

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: H002130**

THERESA K. TRESS, Employee	CLAIMANT
DOLLAR TREE STORES, INC., Employer	RESPONDENT
SAFETY NATIONAL CASUALTY CORPORATION, Carrier	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., TPA	RESPONDENT

OPINION AND ORDER FILED APRIL 6, 2021

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Craighead County, Arkansas.

Counsel for the Claimant: HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a hearing on January 8, 2021, before the undersigned Administrative Law Judge. A Prehearing Order was entered in this matter by the undersigned Administrative Law Judge on October 8, 2020, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim; and,
- (2) The employee/employer/carrier relationship existed at all relevant times, inclusive of December 8, 2018, and December 11, 2018, on one of which dates the Claimant sustained compensable cervical and left shoulder injuries for which certain benefits have been paid.

The Prehearing Order of October 8, 2020, also reflected the issues to be adjudicated as follows:

- (1) Whether the Claimant is entitled to additional benefits in relation

to compensable neck and left shoulder injuries sustained on either December 8, 2018, or December 11, 2018; and,

(2) Attorney's fees associated with controverted indemnity benefits.

All other issues were reserved. During preliminary discussions, the Commission's Prehearing Order of October 8, 2020, was introduced into evidence without objection as "Commission's Exhibit No.1," with it noted on the record that amendments thereto would be deemed included therein, consisting of the parties' hearing stipulations that the Claimant's average weekly wage on either date of injury was \$261.00 with corresponding compensation rates of \$174.00 for both temporary total and permanent partial disability benefits, and that the Claimant also sought temporary total disability benefits from January 24, 2020, through a date yet to be determined. (TR 9; 15; 51) In addition, the parties' respective exhibits were introduced into evidence with no objections. (TR 8-9; 13-14) Finally, the parties also agreed upon December 11, 2018, as the correct date of injury. (TR 10; 13)

Findings of Fact and Conclusions of Law

(1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim and the stipulations submitted by the parties are accepted as facts herein;

(2) The Claimant has failed to prove, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical care in relation to her compensable left shoulder injury of December 11, 2018; and,

(3) The Claimant has proven, by a preponderance of the credible evidence, that she is entitled to additional reasonably necessary medical care in relation to her compensable neck/cervical injury of December 11, 2018, following the last payment of compensation for such on April 15, 2020, and inclusive of the surgery performed by Dr. Abraham on September 8, 2020, medical and other related expenses associated therewith, temporary total disability benefits from September 8, 2020, through a date yet to be determined, and attorney's fees with respect to controverted indemnity benefits.

Applicable Law

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3).

In addition, Ark. Code Ann. §11-9-508(a)(1) provides that:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

Further, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 246 (Ark. 1981)

Also, it is long-settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133 (2017). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant's credibility. (See *Yates, supra*. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant's testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

Testimony

Theresa K. Tress

At the outset of her testimony, and upon inquiry by the undersigned Administrative Law Judge, the Claimant conceded that she had consumed a dose of Soma approximately four hours prior to the hearing but had not taken any Hydrocodone. Given the time frame involved, and upon assurance by the Claimant and her Counsel that the former was able to proceed, the parties were allowed to do so. (TR 17-18)

The Claimant, who was just short of 65 years-old at the time of the hearing, testified that she began working for Respondent Employer as a cashier approximately three years ago and was subsequently promoted to Associate Manager and then Freight Manager. (TR 19-21) On December 11, 2018, as she was overseeing a delivery, the driver essentially attempted to unload too much freight at once. (TR 22-23) According to the Claimant, this caused some of the freight to strike her and knock her down, at which point a co-worker arrived and said “You got to stop now ‘cause you done buried her alive.” (TR 23)

Despite experiencing pain thereafter in her neck and left shoulder, the Claimant continued with the delivery and then reported the incident to her supervisor, “Deborah.” (TR 24) In turn, the Respondents arranged to have the Claimant seen by “Dr. Barnes”; however, the appointment apparently could not take place until January 3, 2019. (TR 24-25) Dr. Barnes’ office provided conservative care, which was allegedly unhelpful, and recommended a neurological evaluation following radiographic studies – including an MRI that apparently was ordered in April, 2019, but not approved or performed until September, 2019. (TR 26)

Further according to the Claimant, she heard nothing further from her assigned adjuster (presumably following the MRI) and ultimately returned to Dr. Barnes’ clinic at which point she

was referred for surgical evaluation. Eventually, the Claimant thereafter presented to Dr. Abraham on January 22, 2020. (TR 27; see also TR 30) During the interim, the Claimant continued working for Respondent Employer and was not sent for any treatment during the period between October, 2019, and January, 2020. (TR 27)

Evidently, Dr. Abraham felt that the Claimant should undergo an MRI on her left shoulder which she eventually obtained. (TR 30) The Claimant agreed that the study was “unremarkable,” but did demonstrate osteoarthritis. (*Id.*) Consequently, upon referral from Dr. Abraham’s office, the Claimant’s left shoulder was evaluated by Dr. Schechter. (*Id.*) The Claimant further agreed that Dr. Schechter did not recommend surgery but had offered an injection which she declined because:

He was very rude. He said, “Oh, you’re Workmans’ Comp,” and he was just down-talking me and I don’t appreciate being down-talked. I was hurting already. (TR 31)

The Claimant also agreed that Dr. Abraham recommended surgery (presumably cervical) on April 15, 2020, that such was not approved, and that an independent medical evaluation had been scheduled thereafter. (TR 32) At some point following Dr. Abraham’s denied surgical recommendation, the Claimant was assigned a nurse case manager who visited her home and to whom she provided a copy of her MRI. (TR 33) The Claimant further testified as follows:

Q: That’s okay. She got a copy of that MRI?

A: Yes, and she took it to that doctor and she called me back and she said, you know, “I can get you in to see him.” And I said, “Well, I have no transportation, and to call my lawyers to see what they say. And the next thing I heard back was that I couldn’t do it.” (TR 33-34)

Also, with further regard to the assignment of a nurse case manager to her claim and the ensuing events, the Claimant testified that:

Q: Corina Meyers. And she came to you house; is that correct?

A: Yes.

Q: And you provided her with what?

A: With a MRI disc.

Q: Okay. Is that what she was asking you for?

A: Yes.

Q: Okay. And did she ask for any other information?

A: No.

Q: Okay. So she came to your house and you gave her what she was asking for, and a later time did she contact you about another appointment?

A: Yes.

Q: With a different doctor?

A: Yes.

Q: Okay. And what did you tell her?

A: To contact my attorneys.

Q: And did you tell her you did not have transportation?

A: Yes.

Q: Did she offer you transportation?

A: No.

Q: Did she offer you any other solutions?

A: No.

Q: Okay. Were you able to go to that appointment even?

A: No.

Q: Okay. Now, you live in Jonesboro; is that correct?

A: Yes.

Q: Okay. And the doctor that they've been wanting to send you to is in Memphis; is that correct?

A: Yes.

Q: Was it even a possibility for you to get to Memphis?

A: No.

Q: Okay. And so we objected to the independent medical evaluation in Memphis; is that correct?

A: Yes.

Q: Did anybody ever contact you about going back to a doctor?

A: No. (TR 37-38)

Eventually, the Claimant proceeded with surgery provided by Dr. Abraham on September 8, 2020, and utilized her Medicare benefits in doing so. (TR 39) The Claimant testified that she was “tickled to death” post-operatively because she could move her left arm, but that she developed “shakes” upon returning home following her surgery. (*Id.*) With respect to her post-operative “shakes,” the Claimant explained that:

I do a lot of shaking a lot of times – different times, and sometimes it's so severe that I lose my whole balance and I have to – whoever's near me has to sit me down, okay? 'Cause there's nowhere to go but the floor, and I – I try to walk in my yard – I don't get far from the house because of this. And if I go to town, I have to take someone with me so I can go shopping, if I want to go shopping, but I haven't been shopping because I'm scared something's gonna happen and I don't want to be stuck out there.” (TR 40)

Upon interjection by the undersigned Administrative Law Judge, Counsel for the Claimant clarified that the Claimant's alleged “shakes” were not under consideration for purposes of the hearing conducted on January 8, 2021. (TR 41) With respect to her available transportation, the

Claimant testified that she (at least as of the date of the hearing) has a “broke down vehicle” that cannot transport her and that she relies upon her son for transportation, including her transportation to the hearing. (TR 42)

The Claimant went on to agree that she had begun FMLA leave on February 10, 2020, given that no light-duty had been offered following Dr. Abraham’s release to such in January, 2020, and that Dr. Abraham subsequently removed her from work completely on February 14, 2020. (TR 44-45) When asked about her current medications, the Claimant described Soma, “Hydros,” Duloxetine, Famotidine, and Gabapentin, and denied that she had been on any of such medications prior to her date of injury. (TR 46-47) The Claimant further denied any previous neck or left shoulder problems prior to her date of injury, but did acknowledge a previous workers’ compensation low-back injury that had occurred in either 1988 or 1989 and required surgery. (TR 49-50) Following this previous injury, which according to her testimony did not involve her neck, the Claimant began her oil-field job:

Q: Okay. And how’d you do following that surgery?

A: I did great. I mean, ‘cause I went to the oil field. Shoot, I used to do all kinds of things.

Q: So you had your oil field job after that surgery?

A: Yes.

Q: Okay.

A: I’d drive school busses and there wasn’t anything I couldn’t do. I – I think I was just marvelous. God provided for me. I can say that. (TR 50-51)

Upon cross-examination, *inter alia*, the Claimant conceded that the improvement in her ability to raise and move her left arm post-operatively had been temporary, and that “it still moves but what’s the difference is the shakes in there.” (TR 53) The Claimant further conceded that,

during her deposition, she had admitted to taking Soma for muscle relaxant purposes prior to December 11, 2018, but then went on to affirm during the hearing that she “did not take any kind of drugs before” Dr. Abraham had prescribed Soma, and that her previous deposition testimony had been “incorrect.” (TR 54-58)

Also upon cross-examination, and with respect to the Independent Medical Evaluation scheduled in Memphis, the Claimant described her transportation issues, and that she was notified of the proposed Independent Medical Evaluation via telephone. (TR 58-62)

In addition:

Q: Okay. That was made clear to you by Sedgwick and also by the nurse case manager whose name is Casondra?

A: Casondra. Yes, it was made by her.

Q: Okay. And she actually came to your house to pick up the MRI.

A: Mm-hmm.

Q: Is that that right?

A: Yes, sir.

Q: And that was before the first surgery, which was scheduled in May of 2020?

A: Yes.

Q: All right. So this would have been after April 14, 2020, when Dr. Abraham recommended the surgery, is that right?

A: For May, yes.

Q: And so after that surgery was recommended did you fully understand that there was a second opinion scheduled in Memphis?

A: Yes.

Q: All right. And why did you not want a second opinion?

A: I did want a second opinion but the thing was I didn't have the transportation at that time because he just can't take off any day, and my other friends they all work.

Q: Did you even attempt to contact any of those friends or your son?

A: Yes, I did.

Q: All right. And did you ever tell the nurse case manager that?

A: Yes.

Q: Did you give to her any alternative dates or was that at the point where you went to your lawyer and the IME was canceled?

A: No, I – no. I told her – I said, "I have no way to get over there and I did try."

Q: Okay. But you never agreed to the IME did you?

A: I gave the records.

Q: I'm sorry?

A: I gave her the MRI. That's all I could, you know...

Q: My question to you is: You never agreed to the second opinion for the surgery, did you?

A: Yes, to that Corina – I said that would be great if I could [get] over there.

Q: But you told them you didn't have transportation.

A: I didn't have transportation.

Q: And then you told them, "My lawyer objected." You told them that didn't you?

A: No. I said, "Talk to my lawyers."

Q: All right.

A: I didn't say they object. I said, "You talk to my lawyers." (TR 62-64)

The Claimant went on to concede that did not have the second opinion in Memphis but did see Dr. Schechter on April 16, 2020, and re-affirmed that she had declined his offered shoulder injection because “After he talked down to me I will not do anything with any doctor. I’m sorry. He’s gonna sit there and say, ‘Oh, you’re Workman’s Comp.’ I’m not gonna let anybody touch me with a needle. (TR 68; 70)

At a subsequent point during cross-examination and with respect to post incident matters, the Claimant participated in the following exchange:

Q: And what I hear you saying, though, is you kept trying to work through it and then you requested medical treatment and an appointment was set up.

A: Right.

Q: Okay.

A: And after I didn’t hear from Jeremy –

Q: I don’t have a question in front of you.

A: Okay.

Q: But I will ask you is –

JUDGE LUCY: Well, let me hear this, Mr. Murphy.

MR. MURPHY: Okay.

JUDGE LUCY: Go ahead.

A: I tried notifiyn’ Jeremy ‘cause I didn’t know if I had to go to work or not. [Crying] And he would not return my calls. [Crying] I did not hear from him for over two months and then he tells me, “Oh, we lost you in the system, Theresa. The lady got fired.” [Crying]

JUDGE LUCY: There’s no need for you to get emotional.

A: I – yeah, I do. I can.

JUDGE LUCY: Just calm down.

JUDGE LUCY: All right. Go ahead Mr. Murphy.

Q: So you kept working?

A: I kept workin'. [Crying.]

JUDGE LUCY: Do we need to take a break, Miss Tress?

A: (The witness shakes head negatively.)

MS. YORK: Judge, can I hand her some tissues?

JUDGE LUCY: Yes. (TR 77-78)

Upon re-direct examination, the Claimant testified, *inter alia*, as follows:

Q: Of all your doctor's appointments, other than that one that was given in Memphis, have they all been local and in Jonesboro?

A: Yes, they've all been local.

Q: When you were notified that there was going to be an appointment scheduled in Memphis, did you try to obtain transportation?

A: Yes, I did.

Q: Okay. And who did you call?

A: I called all my friends and they said, you know, "We're working." And I – then I called you – your office and told you I can't go that far because I don't have no way."

Q: Okay. And did – were any of the people that you contacted able to drive you to Memphis?

A: No.

Q: Okay.

JUDGE LUCY: Let me interject. Mr. Murphy, did the Respondents offer an Uber transport?

MR. MURPHY: There was no transportation offered at that time that I'm aware of, Judge.

JUDGE LUCY: Thank you, Mr. Murphy. Go ahead, Ms. York.

MR. MURPHY: Well, Judge, I will state, just to put this in context, that there was an immediate objection outright to the IME by Ms. York, so there was no further discussion at all regarding another appointment or transportation. (TR 81-82)

Also,

Q: Your nurse case manager, Corina – Casondra – I’m not sure what her name is, but who is your nurse case manager?

A: Miss Meyers.

Q: Miss Meyers.

A: Which I don’t know –

Q: Did you ask her for transportation?

A: Yes. And she [was] busy with another case and she said Jeremy told her – I know, I can’t do that.

JUDGE LUCY: Well, no. I’d like to hear it because those are both agents of Mr. Murphy’s client, so go ahead.

A: Miss Meyers told me that – that Jeremy told her to never mind about me because he was closing my case. (TR 84)

At an earlier point, during cross-examination, the Claimant agreed that she had applied for unemployment benefits following her termination from employment, but also agreed that such were denied “since you can’t do that if you’re applying for Workman’s Comp.” (TR 74)

Medical and Documentary Evidence

I have reviewed the entirety of the medical evidence submitted herein, the most salient and relevant of which is discussed below in further detail.

Respondents’ Exhibit No. 1 appears to reflect that the first date of service for which they paid following the Claimant’s date of injury was January 3, 2019, and that the last date of service

for which they paid was April 15, 2020. (RX 1 at 1 and 3)

On January 3, 2019, the Claimant presented to APRN Billie Barnes of the NEA Baptist Clinic, with respect to left shoulder and upper back pain in association with a work-related injury that had occurred on December 11, 2018, and she offered a history of such that was entirely consistent with her hearing testimony. (CX 1 at 2) Nurse Barnes offered conservative measures, released the Claimant to full duty, and instructed the latter to return to the clinic in one week. (CX 1 at 1) The Claimant duly returned, as instructed, to Nurse Barnes on January 10, 2019, and then on January 17, 2019, and February 5, 2019, as instructed. (CX 1 at 3; 6; 8) Notably, on January 17, 2019, Nurse Barnes had ordered “PT,” and on February 5, 2019, had allowed for the Claimant to return to work with “no lifting, pulling, or pushing with LUE.” (CX 1 at 7; 9)

On February 21, 2019, the Claimant advised Nurse Barnes that she had “cancelled some PT ‘because I just didn’t feel like going.’” (CX 1 at 12) Over a month later, on March 26, 2019, the Claimant advised Nurse Barnes of pain involving the left thoracic back and neck that ranked “6/10...like when you are in early labor.” (CX 1 at 14) At this point, Nurse Barnes released the Claimant to return to work at full duty and advised her to return the clinic “PRN.” (CX 1 at 15) Ultimately, on April 4, 2019, Nurse Barnes ordered an MRI of the Claimant’s cervical spine due to ongoing issues. (CX 1 at 18) This was apparently not procured until September 11, 2019, but revealed, among degenerative changes, a central disc herniation at C6-7 with impingement of the thecal sac. (CX 1 at 22) Accordingly, Nurse Barnes referred the Claimant for a neurosurgical evaluation. (CX 1 at 25)

The Claimant thereafter received an evaluation from Dr. Robert Abraham on January 22, 2020, who noted that the Claimant’s pain “radiates from the neck into both shoulders and shoulder blades to the bra line with left greater than right.” (CX 1 at 27) Dr. Abraham suggested

conservative measures pending the results of an MRI of the Claimant's left shoulder. (CX 1 at 32)

The Claimant underwent such study on February 26, 2020, which essentially revealed mild osteoarthritic changes. (CX 1 at 45)

On April 15, 2020, the Claimant returned to Dr. Abraham's office and advised that she "is on FMLA at present. Her employer has told her if she comes back to work on light duty she will lose her job." (CX 1 at 61) The following day, the Claimant received an orthopedic evaluation for her left shoulder from Dr. Ron Schechter, who noted as follows:

I had a long discussion with the patient about her problem and the risks, benefits, options of treatment. I was realistic with her that 1st of all she has to understand that she has known neck problems and some of her pain is *likely coming from her neck*. That being said, she does have reproduction of pain with shoulder provocative testing and tenderness around the shoulder which *could* suggest a separate shoulder problem. Her MRI scan does not show any structural derangement in the shoulder. She *could* be having some degree of shoulder subacromial impingement with subacromial bursitis. I was realistic with her that I do not have any surgical options I could offer her given the benign appearance of her MRI scan but we could try a steroid injection to see if that would alleviate some of her pain. She has already tried physical therapy. She declined the injection and said she just wants to pursue treatment on her neck.

I think it is worth mentioning that I have some concern for potentially some secondary gain issues here. The patient described that she was having significant pain that had been present for a year and a half and she had been lost in the system. Despite her pain being reportedly so bad, she was not interested in trying an injection today which is a simple quick easy thing. It is difficult for me to understand why someone could be hurting so bad for a year and a half but not be willing to try a 3 sec injection. Additionally, her tenderness seemed to be out of proportion to what I would typically see. These things make me question secondary gain issues or symptom magnification. The (sic) should be taken into consideration is needed (sic) for further care. She will follow here as needed pending Work Comp approval. (CX 1 at 68; emphasis added)

On August 25, 2020, the Claimant again returned to Dr. Abraham's office, and reported

“8/10 pain in her neck... The pain is worse with head and neck movement *especially when driving.*” (CX 1 at 69; emphasis added) Ultimately, on September 8, 2020, the Claimant underwent a total disc replacement at C5-C6 performed by Dr. Abraham. (CX 1 at 104)

Adjudication

Left Shoulder

In addition to the applicable law cited above, it is well-known that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty, and that terms such as “could” or “possibly” do not equate with such. See Ark. Code Ann. §11-9-102(16)(B) and *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). Dr. Schechter’s report of April 16, 2020, reflects a thorough physical exam of the Claimant’s left shoulder, a corresponding discussion of the former’s physical findings, and a discussion with the Claimant regarding her available options. Notably, Dr. Schechter opined that the Claimant’s left shoulder pain was “likely” associated with her neck problems, that she “could” have a separate left shoulder problem, that her left shoulder MRI was benign, and that he therefore would not recommend a surgical course of care for such. However, Dr. Schechter did offer conservative care which the Claimant flatly refused as confirmed by the latter’s own testimony.

I afford considerable evidentiary weight to Dr. Schechter’s report of April 16, 2020, and am thus persuaded that the Claimant’s left shoulder complaints on such date were indeed likely related to her neck issues rather the possibility that she “could” have a separate left shoulder problem despite her benign MRI findings, for which she declined conservative care because Dr. Schechter had allegedly “talked down” to her. Regardless of the Claimant’s perception of Dr. Schechter and declination of his offered conservative care, I specifically find that her alleged ongoing left shoulder issues are attributable to her neck issues and, based on the lack of reasonable

medical certainty with respect to a “separate” shoulder problem in Dr. Schechter’s report of April 16, 2020, that she has failed to prove, by a preponderance of the evidence, that she is entitled to further reasonably necessary medical care in relation to her left shoulder under Ark. Code Ann. §11-9-508.

Neck/Cervical

Nonetheless and given that I afford considerable evidentiary weight to Dr. Schechter’s comments of April 16, 2020, which include a statement that the Claimant’s left shoulder problems were “likely” emanating from her neck, it is rather inexplicable as to why the Respondents would require a second neurosurgical opinion in Memphis and apparently decline further neck/cervical treatment based on the Claimant’s alleged failure to agree to such in light of the fact that her cervical MRI, finally approved and then procured on September 11, 2019, had revealed a herniated disc at C6-7.

There are some inconsistencies in the Claimant’s testimony, such as her description to Dr. Abraham of pain “when driving” on August 25, 2020 (in comparison with her alleged transportation issues), and Dr. Schechter’s concerns with respect to secondary gain. However, I found the Claimant to be an overall credible witness, and there was no testimony to contradict her own with respect to having been “lost in the system.” Accordingly, based on the Claimant’s credible testimony and Dr. Schechter’s comments of April 16, 2020, I specifically find that the Claimant has proven, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical care in relation to her compensable cervical injury of December 11, 2018, as described in the findings above and the below Order, and that treatment rendered by Dr. Abraham following April 15, 2020, has been reasonably necessary in relation to the Claimant’s compensable neck/cervical injury of December 11, 2018.

With respect to temporary total disability benefits, the Claimant applied for unemployment insurance following her alleged termination from employment, which strongly suggests that she held herself out as able and available to work at some point thereafter and prior to the surgery performed by Dr. Abraham on September 8, 2020. Accordingly, I feel compelled to specifically find that temporary total benefits herein should be limited to the period of September 8, 2020, through a date yet to be determined.

Order

Based on the foregoing discussion, including my observation of the witness and her testimony, review of the exhibits included in the record, and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical treatment in relation to her left shoulder injury of December 11, 2018, but has proven, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical care in relation to her compensable neck/cervical injury of December 11, 2018, following the last payment of compensation for such on April 15, 2020, inclusive of the surgery performed by Dr. Abraham on September 8, 2020, medical and other related expenses associated therewith, temporary total disability benefits from September 8, 2020, through a date yet to be determined, and attorney's fees with respect to controverted indemnity benefits.

The Respondents are ordered and directed to pay benefits consistent with the findings of fact made herein. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809. Pursuant to Ark. Code Ann. §11-9-715, the Claimant's attorney is entitled to a 25% attorney's fee on indemnity benefits awarded herein. One-half of this fee shall be payable by the Respondents and one-half

Tress – H002130

shall be payable by the Claimant from the indemnity benefits awarded herein. The Respondents are ordered and directed to pay the Court Reporter's fee within thirty (30) days of billing for such pursuant to Commission Rule 099.20.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge