

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC NO. H102239**

SANDRA K. SCOTT, EMPLOYEE	CLAIMANT
ARK. ENT. FOR THE DEV. DISABLED, SELF-INSURED EMPLOYER	RESPONDENT
RISK MGMT. RESOURCES, THIRD-PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED NOVEMBER 29, 2021

Hearing before Administrative Law Judge O. Milton Fine II on September 23, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 23, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on June 21, 2021. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. Following an addition of Stipulation No. 4 at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employer/employee/carrier relationship existed at all relevant times, including January 9, 2020, when Claimant sustained a compensable injury to her left shoulder in the form of a sprain.
3. Claimant's average weekly wage of \$845.45 entitles her to compensation rates of \$563.00/\$422.00.
4. In the event that Claimant is found to be entitled to temporary total disability benefits, the parties will be able to confer and agree on the applicable dates for which she would be entitled to such benefits.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The issue concerning whether Respondents are entitled to an offset was withdrawn, leaving the following to be litigated:

1. Whether Claimant sustained a compensable injury by specific incident in the form of a torn left rotator cuff.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.
4. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that on January 9, 2020, she injured her left shoulder in the scope and course of employment when she was trying to get into the vehicle.
2. Respondents initially accepted the claim as compensable and sent her to Concentra for treatment.
3. Claimant was diagnosed as having a sprain of the left shoulder and was sent back to work at full duty on January 17, 2020.
4. Respondents have denied the claim.
5. Claimant was forced to obtain treatment on her own and went to see Dr. Michael Hussey. Dr. Hussey ordered an MRI, which revealed a massive rotator cuff tear.
6. Claimant underwent surgery to repair the rotator cuff tear in December of 2020.
7. Claimant contends she sustained a compensable left shoulder injury in the scope and course of employment; and that she is entitled to medical benefits, temporary total disability benefits, and a controverted attorney's fee.
8. All other issues are reserved.

Respondents:

1. Respondents contend that all appropriate benefits have been paid with regard to this matter.

2. Claimant was released to return to work in a full duty capacity on January 17, 2020, and no permanent impairment was assigned to this matter.
3. Claimant had no complaints of problems with her shoulder for 164 days.
4. Claimant continued to work in a full-duty capacity during that timeframe.
5. Claimant had medical treatment during that time and did not mention any issues with her shoulder.
6. In light of this, it is Respondents' position that Claimant's request for medical treatment at this juncture is not reasonable and necessary.
7. The claim was not formally denied until November 13, 2020.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the hearing witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she sustained a compensable left shoulder injury by specific incident in the form of a rotator cuff tear.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment of her left rotator cuff tear.

5. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits.
6. Claimant has not proven by a preponderance of the evidence that she is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CASE IN CHIEF

Summary of Evidence

The two hearing witnesses were Claimant and Shendala Thomas.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of her medical records, consisting of three abstract/index pages and 49 numbered pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 19 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of one index page and 13 numbered pages thereafter.

Testimony. Claimant, who is 59 years old and has a graduate equivalency degree, testified that she went to work for Respondent Arkansas Enterprises for the Developmentally Disabled ("AEDD") in 2007. There, she performed two job functions: (1) furnishing transportation to and from AEDD to her clients; and (2) providing instruction to them.

Asked to describe what happened on January 9, 2020, Claimant related that AEDD employee Veronica Rancifer asked her to drive to Hot Springs to pick up some product for the clients. Such errands are a normal occurrence there. The following exchange took place on direct examination:

Q. So what happened when you did that?

A. Well, when I—I got in the truck, the company truck, and realized there wasn't enough gas for me to go to Hot Springs and come back. So I stopped at the Exxon right down the street. So I got off to fill it up. When I got ready to get back up on the truck, my foot slipped off. And to keep from hitting—from my body hitting the ground, I just grabbed hold of the hand bar and that's what jerked my shoulder.

Q. Okay. Was that your left shoulder?

A. Left shoulder.

Q. Okay. After it happened, what did you do?

A. I thought it was going to be okay. I just went on to Hot Springs and came back. Didn't realize that it was a little bit more than just, you know, what I thought it was.

Q. Okay.

A. Because it was still—it was—I was in a lot of pain, so I reported it to the director.

Q. You reported it to Reginald Johnson?

A. Yes, ma'am.

Respondents furnished Claimant with medical treatment for her left shoulder. They sent her to Concentra Clinic. There, she was given physical therapy. Asked if this treatment helped, she replied: "At the moment, for a little while." On January 12, 2020, 12 days after the incident in question, Concentra released Claimant to full duty. In describing the condition of her shoulder as of that date, she stated: "I mean it was—it wasn't hurting as bad, but it wasn't completely well either." She voiced her concerns about her shoulder to Johnson. But no additional treatment was offered.

According to Claimant, even though she was not involved in any other accidents after January 5, 2020, or sustained any other injuries to her left shoulder, her shoulder

condition worsened. She denied having any pre-existing problems as well. In June 2020, nearly six months after the hand bar incident, she saw Laura Sanders, a nurse practitioner, for a routine checkup. In the course of that visit, when she was asked if she had any new problems, she informed Sanders that she was having trouble with her left shoulder and that it was keeping her from sleeping. Claimant was referred to Dr. Michael Hussey. He had her undergo an MRI of the shoulder, which revealed a massive rotator cuff tear. Just two days before the MRI, she passed her D.O.T. physical. On December 4, 2020, Hussey performed surgery. While the operation gave her some relief, she added: “It’s—I mean, it’s okay. I mean, it still hurts. I can only lift it so far.”

The following exchange occurred on direct examination:

Q. Now, Dr. Hussey opined that he didn’t believe your injury was sustained at work?

A. He did.

Q. Do you agree with that?

A. I do not.

Q. Why?

A. Because I’ve never had a problem with my—I’ve never had problems with my shoulder until that day.

Q. Okay. And even though you had this MRI that showed a massive tear, you were able to continue to work?

A. Yes.

Claimant acknowledged that her driving job at AEDD was very physically demanding. She picked up the clients in the AEDD vehicle in the morning, and then returned them home in the evening. This required that she turn the steering wheel of

the vehicle a lot, and that she push clients up a ramp. As for the instruction portion of her workday, Claimant related: “Sometimes I would have to pick up heavy things, if I don’t have anybody in my area to do it for me. I would have to pick up like boxes that might weigh 20, 30 pounds, you know.” She worked with AEDD clients to pack things into boxes.

The following exchange took place on cross-examination:

Q. You told me in your deposition that after the therapy was done you felt better, and it was a few months before your shoulder acted up. Is that right?

A. Yes, ma’am.

Q. They released you at Concentra January 17th and you went back to your regular job. Correct?

A. Correct.

Q. The next report we have that your attorney introduced where you mentioned your shoulder is June 30th. Does that sound right?

A. Yes, ma’am.

Q. And I asked you in your deposition, “Did you have any trouble at all from the full-duty release until June?” And your response was, “No, ma’am. It just started back to hurting in June.” Is that right?

A. Yes, ma’am.

Q. And you were doing your regular job that whole time?

A. Yes, ma’am.

Q. Both being driver and instructor?

A. Yes, ma’am.

Questioned about her visits to Sanders, Claimant agreed that she saw her on February 25, 2020, and March 31, 2020. While Claimant was not sure if she mentioned

her left shoulder to the nurse practitioner during the course of her visits, she stated that she would not dispute her treatment records from those dates if they do not reference the shoulder. As for the report of her June 30, 2020, visit to Sanders, the record correctly reflects that she reported at that time that she had been having left shoulder pain for two months, and that she denied suffering any previous or recent trauma.

However, under questioning by the Commission, Claimant reiterated that she was not having any left shoulder trouble after the release by Concentra until around the time of the visit to Sanders on June 30, 2020. Shown the record of her visit to Sanders on that date, which reflects that she presented with left shoulder pain that had been occurring for two months, Claimant did not think that was accurate. She testified that while she was not sure exactly how long she had been having the pain at that point, it “started back to bothering” her sometime in June 2020.

Notwithstanding the foregoing, the following exchange occurred when Claimant was questioned further by her attorney:

Q. [A]fter your therapy at Concentra, did the pain ever completely go away?

A. No, ma’am.

Q. Okay. Was it—

A. It was just bearable.

Q. It was bearable?

A. Yes, ma’am.

Q. Okay. And when did it become intolerable?

A. I would say when I went to the doctor.

Q. Okay. So around June—

A. Yes, ma'am.

Q. --is when it became intolerable?

A. About the end of June.

Yet despite this, Claimant stated that she testified truthfully in her deposition when she stated that she had no trouble at all from the time of the Concentra release until June 2020, when “[i]t just started back to hurting”

Called by Respondents, Shendala Thomas testified that she has worked for AEDD for 19 years as a service coordinator. She stated that she saw Claimant on a regular basis at AEDD between January 17, 2020, and the end of June of that year. During that period, according to Thomas, Claimant did not complain about her shoulder; and her job did not have to be modified in any way.

On cross-examination, Thomas explained that Claimant is not a “complainer”: “She works hard.” Claimant passed her D.O.T. physical even though she underwent an MRI around the same time that showed a massive rotator cuff tear. She worked at AEDD until November or December of 2020.

Medical Records. The medical records in evidence, contained in Claimant’s Exhibit 1 and Respondents’ Exhibit 1, reflect the following:

On January 9, 2020, Claimant presented to Dr. Scott Carle at Concentra with left shoulder pain and weakness. She reported that four hours earlier, she grabbed the support bar in order to enter a truck and felt anterior shoulder pain. X-rays were negative. Claimant was assessed as having a left shoulder sprain and was prescribed Meloxicam and physical therapy. Carle assigned her a 15-pound lifting restriction, and restricted her from driving a company vehicle and from gripping/squeezing/pinching with

her left upper extremity. On January 13, 2020, the restrictions were modified to no lifting of more than 25 pounds, no driving of a company vehicle, and no reaching above shoulder height with the left upper extremity. On January 17, 2020, after therapy visits, Dr. Carle found Claimant to be at maximum medical improvement and released her with no restrictions. His examination notes from that visit reflect that Claimant had her left shoulder had full range of motion with no tenderness.

In visits to Sanders at CHI St. Vincent on February 25, 2020, and March 31, 2020, Claimant made no mention of any left shoulder pain or other problems. Then, on June 30, 2020, she presented to Sanders with, inter alia, left shoulder pain. On that occasion, she reported that she had been having the pain for two months, and that it was worsening and of such severity at times that she could not lie on that shoulder or perform any lifting. Sanders referred her to an orthopedic surgeon.

When Claimant saw Dr. Hussey on August 3, 2020, she told him that her left shoulder pain began over eight months ago when fell while getting up into a truck, but that it had become significantly worse the last two months. She attributed her shoulder problems to an incident eight months prior when she fell while attempting to get into a truck. The report notes:

4 view x-ray left shoulder demonstrate[s] decreased acromiohumeral distance consistent with Hamada grade 2 cuff tear arthropathy. Moderate redness of the AC joint and small inferior humeral head osteophyte seen consistent with early glenohumeral arthritis.

Hussey assessed her as having a rotator cuff strain versus tear, bursitis and biceps tendon pathology, and ordered an MRI of the left shoulder.

The MRI, which took place on August 13, 2020, revealed a full-thickness, nearly full-width tear of the supraspinatus tendon; a partial-thickness, partial-width articular

surface tear of the infraspinatus tendon; a degenerative tear of the superior, posterior, and inferior labrum; and high-grade glenohumeral chondromalacia. Hussey reviewed the MRI on August 17, 2020, and also noted that it showed that the long head biceps tendon appeared to be ruptured and retracted beyond the field of view. He assessed her as having: (1) a large, full-thickness rotator cuff tear; (2) impingement syndrome; (3) bursitis; and (4) a long head biceps tendon rupture.

Dr. Hussey on October 11, 2020, write Leolani Marrs at JMS Consulting LLC, stating:

I received a letter from you dated September 24, 2020 regarding your client and my patient Sandra Scott and her claimed work-related injury that occurred on 1/9/2020. In your letter, you have provided a brief description of the events that have transpired from the date of Ms. Scott's injury until her most recent visit with me. You have also included medical records from her PCP that have occurred since the date of the claimed injury until her most recent follow-up with her PCP on July 28, 2020.

Based on the medical records currently available to me for review, Ms. Scott presented to her PCP on 2/27/2020, over 2 months after her work-related injury, but did not claim any pain or dysfunction in her left shoulder at that visit. She had another subsequent visit with her PCP on 3/31/2020 and again made no mention of pain or dysfunction in her left shoulder. It was not until about 7 months later that she finally reported left shoulder pain issues to her PCP on the 7/28/2020¹ visit and a referral was made at that point for evaluation and treatment of her acute left shoulder pain.

I first saw Ms. Scott in my clinic as a new patient under her private insurance on 8/3/2020, and at that visit she claimed that she had an injury getting up into a work truck while on the job approximately 8 months prior to her presentation to my clinic that the pain had gotten worse over the last 2 months. At that point I ordered an MRI scan of the shoulder which demonstrated a large rotator cuff tear as well as a biceps tendon rupture. A recommendation for rotator cuff repair was recommended to her at that time.

¹The medical records in evidence do not reference a visit on this date. Instead, this appears to be an error; the date in question should be June 30, 2020. See *infra*.

In the records available for my review and the letter from Leolani Marrs, RN state that she was seen the same day of her injury on 1/9/2020 at Concentra medical facility where x-rays of the left shoulder reported only degenerative changes. According to this letter, she was provided a prescription for Mobic and a Toradol injection and completed four formal therapy sessions. The letter also states that on 1/17/2020, Dr. Carle confirmed full range of motion of her left shoulder and full strength and Ms. Scott denied any pain or tenderness and she was released to full duty work status at that time.

Based on these new records available to me, as well as my own records and the recent MRI scan, it is my medical opinion, that if Ms. Scott did indeed sustain the left shoulder injuries that are present on the MRI scan during the 1/9/2020 work accident, that she would have continued to be symptomatic with pain and dysfunction in the left shoulder even after the 1/17/2020 clinic visit. An injury of the magnitude seen on her MRI scan, would not recover in the period of just 10 days and with nonoperative treatment alone in my opinion. In my opinion, it would be near impossible for a patient to deny any pain or tenderness and have full range of motion and strength of the shoulder if she had sustained large full-thickness rotator cuff tears that are currently seen on her MRI scan. Again, on the 2/27/2020 visit to her PCP, Ms. Scott made no mention of any pain or dysfunction to her left shoulder, which in my opinion would be exceedingly uncommon if she had indeed sustained the large full-thickness rotator cuff tears that are present on MRI scan now during the 1/9/2020 work accident. In review of the clinic note to her PCP that took place on 6/30/2020, the PCP documents that the patient denied any previous or recent trauma or surgery to the left shoulder. The patient reports onset of pain 2 months prior to her visit which would have likely started around April or May preceding that clinic visit. Therefore, based on this new information available to me, it is my medical opinion that my surgical recommendation to Ms. Scott for her left shoulder is less than 51%² directly related to the mechanism of injury causing left shoulder pain reported on 1/9/2020.

All statements given above are within a reasonable degree of medical certainty.

²This is the “major cause” standard, defined in Ark. Code Ann. § 11-9-102(14) (Repl. 2012). The injury at issue here is one alleged to have occurred in a specific incident. Claimant does not have to show that her left shoulder injury was the major cause of her disability or need for treatment in the case of an alleged specific incident. *See supra*.

On December 4, 2020, Dr. Hussey operated on Claimant's left shoulder, performing the following: (1) an arthroscopic rotator cuff repair; (2) an arthroscopic long head biceps tenodesis; (3) an arthroscopic subacromial decompression with partial acromioplasty; and (4) an arthroscopic extensive debridement of the shoulder joint to include debridement of the degenerative labral fraying, a partial synovectomy, and a subacromial/deltoid bursectomy. The doctor's post-operative diagnoses were: (1) massive rotator cuff tear; (2) impingement syndrome; (3) subacromial/subdeltoid bursitis; (4) high-grade partial-thickness long head biceps tendon tear; (5) glenoid degenerative labral fraying; and (6) glenohumeral joint proliferative synovitis.

ADJUDICATION

A. Whether Claimant sustained a compensable left shoulder injury.

Introduction. As the parties have stipulated, Claimant on January 9, 2020, sustained a compensable injury in the form of a left shoulder sprain. In this action, Claimant has contended that as a result of that same specific incident, she also sustained a compensable injury in the form of a torn left rotator cuff. Respondents deny that this alleged injury is compensable.

Standards. Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injuries, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those

findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Discussion. In her testimony, Claimant related that on January 9, 2020, she was working for Respondent AEDD, driving a company truck to Hot Springs in order to pick up some product for her clients. However, because the truck was low on fuel, she had to stop to gas it up. After completing the refueling, Claimant attempted to reenter the truck. But her foot slipped. To prevent from striking the ground, she grabbed ahold of the bar on the vehicle. As a result, she “jerked” her left shoulder.

In examining the elements of compensability cited *supra*, there is no question that this specific incident (i.e., the falling and grabbing of the bar after refueling the company truck) occurred as described. Moreover, this incident involved the performance of employment services. Looking at the matter from the other end, it is also clear that Claimant eventually was found to have objective findings in her left shoulder in the form of, inter alia, a rotator cuff tear (found on the August 13, 2020, MRI and confirmed in the December 4, 2020, surgery). This objective finding certainly caused internal or external physical harm to Claimant's body and required medical services.

What remains to be determined, however, is whether the rotator cuff tear is causally related to the January 9, 2020, work-related incident. To show that this particular injury arose out of her employment, Claimant must show that a causal connection existed between it and her employment. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "in the course of employment" when it occurs "within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly." *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997); *Pilgrim's Pride Corp. v. Calderera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Sartor, supra*.

The medical records in evidence, traced above, show that Claimant began treating for her left shoulder shortly after the January 9, 2020, incident. She went to Concentra on three occasions and underwent four sessions of physical therapy. On

January 17, 2020, Dr. Carle released her to full duty, finding that she had reached maximum medical improvement. Thereafter, until June 30, 2020—a period of over five months—Claimant did not undergo any treatment for her left shoulder. On June 30, 2020, per Sanders’s report, Claimant told her that she had been having shoulder pain for two months. At the hearing, Claimant testified that this was an inaccurate timeline; she stated that her pain began sometime in June.

A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, I do not find that this lapse or delay to be reasonable in length. I credit Dr. Carle’s opinion that Claimant reached maximum medical improvement regarding her left shoulder as of January 17, 2020. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

In turn, I credit the opinion of Dr. Hussey, Claimant’s surgeon, that the rotator cuff tear that was documented by the MRI “would have continued to be symptomatic with pain and dysfunction in the left shoulder even after” Dr. Carle’s release.” I also credit the following:

[I]t would be near impossible for a patient to deny any pain or tenderness and have full range of motion and strength of the shoulder if she had sustained large full-thickness rotator cuff tears . . . seen on her MRI scan. Again, on the 2/27/2020 visit to her PCP, Ms. Scott made no mention of

any pain or dysfunction to her left shoulder, which in my opinion would be exceedingly uncommon if she had indeed sustained the large full-thickness rotator cuff tears that are present on MRI scan now during the 1/9/2020 work accident.

In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Again, I credit Dr. Hussey's opinions as outlined above. In so doing, I am well aware that Claimant passed her D.O.T. examination just prior to undergoing the MRI that documented the rotator cuff tear. But the following testimony that she gave, quoted above, bears repeating here:

- Q. And I asked you in your deposition, "Did you have any trouble at all from the full-duty release until June?" And your response was, "No, ma'am. It just started back to hurting in June." Is that right?
- A. Yes, ma'am.

I find Claimant to be very sincere in her belief that truck handle-grabbing incident at the fueling station caused her left rotator cuff tear. But any belief, no matter how sincere, is not a substitute for credible evidence. *Graham v. Jenkins Engineering*, 2004 AR Wrk. Comp. LEXIS 79, Claim No. F112391 (Full Commission Opinion filed March 12, 2004). In light of the foregoing evidence, only through speculation and conjecture could I find that Claimant's work-related incident at the gas station caused her rotator cuff tear. However, I cannot engage in speculation and conjecture. See *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). In sum, I am compelled to find, based on the foregoing, that Claimant has not proven by a preponderance of the evidence that her left rotator cuff tear is compensable.

B. Whether Claimant is entitled to reasonable and necessary medical treatment.

Introduction. Claimant has contended that she is entitled to reasonable and necessary medical treatment of her alleged compensable left rotator cuff tear. Respondents disagree.

Standards. Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*;

Geo Specialty Chem. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

Discussion. The evidence shows that Respondents covered all of the treatment of Claimant's stipulated compensable left shoulder sprain, which was comprised of therapy and treatment at Concentra that concluded on January 17, 2020. Any treatment she received thereafter for her left shoulder was not causally related to the stipulated compensable injury. *See supra; Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. To the extent that such treatment was related to her left rotator cuff tear—which the treatment of Dr. Hussey (including the surgery) certainly was—Claimant has not met her burden of proving this condition to be compensable. Therefore, she has not proven by a preponderance of the evidence that Respondents are responsible for said treatment.

C. Whether Claimant is entitled to temporary total disability benefits.

Introduction. Claimant has also alleged that she is entitled to temporary total disability benefits. Respondents have disputed this.

Standards. The stipulated compensable injury (a left shoulder sprain) is an unscheduled one. See Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Discussion. At the hearing, Claimant testified that she continued to work after her January 9, 2020, left shoulder sprain until December 2, 2020, two days before the surgery on her left rotator cuff tear (which, again, has not been found to be compensable) took place. However, the evidence preponderates that Claimant reached the end of her healing period regarding her stipulated compensable left shoulder sprain much earlier: on January 17, 2020, when she was found by Dr. Carle to be at maximum medical improvement and released from treatment. Consequently, she has not met her burden of proving her entitlement to this particular type of workers' compensation benefits.

D. Whether Claimant is entitled to a controverted attorney's fee.

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). While Respondents have controverted Claimant's claim for temporary total disability benefits—Claimant has not established her entitlement to these or any other type of indemnity benefits. Her counsel is thus not entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CONCLUSION

Judgment is hereby rendered in accordance with the findings of fact and conclusions of law set forth above.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge