

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H305020

KLARESSA D. THOMPSON, Employee	CLAIMANT
NIDEC MOTOR CORPORATION, Employer	RESPONDENT
TRAVELERS INSURANCE CO., Carrier	RESPONDENT

OPINION FILED JANUARY 15, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 2, 2024, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on January 10, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on July 24, 2023.

Subsequent to the hearing, the parties agreed to stipulate that claimant earned an average weekly wage of \$727.00 which would entitle her to compensation at the rates of

\$485.00 for total disability benefits and \$364.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's right shoulder on July 24, 2023.
2. Related medical.
3. Temporary total disability benefits from July 25, 2023 through a date yet to be determined.
4. Attorney's fee.

The claimant contends she sustained a compensable injury to her right shoulder on July 24, 2023. She contends she is entitled to temporary total disability benefits from on or about July 25, 2023 until a date yet to be determined and reasonably necessary medical treatment. Claimant contends that her attorney is entitled to an appropriate attorney's fee.

The respondents contend that the claimant did not sustain a compensable injury within the course and scope of her employment.

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

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on January 10, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$727.00 which would entitle her to compensation at the rates of \$485.00 for total disability benefits and \$364.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on July 24, 2023.

4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury.

FACTUAL BACKGROUND

At the time of the hearing the claimant was a 31-year-old woman who began working for respondent in September 2020. She worked at a job that required her to remove motor coils that had been wound in a machine. Claimant testified that on July 24, 2023, she was lifting a very large coil off of a machine when she felt a sharp pain in her right shoulder. Claimant testified that she was unable to continue lifting the coils and reported this incident.

After reporting the injury, claimant was sent by Samuel Norman, Safety and IT Manager for respondent, to see James McWilliams, ANP. Claimant was seen by McWilliams that day and he initially noted that claimant was six to eight weeks pregnant. He diagnosed claimant's right shoulder condition as impingement syndrome and

recommended an MRI scan. In addition, he also prescribed medications; the use of a sling; ice/cold packs; and rest. McWilliams also indicated that claimant should refrain from working for ten days.

McWilliams' note contains an addendum dated July 25, 2023, in which he indicates that he was informed by respondent that it would be able to accommodate claimant with light duty work without the use of her injured right arm. McWilliams indicated that he was consenting to that change as long as claimant rests the right arm in a sling. Claimant testified that she did return to work for respondent and was placed in a job using her left hand to clean hand railings and machinery. Claimant testified that she was physically able to perform this job for only five days before she was terminated by the respondent. Initially, claimant testified that she was not physically able to perform this job, but subsequently indicated that she became sick from the smell of the cleaning solution. Claimant has not worked for respondent or any other employer since that time.

Claimant returned to McWilliams on August 1, 2023 and he noted that claimant's pregnancy limited her diagnostic and treatment options. He again diagnosed claimant's condition as right shoulder impingement syndrome and recommended an MRI scan. In a letter dated October 12, 2023, McWilliams indicated that claimant's symptoms of shoulder impingement could be caused by a variety of conditions. He again noted that her pregnancy was complicating further evaluation and that without the benefit of imaging the only recourse would be an empirical diagnosis by a specialist or by waiting out the pregnancy until imaging was determined to be safe.

On November 15, 2023, claimant was evaluated by Dr. Steven Forest, her primary care physician. Dr. Forest assessed claimant's condition as right supraspinatus

tenosynovitis and right shoulder pain. He referred claimant to Dr. Kari Cordell, an orthopedic surgeon in Hot Springs, whose initial evaluation occurred on January 11, 2024. Dr. Cordell assessed claimant's condition as right shoulder pain and adhesive capsulitis of the right shoulder. She recommended that claimant discontinue the use of her sling and referred claimant to physical therapy for adhesive capsulitis.

Claimant's initial physical therapy examination occurred on May 20, 2024, and she continued to receive physical therapy for a period of time. On June 7, 2024, claimant finally under an MRI scan of her right shoulder. The MRI report contains the following notation:

IMPRESSION:

Tendinosis of the supraspinatus tendon, without evidence of definite rotator cuff tear.

