

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H008038**

TEREASA WASHINGTON, EMPLOYEE	CLAIMANT
DEPT. OF CORRECTION (E. ARK. REG.), EMPLOYER	RESPONDENT
STATE OF ARKANSAS, CARRIER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, TPA	RESPONDENT

OPINION FILED SEPTEMBER 5, 2025

Hearing before Administrative Law Judge, Steven Porch, on July 18, 2025, in Forrest City, St. Francis County, Arkansas.

Claimant, *Pro Se*, Ankeny, Iowa.

Respondents were represented by Mr. Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on July 18, 2025. A prehearing telephone conference took place on March 12, 2025. A prehearing order was entered on the same day, and subsequently entered into evidence as Commission Exhibit 1, without objection or amendment. The parties confirmed the stipulations and the issues at the hearing. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee relationship existed on August 6, 2020, when Claimant sustained bilateral carpal tunnel injury.
3. Respondents have accepted this original claim as compensable and certain benefits have been paid.

4. Claimant's average weekly wage was \$540.54, entitling her to temporary total disability rate of \$360.00 weekly, and a permanent partial disability rate of \$270.00 weekly.¹
5. The claim has previously been litigated, with a final decision of the Arkansas Court of Appeals dated March 13, 2024, which is *res judicata* and the law of the case.

The parties have identified the following issues to be adjudicated:

1. Whether Claimant is entitled to additional reasonable and necessary medical treatment, including surgeries by unauthorized physician, Dr. David M. Rhodes, and related expenses, including mileage and out of pocket expenses.
2. Whether Claimant is entitled to additional Temporary Total Disability (TTD) commencing January 10, 2023, until a date yet to be determined.

All other issues are reserved.

CONTENTIONS

Claimant contends:

Because my hands have never gotten well after I had surgery, I had to have surgery a second time and I feel that I should have started back being paid after the second surgery. I am currently seeing Dr. Paulson in Ankeny, Iowa at Iowa Ortho and I have surgery scheduled for February 29th on my hands which continue to cause troubles. Dr. Paulson did another nerve exam, and it showed that my carpal tunnel is still there. I know this doctor was not approved by Workers' Comp., but I am still having problems and that is the facts.

Respondent contends:

That this claim was the subject of a hearing on April 15, 2022. An opinion from the ALJ dated July 12, 2022, was appealed by the Claimant to the Full Commission, which issued its own

¹ These rates were stipulated to at the full hearing by both parties.

decision on November 14, 2022. Respondent appealed that decision to the Arkansas Court of Appeals, which issued its opinion dated March 13, 2024. This decision is now final, *res judicata*, and the law of the case.

Respondent has provided the Claimant with medical treatment, including conservative treatment, injections and therapy for her wrists. The Claimant chose to see Dr. Sean Morrell. The Claimant underwent surgery for carpal tunnel release on her right arm on October 26, 2020, by Dr. Morrell. The Claimant ultimately underwent surgery on her left arm on February 24, 2021, by Dr. Morrell. On December 17, 2020, the Claimant was released to return to work full duty without restriction by Dr. Morrell following her right wrist surgery.

On April 23, 2021, the Claimant was released at Maximum Medical Improvement by Dr. Morrell with no work restrictions so that she could return to her full duty employment. The Claimant in fact did return to work and subsequently filed a new claim for another injury. The Claimant was granted her one-time Change of Physician to see Dr. Michael Hood on June 22, 2021. The Claimant requested the Change of Physician to get an impairment rating. Dr. Hood did not take the Claimant off work, he in fact, stated that the Claimant could return to work full duty. As for treatment, it is obvious the Claimant was prescribed hand exercises to perform at home from her testimony at the hearing that Dr. Hood gave her clay to roll up in her hand. Dr. Hood ordered a Functional Capacity Evaluation, which the Claimant underwent July 28, 2021, where she performed reliably in the medium classification of work. The Claimant demanded an impairment rating assigned by Dr. Hood, which was the subject of the previous hearing.

While the case was on appeal, the Claimant demanded additional treatment. The Claimant was provided by Respondent a return visit to Dr. Hood after she refused to see Dr. Morrell again.

Dr. Hood did not recommend surgery for the Claimant. The Claimant has now seen another physician on her own, who is not an authorized physician, underwent surgery by that physician, evidently has had or intends to have additional surgery with that physician, and now demands that she be provided additional period(s) of TTD benefits related to her surgery(ies) by that unauthorized physician.

Respondents contend that the medical treatment the Claimant demands as an issue for a hearing is treatment with an unauthorized physician(s), that the Claimant is not entitled to another Change Of Physician, and that the Claimant cannot meet her burden of proving that additional medical treatment by this unauthorized physician is reasonable and necessary for and causally related to her injury after the authorized physician she chose herself declined to do surgery on the Claimant. The Respondent further contends that the Claimant is not entitled to additional disability benefits for period(s) related to her unauthorized medical treatment, nor is the Claimant entitled to periods(s) of disability related to medical treatment which was not reasonable and necessary for and causally related to the injury. The Respondent reserves the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, 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. The preponderance of the evidence establishes that the treatment Claimant has received from Dr. David M. Rhodes was unauthorized. Thus, the cost of that unauthorized treatment and related expenses, including mileage and out of pocket expenses, is not

the financial obligation of the Respondents.

4. The Claimant has failed to prove by the preponderance of the evidence that she is entitled to additional TTD benefits.

CASE IN CHIEF

Summary of Evidence

The record is made up of Respondents' Exhibit 1, correspondence, consisting of 1 page; Respondents' Exhibit 2, medical records, consisting of 4 pages; Respondents' Exhibit 3, documentary evidence, consisting of 10 pages; Commission Exhibit 1, Pre-Hearing Order Filed March 12, 2025, consisting of 7 pages total. I have entered into the record by reference the previous transcript of the full hearing that took place on April 15, 2022, the opinion from that hearing issued on July 12, 2022, the de novo opinion from the Full Commission issued on November 14, 2022, and the appellate opinion from the Arkansas Court of Appeals issued on March 13, 2024. The Claimant did not enter any exhibits into the record. The Claimant was the only witness testifying at the full hearing.

The Claimant was employed as a mental health advisor for the Respondent/Employer in February 2017. April 15, 2022, TR 15. Her job was to make rounds on over 100 inmates three times a week and to type her reports. Claimant testified that she had to increase her job duties when Covid hit the State of Arkansas. Claimant began experiencing numbness and tingling in her arms in August 2020. Subsequently, the Claimant underwent surgery for her right upper extremity on October 26, 2020, (April 15, 2022, TR 20) and on her left upper extremity on February 24, 2021. April 15, 2022, TR 24. The surgeries were performed by Dr. Sean Morrell, who eventually placed the Claimant at maximum medical improvement with 0% permanent anatomic impairment rating on April 23, 2021. April 15, 2022, TR 25.

The Claimant thereafter obtained a change-of-physician order to see Dr. Michael Hood due to ongoing symptoms affecting both upper extremities, which included swelling, numbness, pain, and weakness. April 15, 2022, TR 26-31. Dr. Hood gave the Claimant exercises to do to help with her condition. *Id.* Dr. Hood also ordered a Functional Capacity Evaluation which was performed on July 28, 2021, and received a 10% permanent anatomic impairment rating for each of her upper extremities. April 15, 2022, TR 32-34. The Respondents disputed this rating, and a full hearing was held on April 15, 2022, to resolve the matter. Administrative Law Judge Terry Don Lucy, in an opinion filed on July 12, 2022, found that the Claimant had failed to prove by the preponderance of the evidence that she was entitled to a 10% impairment rating for each of her upper extremities. *See* Lucy Opinion dated July 12, 2022. Judge Lucy based his opinion on how Dr. Hood assessed the Claimant's injuries using subjective factors, not objective factors. *Id.*

The Claimant appealed this decision to the Full Commission which reversed Judge Lucy's decision and found that the Claimant did prove by the preponderance of the evidence that she was entitled to a 10% impairment rating for each of her upper extremities. *See* Full Commission Opinion dated November 14, 2022. The Respondents appealed the Full Commission's decision to the Arkansas Court of Appeals, which affirmed the Full Commission's decision on March 13, 2024. *See* ADOC v. Washington, 2024 Ark. App. 181, 685 S.W.3d 347 (2024).

During the time of the appeal to the Arkansas Court of Appeals, the Claimant demanded additional treatment. The Respondents agreed to provide the Claimant a return visit to Dr. Hood, after she refused to see Dr. Morrell. Dr. Hood did not recommend surgery. The Claimant, without Respondent's authorization, saw another physician, Dr. David M. Rhodes, and testified that she underwent a surgery to her right upper extremity on April 14, 2023. It is important to note that before this operation, the Claimant signed an acknowledgement of Form AR-N on September 12,

2020. *See* April 15, 2022, TR 165-167. Despite having the alleged unauthorized surgery by Dr. Rhodes, Claimant testified that it did not improve her condition. The Claimant now wants the Respondents to pay for the treatment she had received from Dr. Rhodes.

Adjudication

- A. Whether Claimant is entitled to additional reasonable and necessary medical treatment, including surgeries by unauthorized physician, Dr. David M. Rhodes, and related expenses, including mileage and out of pocket expenses.

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). The standard "preponderance of the evidence" 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). 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).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). 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.*

Claimant has a compensable injury, carpal tunnel syndrome, in both wrists. She underwent surgery by Dr. Morrell on October 16, 2020, for her right wrist, and on February 24, 2021, for her left wrist. Dr. Morrell stated that the Claimant had reached maximum medical improvement for her work-related injuries on April 23, 2021. See April 15, 2021, TR 136-150. I credit this statement and find by the preponderance of the evidence that Claimant's healing period ended on April 23, 2021.

Despite having the surgery, she continued to have discomfort in her wrists and visited Dr. Rhodes, without Respondents' authorization, on January 10, 2023. There she complained about numbness and tingling in both of her wrists that were associated with her compensable work-related injury. Respondents' Exhibit 3, pp. 7-9. Dr. Rhodes recommended surgery to redo the "right median nerve decompression at the wrist through an extended approach." *Id.* Despite this recommendation, the Respondents' arranged for an appointment with Dr. Hood, since Dr. Rhodes was not an authorized provider.

The Claimant visited Dr. Hood on February 21, 2023. Respondents' Exhibit 2. Dr. Hood's visit/medical note made clear that he did not believe the Claimant was "a good candidate for revision carpal tunnel release. However, if it is desired, she should see a dedicated hand specialist." *Id.* Dr. Hood further opined that Claimant has achieved her "maximal recovery level." *Id.* Dr. Hood assessed a final impairment rating for Claimant of 10% for each upper extremity. *Id.* Despite Dr. Hood's position, the Claimant testified that she was still experiencing symptoms with both of her

upper extremities and returned to Dr. Rhodes, without the authorization of the Respondents, for additional treatment.

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*. A claimant is not required to furnish objective medical evidence of her continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

Without question, the Claimant was seeking relief from her symptoms, numbness and tingling, when she reached out to Dr. Rhodes on January 10, 2023. See Respondents' Exhibit 3, pp. 7-9. However, Respondents have argued that any treatment Claimant has undergone with Dr. Rhodes, which is the subject of this full hearing, was unauthorized and that Respondents are not responsible for the costs associated with that treatment. In *Tempworks Mgmt. Servs. v. Jaynes*, 2023 Ark. App. 147, 662 S.W.3d 280, the Arkansas Court of Appeals wrote:

Briefly, Ark. Code Ann. § 11-9-514(c)(1) requires an employer or insurance carrier to deliver a Commission-approved notice to the employee "which explains the employee's rights and responsibilities concerning change of physician." Unauthorized medical expenses incurred after the employee has received the notice are not the employer's responsibility. *Id.* § 11-9-514(c)(3). But if the employee is not furnished a copy of the notice, the change-of-physician rules don't apply.

The change-of-physician rules do not apply absent proof that the claimant received a copy of the

rules from the Respondents either in person or by certified registered mail. Ark. Code Ann. § 11-9-514(c)(1)-(2) (Repl. 2012). *See also Jaynes, supra; Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000).

The preponderance of the evidence in this matter establishes that Claimant did receive a copy of these rules. She admitted at the April 15, 2022, full hearing that she was given and signed the two-sided Form AR-N, a copy of which is in evidence. See April 15, 2022, TR 39, 165-167. Thus, I find by the preponderance of the evidence that the treatment received by Claimant from Dr. Rhodes was in fact unauthorized; as a result, the Respondents are not responsible for the cost of those unauthorized medical services.

B. Whether Claimant is entitled to additional temporary total disability benefits from January 10, 2023, to a date to be determined.

In this proceeding, Claimant has also claimed entitlement to additional temporary total disability benefits from January 10, 2023, through a date yet to be determined. Respondents stipulated that they did pay some benefits under the claim but maintained that Claimant was not entitled to any temporary total disability benefits.

Claimant's compensable carpal tunnel syndrome, in both of her upper extremities, is a scheduled injury. *See* Ark. Code Ann. § 11-9-521(a)(2) (Repl. 2012). An employee who suffers a compensable scheduled injury is entitled to temporary total disability compensation "during the healing period or until the employee returns to work, whichever occurs first" *Id.* § 11-9-521(a). *See Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). 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). Claimant must prove her entitlement to temporary total disability benefits by a preponderance of the evidence. *Id.* § 11-9-705(a)(3).

The Claimant testified that she is requesting TTD benefits from January 10, 2023, to April 14, 2023. TR 21. I have previously found that the Claimant's healing period ended on April 23, 2021. The Claimant has not presented any reliable evidence demonstrating that she has entered another healing period for the dates she has requested. For example, the Claimant demands TTD benefits beginning January 10, 2023. This was the date when Claimant had a consultation with Dr. Rhodes, an unauthorized physician. Nothing that Dr. Rhodes did that day would have caused the Claimant to enter another healing period. *See* Respondents' Ex. 3, pp. 7-10. Rather the visit culminated into a recommendation for a future surgery. *Id.* The Claimant also testified "April the 14th, I believe...I believe that my surgery was April the 14th, 2023." TR 22. Here the Claimant used the term "believe" but presented no credible evidence that she had surgery on April 14, 2023, or on any other date that would cause her to enter another healing period for the dates she is seeking TTD benefits. *Id.* The Claimant has failed to meet her burden. Therefore, the Claimant has not proven by the preponderance of the evidence that she is entitled to TTD benefits.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge