

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H108811

JULIE REVELS, EMPLOYEE	CLAIMANT
MAGNET COVE ELEMENTARY SCHOOL, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WORKERS' COMPENSATION TRUST, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 16, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed July 16, 2024. The administrative law judge found that the claimant proved she sustained an 11% permanent anatomical impairment rating. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained permanent anatomical impairment in the amount of 11%.

I. HISTORY

Julie Ann Revels, now age 58, testified that she had been employed with the respondents, Magnet Cove School District, for 21 years. The

parties stipulated that the employment relationship existed at all pertinent times, including September 21, 2021. The claimant testified that she slipped in a “water bottle spill” and that she “fell completely on my shoulder.” The parties stipulated that the claimant “sustained an admittedly compensable injury to her right shoulder” on September 21, 2021.

An MRI of the claimant’s right shoulder was taken on September 23, 2021 with the following impression:

1. Large full-thickness tears of the supra and infraspinatus as detailed above.
2. There is tendinosis and tenosynovitis of the long head biceps tendon with intact anchor.
3. There is no grossly detached labral tear on this conventional exam.
4. Focal bone bruise/contusion involving the greater tubercle without acute displaced fracture or cortical depression. Humeral head remains well aligned across the glenoid fossa.
5. There is mild active osteoarthritis across the AC joint without diastases.

Dr. Christopher M. Young noted on October 7, 2021: “Julie Revels is here for complaints of right 8/10 shoulder pain that has been going on since 09/21/2021. This is a work comp injury that happened while walking into the classroom and slipping and falling landing on her right arm....MRI done prior to appointment shows right full thickness rotator cuff tear....After discussion, due to her increasing pain and weakness, we plan to proceed with right shoulder open rotator cuff repair. With this being [an] acute injury

and having a full thickness rotator cuff tear it is best to get this fixed in a timely manner.”

Dr. Young performed surgery on October 29, 2021: “Diagnostic right shoulder arthroscopy with open Right rotator cuff repair.” The pre- and post-operative diagnosis was “Rotator cuff tear right shoulder, documented with MRI and unresponsive to conservative care.”

The claimant was provided treatment at Malvern Physical Therapy following surgery, and she was discharged from Malvern Physical Therapy on October 25, 2022.

The claimant participated in a Functional Capacity Evaluation on December 21, 2022: “The results of this evaluation indicate that a reliable effort was put forth, with 50 of 50 consistency measures within expected limits....Ms. Revels completed functional testing on this date with **reliable** results. Overall, Ms. Revels demonstrated the ability to perform work **in the LIGHT** classification of work[.]”

Casey Garretson, Occupational Therapist, Functional Testing Centers, Inc., provided an “IMPAIRMENT EVALUATION SUMMARY – Upper Extremity” on December 21, 2022:

Ms. Revels reports injury at work when she slipped and fell on wet floor, and she landed on her right shoulder resulting in the immediate onset of right shoulder pain....

There is no noted atrophy of the Right shoulder girdle. There is no popeye deformity or other abnormalities in the muscle bulk or any asymmetrical bony defects observed of the Right

bicep or shoulder region. Sensation was intact and normal throughout the Right upper extremity. The Contralateral UE had full motion. Right elbow and wrist PROM was within normal limits. Passive ROM values did mildly exceed AROM measurement values. The patients' pain was not taken into account to determine this Impairment Rating. No other ratable finding was found related to the Right UE.

Casey Garretson assigned the rating, "*Right Upper Extremity: 9% Upper Extremity Impairment 5% Whole Person Impairment (Table 3).*"

Dr. Young noted on March 2, 2023:

The patient is here for evaluation of right shoulder. She underwent FCE for evaluation after her injury to determine what she was capable of doing and what her disability rating was. I calculated all of her FCE numbers with the occasional bimanual lifting up to 30 pounds, the unilateral lifting maximum right upper extremity of 10 pounds. She also had demonstrated functional limited reaching of 5 pounds. She can only occasionally lift at the level of normal work day. She was unable to reach overhead. Based on these figures, I was able to come up with an 18% upper extremity disability rating and an 11% whole person disability rating based on the guides to evaluation of permanent impairment of volume 4th addition (sic).

The parties stipulated that "the claimant's authorized physician assigned her a permanent anatomical impairment rating of 11% to the body as a whole."

Dr. Young reported on May 30, 2023:

Julie A. Revels is here for a postoperative visit about 18 months out from a right rotator cuff repair. Patient still has some pain in her right shoulder. Her ROM is still limited and still cannot lift anything over her head. She is limited with how much weight she can pick up with this arm, and there are

some struggles she has at work being able to do her job properly....

Patient is at MMI. She underwent FCE for evaluation after her injury to determine what she was capable of doing and what her disability rating was. I calculated all of her FCE numbers with the occasional bimanual lifting up to 30 pounds, the unilateral lifting maximum right upper extremity of 10 pounds. She also had demonstrated functional limited reaching of 5 pounds. She can only occasionally lift at the level of normal work day. She was unable to reach overhead. Based on these figures, I was able to come up with an 18% upper extremity disability rating and an 11% whole person disability rating based on the guides to evaluation of permanent impairment 4th addition (sic). At this time I will discharge her from my care. She will follow up as needed.

Dr. Young noted in part on September 5, 2023:

The patient is here for followup from the functional testing center from Mountain Home, Arkansas for impairment rating on her right shoulder. They ended up with a different rating [than] I ended up with as a final impairment rating for the whole body. The patient reports that they didn't measure anything or do any exercises pertaining to reaching overhead which is where her problem lies....

I do not have any reason to change my 11% whole person impairment rating. I am not going to go back and recalculate my number because I standby (sic) the first number that I did. I am not sure how they ended up at 5%. I however ended up at 11% and I still support that.

IMPRESSION: Right rotator cuff tear with now permanent disability. I calculated her permanent whole body disability 11% according to the guides to partial permanent impairment, fourth edition.

Rick Byrd, "Certified Senior Disability Analyst" with Functional

Testing Centers, Inc., provided an Impairment Rating Review on September 14, 2023 and stated in part:

On 05-30-2023, Dr. Young assigned Ms. Revels an 18% right Upper Extremity Impairment which is a (sic) 11% Whole Person Impairment based on, "I calculated all of her FCE numbers with the Occasional bimanual lifting up to 30 pounds, the unilateral lifting maximum right upper extremity of 10 pounds. She also had demonstrated functional limited reaching of 5 pounds. She can only occasionally lift at the level of normal workday. She was unable to reach overhead. Based on these figures, I was able to come up with an 18% upper Extremity disability rating and an 11% whole person disability rating based on the guides to the evaluation of permanent impairment of volume 4th addition".

With the above impairment, there is nothing in the 4th Edition Guides that allows for impairment based on pounds lifted or limitations with functionally reaching overhead or with weight. I can find not correlate (sic) the above rating with any table of the Guides and obviously no table was listed to support Dr. Young's impairment rating of Ms. Revels.

An Impairment rating was completed by Functional Testing Centers on 12-21-2022 using objectively measured PROM that is outside the control of the patient with a finding of: 9% Right Upper Extremity Impairment, which is a 5% Whole Person Impairment. I do believe that this rating is the most accurate and objective rating as it is based off the 4th Edition Guides.

The parties stipulated that "the respondents have accepted and paid, or are in the process of paying, a permanent anatomical impairment rating of 5%."

The respondents' attorney examined Rick Byrd at hearing:

Q. What did you do in order to evaluate the two different ratings that are involved in this case? We've got a 5% and an 11%.

A. So I went to the guides – 4th Edition Guides, and Dr. Young had – and I quoted him in this letter where he said he'd calculated it all from FCE numbers with occasional lifting of 30

pounds and 10 pounds with the right hand. And then he said [as read], "Based on these figures, I calculated an 18% upper extremity impairment and an 11% whole person disability rating." And then he said, "... based on the guides." And I am very familiar with the guides and there is nowhere in the guides where it allows for lifting to correlate with an impairment....

Q. So the 12-21 evaluation that was done, you reviewed in detail the measurements and all of the activities that Mr. Garretson had Ms. Revels perform?

A. I did. I went back and just made sure that the guides – that the ratings, the individual numbers that were assessed were the appropriate numbers for, like, flexion loss, extension loss, abduction loss, and it – and it did indeed add up to 9% of the right upper extremity, which then using Table 3 is a 5% impairment....

The claimant's attorney cross-examined Rick Byrd:

Q. Rick, you're not a medical doctor.

A. No, sir....

Q. Casey's not a medical doctor.

A. No, sir.

Q. So we're talking about the difference of opinion between the orthopedic surgeon and your company, right?

A. I think we're talking about the difference in the guides – in interpretation of the guides and actually utilizing the guides, as opposed to a medical and a non-medical situation.

Q. And its interpretation of the guides, as you say, because Dr. [Young] did, in fact, indicate that he relied upon the 4th Edition of the guides, right?

A. He did.

A pre-hearing order was filed on March 7, 2024. According to the text of the pre-hearing order, the claimant contended, "The claimant contends she sustained admittedly compensable injuries to her right shoulder. She contends her authorized, principal treating physician assigned her a permanent anatomical impairment rating of 11% BAW, and

she is entitled to PPD benefits based on this 11% BAW rating. She contends the respondents have accepted and will pay only a 5% BAW permanent anatomical impairment rating. The claimant contends the respondents have controverted payment of PPD benefits commensurate with the difference between the 11% BAW rating and the 5% BAW rating, which is 6% BAW and, therefore, her attorney is entitled to a controverted fee based on this amount (6% BAW). Finally, the claimant's attorney respectfully requests the Commission order the respondents to deduct any attorney's fees the claimant owes based on controverted benefits she may receive by award or otherwise, and to pay his attorney's fees by separate check payable directly to him."

The parties stipulated, "The respondents controvert only the difference between the 11% BAW and five 5% BAW impairment ratings, which totals six percent 6% BAW." The respondents contended, "The respondents contend they have accepted and paid all appropriate benefits related to the claimant's September 21, 2021, compensable shoulder injury. The respondents contend they have accepted a 5% BAW permanent anatomical impairment rating, and that this 5% BAW rating is supported by the *AMA Guides*, while the 11% rating is *not* supported by the *AMA Guides*. The respondents reserve the right to supplement their contentions and to assert any and all other applicable defenses and arguments upon the

completion of necessary investigation and discovery. The respondents reserve any and all other issues for future determination and/or litigation.”

The parties agreed to litigate the following issues:

1. Whether the claimant is entitled to PPD benefits commensurate with the eleven percent 11% BAW, or the five percent 5% BAW permanent anatomical impairment rating pursuant to the applicable *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA, 4th Edition 1993 (the *AMA Guides*)).
2. Whether and to what extent the claimant’s attorney is entitled to a controverted fee on these facts.
3. The parties specifically reserve any and all other issues for future determination and/or litigation.

A hearing was held on April 17, 2024. The respondents’ attorney examined Casey Garretson:

Q. It looks like you evaluated [the claimant] on December 21st of ’22. Does that sound correct?

A. It sounds correct....

Q. What measurements are done for a shoulder rating?

A. For an impairment rating?

Q. For an impairment rating, yes.

A. We would take passive range of motion measurements.

So the book has the guides on which measurements to do, so even in our report – in our impairment rating report we even have pictures of exactly how we would take those measurements, so we’d have the person do forward flexion of their shoulder, and then we’d have them do extension, we’d have them do abduction, adduction, internal rotation, and external rotation....

Q. When you say the book, just to clarify that is the AMA Guides 4th Edition?

A. Correct. Yes....

Q. Did you need to have her lift anything overhead to affect her rating in any way?

A. No....

Q. You rely completely on passive measurements?

A. Correct. In her case there was no other ratable findings other than the passive range of motion....

Q. You have issued a 5% rating associated with her shoulder injury. Is that right?

A. Correct.

Q. Tell the judge, if you will, why you think that is the accurate rating.

A. I think you can look off kinda Rick's response and, you know, I would've said the exact same thing. I would've said, you know, we did that rating, the only objective measurements that we were able to find were those passive range of motion measurements....

Q. In your review of the records and the measurements taken, is there anything that you have seen to support 11% being associated with this injury?

A. No.

The claimant's attorney cross-examined Casey Garretson:

Q. You don't have any information to the effect that Dr. Young used active range of motion in order to determine his impairment, correct?

A. Correct.

An administrative law judge filed an opinion on July 16, 2024. The administrative law judge found, among other things, that the claimant proved she was entitled to 11% permanent anatomical impairment. The respondents appeal to the Full Commission.

II. ADJUDICATION

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent*

Impairment (4th ed. 1993) to be used in assessing anatomical impairment. See *Commission Rule 34*; Ark. Code Ann. §11-9-522(g)(Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(B)(Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means

“more than fifty percent (50%) of the cause,” and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force.

Metropolitan Nat’l Bank v. La Sher Oil Co., 81 Ark. App.269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “2. The claimant has met her burden of proof in demonstrating she is entitled to an impairment rating of 11% BAW – *i.e.*, to additional PPD benefits based on the 6% BAW difference in the two (2) subject ratings.” The Full Commission finds that the claimant proved she sustained permanent anatomical impairment in the amount of 11%.

The parties stipulated that the claimant sustained a compensable injury to her right shoulder on September 21, 2021. An MRI of the claimant’s right shoulder taken September 23, 2021 showed, among other things, “large full-thickness tears of the supra and infraspinatus as detailed above.” Dr. Young began treating the claimant after the compensable injury and noted that she had sustained a “right full thickness rotator cuff tear.” On October 29, 2021, Dr. Young performed a “Diagnostic right shoulder arthroscopy with open Right rotator cuff repair.” The pre- and post-

operative diagnosis was “Rotator cuff tear right shoulder, documented with MRI and unresponsive to conservative care.”

Casey Garretson, an occupational therapist and part owner of Functional Testing Centers, Inc., opined on December 21, 2022 that the claimant had sustained a 5% whole-person impairment rating. Mr. Garretson asserted that the 5% rating was based on “passive range of motion” and the 4th Edition of the *Guides to the Evaluation of Permanent Impairment*. However, Dr. Young opined on March 2, 2023 that the claimant had sustained “an 11% whole person disability rating” in accordance with the 4th Edition of the *Guides*. Dr. Young reiterated his expert opinion on May 30, 2023 and September 5, 2023.

The respondents argue on appeal that the proper anatomical impairment rating is 5% based on the calculations of Casey Garretson and Rick Byrd with Functional Testing Centers, Inc. The respondents contend that Dr. Young did not properly reference the 4th Edition of the *Guides* in assessing 11% permanent anatomical impairment. The Full Commission notes that the *Guides* are “just that: mere guides to aid the Commission in assessing the degree of a claimant’s disability as defined by statute and interpreted by the courts.” See *Singleton v. City of Pine Bluff*, 102 Ark. App. 305, 285 S.W.3d 253 (2008).

It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. App. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds that Dr. Young's assessment of 11% permanent anatomical impairment is supported by the evidence of record and is more credible than the 5% rating suggested by the evaluators at Functional Testing Centers, Inc. We reiterate that all that is required for a valid impairment rating is that the medical evidence *be supported by objective findings*. See *Stephens Truck Lines, supra*. There are supporting objective medical findings of permanent impairment in the present matter, to include a documented full-thickness rotator cuff tear in the claimant's right shoulder as a result of the compensable injury. Dr. Young, the treating surgeon, on three occasions assessed an 11% permanent anatomical impairment rating. Moreover, Dr. Young's calculation of 18% upper extremity impairment, 11% whole person impairment is plainly supported by the 4th Edition of the *Guides* at page 3/20, "Table 3. Relationship of Impairment of the Upper Extremity to Impairment of the Whole Person."

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she

sustained permanent anatomical impairment in the amount of 11%. The claimant proved that the 11% rating assessed by Dr. Young was wholly accurate and was consistent with the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). The 11% rating was supported by objective and measurable physical findings, to include a full-thickness rotator cuff tear documented following the compensable injury. We find that Dr. Young's conclusion that the claimant sustained 11% permanent anatomical impairment was stated within a reasonable degree of medical certainty. The claimant also proved that the September 21, 2021 compensable injury was the major cause of the assessment of 11% permanent physical impairment.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). The claimant is entitled to a fee based on the amount of permanent anatomical impairment controverted by the respondents, 6%. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding the claimant has met her burden of proof in demonstrating she is entitled to an impairment rating of eleven percent (11%) body as a whole.

The claimant suffered an admittedly compensable injury when she slipped and fell, tearing her rotator cuff, on September 21, 2021. In the course of her treatment, the claimant received two whole-body impairment ratings – five percent (5%) provided by Functional Testing Centers, Inc., and eleven percent (11%) from her treating physician, Christopher Young.

An administrative law judge was tasked with determining whether the claimant was entitled to an eleven percent (11%) whole-person rating, or whether she was limited to a five percent (5%) rating. After a hearing, the ALJ opined the claimant was entitled to the eleven percent (11%) rating assigned by Dr. Young.

"Permanent impairment" has been defined as "any permanent functional or anatomical loss remaining after the healing period has ended." *Main v. McGehee Metals*, 2010 Ark. App. 585, 377 S.W.3d 506 (2010). Any determination of the existence or extent of physical impairment must be supported by objective and measurable findings. *Wayne Smith Trucking, Inc. v. McWilliams*, 2011 Ark. App. 414, 384 S.W.3d 561 (2011). "Objective findings" are those that cannot come under the voluntary control of the patient, and specifically exclude pain, straight-leg-raising tests, and range-of-motion tests. Ark. Code Ann. § 11-9-102(16)(A); *Vangilder v. Anchor Packaging, Inc.*, 2011 Ark. App. 240 (2011).

An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994).

Pursuant to Ark. Code Ann. § 11-9-522(g)(1)(A), the Commission has adopted the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1993) (AMA Guides), to be used in the assessment of permanent anatomical impairment. *Greene v. Cockram Concrete Co.*, 2012 Ark. App. 691 (2012). The Commission is authorized to decide which portions of the medical evidence to credit and to translate this medical evidence into a finding of permanent impairment using the AMA

Guides. *Id.*

In the present case, Claimant slipped and fell, injuring her right shoulder. The claimant underwent a right shoulder arthroscopy and rotator cuff repair on October 29, 2021. Claimant's surgeon, Dr. Christopher Young, ultimately assigned a whole-body impairment rating of eleven percent (11%) on May 30, 2023. Dr. Young does not detail how he arrived at an eleven percent (11%) rating, but rather states his findings were "based on the guides."

In contrast, Casey Garretson has a doctoral degree in occupational therapy and is a co-owner of Functional Testing Centers, Inc. He determined the claimant sustained a five percent (5%) permanent impairment. This rating was supported by six pages of notes, references to the *Guides*, and direct evaluation of the claimant. *Id.* Mr. Garretson is certified to do ratings pursuant to the 4th, 5th and 6th editions of the *AMA Guides*.

At the hearing, Mr. Garretson testified he met with the claimant on December 21, 2022, to conduct a Functional Capacity Evaluation and rating. He did the rating portion of the testing at the beginning of the meeting.

During testing, Mr. Garretson took active and passive measurements of the claimant's abduction, adduction, internal rotation and external

rotation. He took each of these measurements three times and used the highest result of the three in his findings, because "our goal is to give the patient the greatest impairment that we can." The claimant gave very consistent effort, which he testified resulted in 50 out of 50 measurements. Mr. Garretson assigned a five percent (5%) rating and could not find any basis in the *Guides* to arrive at the eleven percent (11%) rating assigned by Dr. Young.

Rick Byrd, co-owner of Functional Testing Centers, also testified at the hearing. He explained he is also certified to do ratings pursuant to the 4th, 5th and 6th editions of the *AMA Guides*.

At the hearing, Mr. Byrd went into detail as to why a five percent (5%) rating is supported by the *AMA Guides*:

- Q: What did you do in order to evaluate the two different ratings that are involved in this case? We've got a 5% and an 11%.
- A: So I went to the guides -- 4th Edition Guides, and Dr. Young had -- and I quoted him in this letter where he said he'd calculated it all from FCE numbers with occasional lifting of 30 pounds and 10 pounds with the right hand. And then he said [as read], "Based on these figures, I calculated an 18% upper extremity impairment and an 11% whole person disability rating." And then he said "...based on the guides." And I am very familiar with the guides and there is nowhere in the guides where it allows for lifting to correlate with an impairment.

There is in the guides an allowance (*sic*) for muscle strength, but muscle strength is also a subject of (*sic*) measure. Lots of times we do reviews and they've tested a person's muscle -- and so you push -- the therapist or evaluator will push on them and then grade their muscle tone -- grade their muscle strength, and so that's subjective; it's under the control of the patient.

So even with the lifting, that's subjective. So even if it was in the guides, it would be -- it would still be a subjective measure because Miss Revels was in control of how much she was lifting, and so whether that's 5 pounds or 50 pounds -- but there's nothing -- nowhere in the guides is it allowed that you just look up lifting or do any calculations or anything like that. So there was no table of the guides of the 4th Edition that would allow that.

And then we had done, we being Casey, -- Functional Testing Centers had done an impairment on her after Dr. Young had declared her M.M.I. and we had done it using passive range of motion of the shoulder, which is an objective measurement.

We had also -- and I've reviewed that where we look all the different aspects of how you could possibly get a rating, 'cause there's more than just range of motion. Some doctors get caught up and just always do the same rating on their -- you know, if they don't have that rating, they don't get a rating, and lots of times that's wrong, 'cause they might have crepitation or they might have a chronic instability of the shoulder or they might have swelling and there's other ways to rate, and so we would look at all those, of which Casey did in his report and determined

that the way that gives her the highest rating would be passive range of motion loss.

Mr. Byrd went on to explain:

Q: So the 12-21 evaluation that was done, you reviewed in detail the measurements and all of the activities that Mr. Garretson had Miss Revels perform?

A: I did. I went back and just made sure that the guides -- that the ratings, the individual numbers that were assessed were the appropriate numbers for, like, flexion loss, extension loss, abduction loss, and it -- and it did indeed add up to 9% of the right upper extremity, which then using Table 3 is a 5% impairment.

I went back and tried to make sense out of Dr. Young's and thought maybe he used active range of motion, and so we used our active range of motion numbers and that -- that did increase her impairment, as it should, but it only increased it to 11% of the upper extremity, so it didn't get to the 18%.

Q: Is active range of motion able to be considered under the *AMA Guides 4th Edition* for permanency?

A: It is in the guides, but not according to Arkansas law stating it needs to be objective finding, so the guides definitely allow (*sic*) for it but not under Arkansas's objectivity indicator.

Finally, Mr. Byrd explained why the December 21, 2022 impairment rating was more accurate than Dr. Young's May 2023 rating, stating the Functional Testing Center's evaluation was:

definitely out of the guides, and we've stated that tables and the methodology is exactly as

the guides would indicate. Our report has pictures of how we measured and -- 'cause there are different ways you can measure and get different results, and so we used the way the guides indicate to measure and we believe they are accurate.

The record is clear. Two highly qualified professionals were unable to reproduce Dr. Young's findings of an eleven percent (11%) whole-body impairment. Mr. Byrd and Mr. Garretson performed extensive testing and research to assign the claimant a five percent (5%) rating and testified to their reasoning. These same efforts are not found in Dr. Young's records. Dr. Young provided no indication of why or how he came to his conclusion based on the *Guides*, and taking all records into account, his findings are unreliable. For these reasons, we should rely on the assessment by Mr. Byrd and Mr. Garretson and limit the claimant to a five percent (5%) permanent impairment rating.

There is no proof in the record of the method used by Dr. Young to calculate his rating other than his self-serving statement that he relied on the *Guides*. This is no proof he calculated the ratings correctly. Without proof of how he calculated his rating it would be speculation for the Commission to accept it, just because he was the treating physician. The only proof in the record of a rating that was correctly and carefully calculated was the five percent (5%) rating assessed by Functional Testing Centers, Inc. The only reliable rating is the five percent (5%) rating.

Accordingly, for the reasons set forth above, I must dissent.

MICHAEL R. MAYTON, Commissioner