The physical therapist's note of August 13, 2024, indicates that claimant had reached a plateau with respect to physical therapy progress. The report indicates that claimant had not made any functional improvements and it was recommended that claimant be discharged to home exercises with a follow-up to the referring provider.

Claimant returned to Dr. Cordell on August 20, 2024, who indicated that claimant had been diagnosed with right shoulder adhesive capsulitis and that the MRI scan showed tendinosis. Dr. Cordell's report indicates that claimant elected to proceed with an injection, continue therapy, and return as needed. Claimant has not received medical treatment since that evaluation.

Claimant has filed this claim contending that she suffered a compensable injury to her right shoulder on July 24, 2023. She requests payment of related medical, temporary

total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her right shoulder while lifting a coil on July 24, 2023. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof. First, I find based on claimant's testimony as well as the remaining evidence presented that claimant has proven that her injury arose out of and in the course of her employment and that the injury was caused by a specific incident identifiable by time and place of occurrence. Claimant testified about her injury and indicated that she reported the injury to respondent who sent her to McWilliams for medical treatment that same day. McWilliams' medical report contains a history of injury consistent with claimant's testimony.

I also find that claimant's injury caused internal or external harm to her body that required medical services or resulted in disability. As a result of claimant's shoulder

complaints, she has been treated with medication, the use of a sling, physical therapy, and an injection.

The primary issue in this case involves whether claimant has offered medical evidence supported by objective findings establishing an injury. A.C.A. §11-9-102(4)(D) states:

A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section.

Subsection (16) of A.C.A. §11-9-102(16)(A)(i) defines “objective findings” as those findings which cannot come under the voluntary control of the patient. Respondent contends that in this particular case there are no objective findings establishing an injury. On the other hand, claimant contends that the physical therapy records show that passive and active range of motion studies were done and that the passive range of motion findings constitute an objective finding. Respondent counters that passive and active range of motion is relevant to permanency, not compensability.

The issue of objective findings and passive versus active range of motion was discussed by the Arkansas Court of Appeals in *Hayes v. Wal-Mart Stores*, 71 Ark. App. 207, 29 S.W. 3d 751 (2000). In that particular case, the Court of Appeals determined that passive range of motion evaluations performed by an examiner did not come under the voluntary control of the patient; therefore, they constituted objective findings pursuant to A.C.A. §11-9-102(16)(A)(i). Specifically, the Court stated:

[T]he conclusion is inescapable that the tests performed on appellant were passive range-of-motion evaluations performed by the examiner and not under the voluntary control of the appellant. Under these

circumstances, we hold that the Commission's opinion displays no rational basis for its finding that the range-of-motion tests performed on appellant did not constitute objective findings under Ark. Code Ann. §11-9-102(16)(A)(i).

While respondent contends that these objective findings are only relevant with respect to permanency, I note that the Arkansas Court of Appeals specifically found that passive range of motion testing constituted an objective finding under A.C.A. §11-9-102(16)(A)(i). No distinction was made as to compensability versus permanency. Given the decision in *Hayes* that a passive range of motion evaluation constitutes an objective finding, I find that claimant has satisfied the remaining element of compensability. Therefore, I find that the passive range of motion evaluation performed by the physical therapist on the claimant constitutes an objective finding.

Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on July 24, 2023.

Having found that claimant suffered a compensable injury to her right shoulder, I find that respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's right shoulder injury.

The next issue for consideration involves claimant's request for temporary total disability benefits. Claimant contends that she is entitled to temporary total disability benefits beginning July 25, 2023, and continuing through a date yet to be determined. Claimant's injury to her right shoulder is a non-scheduled injury. In order to be entitled to compensation benefits for temporary total disability benefits, claimant has the burden of

proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). Even if I were to find that claimant has remained within her healing period since the date of her injury, I do not find that claimant has proven by a preponderance of the evidence that she has suffered a total incapacity to earn wages.

As previously noted, when claimant initially saw McWilliams on July 24, 2023, he took claimant off work for 10 days. However, two days later he authored an addendum indicating that he had been informed by respondent that it had work available which claimant could perform without using her injured right arm. McWilliams agreed to this light-duty work and claimant did return to work for respondent for approximately five days. As previously noted, claimant initially indicated that she was not physically capable of performing this work, and subsequently indicated that she could no longer perform the work due to becoming sick as a result of the cleaning solution. According to Norman, claimant was terminated after that date because she broke safety protocols with respect to the lifting of the coil as well as failing to report getting sick from the cleaning solution which claimant had previously used on a daily basis.

Irregardless, McWilliams initially took claimant off work for 10 days before agreeing to allow her to return to work at a one-handed job. There is no evidence that McWilliams or any other treating physician has taken the claimant off work since that date or placed any work restriction on her ability to return to work. According to claimant's testimony, she obtained a high school diploma in 2011. She is self-taught with respect to computer training and has taken an online course through a school in Washington state for medical

transcription and coding. Claimant also performed some self-employment work as a photographer and artist. Claimant testified that she previously worked at an oil field construction company working in quality control handling paperwork, book work, data entry, and computer work. Claimant testified that she performed this job for four years and used a laptop and traveled to various construction sites to perform her work. Claimant acknowledged that she had not been taken off work by any employer and that she did not have any problem reading or writing. She also acknowledged that she has rebranded her photography website in hopes of trying to obtain business. Specifically, claimant testified as follows:

Q What types of things have you looked to doing from home?

A Data entry.

Q Okay. And is that something you could do?

A Yes, sir, it would be.

Q Okay. Now, I believe you indicated in some questioning to your attorney that you didn't believe you were physically able to work since this event on July the 24th of '23?

A That is correct.

Q Okay. But you are not wearing a sling or any kind of brace at the present time?

A That is correct.

Q And you've already told us just a minute ago you could do data entry and computer entry and that kind of thing?

A That is not physical work.

Q Sure. But it's work and it's employment that you could do; correct?

A Yes, sir.

Thus, by claimant's own admission she is capable of performing data entry work and according to her own testimony she has previously performed data entry work for an oil field construction company for four years.

While not working, claimant is currently taking care of four children with the ages of 10, 8, 3, and nine months. In addition, claimant's husband travels for his work, and as a result, she is responsible for taking care of her children, her home, and also takes care of various farm animals including goats, rabbits, and chickens. While claimant testified that the older children do most of the work involving the farm animals, physical therapist notes indicate that claimant was also performing these duties.

July 17, 2024 physical therapist note:

Pt states she has to take care of farm animals, and 4 kids at home currently.

July 23, 2024 physical therapy note:

Pt reports she is doing fair today. Pt states she had to do a lot of laundry yesterday and had to take care of her goats.

August 13, 2024 physical therapy note:

Pt states she has daily "farm" chores including chickens/goats/rabbits, and keeping up with her baby, toddler, and older kids throughout her day, while her husband works out of state.

Based upon the foregoing evidence, I find that claimant has failed to meet her

burden of proving by a preponderance of the evidence that she has suffered a total incapacity to earn wages for a sufficient time to entitle her to compensation. As previously noted, McWilliams initially took claimant off work for ten days before permitting her to return to work at one-handed duty for the respondent. Claimant apparently performed this job for five days before she failed to show up for work and was terminated. No treating physician has taken claimant off work since that time.

Furthermore, claimant has performed office work in the form of data entry and admitted that she was capable of performing that type of employment. However, claimant is currently staying at home taking care of her four children and various farm animals while her husband travels for work.

Based upon the evidence presented, I find that claimant has failed to prove by a preponderance of the evidence that she has suffered a total incapacity to earn wages for a period of time which would entitle her to payment for temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on July 24, 2023. Respondent is liable for payment of all reasonable and necessary medical treatment provided in

connection with claimant's compensable injury. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), no attorney fee has been awarded.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$687.75.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE