

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204645

BOBBIE PEEL

CLAIMANT

WHIRLPOOL CORPORATION
SELF INSURED

RESPONDENT

OPINION FILED SEPTEMBER 15, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 17, 2003, in Fort Smith, Arkansas. The deposition of the claimant, taken on September 12, 2002, was admitted as Respondent's Exhibit No. 5.

A pre-hearing order was entered in this case on April 8, 2003. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the additional issue of the effect of the notice provisions of Ark. Code Ann. §11-9-701 on the claimant's entitlement to benefits attributable for her alleged compensable shoulder injury was added by agreement of the parties. A copy of this pre-hearing order with that amendment noted thereon was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$326.00 for total disability and \$245.00 for permanent partial disability.
3. The claim is controverted in its entirety.
4. The claimant has received unemployment benefits at the weekly rate of

\$253.00.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained compensable injuries to her right hand, right elbow, and right shoulder during 2001 and 2002.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from March 26, 2002 through a date yet to be determined, and attorney's fees.
3. Whether the claimant unjustifiably refused suitable employment.
4. Whether the claimant is barred from receiving benefits for her shoulder difficulties, if held compensable, that accrued prior to May 25, 2002, pursuant to Ark. Code Ann. §11-9-701.

In regard to these issues, the claimant contends:

"Claimant was injured during the course and scope of her employment by repetitive motion injury. The claimant is entitled to draw temporary total disability benefits from March 27, 2002 until a date yet to be determined. That the claimant is entitled to medical treatment. Further, that the respondents have a job available within the restrictions of the claimant but have refused to put her back to work. Claimant is also entitled to an attorney's fee and all amounts controverted."

In regard to these issues, the respondents contend:

"Claimant did not receive the compensable injury, or injuries, as alleged. Alternatively, claimant's job activity at Whirlpool was not rapid and repetitive. Claimant has chronic bursitis or arthritis which was not caused or aggravated by her employment but, even if claimant is able to prove an aggravation, it is only temporary in nature. Claimant's alleged injury, or injuries, is not the major cause of her need for treatment and/or alleged disability. Dr. Heim's recommended surgery for an arthritic acromial spur is not reasonably or necessarily related to a compensable injury. Further, a compensable injury is not the major cause of claimant's need for surgery or any alleged disability as a result. Alternatively, claimant is not entitled to temporary total disability benefits because at all times, she was offered employment within her

medical restrictions but refused same. In WCC File E801598, claimant contended bilateral hand injuries in 1994, which was subsequently settled by Joint Petition for \$10,000. Claimant had surgery on her left wrist by Dr. Heim and in 1997, he advised claimant against repetitive activity with either wrist.”

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained “compensable injuries” to her right hand, right elbow, and right shoulder, during her employment with the respondent in 2001 and 2002. The burden rests upon the claimant to prove the occurrence of these alleged compensable injuries. For the sake of clarity, these alleged compensable injuries will be addressed separately.

I. RIGHT HAND

The first of these alleged compensable injuries to be addressed is the one involving the claimant’s right hand. The burden rests upon the claimant to prove that her difficulties with her right hand satisfy all of the various requirements for a “compensable injury” contained in the Arkansas Workers’ Compensation Act.

The first of these statutory requirements is contained in Ark. Code Ann. §11-9-102(4)(D). This subsection mandates:

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

This subsection has been interpreted by the Appellate Courts as requiring medical evidence supported by “objective findings”, only to establish the actual existence of the physical injury or condition alleged to be compensable.

In the present case, the medical evidence clearly establishes the actual existence of a physical injury or condition involving the claimant’s right hand in the form of a ganglion cyst. The actual presence of this physical injury or condition is supported by visual and tactile “objective findings”. However, this is the only physical injury or condition “established” by the medical evidence presented. Therefore, the claimant has presented

sufficient medical evidence to meet the requirements of Ark. Code Ann. §11-9-102(4)(D), in regard to her ganglion cyst.

The claimant must next prove that this medically established and objectively documented physical injury or condition satisfies all of the definitional requirements for a “compensable injury” contained in either Ark. Code Ann. §11-9-102(4)(A)(i) or §11-9-102(4)(A)(ii)(a). One requirement common to both of these subdivisions is that the physical injury or condition must arise out of and occur in the course of the claimant’s employment. In order to satisfy this requirement, the claimant must prove the existence of a causal relationship between the physical injury or condition and the employment. In order to satisfy the further definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), the employment related cause must be a “specific incident”. In order to satisfy the further definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the employment related cause must entail rapid repetitive motion of the injured portion of the body.

The evidence presented fails to prove that the ganglion cyst on the claimant’s right hand was caused by a “specific” employment related incident. In fact, the claimant does not even allege such a cause. Thus, the claimant has failed to prove that the ganglion cyst on her right hand would represent a “compensable injury,” as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant testified that at the time her right hand problems began she was performing the “end capping” job. The videotape (Respondents’ Exhibit No. 4) showing the employment activities necessary to perform the “end capping” job, demonstrates repetitive use of the hands, but does not show activities which would appear to be particularly strenuous or forceful.

The actual mechanics or trauma required to cause the formation of a ganglion cyst is not a matter of common knowledge. Thus, considerable weight must be afforded to expert medical opinion. In the present case, there is an obvious conflict of medical opinion

on the cause of the claimant's ganglion cyst.

In his reports and records, Dr. Stephen Heim expresses the opinion that the claimant's ganglion cyst "is probably a repetitive use injury". On the other hand, Dr. Nils Axelsen is adamant that this condition is not related to her employment activities. In his office notation of September 21, 2001, Dr. Axelsen states:

"I have told her (the claimant) that there is no way that I can justify this (ganglion cyst) as a workers' comp injury."

Both Dr. Heim and Dr. Axelsen are board certified orthopaedic surgeons. Both have had the opportunity to personally examine and evaluate the claimant. However, after consideration of all the evidence presented, it is my finding that the opinion of Dr. Axelsen is entitled to the greater weight and credit. At this point, I would note that of all the previous cases I have seen, which involved employment related ganglion cysts, these conditions only appear to occur following a specific particularly stressful or traumatic event involving the area of the ganglion formation, such as a direct blow or a specific stressful jerking of the affected anatomical structures. It is difficult to conceive that the activities demonstrated on the videotape and even the activities described by the claimant in her testimony would be sufficient to cause the formation of a ganglion cyst.

It is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that her medically established and objectively documented ganglion cyst was caused by employment related "rapid repetitive motion" of her hand or wrist. Therefore, she has failed to prove that this medically established and objectively documented condition satisfies the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

In summary, I find that the claimant has failed to prove the occurrence of a "compensable injury" to her right hand, as that term is identified by the Act. Her claim for any benefits attributable to any difficulties involving her right hand must be denied.

II. RIGHT ELBOW

Again, the burden rests upon the claimant to prove that her difficulties with her right elbow satisfy all of the requirements for a “compensable injury” imposed by the Act. As previously stated, the first of these requirements is contained in Ark. Code Ann. §11-9-102(4)(D).

The medical evidence presented clearly “establishes” a physical injury to the claimant’s right elbow in the form of “lateral epicondylitis”. All of the physicians, who have evaluated or treated the claimant for her right elbow/forearm complaints have reached this diagnosis.

However, it appears from the medical record that this diagnosis of lateral epicondylitis is based solely upon the claimant’s subjective complaints of pain and her subjective complaint of increased pain upon “palpitation” or touching in the area of her right lateral epicondyle. Repeated x-rays, performed on the claimant’s right elbow, have all been interpreted as normal and show no findings supportive of the presence of lateral epicondylitis, such as joint effusion or swelling. The claimant testified that when she initially sought medical treatment for her right elbow complaints from Dr. Brian Rogers, her entire right arm was swollen from her finger tips to her shoulder. However, the office notation of Dr. Brian H. Rogers, dated August 14, 2001, does not record that he observed any swelling on his physical examination. He only notes “some fairly marked tenderness” in the area of the right lateral epicondyle. Subsequent physical examinations by a multitude of physicians have also consistently failed to note observation of any swelling, redness, or other subjective findings involving the elbow area, which would support the diagnosed injury to the claimant’s right elbow.

The claimant may very well have experienced a work related overuse injury to her right elbow, specifically in the form of lateral epicondylitis or tennis elbow. However, unless the actual existence of such an injury is supported by the presence of “objective findings”

or findings beyond the claimant's voluntary control, such an injury does not represent a "compensable injury" within the meaning of the Arkansas Workers' Compensation Act. Clearly, by the enactment of Ark. Code Ann. §11-9-102(4), it was the legislature's intent that not all work related injuries be "compensable injuries". Rather, "compensable injuries" are limited to only those work related injuries that meet the specific requirements imposed by this subsection.

In summary, the claimant has failed to prove by the greater weight of the credible evidence presented, the existence of a physical injury involving her right elbow that is supported by "objective findings". Thus, she has failed to satisfy the requirement imposed by Ark. Code Ann. §11-9-102(4)(D). Her failure to prove this necessary requirement prevents a finding that her right elbow difficulties represent a "compensable injury", as that term is defined by the Arkansas Workers' Compensation Act. Her claim for any benefits attributable to her right elbow difficulties must be denied.

III. RIGHT SHOULDER

The final alleged injury involves the claimant's right shoulder. Again, the claimant must prove the occurrence of a physical injury to this part of her anatomy that meets all the requirements for a "compensable injury" set out in the Act.

In regard to Ark. Code Ann. §11-9-102(4)(D), the medical record "establishes" that the claimant's current difficulties with her right shoulder take the form of supraspinatus tendinitis. This is the ultimate diagnosis made by Dr. Stephen Heim. Dr. Heim's diagnosis is not only compatible with the claimant's subjective complaints, but is supported by objective findings, particularly plain x-rays and an MRI study that was performed on January 24, 2003. Therefore, the claimant has presented sufficient evidence to prove all of the requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

Again, the claimant must prove that this medically established and objectively documented physical injury or condition satisfies all of the definitional requirements of one of the categories of “compensable injuries” established by Ark. Code Ann. §11-9-102(4)(A). Again, the two potentially applicable provisions of this subsection are found in subdivision (i) and subdivision (ii)(a).

As was the case for the claimant’s alleged compensable elbow injury, there is no evidence presented to establish the existence of a causal relationship between this medically established and objectively documented physical injury or condition and a specific employment related incident. Again, the claimant makes no contention that such a relationship exists. Thus, this medically established and objectively documented physical injury or condition would not constitute a “compensable injury” under the provisions of Ark. Code Ann. §11-9-102(4)(A)(i).

In order to represent a “compensable injury” under the provisions of Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the claimant must not only prove that her employment played a causal role in producing her medically established and objectively documented right shoulder injury, she must further prove that this employment related cause involved “rapid repetitive motion” of her shoulder joint.

It is apparent from the reports and records of Dr. Heim that it is his expert opinion that the claimant’s employment activities played a causal role in producing the right supraspinatus tendinitis and possible tear or perforation of this tendon. In his report of April 16, 2002, Dr. Heim states that he thinks this condition is “definitely work related”. Dr. Axelsen voices no opinion concerning the cause of the claimant’s right shoulder difficulties.

Although not expressly set out in any particular medical report, the actual mechanics of this injury can be ascertained from the medical record. Plain x-rays and the MRI study reveal the presence of a bone spur on the right inferior acromion, which impinges or presses on the right supraspinatus tendon. With particular movement of the claimant’s left

shoulder, this spur would irritate and has possibly perforated or partially torn the supraspinatus tendon at this point of contact.

Clearly, the claimant's development of the acromioclavicular hypertrophy and the inferior acromial spur would not represent conditions associated with the claimant's employment with this respondent. These changes are the result of progressive degenerative arthritis and have developed over an extended period of time. It is very likely that to some degree these conditions predated the claimant's employment with the respondent.

The claimant testified that her difficulties with her right shoulder began in August of 2001. However, the medical evidence shows that the claimant was experiencing complaints with her right shoulder as early as March 7, 2000, which is only a little over five months following her date of hire with this respondent. At that time, the claimant's shoulder difficulties were diagnosed as taking the form of subacromial bursitis. However, this would involve the same area of the shoulder joint as the subsequently diagnosed supraspinatus tendinitis. A review of the claimant's symptoms in March of 2000, reveals that they were essentially the same as her subsequent complaints. Thus, it would appear that the arthritic changes, including the bone spur, were likely already present at that time.

The mere fact that the claimant's difficulties with her right shoulder are in part due to a degenerative arthritic condition, that likely predated her employment with this respondent, does not prevent an aggravation of this pre-existing condition by her subsequent employment activities from constituting a "compensable injury". However, under the requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a) the aggravation of this pre-existing condition must be the result of "rapid repetitive motion" of the claimant's arm.

Clearly, any movement of the claimant's arm at the shoulder, employment related or otherwise, would cause the arthritic bone spur to rub against the supraspinatus tendon and thereby irritate and possibly even partially tear or puncture the tendon. However, from

the evidence presented it would appear that the majority of the offending movement of her claimant's right arm at the shoulder (after commencing employment with this respondent), occurred as a result of the performance of her assigned employment activities for the respondent.

After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence proves the existence of a causal relationship between the claimant's employment activities for this respondent and her current right shoulder difficulties, in the form of supraspinatus tendinitis and a possible partial tear or puncture of the supraspinatus tendon. Thus, she has proven the occurrence of a physical injury to this portion of her body that "arose out of and occurred in the course of her employment". Clearly, the medical evidence shows that this injury has produced internal "physical harm" to the claimant's body. Finally, when all of the motions of the claimant's shoulder, required by all of her employment activities for this respondent, are considered together, the claimant has proven that these movements represent "rapid repetitive motion" within the meaning of Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Thus, satisfying the third requirement of this subdivision.

I further find that the greater weight of the credible evidence proves that the more frequent and more prolonged movement of her claimant's right shoulder occurred in the performance of her assigned employment activities for this respondent. Therefore, this more frequent and prolonged employment related movement was the "major cause" of her current need for medical treatment for this condition and for any disability which she may have experienced as a result of this condition. Thus, she has satisfied the requirement of Ark. Code Ann. §11-9-102(E)(ii).

In summary, I find that the claimant has proven that her right shoulder difficulties, in the form of supraspinatus tendinitis with a possible puncture or tear of the supraspinatus tendon, meets all of the definitional requirements for a "compensable injury", which are

contained in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). This injury further meets the requirements of Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(E)(ii). Thus, the claimant's right shoulder difficulties, in the form of tendinitis of the supraspinatus tendon with a possible puncture or tear of that tendon, represents a "compensable injury" within the meaning of the Act. The claimant is therefore entitled to appropriate benefits for this compensable injury.

IV. BENEFITS

Clearly, the claimant would be entitled to reasonably necessary medical services required for this compensable injury, Ark. Code Ann. §11-9-508. The greater weight of the credible evidence reveals that the medical services provided her for these difficulties by and at the direction of Dr. Stephen Heim, represent such reasonably necessary medical services. Therefore, the respondents are liable for the expense of such services, subject to the medical fee schedule established by this Commission.

However, it appears that a substantial portion of these medical expenses may have been paid under a policy of group insurance maintained through the respondent. Pursuant to Ark. Code Ann. §11-9-411, the respondents are entitled to a set off for any medical expenses paid under this group policy of insurance. The respondents are required by this subsection to place in reserve an amount equal to this set off for a period not to exceed five years. If, upon completion of this five year period, no order directing the payment of these sums is obtained, and no release of the subrogation interest of the third party group carrier is obtained, then these sums shall be paid by the respondents to the Death and Permanent Total Disability Bank Fund of the State of Arkansas.

In regard to temporary total disability benefits, the present compensable injury is to a portion of the claimant's anatomy that is not scheduled under Ark. Code Ann. §11-9-521. Therefore, in order to be entitled to such benefits, the claimant must prove that she has continued within her healing period from the effects of her compensable right shoulder

injury and has been rendered totally disabled from performing any forms of regular gainful employment as a result of the effects of this injury.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the resolution or improvement of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, at a point where nothing further in the way of medical treatment can be reasonably expected to improve this physical damage, then the healing period has ended.

In the present case, the medical evidence shows that the claimant has continued within her healing period from the effects of her compensable injury from March 26, 2002 through a date yet to be determined. In particular, the medical reports and records of Dr. Heim indicate that this condition could likely be resolved by appropriate surgical intervention. Dr. Heim is a highly competent orthopaedic surgeon and his opinion in this regard is entitled to significant weight and credit. I would also note that the type of treatment he recommends is commonly recognized by the general medical community as being appropriate for the resolution or improvement of injuries of the type and nature as the present compensable injury.

It is my further opinion that the claimant's testimony concerning the nature and magnitude of her right shoulder difficulties and the medical restrictions placed upon her potential employment activities, as a result of her compensable right shoulder injury, would make it highly unlikely that the claimant could obtain regular gainful employment in the open job market. This is particularly true in light of the likelihood of impending surgical intervention. As a result, I find that the claimant has proven that she has been rendered totally disabled from performing all forms of regular gainful employment as the result of her compensable injury from March 26, 2002 through a date yet to be determined.

Next, it becomes necessary to address the claimant's entitlement to these temporary total disability benefits, which accrued prior to May 25, 2002, in light of the provisions of Ark. Code Ann. §11-9-701. In this regard, the respondents contend that the claimant did not give required notice of her compensable right shoulder injury until May 25, 2002, and is therefore barred under the provisions of the foregoing subsection from receiving any benefits that would have accrued prior to their receipt of the notice required by this subsection.

I do not find that the respondent's contention is supported by the evidence presented. The evidence presented shows that the claimant repeatedly advised the respondent's first aide or nursing staff that she was experiencing difficulties with her right shoulder and that these difficulties seemed to be related to certain employment activities. These reports began as early as March of 2000. The evidence also shows that the claimant was again complaining of difficulties with her shoulder in August of 2001 and again attributed these difficulties to certain employment activities. The respondents were again made aware that the claimant was complaining of difficulties with her right shoulder in February of 2002, and was obtaining medical treatment for such difficulties beginning in February of 2002, from the Pro Med Clinic and Dr. Heim.

The mere fact that the respondents appear to have deemed these difficulties as "non occupational" (apparently because the claimant could not point to a specific precipitating event or incident) is of no consequence. The claimant clearly informed the respondents of all the facts of which she was aware concerning her right shoulder complaints in a timely manner. This is all that is required by Ark. Code Ann. §11-9-701.

After consideration of all the evidence presented, it is my opinion that the claimant is not barred from receiving any benefits, either in the form of the payment of medical expenses or in the form of temporary total disability benefits, by the notice provisions of Ark. Code Ann. §11-9-701. There is a statutory presumption that appropriate notice was

given. The evidence presented further supports this presumption.

Next, it is necessary to address the claimant's entitlement to the foregoing temporary total disability benefits, in light of the provisions of Ark. Code Ann. §11-9-526. This subdivision provides that the claimant is barred from receiving temporary total disability benefits during any period wherein she has unjustifiably refused "suitable employment".

The medical evidence shows that the claimant was released by Dr. Heim to return to work in a substantially limited or light duty capacity on December 12, 2002. At that time, Dr. Heim restricted the claimant from lifting more than five pounds with her right upper extremity, lifting above shoulder height, and repetitive lifting or lifting more than eight to ten times per minute. On or about January 4, 2003, the respondents provided the claimant with a job within Dr. Heim's restrictions. However, when Dr. Heim set these restrictions on December 12, 2002, he was obviously of the opinion that the claimant had not experienced any tendon tear. This was also his belief when he authored his report of January 22, 2003.

When the claimant returned to the offered light duty employment, she testified that her difficulties with her right shoulder increased. Whereupon, Dr. Heim finally obtained an MRI of the claimant's right shoulder, which not only indicated the presence of the supraspinatus tendinitis, but also revealed a real possibility of an actual partial tear or perforation of the tendon.

In light of the claimant's testimony and the results of this subsequent test, I cannot find that the claimant's refusal of this light duty position was unjustified. Clearly, Dr. Heim's opinion concerning the claimant's ability to perform the light duty employment may well have been changed by the results of this test. However, no subsequent opinion on this issue was ever obtained from Dr. Heim. The burden rests upon the respondents to prove all of the elements necessary to invoke the provisions of Ark. Code Ann. §11-9-526.

It is my opinion that they have failed to do so. Therefore, the claimant would not be barred from receiving temporary total disability benefits by the provisions of this subsection.

Finally, it becomes necessary to address the effect of the claimant's receipt of unemployment benefits on her entitlement to temporary total disability benefits from March 26, 2002 through a date yet to be determined. This issue is controlled by the provisions of Ark. Code Ann. §11-9-506. Under this subsection, the claimant is limited to indemnity benefits for temporary total disability to the difference between her temporary total disability rate of \$326.00 and her unemployment rate of \$253.00 (i.e. \$73.00) during any portions of her temporary total disability period wherein she also received unemployment benefits.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$326.00 for total disability and \$245.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury to her right hand during her employment with this respondent. Specifically, she has failed to prove by the greater weight of the credible evidence the occurrence of any physical injury to her right hand that arose out of and occurred in the course of her employment and that was caused by a specific incident or by rapid repetitive motion.
5. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury to her right elbow during

her employment with this respondent. Specifically, she has failed to prove by medical evidence, supported by objective findings, the actual existence of any physical injury or condition involving her right elbow.

6. The claimant has proven by the greater weight of the credible evidence that she sustained a compensable injury to her right shoulder during her employment with this respondent. Specifically, she has proven by medical evidence, supported by objective findings, the actual existence of a physical injury to her right shoulder, in the form of supraspinatus tendinitis with a possible partial tear or puncture of the supraspinatus tendon. She has further proven by the greater weight of the credible evidence that this physical injury arose out of and occurred in the course of her employment with this respondent, was caused by rapid repetitive motion, and resulted in internal physical harm to her body. She has further proven that this employment related injury was the major cause of her current need for treatment and her current temporary disability.
7. The medical services rendered to the claimant for her right shoulder difficulties by and at the direction of Dr. Stephen Heim constitute reasonably necessary medical services for her compensable injury. Liability for the expense of these services rests upon the respondents herein, subject to the medical fee schedule established by this Commission and subject to the provisions fo Ark. Code Ann. §11-9-411.
8. The claimant was rendered temporarily totally disabled as a result of her compensable right shoulder injury for the period beginning March 26, 2002 and continuing through a date yet to be determined.
9. The respondents have failed to prove that the claimant has unjustifiably refused suitable employment offered to her by the respondents, during the

foregoing period. Thus, she is not barred from receiving any temporary total disability benefits by the provisions of Ark. Code Ann. §11-9-526.

10. Ark. Code Ann. §11-9-707 provides that there is a presumption that sufficient and appropriate notice of the compensable injury was given to the respondents. The respondents have failed to prove by the greater weight of the credible evidence that the claimant did not provide them with the appropriate notice of her compensable right shoulder injury as required by Ark. Code Ann. §11-9-701. Thus, the claimant is not barred from receiving any benefits as a result of the provisions of this subsection.
11. During the claimant's period of temporary total disability, she has received unemployment benefits through the Arkansas Employment Security Division at the weekly rate of \$253.00. Pursuant to the provisions of Ark. Code Ann. §11-9-506 the claimant's temporary total disability benefits are reduced to the difference between her temporary total disability rate and the weekly rate of her unemployment benefits during any portion of her period of temporary total disability wherein she also received unemployment benefits, Ark. Code Ann. §11-9-506.
12. The respondents have denied the occurrence of compensable injuries to the claimant's right hand, right elbow, and right shoulder, and have controverted her entitlement to any and all benefits attributable to such injuries.
13. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the weekly indemnity benefits herein awarded the claimant for her compensable right shoulder injury.

ORDER

The respondents shall be liable for reasonably necessary medical services provided to the claimant for her compensable right shoulder injury by and the direction of Dr.

Stephen Heim. This liability shall be subject to the provisions of Ark. Code Ann. §11-9-411 and to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant temporary total disability benefits for the period beginning March 26, 2002 and continuing through a date yet to be determined, subject to the appropriate reduction provided by Ark. Code Ann. §11-9-506.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondents in addition to such benefits. The remaining one-half of this fee is to be withheld from benefits herein awarded and directly payable to the claimant.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge