

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H401851

GLORIA YVONNE TACKETT,
EMPLOYEE

CLAIMANT

PINNACLE PLACE MEMORY CARE,
EMPLOYER

RESPONDENT

ACCIDENT FUND INSURANCE COMPANY,
CARRIER/TPA

RESPONDENT

OPINION FILED FEBRUARY 11, 2025

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 JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed September 9, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. The Claimant has not proven by the preponderance of the evidence that she sustained compensable injuries to her right shoulder by specific incident nor through the course of employment.
4. Based on my finding that 1.) Claimant did not sustain an injury by specific incident, and 2.) nor did her injury arise out of and through the course of employment, the remaining issues of reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the September 9, 2024 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that the Claimant had not proved by a preponderance of the evidence that she sustained a compensable injury by specific incident nor through the course of employment and based on that finding the Claimant was not entitled to reasonable and necessary medical treatment, temporary total disability benefits or a controverted attorney fee. After my *de novo* review, I would concur in part and dissent in part with the ALJ's findings. I would rule in favor of the Claimant sustaining an aggravation of her pre-existing condition through the course of her employment with the Respondent and therefore that she is entitled to reasonable and necessary medical treatment of such injury. However, I would concur with the ALJ that the Claimant is not entitled to temporary total disability benefits as a result of her compensable injury.

1. Claimant suffered a compensable aggravation to her pre-existing shoulder condition.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

The Claimant has a long history of symptomology and diagnoses for her right shoulder. Claimant was diagnosed with right rotator cuff syndrome as early as 2005. In 2005, the Claimant had an X-Ray of her shoulder which showed as essentially normal “with type 2 acromial spurring.” For 11-years Claimant did not seek treatment for her right shoulder. On January 25, 2016, Claimant suffered an injury at work when she caught a falling wooden medication box injuring her right arm and shoulder. The Claimant was subsequently diagnosed with a strain of her right levator scapulae muscle on February 25, 2016. Claimant undergoes an MRI on March 10, 2016, which shows:

1. Near complete tear of the supraspinatus is seen with a few intact anterior leading fibers. The tear continues posteriorly with the conjoined tendon and infraspinatus as a moderate grade articular surface tear with approximately 2.5 cm medial retraction of the articular fibers. Minimal atrophy of the supraspinatus and infraspinatus muscle fibers is seen.
2. There is a tear of the superior and articular fibers of the infraspinatus without evidence of scrotal there is tear of the superior mid articular fibers of the subscapularis without significant tendon retraction. Degenerative changes of the lesser tuberosity is seen.
3. The intra-articular portion of the long head of the biceps tendon also appear significantly degenerated and torn with longitudinal split tear extending into the vessel groove. The tendon appears to reconstitute distally within the bicipital groove and proximal arm. Moderate biceps tenosynovitis is noted.
4. Severe acromioclavicular degenerative changes are seen. Moderate joint effusion is noted. There is indentation of the myotendinous fibers of the supraspinatus. A large amount of fluid is seen in the subacromial bursa.

On April 4, 2017, the Claimant is diagnosed with a full thickness rotator cuff tear of her right shoulder and a partial-thickness rotator cuff tear of her left shoulder. Dr. Samuel Moore recommends Claimant undergo a rotator cuff repair surgery on the basis of diagnoses but does not specify which shoulder or if the surgery would be bilateral. On August 11, 2017, Claimant undergoes a left shoulder arthroscopy.

On December 25, 2023, Claimant was attacked by a patient while performing employment services for Respondent. Claimant presented to the emergency room of Baptist Health and was seen by Dr. Clinton Evans who diagnoses her with a contusion or strain of her right shoulder and lumbar spine. Claimant was then referred to Clint Bearden, PA for evaluation of Claimant's right shoulder. Clint Bearden diagnoses the Claimant with a right rotator cuff tear and refers the Claimant for an MRI which showed:

1. Motion limited evaluation.
2. Complete full thickness tear of the supraspinatus tendon with approximately 5.5 cm of retraction just proximal to the glenoid. This is technically age indeterminate, however given associated moderate supraspinatus muscular atrophy, is suggestive of chronicity.
3. Complete full-thickness tear of the infraspinatus tendon with approximately 5 cm of retraction. This is technically age indeterminate, however given associated severe infraspinatus muscular atrophy, is suggestive of chronicity.
4. Mild supscapularis tendinosis with low-grade partial thickness articular surface tear of the subscapularis tendon.
5. Tear with retraction of the long head of the biceps tendon.

6. Degenerative tears of the superior, anterior, and inferior labrum. Probable 16 mm paralabral cyst adjacent to the anterior inferior labrum.
7. Severe degenerative arthrosis of the glenohumeral joint.
8. Small glenohumeral joint effusion.
9. Mild to moderate degenerative arthrosis of the acromioclavicular joint.
10. All findings are age indeterminate unless otherwise specified.

Based on this MRI, the Claimant is referred to Dr. David Gilliam for evaluation. This MRI visualizes a clear aggravation and progression of the objective findings of an injury to the Claimant's right shoulder including a 5.5 cm retraction of the supraspinatus tendon as compared to a 2.5 cm retraction visualized in the 2016 MRI of Claimant's right shoulder. On March 19, 2024, Claimant is seen by Dr. Gilliam who states that Claimant's symptoms were exacerbated by her December 25, 2023, work injury. Dr. Gilliam also assesses the Claimant as having a recent rotator cuff sprain of her right shoulder in the context of chronic rotator cuff tears.

The Respondent then requested an independent medical evaluation of Claimant's medical records by Dr. Theodore Hronas. Dr. Hronas opined:

In summary, the initial MRI exams of the right shoulder demonstrate evidence of a tear of the distal supraspinatus tendon that progressed significantly in a short period of time, with findings of complete tears of both the supraspinatus and infraspinatus tendons on 3/29/2016. The most recent MRI exam of the right shoulder, 1/19/24, demonstrates severe osteoarthritic change of the right glenohumeral joint with extensive bone remodeling and chronic tears and severe muscle atrophy of both the supraspinatus and infraspinatus

tendons as described. This degree of osteoarthritic change and the chronic tendon tears with severe muscle atrophy takes years to develop. There is no reactive joint effusion, edema, or any objective findings of an acute or recent injury of the right shoulder.

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice, and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). 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. 94, 989 S.W.2d 151 (1999). Based on my review of the record, I find that Dr. Gilliam's medical opinion should be given more weight as he is an orthopedic physician, had personal contact with the patient and extensively reviewed the Claimant's current and past medical history in relation to her right shoulder.

A doctor is not required to be absolute in an opinion nor are the magic words "within a reasonable degree of medical certainty" even required to be used by the doctor for an injury to be related to the work accident. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296 (2001). Rather, the medical opinion must simply be more than speculation. *Id.* If a doctor renders an opinion about causation of a workers' compensation injury with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this should pass muster. *Id.*

Here, Dr. Gilliam states that Claimant's symptoms were exacerbated by the work-incident on December 25, 2023, with an objective finding of a rotator cuff strain of her right shoulder.

Although Claimant clearly had objective evidence of an injury to her right shoulder prior to the work-incident, there is clear and credible evidence that she suffered from an aggravation of the injury after the work accident on December 25, 2023. The Courts have held in several cases that an increase in symptoms following a work-related accident is sufficient proof to establish compensability. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004). There was an objective change in the condition of Claimant's right shoulder following her work accident and her authorized physician opined that it was related to the December 25, 2023, work incident. Therefore, I find that the Claimant has sustained a compensable injury to her right shoulder.

2. Claimant is entitled to reasonable and necessary medical care in the form of surgical intervention as recommended by Dr. Gilliam.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or

alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent 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).

Claimant has suffered a compensable injury to her right shoulder as a result of the work-incident that took place on December 25, 2023. Claimant is entitled to reasonable and necessary medical treatment in connection with the injury received by the employee. To date Claimant has undergone conservative treatment in the form of physical therapy and injections without relief. Based upon the lack of success with conservative care, I find that Claimant is also entitled to reasonable and necessary medical care in the form of surgical intervention as recommended by Dr. Gilliam.

3. Claimant is not entitled to temporary total disability benefits.

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The Claimant has the burden of proof in showing that they remain in their healing period and are totally incapacitated from earning wages. *Id.*

While Claimant may have remained in her healing period due to her ongoing compensable injury to her right shoulder and was partially

restricted, she was not completely taken off of work by any physician in the record and was therefore not totally incapacitated from earning wages.

Therefore, I find that the Claimant suffered a compensable aggravation to her right shoulder as a result of the work-incident that took place on December 25, 2023 and is entitled to reasonable and necessary medical treatment including surgical intervention by Dr. Gilliam. However, I do not find that Claimant is entitled to temporary total disability benefits as she was not totally incapacitated from earning wages.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner