

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H101235

SHANNON WILLIAMS, Employee	CLAIMANT
MEDICAL SOLUTIONS LLC, Employer	RESPONDENT
ARCH INSURANCE COMPANY, Carrier/TPA	RESPONDENT

OPINION FILED NOVEMBER 16, 2022

Zoom hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART, Springdale, Washington County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 24, 2022, the above captioned claim came on for hearing via Zoom. A pre-hearing conference was conducted on June 1, 2022 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 claimant sustained a compensable left shoulder and left wrist injury on December 16, 2020.
3. The claimant was earning sufficient wages to entitle her to compensation at

the weekly rates of \$711.00 for total disability benefits and \$533.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to additional temporary total disability benefits beginning April 21, 2022 and continuing through a date yet to be determined.

2. Attorney's fee.

The claimant contends that she has continued to be temporarily totally disabled by her compensable injuries after April 21, 2022, and is entitled to benefits for such disability. She further contends that the respondents have controverted such benefits and are liable for the statutory attorney's fee on any such benefits awarded.

The respondents contend that all appropriate temporary total disability benefits were paid through April 21, 2022, until the claimant began having unrelated health issues. To the extent additional benefits are awarded, respondents plead an offset for any group insurance payments made to or on behalf of the claimant as well as an offset for unemployment benefits paid to the claimant, to the extent allowed under Arkansas law.

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 witness and to observe her 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 June 1, 2022 and contained in a pre-hearing order filed that same date are hereby

accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning April 21, 2022 and continuing through a date yet to be determined.

### FACTUAL BACKGROUND

Claimant is a 49-year-old woman with an Associate's Degree in respiratory care who has been employed as a respiratory therapist for the last twenty years working in various emergency rooms and intensive care units. In addition to working in a position at a local hospital in Fort Smith, she began working for respondent approximately seven years ago which required her to travel to various hospitals performing her job as a respiratory therapist.

On December 16, 2020, claimant was working at a hospital in Fargo, North Dakota. As she was leaving a patient's room her foot got caught in the cords by the patient's bed, causing her to fall. Claimant tried to break her fall by extending her hands and this resulted in her breaking her left wrist and tearing her left rotator cuff.

After some initial treatment claimant came under the care of Dr. Garlow who performed an arthroscopic procedure to repair her torn rotator cuff in March 2021 and later a manipulation procedure under anesthesia for stiffness. Following her surgery the claimant underwent physical therapy and while doing so reinjured her left shoulder.

Claimant eventually received a change of physician to Dr. Cox who ordered a new MRI scan. In his report of January 26, 2022, Dr. Cox indicated that the MRI scan revealed a traumatic complete re-tear of her left rotator cuff. He stated that several treatment

options were available and he referred claimant to Dr. Songy for an evaluation.

In his report of March 1, 2022, Dr. Songy agreed that the MRI scan showed a re-tear of claimant's left rotator cuff with significant retraction and he discussed various treatment options with claimant. It was his opinion that claimant's best option was a "left shoulder arthroscopy with a rotator cuff repair, likely partial repair, augmented with an in-space subacromial balloon."

Claimant agreed to undergo the recommended procedure proposed by Dr. Songy and surgery was scheduled for March 31, 2022. Before claimant could undergo the surgery, she was found unresponsive at her home in Fort Smith. Claimant was hospitalized for a short period of time at Mercy in Fort Smith before being transported by air to St. Vincent in Little Rock where she was hospitalized for about two months. Since her release from St. Vincent, she has returned to her hometown of West Memphis where she has family and can receive help with her condition from them. Claimant's diagnosis has included bilateral embolism; deep vein thrombosis; and a blood disorder (TTP). The claimant acknowledges that these conditions are not related to her compensable shoulder and wrist injury.

Since the time of her initial injury on December 16, 2020, claimant has not returned to work for respondent. At the time her surgery was scheduled, respondent was continuing to pay claimant temporary total disability benefits and continued to pay them through April 21, 2022. Claimant has filed this claim contending that she is entitled to additional temporary total disability benefits beginning April 21, 2022 and continuing through a date yet to be determined.

## ADJUDICATION

Claimant contends that she is entitled to additional temporary total disability benefits beginning April 21, 2022 and continuing through a date yet to be determined. The injury to claimant's shoulder is an unscheduled injury. In order to be entitled to temporary total disability benefits for an unscheduled injury, claimant has the burden of proving by a preponderance of the evidence that they remain within their healing period and that they suffer a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

Even though the claimant may have remained within her healing period subsequent to April 21, 2022, claimant must also prove by a preponderance of the evidence that she suffered a total incapacity to earn wages. I find that she has failed to meet that burden of proof. As previously noted, claimant sought medical treatment from Dr. Cox who ordered a new MRI scan which revealed a complete re-tear of claimant's left rotator cuff. Dr. Cox then referred claimant to Dr. Songy for an evaluation and Dr. Songy in his report of March 1, 2022 discussed various options and recommended surgery. Claimant agreed to undergo the recommended surgery by Dr. Songy and it was scheduled for March 31, 2022, but was canceled when claimant had unrelated health issues.

Significantly, in his report of March 1, 2022, Dr. Songy addressed claimant's ability to return to work. Specifically, he stated:

We will allow the patient to return to work with no use of her left arm.

Claimant returned to see Dr. Songy on March 24, 2022, but Dr. Songy did not mention any change in claimant's work status. Thus, the last medical report from claimant's authorized treating physician addressing her ability to return to work indicates that claimant could return to work with no use of her left arm. Given Dr. Songy's opinion, which I find to be credible and entitled to great weight, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a total incapacity to earn wages beginning April 21, 2022 given that she had previously been released by Dr. Songy to return to work with restrictions.

In reaching this decision, I do note that claimant testified that in her opinion she was not capable of returning to work because of her shoulder. However, claimant's opinion is contrary to the opinion of her authorized treating physician, Dr. Songy. Again, I find that Dr. Songy's opinion is credible and entitled to great weight.

Accordingly, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a total incapacity to earn wages; therefore, she has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning April 21, 2022.

### ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning April 21, 2022 and continuing through a date yet to be determined. Therefore, her claim for additional compensation

benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$331.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE