLAIMANT**

**AR. DEPT. OF CORRECTIONS, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION, TPA**

**RESPONDENT**

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**OPINION FILED 4 OCTOBER 2023**

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On hearing before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe, 13 April 2023, Pine Bluff, Jefferson County, Arkansas.

Mr. Andy L. Caldwell, Attorney-at-Law of Little Rock, appeared for the claimant.

Mr. Charles H. McLemore, Attorney-at-Law of Little Rock, appeared for the respondents.

**I. STATEMENT OF THE CASE**

The above-captioned case was heard on 13 April 2023 in Pine Bluff, Arkansas, after the parties participated in a prehearing telephone conference on 24 January 2023. A Prehearing Order, admitted to the record without objection as "Commission's Exhibit № 1," was entered on 25 January 2023. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant is entitled to additional medical treatment and pain management.
2. Whether the claimant is permanently and totally disabled.
3. Whether, in the event that the claimant is not entitled to permanent and total disability benefits, the claimant is otherwise entitled to benefits under Ark. Code Ann. §11-9-505(a)(1).
4. Whether the claimant is entitled to corresponding attorney's fees.

All other ISSUES were reserved.

On the day of the hearing, the parties discussed (as noted below in Section III) an Amended Prehearing Questionnaire Response that the claimant attempted to provide for the purpose of narrowing the issues before the Commission, better reflecting the remaining issues since the filing of her initial Prehearing Questionnaire Responses. That Amended Response was admitted to the record as “Claimant’s Exhibit No 3”. The respondents sought and were granted leave to file an updated Response in light of the claimant’s Amended Response. That Response was tendered on 13 April 2023 and appears in the record as “Respondents’ Exhibit No 3.”

I found that it was in the best interest of the parties to proceed with the hearing in the framing of the Amended Questionnaire Responses. Thus, the ISSUES addressed at the hearing, which were not inconsistent with the language of the Prehearing Order, but rather an extension of the issues presented therein, were:

1. Whether the claimant was entitled to additional PPD for RSD/CRPS.
2. Whether the claimant is permanently and totally disabled.
3. In the event that the claimant is not entitled to Permanent and Total Disability benefits, whether the claimant is otherwise entitled to benefits under Ark. Code Ann. §11-9-505(a)(1).
4. Whether the claimant is entitled to additional medical treatment, specifically related to ongoing care from her PCP Dr. Robert Scott, a neurology consult, and a referral by Dr. Brent Walker to UAMS for consideration of a Spinal Cord Stimulator.
5. Whether the claimant is entitled to attorney’s fees.

All other ISSUES were, again, reserved.

The Prehearing Order set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.

2. An employee/employer/carrier relationship existed between the parties on 26 December 2018 when the claimant sustained an injury to her right hand, which the respondents accepted as compensable.

3. The claimant’s average weekly wage was \$828.67, entitling her to temporary total disability and permanent partial disability in the amounts of \$552.00 and \$414.00, respectively.

The claimant was the sole WITNESS at the hearing.

The parties’ CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated by reference into the Prehearing Order.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record as a whole and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. §11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The claimant is not entitled to additional PPD for RSD/CRPS.
3. The claimant has not proven that she is permanently and totally disabled.
4. The claimant has not proven entitlement to additional benefits under Ark. Code Ann. §11-9-505(a)(1).
5. The claimant is entitled to additional treatment associated with the referral to UAMS ordered by Dr. Walker for consideration of a Spinal Cord Stimulator. The respondents, however, are not liable for the claimant’s past treatment from Dr. Scott.
6. No attorney’s fee is associated with these findings.

## **III. HEARING TESTIMONY and MEDICAL EVIDENCE**

Before the claimant testified on her own behalf, the parties discussed on the record an amendment to the claimant’s prehearing questionnaire response that was represented as sent on 24 January 2023, the day of the phone conference, but not received by the Commission or by the respondents’ counsel. That amended response was entered on the record as “Claimant’s Exhibit № 3” and, essentially, clarified the relief sought by the claimant. [TR at

5-9]. After a short break off the record, during which the parties checked correspondence for the amended responses, the proceedings continued. An equipment malfunction resulted in part of that back-on-the-record discussion not being captured for transcription. [TR at 9.] The parties were unaware of this at the time, and the transcript reflects the end of that pre-testimony discussion on the framing of the issues, relief sought, and anticipated testimony and argument. [TR at 9-12.] After the parties' exhibits were marked and admitted on the record, the claimant was sworn and her testimony began without further incident. [TR at 16.]

*A. Claimant on Direct-Examination*

Jurmicka Puckett is a 40-year-old high school graduate with some college credit from the University of Arkansas at Pine Bluff. [TR at 18.] Her employment history includes line work at a fish market and at Tyson. She began working for the Arkansas Department of Correction (ADC) in 2004 as an entry-level corrections officer or CO I. [TR at 19.] She later promoted to the rank of CO II or corporal. [TR at 20.]

Explaining her 26 December 2018 injury, she stated that another officer's rolling chair moved out from under or around her, causing her to fall and catch herself with her right hand. [TR at 20-21.] She immediately reported the injury and sought treatment at Med-Express, per her employer's direction. A nurse practitioner saw her, assessed a wrist sprain and median nerve injury at the wrist and hand level, and entered a referral for "Any Neurology." [Resp. Ex. № 1 at 4.] The claimant was eventually scheduled at OrthoArkansas, where Dr. Brian Norton saw her. [TR at 21.]

According to the claimant, she underwent X-ray and MRI scans in the next several weeks, with the ganglion cyst believed to be the cause of her unresolved pain. [TR at 22.] Her pain persisted after an initial surgery on 29 April 2019. [TR at 23.] She stated that she was released back to work in August of 2019, but that she voluntarily demoted to an

Administrative Specialist role, consistent with a Demotion Acknowledgement form dated 11 July 2019, prior to actually returning to the workplace. [TR at 24; Cl. Ex. № 2 at 18.] The claimant continued working until 3 January 2021. [TR at 25.] She stated that she quit work because, “I was still having issues with my wrist and I was dropping things....” *Id.*

The claimant testified that she presented for a second surgery on 4 January 2021, the day after her last day worked at ADC. She has not worked there since. *Id.* Nor has she worked elsewhere. [TR at 26.] She said that the second surgery left her in more pain than the first one. Physical therapy was ordered, and she stated that a third surgery was planned because she could not achieve strengthening in therapy because her wrist was “still in pain, and it was stiff and swollen.” *Id.*

A third surgery occurred on 12 May 2021, and when asked if that procedure helped, she responded, that it did not. Per her understanding of Dr. Brent Walker’s impression, she now has complex regional pain syndrome or CRPS in her wrist. [TR at 27.] The claimant stated that Dr. Norton referred her to Dr. Walker and sent her for a Functional Capacity Evaluation (FCE). *Id.* She testified about performing her best effort at the FCE, but that she sought Dr. Norton’s care again immediately after the testing because of pain and swelling in her hand. She appeared to claim that around that time she also experienced or began experiencing “aching that goes up the arm.” *Id.* Dr. Norton, she said, referred her back to Dr. Walker, whom she last saw in July of 2022. [TR at 28.]

According to the claimant, Dr. Walker advised that a spinal cord stimulator was the “only other option... because it was at its chronic state.” *Id.* The respondents did not authorize implantation of the stimulator. Nor did they authorize additional treatment from that point. She stated, however, that her pain and problems with her right hand persist and that she presents at various times to her neighborhood clinic for ice packs. *Id.*

Since Dr. Walker’s care ended, she has seen and continues seeing her PCP, Dr. Robert Scott at the Daughters of Charity clinic. [TR at 29.] She said that Dr. Scott is prescribing Gabapentin tablets and Diclofenac ointment for her wrist and hand. [TR at 30.] The claimant said she avoids taking Gabapentin if she knows she is going to be driving; it makes her dizzy and drowsy. Otherwise, she takes it three (3) times daily. According to the claimant, Dr. Scott has restricted her from working with her right hand. *Id.*

Ms. Puckett applied for unemployment benefits, but that was denied. [TR at 32.] She also applied for Social Security Disability (SSD) and listed an arm injury, diabetes, high blood pressure, and high cholesterol as her disabling conditions. That application was also denied, but she stated that she is appealing that denial and adding vertigo to her list of conditions. *Id.* She stated that she would like to return to work, but that she “can’t do the job essential functions that I require.” [TR at 33.] Explaining further, she said:

Just any kind of motioning of the hand, any kind of rotating, pulling, any kind of—even trying to write with the right hand, it’s just, I no longer can just do it. I’m learning to write with the left hand... any kind of rotating the wrist causes pain up the arm. *Id.*

She wears a brace or splint with a cushion that extends up her forearm that was prescribed by Dr. Norton. [TR at 34-35.] When she experiences discomfort or pain, the claimant applies cold or heat, tries massage and more Gabapentin, or she presents to the clinic where they apply cold packs and wrapping from the wrist up her arm. She opined that she cannot do any of the jobs she previously worked because she cannot write or type, pick up boxes or books, or push buggies. [TR at 36.] She also believes that she could not perform work while taking Gabapentin because of the drowsiness she experiences with it. [TR at 37.] Ms. Puckett stated that she can drive to Dr. Scott’s clinic because it is not far away from her house. Still, she tries to avoid the medication if she will be driving. [TR at 38.] If she presents

to the clinic in pain and not having already taken Gabapentin, she may receive a Tramadol injection that Medicaid pays for. [TR at 38.]

*B. Transcription Issue*

At the conclusion of Ms. Puckett’s testimony on direct-examination, the parties briefly went off the record. [TR at 39.] During the break the Court Reporter found an earlier problem with the recording equipment left part of the pre-testimony discussion out of the record. See above. The narrative around that issue and the parties’ opportunity to relay information or argument related thereto appear in the Transcript between pages 39 and 43. As noted above, the parties were discussing claims and positions, but no witness testimony or evidence was lost. The actual presentation of the witness’ evidence was not impacted, and neither party moved for any dispositive action based on the malfunction.

*C. Claimant on Cross-Examination by Mr. McLemore*

In response to a question by counsel, the claimant explained that she chose to wear a cushion around her waist to help keep her splint and wrist propped up and that the cushion was not prescribed by a physician. [TR at 43.]

The claimant agreed that the records reflected that while she was out on FMLA, she interviewed for and received a promotion from Mail Room Services Coordinator to Mail Room Supervisor. [TR at 46; Cl. Ex. No 2 at 9-13.] She stated that she, however, did not return to work as the mail room’s supervisor [TR at 46.] Ms. Puckett also acknowledged that she signed for a Form AR-N after reporting her injury. [TR at 47.]

The claimant acknowledged that the Nerve Conduction Study performed in June of 2022 was reported by Dr. Rodrigo Cayme as “within normal limits, with no evidence of right median or ulner mononeuropathy.” [TR at 49.] She discussed her other, pre-existing health conditions and some complications related to managing or treating those conditions.

According to the claimant, she intends<sup>1</sup> for a neurologist to see her about headaches she attributes to her wrist or hand pain and for the vertigo she was experiencing. [TR at 52-53.]

Ms. Puckett denied any relief from any surgery or from Dr. Walker’s intervention: “I’ve gotten no relief.” [TR at 54.] And she stated that she cannot write with her right hand. *Id.* Despite her discomfort, she offered that she performed her best at the FCE. [TR at 55.]

Discussing the various medications she had been prescribed or tried at one time or another, the claimant said that she told Dr. Walker that Gabapentin made her sleepy and dizzy. [TR at 59.] She disagreed with Dr. Walker’s 15 September 2021 note stating that she reported not being able to take Gabapentin due to severe nausea and vomiting. See Resp. Ex. No 1 at 73. She testified, instead, that Amitriptyline made her sick, not Gabapentin. [TR at 59.]

The claimant denied seeing Dr. Norton again after the FCE, but she did see Dr. Walker, who ordered stellate ganglion blocks. Dr. Walker then released her on 28 October 2021. [TR at 62-63.] She said that her employment terminated on 29 October 2021. She said that she continues seeking treatment for resolution of her symptoms. Dr. D’Orsay Bryant saw her and ordered an X-ray, but did not recommend surgery at the time. At some point thereafter, she saw Dr. Baskin on her own. [TR at 64.] She denied being ready to go back to work at or around that time because she had not been released by her PCP, Dr. Scott, whom she said she saw immediately after her injury occurred. The claimant testified that she continued seeing Dr. Scott for her injury at the same time she was seeing Drs. Norton, Walker, and Bryant. [TR at 65.]

Regarding her returning to work, Ms. Puckett said that she called someone after completing the FCE to ask about jobs within her restrictions. [TR at 66.] “I asked her, ‘Did

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<sup>1</sup> At the time of the hearing, the claimant indicated a neurology appointment was already scheduled for 11 June 2023. [TR at 53.]



they find any job that was within my restrictions?’ and she said, ‘No.’ The only thing that she saying was, ‘25 pounds,’ but they already terminated my position.” *Id.* She acknowledged receiving a letter from Rebecca Thomas dated 14 January 2022, but denied (as was apparently offered to her in the letter) meeting with Ms. Thomas to discuss returning to work. [TR at 67.] She was asked again and verified that she did not meet or contact her employer about returning to work around that time or after the 14 January 2022 letter.

The claimant testified that she wanted to go back to work in October of 2021, but “could not go back” when ADC was seeking to bring her back in January.

Q: But January the 14<sup>th</sup> of 2022, you did not want to go back?

A: I could not go back, due to I had went to the doctor to get – understand things had progressed, things had changed, and I had been going to Dr. Robert Scott. My doctor had been following up with me versus the other doctors really not following up, basically, saying that I met MMI. There’s nothing else they could do for me. From a surgical standpoint, I was as good as I was going to get. So I followed up with my doctor, Robert Scott, because I’m still having the same issues, still having the same problems. And once he evaluated me and seen the issues or whatever, to seeing whatever records that he has; so it won’t be hearsay, he advised that I was not to return to work.

Q: So between October and January, what changes is your advice from your family doctor not to work?

A: Not to work. That’s according to Robert Scott.

Q: Okay. Who you’ve been seeing all along, while you had seen Dr. Norton, Dr. Walker, and Dr. Bryant?

A: Yes, because I hadn’t received any medical treatment prior to – I mean, after the accident. [TR at 68-69.]

The claimant went on to say that she is not seeking any employment, although she applied for a job at Dollar General, as part of her unemployment application process, that she admits was outside of her physical abilities. [TR at 69.] Her unemployment application was denied, and she filed for Social Security Disability sometime in January of 2022. [TR at 70.]

According to the claimant, she saw Dr. Norton again in May of 2022, after seeing Dr. Baskin. Dr. Norton, she said, referred her back to Dr. Walker. *Id.* She recalled the nerve conduction study performed in June of 2022 and following up with Dr. Norton afterwards. Dr. Norton also ordered a bone scan, after which he saw her one more time without recommending further treatment or intervention. [TR at 71.] She then saw Dr. Walker again, and he did not prescribe any medication. The claimant said that “the only other option I had was to have a stimulator,” which “should be able to help with the pain.” [TR at 72.] She has not seen Dr. Walker since that visit. Dr. Scott is the only physician who has followed her since then.

Ms. Puckett confirmed that she is not currently looking for work at the recommendation of Dr. Scott, because her wrist is “at its fracturing point” and “can be easily fractured just getting a little bump.” So she mostly spends her time at home. [TR at 75.]

*D. Claimant on Additional-Examination*

The claimant addressed additional questions again about prescription medications and treatments that she found unhelpful. She said that her PCP, Dr. Scott, continues to prescribe her Gabapentin and that he thinks she should see a neurologist. [TR at 82.]

*E. Medical Evidence*

Ms. Puckett first sought treatment on for her wrist 26 December 2018, the day she was injured. *See*, [Cl. Ex. No 1 at 1-6.] The provider assessed an unspecified sprain with negative X-ray findings. She was taken off work with a follow-up scheduled for a few days later. The claimant presented again on 28 December 2018, complaining of throbbing pain. *Id.* [at 7-10.] She was assessed with a median nerve injury at the wrist, continued off work, and referred to a specialist.

The claimant then presented to Dr. Brian Norton<sup>2</sup> on 11 January 2019. He assessed her pain as possibly due to a ligament or tendon injury versus a contusion and ordered an MRI. *Id.* [at 17.] She saw Dr. Norton again, and his 8 February 2019 encounter note states that the MRI revealed a ganglion cyst, which he believed was likely related to her work injury. Excision was discussed and scheduled. *Id.* [at 18.] The MRI did not reveal any acute or suspicious findings in the claimant’s hand. *Id.* [at 22-23.]

Dr. Norton removed the cyst on 29 April 2019 without complication. *Id.* [at 25.] She followed up with him on 15 May 2019, when he ordered the initiation of occupational therapy and authorized her return to work that day with a five-pound pushing/pulling/lifting restriction for her right hand. *Id.* [at 27-33.] Due to some apparent confusion about scheduling, she did not begin a regular course of therapy appointments until 10 June 2019. *Id.* [at 34.] Ms. Puckett followed up with Dr. Norton’s physician assistant Jenna Pardoe on 19 July 2019. *Id.* [at 69-74.] The encounter note indicates she was improving, should follow up again in a month, and was to return to work with a 15-pound pushing/pulling/lifting restriction for her right hand.

Ms. Puckett saw Dr. Norton again on 6 August 2019, when she complained of continuing pain and popping in her wrist. He ordered another MRI for further evaluation of the wrist and placed her on a 20-pound restriction. *Id.* [at 78-83.] The claimant was seen again on 10 September 2019. *Id.* [at 84-87.] The MRI revealed no new abnormality. The note indicates no significant pain, but referenced additional treatment options should the need arise. The note further reflects “no impairment per exam today.” She was placed at MMI and released to work without restrictions at full duty, with follow up on an as-needed basis. *Id.* [at 85.]

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<sup>2</sup> According to the OrthoArkansas website, Dr. Norton is an orthopaedic surgeon specializing in hand and upper extremity surgery. See <https://www.orthoarkansas.com/briandnortonmd>.

After about a year, Ms. Puckett presented to Dr. Norton’s clinic again on 1 September 2020 with continued complaints of pain and popping in her right wrist. *See*, [Resp. Ex. № 1 at 22.] An MRI was ordered, and her work status was continued at full duty. *Id.* [at 24.] The 7 October 2020 MRI revealed no ganglion recurrence, but some synovitis. *Id.* [at 25-28.] Dr. Norton consulted with her on treatment options and performed a steroid injection that day. She was instructed to monitor her blood sugar and to follow up on 18 November 2020.

The claimant returned for the November appointment and reported some improvement with her pain, but that her blood sugar levels became significantly elevated after the steroid injection. *Id.* [at 29-31.] The record notes she “has failed nonsurgical treatment and is unable to proceed with repeat injection. The patient has elected to proceed forth with a right wrist arthroscopy and partial synovectomy....” That procedure (a right wrist arthroscopy with triangular fibrocartilage complex (TFCC) repair and partial synovectomy) occurred without complication on 4 January 2021. *Id.* [at 32-35.]

She followed up with Dr. Norton’s office on 7 April 2021, when some pain and clicking were still noted. *Id.* [at 41-44.] She was authorized to return to work without pushing/pulling/lifting with her right hand. A repeat MRI was ordered and performed on 27 April 2021. *Id.* [at 45.] The claimant saw Dr. Norton again 27 April 2021. *See*, [Cl. Ex. №. 1 at 91-94.] His note for that visit reflects:

MRI showed findings consistent with the postoperative TFCC repair changes.

...

Patient has intact flexion extension of wrist, however this is limited secondary to pain.

There is palpable clicking noted along the dorsal and ulnar aspect of the wrist specifically with wrist flexion, radial deviation as well as supination and pronation.

Full motion in the fingers.

...

The patient continues to have significant pain and clicking in the wrist. I do not believe there is anything else I can really offer her other than a revision arthroscopy to see if there is any other derangement within the wrist that has developed. If the wrist arthroscopy is relatively normal [then] I would

recommend proceeding forth with a functional capacity evaluation. The risk and benefits of surgery were explained to the patient. Risks include but are not limited to bleeding, infection, damage to nerves or vessels, need for reoperation, stiffness, continued pain, and the development of CRPS/RSD. They voiced understanding of these risks and elected to proceed with surgery. We will keep her on the same work restriction. *Id.*

The revision was performed on 12 May 2021 without complication. *Id.* [at 96-97.] The TFCC repair appeared healed, but significant synovitis was observed again and addressed via partial synovectomy. Additional OT began on 25 May 2021. *Id.* [at 98-102.]

At a follow-up with Jenna Pardoe in Dr. Norton's office on 22 June 2021, some range of motion improvement was noted along with mild wrist pain. *Id.* [at 125-128.] Her anti-inflammatory medication was changed and her work restriction was placed at no pushing/pulling/lifting with the right hand of more than five (5) pounds. Ms. Puckett saw Dr. Norton again on 3 August 2021, and his note from that visit reflects:

She continues to have significant pain in the wrist as well as stiffness in the hand. She is also complaining of pain in the forearm.

...

Some mild wrist pain with range of motion. She also complains of some vague forearm pain.

...

At this point the patient does continue to have pain and stiffness in the hand as well as in the forearm. Not sure there is anything I can offer her from a surgical standpoint. I would recommend getting a functional capacity evaluation for permanent restrictions. In the meantime I would also recommend a referral to either Dr. Walker or Frankowski for evaluation. We will await their evaluation and the FCE to determine further treatment options. *Id.* [at 185-188.]

Ms. Puckett then saw Dr. Norton's practice partner Dr. Brent Walker<sup>3</sup> on 13 August 2021. *Id.* [at 189-194.] His initial assessment included Complex Regional Pain Syndrome Type 1 meeting Budapest criteria upper extremity. He ordered a triple phase bone scan and beginning a series of Stellate Ganglion Blocks (SGBs). The bone scan was performed on 23

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<sup>3</sup> According to the OrthoArkansas website, Dr. Walker is an anesthesiologist specializing in interventional pain management. See <https://www.orthoarkansas.com/brent-walker-md-1>.

August 2021, and the radiologist's impression was listed as Complex Regional Pain Syndrome. *Id.* [at 195.] The SGB injections were performed between 24 August 2021 and 7 September 2021. *Id.* [at 196-198.]

Her next office follow-up with Dr. Walker was on 15 September 2021. *Id.* [at 199-203.]

According to that note:

She has not noticed much improvement following these injections. She has been dealing with this pain for 9 months now. I am somewhat concerned that we may have missed her window of opportunity with stellate ganglion blocks. She still has focalized pain along the ulnar aspect of her palm. She has an area of point tenderness she can press on causes severe pain around her thumb. Her right hand is still slightly swollen as compared to her left. She has trouble gripping items and especially turning doorknobs. She is unable to take the gabapentin due to severe nausea and vomiting. She is taking amitriptyline and clonidine. [Claimant disagrees with Dr. Walker's comment here about her not tolerating Gabapentin and discussing the other medications she was continuing.]

...

Complicating matters since we began the injections her blood sugars have been in the 400s. I do not have a good explanation for this other than stress reaction. The injections do not contain any steroid which would be a possible reason for these elevated blood sugars. Her primary care doctor has suggested we pause the SGBs until she gets her blood sugar under control.

...

[CPRS] is a chronic condition which varies from person to person. And some signs and symptoms go into spontaneous remission. It is possible for CPRS to reactivate months or even years after the initial insult.

...

We will pause the [SGBs] until she gets her blood sugar under control.

...

The following week, Ms. Puckett presented for the FCE ordered by Dr. Norton. *See*, [Resp. Ex. № 1 at 76-95.] According to the report, her effort was reliable. Her limitations were listed as "bi-manual lift/carry of up to 45 pounds," maximal RUE unilateral lift of 20 pounds versus 25 pounds with the LUE, a 5-pound limit while occasionally reaching, and mildly decreased grip strength in her right hand. "She performed all other activities at a level consistent with that of an average worker." The report concluded that, as defined by the US

Department of Labor’s guidelines, she was able to perform in the medium classification of work.

The claimant saw Dr. Walker again on 14 October 2021. *See*, [Cl. Ex. No 1 at 211-215.] She stated that her blood sugars were better controlled, but that she was continuing to have trouble with pain since stopping the SGBs and that she was experiencing notable sleepiness because of her medications. Dr. Walker ordered the SGB injections to begin again.

On 28 October 2021, Dr. Norton authored a letter assigning Ms. Puckett a permanent impairment rating. *Id.* [at 216.] He placed her at MMI and adopted the work limitations noted in the FCE. Based on the AMA Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Ed., he assigned an impairment rating of the right wrist of eleven percent (11%) and of the whole person at seven percent (7%). That rating was made with a reasonable degree of medical certainty.

The claimant then sought the opinion of Dr. D’Orsay Bryant, another orthopaedic surgeon. *Id.* [at 217-219.] According to his 24 November 2021 exam note, “[t]he patient furnished me hundreds of pages of her past medical record, which I have read over a dozen times. The treatment rendered, by both Dr. Norton and Dr. Walker, is satisfactory and medically indicated.” He found that the “patient does have a complex regional pain syndrome that is extraordinarily difficult to treat” and agreed with Dr. Walker’s assessment of the chronicity of her condition. Dr. D’Orsay went on to state that “there are simply no further effective treatment recommendations that I can offer for the patient’s right wrist complex regional pain syndrome. The patient does have a painful right wrist disorder, and in the future, a pain management program may be a treatment protocol consideration to address the complex regional pain syndrome.” *Id.*

There is a gap in the medical records offered by the claimant between Dr. D’Orsay’s November 2021 exam and a visit with Dr. Walker in July of 2022. The respondents, however, provide additional records for that time.

On 24 January 2022, ADC sent an Essential Job Function Questionnaire to Dr. D’Orsay. He faxed a response that same day stating, “I declined to recommend any orthopaedic treatment, so I do not know her work status/restrictions.” See, [Resp. Ex. № 1 at 105-106.]

She saw Dr. Norton again on 10 May 2022. *Id.* [at 107-111.] She presented with a walker, stating that she had seen Dr. Barry Baskin and that he recommended a nerve conduction study. Dr. Norton noted her history and continued symptoms. He ordered a nerve conduction study/EMG and that she remain on the same work restrictions as noted in the FCE.

The claimant saw Dr. Rodrigo Cayme<sup>4</sup> on 21 June 2022 for the nerve conduction study. *Id.* [at 112-119.] The findings were all within normal limits, with no evidence of electrical instability.

Ms. Puckett returned to Dr. Norton again on 21 June 2022. *Id.* [at 120-126.] He reviewed the normal study results with her and opined that he had little to offer from a surgical standpoint. Another triple phase bone scan was ordered. That scan was conducted on 27 June 2022 and returned a negative study with “no scintographic evidence of complex regional pain syndrome.” *Id.* [at 127-128.]

On 7 July 2022, Dr. Norton responded to a case management letter regarding Ms. Puckett’s course. He confirmed she reached MMI on 21 August 2021, that her impairment

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<sup>4</sup> According to the OrthoArkansas website, Dr. Cayme is a Physical Medicine and Rehabilitation specialist with a fellowship in interventional spine medicine. See <https://www.orthoarkansas.com/rodrigocaymemd>.



rating was unchanged, and that her work status (as previously authorized by him) had not changed. *Id.* [at 129-131.] She then returned to Dr. Norton’s office on 25 July 2022, when he noted the recent negative bone scan and that he was unsure of the etiology of the pain. He referred her to Dr. Walker again. *Id.* [at 132-136.]

Dr. Walker then saw her on 27 July 2022. *See*, [Cl Ex. № 1 at 222-228.] He noted her hand was stiff, painful, and looked “terrible.” He recounted her course and continued difficulty, concluding, “[a]t this month her condition [has] existed for well over a year and a half. I think she is most likely in the chronic phase of this condition. I do not think any further stellate ganglion blocks or medications will be of benefit. I am going to refer her to UAMS for consideration of a spinal cord stimulator.” *Id.* at 225. Dr. Walker referred her to Dr. Erika Peterson at UAMS. *Id.* at 220.

The claimant appears to have presented to the JRMC Emergency Department on 16 August 2022, as evidenced by a radiology report provided in her medical exhibit. *See*, [Cl. Ex. № 1 at 230.] The exhibit is a photo of a record indicating it is page three of three. The first two pages of the report and any associated clinic notes are not included. The impressions for what appear to be X-Ray imaging of the humerus and right hand are negative but for some mild periarticular osteopenia in the right hand. A nuclear medicine bone scan on 27 June 2022 and CRPS are listed, respectively, for comparison and indication. *Id.*

After Dr. Walker’s referral to UAMS, Dr. Norton appears to have been provided with an Essential Job Function Questionnaire from the respondents. He completed that form on 3 October 2022, indicating no restrictions or limitations. *Id.* at 144. Neither the claimant nor the respondents provided a progress note or record from an office visit associated with the questionnaire.

The claimant provides several additional records from her PCP's clinic. *Id.* [at 233-258.] She acknowledged at the hearing that this treatment was not authorized. Those records include a work note from her PCP Dr. Robert Scott, dated 5 January 2023, that does not appear to correspond to any particular office visit. *Id.* [at 238.] The note states that she cannot work due to her inability to use her right hand and that she was seeking further treatment.

#### IV. ADJUDICATION

The stipulated facts are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See, *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

##### A. The Claimant is Not Entitled to Additional PPD for RSD/CRPS.

The claimant seeks additional PPD related to her RSD/CRPS diagnosis. The claimant, however, failed to meet her burden on refuting the appropriateness impairment rating issued by Dr. Norton on 28 October 2021. Nor did she present evidence that the PPD benefits associated with that rating have not been paid accordingly. The claimant, thus, failed to prove, by a preponderance of the evidence, that she is entitled to additional PPD benefits associated with her wrist specific to the RSD/CRPS diagnosis and separate and beyond the rating already stated within a reasonable degree of medical certainty.

Permanent impairment is any permanent functional or anatomical loss remaining after the healing period has ended. Any determination of the existence or extent of physical impairment must be supported by objective, measurable medical evidence. See, *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, \*12; 436 S.W.3d 164, \*\*171; 2014 Ark. App. LEXIS 426, \*\*\*17 (citations cleaned up). Permanent benefits are to be awarded only following a determination that the compensable injury is the major cause of the disability or impairment, with a "major cause" being established, by a preponderance of the

evidence, as to meeting more than fifty percent (50%) of the cause. Ark. Code Ann. §§ 11-9-102(F)(ii), 11-9-102(14). Any medical opinion offered must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16).

Here, we have a claimant who received a permanent impairment rating and no evidence that benefits were not paid according to that rating. I do not find a preponderance of evidence to support a finding that Dr. Norton's 28 October 2021 is insufficient or requires adjustment. His rating assignment contemplated the FCE, which put her in the Medium work classification, and he found her to be at MMI. There is no evidence that this rating was not based on any of his own treatment or the other relevant records available to him, including her earlier visit with Dr. Walker, who saw her upon referral from Dr. Norton and who assessed CRPS and noted that condition's tendency to go into remission and reactivate. Dr. Norton's rating was made within a reasonable degree of medical certainty.

Further, Dr. Norton responded in July of the following year to a case management letter regarding Ms. Puckett's course. He confirmed that she reached MMI, that her impairment rating was unchanged, and that her work status had not changed. There is no evidence that the notes and reports from claimant's additional treatment with Dr. Walker were not available to Dr. Norton for his drafting of that letter. I do not find the unaccompanied (by way of no associated office visit notes) and unsupported (by way of no reference to any previous provider notes, imaging studies, or FCE report) note from Dr. Scott to be persuasive in justifying any adjustment in the claimant's rating or permanent benefits owed.

Accordingly, the claimant fails to prove, by a preponderance of the evidence, that she is entitled to additional PPD benefits for CRPS/RSD.

B. The Claimant Has Not Provent that she is Permanently and Totally Disabled.

Arkansas law defines “Permanent Total Disability” as the inability, because of a compensable injury, to earn any meaningful wages. And the employee has the burden of proving that inability to earn wages. Ark. Code Ann. §§ 11-9-519(e)(1-2).

The claimant said that she would like to return to work, “but I just know that I can’t do the essential job functions...” [TR at 33.] What essential functions of what job has she shown she cannot perform? The FCE, which found her effort reliable, placed her at a medium classification. She refused to attempt to return to her job with the respondents since her second surgery and refused to cooperate in finding some other job with the defendants. By her own admission, the only job she applied for was one at Dollar General. “I know I couldn’t do the job,” but to get the unemployment benefits she was seeking, she said, “you have to apply for it, because – try to apply for a job, and that’s what I did.” [TR at 69-70.]

On taking Gabapentin (apparently for years now), Ms. Puckett stated “it’s gonna put me to sleep,” but “that’s just what I’ve been taking.” [TR at 37.] To the extent that she may assert that Gabapentin essentially disables her, she produced little evidence of any coordinated effort to better manage her medication or its effects. The claimant discredits Dr. Walker’s note about reporting Gabapentin making her sick. She cites Dr. Scott, whose unauthorized treatment went on outside the coordination of Dr. Walker and Norton’s collaborative efforts, as her prescribing physician for Gabapentin. Even if Gabapentin were the only medication available to provide her with relief, she produced no evidence of any effort to perform in the workplace only to find it difficult. Nor did she produce evidence of working with Dr. Scott working with her to find a different medication or dosing schedule to mitigate her concern about drowsiness.

The claimant is forty (40) years old with years of knowledge of prison operations and with administrative knowledge and experience. I do not find her motivated to return to any

work, and I give credit to the records reflecting her ability to work with restrictions over Dr. Scott's assertion that she cannot work at all because of difficulty with her right hand.

Based on the record before me, I cannot find that Ms. Puckett is completely unable to participate in the workforce. Accordingly, I do not find that she has proven, by a preponderance of the evidence, that she is totally and permanently unable to earn wages. Her claim for Permanent and Total Disability Benefits is, therefore, denied.

C. The Claimant Has Not Proven Entitlement to Additional Benefits Under Ark. Code Ann. § 11-9-505(a)(1).

Under Arkansas law, an employer "shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost" when an employer refuses to return an injured employee to work when employment is available within the employee's work limitations. Ark. Code Ann. § 11-9-505(a)(1). The claimant seeks benefits under this statute in the event that she is not found permanently and totally disabled. The respondents argue, in part, that this claim is inconsistent with her position that she is unable to work altogether. They also argue that the claimant refused to return to work and even refused to engage in an interactive process to discuss returning to work when the respondents sought the same.

The claimant fails to prove she is entitled to any benefits on this claim. Working through the argued inconsistency of the two positions is not necessary. By the claimant's own testimony, she refused to cooperate with the respondents to discuss her returning to work. Despite her release to work from Dr. Norton, she says she relied, instead, on Dr. Scott's opinion that she should not work altogether. The record includes no persuasive evidence that she was actually inclined to return to work for the respondents, but somehow thwarted by their refusal to permit or coordinate that. Her claim for these benefits fails accordingly.

D. The Claimant Is Entitled to Additional Reasonable and Necessary Medical Treatment and/or Pain Management.

Arkansas law requires an employer to promptly provide for medical treatment and surgical services that are reasonably necessary and related to injuries sustained by an employee. Ark. Code Ann. § 11-9-508(a). A claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.2d 153 (2003). Reasonable and necessary medical services may include those necessary to, among other things, reduce or alleviate symptoms resulting from the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 953, 1995 Ark. App. LEXIS 589.

The claimant initially sought surgical intervention from Dr. Norton. Despite multiple efforts, he was unable to resolve her wrist problems and ultimately referred Ms. Puckett to Dr. Walker for more treatment options. Dr. Walker assessed CRPS and attempted to improve her symptoms, but without much success. Dr. Walker recommended referral to UAMS for further evaluation and consideration of a Spinal Cord Simulator.

The claimant seeks an Order from the Commission finding that that referral is reasonable and necessary, as well as the treatments, prescriptions, and referral(s) from her PCP, Dr. Scott.

The respondents argue against additional medical treatment.

In his continued efforts to resolve Ms. Puckett's wrist problems, Dr. Norton noted in his 27 April 2021 informed consent discussion [see Cl. Ex. № 1 at 94] that developing CRPS/RSD was a risk associated with revision surgery. That procedure was performed without the desired result, and the claimant was later assessed with CRPS. I do not find persuasive evidence that the CRPS and eventual referral for evaluation for a Spinal Cord Stimulator are not related to the initial compensable injury; and I do find, accordingly, that the Dr. Walker's referral is a reasonable and necessary continuation of the treatment and/or management of Ms. Puckett's wrist problems.

The claimant has seen and continues to see Dr. Scott for a number of health issues, including her compensable injury. To the extent that he has or continues to see Ms. Puckett for care related to her wrist, that treatment was and is unauthorized. The respondents are not liable for treatments, prescriptions, and referrals related thereto.

E. Attorney's Fee

Arkansas law generally does not provide for an attorney's fee to be awarded relating to medical services. ACA § 11-9-715. While the claimant has proven her burden as to the right to additional treatment for her compensable injury, attorney's fees do not attach to her prevailing on that point. She has not proven her burden on the other issues litigated in this matter.

**V. ORDER**

Consistent with the findings of fact and conclusions of law set forth above, the respondents are responsible for the reasonable and necessary care associated with Dr. Walker's treatment and referral for consideration of additional treatment, including evaluation for a Spinal Cord Stimulator. Ms. Puckett's other claims are denied.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE