

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500005

CHRISTINA KEENE

CLAIMANT

McKEE FOODS TRANSPORTATION
SELF INSURED

RESPONDENT

OPINION FILED JULY 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 2, 2005, in Springdale, Arkansas. A pre-hearing order was entered in this case on March 15, 2005. 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. Prior to the commencement of the hearing, the parties announced that they could stipulate on the exact weekly compensation rates, and the claimant advised that she was only seeking temporary total disability benefits for the period of October 24, 2004 through February 18, 2005. A copy of the pre-hearing order with these amendments 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, including October 24, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$295.00 for total disability and \$221.00 for permanent partial disability.
3. The claim is controverted in its entirety.

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 as defined in Ark. Code Ann. §11-9-102(4)(A)(ii)(a), to her right shoulder, elbow, and wrist/hand during her employment with this respondent.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from October 24, 2004 through February 18, 2005, and attorney's fees.
3. The respondents' entitlement to credit for any group benefits paid, including group disability.

In regard to these issues, the claimant contends:

"Claimant reported her injured on October 24, 2004. She injured her right shoulder, elbow, and hand due to the rapid and repetitive motion her job requires. She has been doing the same rapid and repetitive job for over a year at McKee Foods."

In regard to these issues, the respondents contend:

"The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act. The respondents' defense includes, but is not limited to, the lack of measurable and objective findings to support the definition of a compensable injury and that the claimant's job is not rapid and repetitive."

DISCUSSION

I. COMPENSABILITY

The first matter to be addressed is the issue of whether the claimant sustained "compensable injuries" to her right shoulder, right elbow, and right wrist/hand, as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a). The burden rests upon the claimant to prove all of the definitional requirements of this subsection. Should she fail to prove even one, then those particular difficulties would

not represent a "compensable injury", so as to entitle her to benefits under the Act. She must also prove that her alleged "compensable injuries" satisfy the additional requirements of Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(E)(ii).

For hopefully the sake of clarity and brevity, the claimant's three alleged injuries will be discussed separately. The first to be addressed concerns the claimant's right elbow.

The evidence shows that the claimant initially complained of symptoms and difficulties involving her right elbow (Claimant's Exhibit No. 1, page 1 or Claimant's Exhibit No. 2, page 1). She continued to appear to complain of difficulties with her right shoulder through November 5, 2004). At that time, Dr. Bryan Benafield (an orthopaedic surgeon) diagnosed these difficulties as possible cubital tunnel syndrome. However, after the visit of November 5, 2004, there is no mention in the medical records of continuing difficulties with the claimant's right elbow. In fact, the electrodiagnostic studies (EMG/NCV) performed on the claimant's right upper extremity, on December 15, 2004, was negative for the existence of any cubital tunnel syndrome involving the claimant's right elbow.

Although the medical evidence is sufficient to "establish" the existence of a physical injury to the claimant's right elbow, the diagnosis of the presence of a physical injury to this portion of her anatomy is based solely upon the claimant's subjective complaints. There is no evidence presented of any "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i) to support the actual existence of this diagnosed injury. Therefore, in regard to this alleged employment related injury, the claimant has failed to prove that it satisfies the requirements for a "compensable injury," as contained in Ark. Code Ann. §11-9-102(4)(D). The claimant's failure to prove this necessary statutory requirement would preclude her from being entitled to any benefits attributable to any difficulties with her right elbow.

The next alleged injury to be addressed is that concerning the claimant's right wrist/hand. The medical evidence shows that the claimant initially complained of difficulties with this portion of her body on October 27, 2004. These difficulties were ultimately diagnosed by Dr. Benafield as being attributable to right carpal tunnel syndrome. This diagnosis was based upon and confirmed by purely "objective" findings" noted on electrodiagnostic studies that were performed by Dr. Miles Johnson on December 15, 2004. Thus, the claimant has proven that the medical evidence "establishes" the actual existence of this physical injury to her right wrist/hand and that the existence of this physical injury or condition is supported or confirmed by "objective findings." The claimant's right carpal tunnel satisfies the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove by the greater weight of the credible evidence that her right carpal tunnel syndrome satisfies the definitional requirements for a "compensable injury," as set out in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are :

- (1) The physical injury must arise out of and occur in the course of the employment;
- (2) The physical injury must cause internal or external physical harm to the claimant's body;
- (3) The physical injury must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome.

Clearly, the injury causing the claimant's right wrist and hand difficulties is shown to be in the form of carpal tunnel syndrome. The claimant's complaints of physical distress with this portion of her anatomy, and more importantly, the neurological abnormalities that involve the claimant's median nerves at her wrists that are noted on the electroneurological studies are sufficient to prove that this injury

has produced internal physical harm to this portion of her body. Thus, the claimant has clearly met these two definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

In order to prove the final requirement for a compensable injury, as defined by this subsection, the claimant must prove that her right carpal tunnel syndrome "arose out of and occurred in the course of her employment" with this respondent. She need not prove the existence of this causal relationship to an absolute or mathematical certainty. It is only necessary that the claimant prove that the existence of this causal relationship is probable or likely.

The claimant testified that she began working with the respondent on December 8, 2003. She testified that her employment with this respondent required the constant intensive use of her right arm and hand (at this point, it is worthwhile to note that the claimant is right-handed). She testified that her difficulties with her right hand first became noticeable in June or July of 2004. It was her testimony that she did not mention these difficulties, at the time of their initial onset, because she thought that they were minor and would go away. However, these difficulties continued to progress, until they prevented her from keeping up with her assigned employment duties. Finally, in October of 2004, she reported these difficulties to the plant nurse. Shortly thereafter, she was referred by the plant nurse to the company doctor (the medical evidence indicates that she actually only saw the company doctor's physician's assistant, Max Beasley). I find the claimant's testimony in regard to these matters to be credible.

The medical evidence contains essentially the same description of the onset and progression of the claimant's right wrist/hand difficulties, as that described by the claimant in her testimony. The claimant's testimony and that of Kevin Fore, the respondent's production supervisor, clearly establishes that the claimant's employment

activities for this respondent were all of a hand intensive nature. The various activities described could reasonably and logically result in the development and progression of right carpal tunnel syndrome. There is no evidence that the claimant engaged in any other hand intensive activities that would be even remotely comparable to the activities she performed in her employment or that she suffered from any other type of systemic condition that could reasonably and logically result in the development and progression of right carpal tunnel syndrome.

The greater weight of the credible evidence presented proves the existence of a causal relationship between the claimant's right carpal tunnel syndrome and her employment activities for this respondent. Thus, the claimant's right carpal tunnel syndrome represents a physical injury that "arose out of and occurred in the course of her employment" with the respondent, Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W. 2nd 263(1962); Eddington v. City Electric Company, 237 Ark. 804, 376 S.W. 2nd 550(1964). Therefore, the claimant has proven the final definitional requirement for her right carpal tunnel syndrome to constitute a "compensable injury," as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

The final matter concerns the requirements of Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection states:

"For injuries falling within the definition of compensable injury under subdivision (4) (A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence and the resultant condition is compensable is only if the alleged compensable injury is the major cause of the disability or need for treatment."

The term "major cause" is defined by Ark. Code Ann. §11-9-102(14)(A) as more than 50% of the cause.

In the present case, the evidence presented shows that the claimant's "alleged compensable injury" and the "resultant condition" are one and the same, specifically right carpal tunnel syndrome. The evidence establishes that the claimant's

employment related or compensable injury did not contribute to the resultant condition of right carpal tunnel syndrome, but in fact was the sole cause. Thus, it is obvious that the claimant's "alleged compensable injury" was not only the "major cause" of her need for medical treatment for her right carpal tunnel syndrome or of any disability produced by her right carpal tunnels syndrome, but was in fact the sole cause. Therefore, the claimant has satisfied the requirement of Ark. Code Ann. §11-9-102(4)(E)(ii), in regard to her right carpal tunnel syndrome.

The remaining injury to be addressed is that involving the claimant's right shoulder. The medical evidence shows that the claimant's right shoulder difficulties were initially diagnosed by Max Beasley, a certified nurse practitioner with the company physician, as being attributable to an "overuse syndrome." The reports and records of Mr. Beasley indicate that this diagnosis was reached not only on the basis of the claimant's subjective complaints, but also on maybe some spasms in the right rhomboid muscle of the shoulder that was noted on his physical examination on October 27, 2004 (Claimant's Exhibit No. 1, page 2). The claimant's right shoulder difficulties were subsequently diagnosed by Dr. Benafield, an orthopaedic surgeon, as being attributable to right shoulder impingement syndrome, right acromioclavicular joint arthritis, and a possible partial thickness right rotator cuff tear. Dr. Benafield based his diagnosis on the claimant's subjective complaints, his findings on physical examination of the claimant's right shoulder, findings noted on a MRI study of the claimant's right shoulder, and the visual observations made of the claimant's right shoulder during the arthroscopic procedure performed on February 2, 2005.

Although Dr. Benafield's operative note continues to contain the diagnosis of "possible" rotator cuff tear, no such defect was visually observed during the arthroscopic procedure. However, Dr. Benafield clearly appeared to observe evidence of impingement syndrome and acromioclavicular joint arthritis, as he

performed a subacromial bursectomy, a procedure designed to shorten and smooth the joint surfaces of the clavicle and acromion.

I find that the greater weight of the medical evidence "establishes" the actual existence of a physical injury or condition involving the claimant's right shoulder and further find that the actual existence of this physical injury or condition is supported by "objective findings," as that term is defined in Ark. Code Ann. §11-9-102(16)(A)(i). Thus, the claimant has proven that her alleged compensable injury to her right shoulder satisfies the statutory requirements of this subsection.

The claimant must next prove that this physical injury or condition, involving her right shoulder, satisfies the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements have been previously set out in this Opinion. In order to prove the first of these requirements (i.e. that the injury arose out of and occurred in the course of her employment) the claimant must prove the existence of a causal relationship between the injury or condition and her employment with the respondent. To satisfy the third requirement of this subsection, this employment related cause must involve "rapid repetitive motion." It must also be noted that in order to meet these requirements, the claimant need not prove that the employment related rapid repetitive motion was the sole or even "major cause" of the "resultant condition" involving her right shoulder. Aggravations of pre-existing conditions may still represent "compensable injuries," under Ark. Code Ann. §11-9-102(4)(A)(ii)(a). In order to meet the definitional requirements of the foregoing subdivision, the claimant need only prove by the greater weight of the credible evidence that the employment related rapid repetitive motion played some causal role in the "resultant condition" and produced some "internal or external physical harm" to this portion of her body. This "internal or external physical harm" may be either temporary or

permanent.

It must also be noted that Ark. Code Ann. §11-9-102(4)(E)(ii) does not require the claimant to prove that any employment related trauma or injury was the "major cause" of the "resultant condition." Rather, the claimant need only prove that the employment related trauma or injury was the "major cause" of the "resultant condition" requiring medical treatment or producing disability.

In the present case, there is absolutely no evidence that the claimant sustained any prior injury to her right shoulder. There is no evidence that the claimant experienced any difficulties with her right shoulder or any limitations in its use, prior to her employment with the respondent. In fact, the claimant's testimony, which I believe to be credible, reveals that she had no difficulties with her right shoulder prior to June or July of 2004.

The evidence also proves that beginning in December of 2003, the claimant began performing employment activities for this respondent that clearly required frequent and repetitive motion of her right shoulder throughout her work day. During portions of each of her work days, this required movement or motion of her right shoulder was clearly rapid and repetitive, within the plain meaning of these terms. Although the evidence indicates that the claimant changed stations approximately every 20 minutes during her shift, each of these assigned positions required considerable movement and motion of her right shoulder, some more than others.

The testimony of Kevin Fore, the production supervisor, contains descriptions of the required activities for the claimant's six different work stations. He further testified that for at least one-half of the claimant's shift, she would be performing the packer position. The other positions described were those of a front monitor, back monitor, stacker/case packer, add-on, and peeling chops. The last position (peeling chops) was only done when the claimant was not required to perform one of

the other five positions. Mr. Fore indicated that at any one time there would be one person performing the front monitor position, five individuals performing the packing position, one person performing the back monitor position, one person performing the stacker/case packer position, and one person performing the add-on position. Finally, he indicated that on any given shift these nine individuals would process 583,200 individually wrapped cakes into cartons of 12, then 18 of these cartons into a case, yielding 2,700 cases per shift or 340 to 345 cases per hour for one line. The other line would require these nine individuals to process 288,000 individually wrapped cakes into cartons of 6 and then 16 cartons into a case, yielding 3,000 cases per shift or 430 to 450 cases per hour.

To perform the front monitor position, the claimant would inspect the cakes as they came down the assembly line and pull off any "bad" cakes. Mr. Fore indicated that this job could be performed with the use of one hand, unless there was a "real problem" and then two hands might be required. He further testified that there was a "bad night" approximately once a week.

For the packing job, the claimant was required to pick up the individually wrapped cakes and place them into store size cartons or rake off any "bad" cakes off onto trays and at the end of their rotation to pick up and stack or empty the trays "into something else."

To perform the back monitor position, the claimant would straighten any cakes that had been missed by the wrapper machine and pull off any "bad cakes." If the wrapper machines are down, the cakes would run off onto trays and this position was assigned the duty to pick these trays up and dump them into barrels. Again, Mr. Fore noted that if it was a "bad night" the back monitor would be "lifting the trays a lot." He also noted that the back monitor position kept the individual performing it "pretty busy."

The stacker/case packer position would require the claimant to pick up, unfold, or pull apart, and fold back the ends of corrugated cardboard boxes (cases), and place these boxes on the end of the stacker machine.

To perform the add-on position, the claimant would be required to monitor various machinery to insure that it is working properly (this is the machinery that seals the cartons) and supply the machinery with glue. At any time the machine should malfunction, the individual in this position would be required to pick the cartons up as they came out and replace them back on the line. If any cartons are damaged, in the sealing process, the individual in this position would be required to open up the damaged carton, take the cakes out, place the cakes on trays, and then move them back up the line to be repackaged.

Finally, Mr. Fore indicated that any time the claimant (or any other individuals on the line) were not busy or had "extra time" they were to "peel the chops." This position involves peeling the plastic wrapper off any damaged cake and dumping the damaged cake into a container for disposal.

Clearly, the claimant's difficulties with her right shoulder that resulted in her need for medical treatment initially appeared and subsequently progressed during her period of employment with this respondent. The described employment activities performed by the claimant for this respondent would not only be reasonably considered as requiring "rapid repetitive motion" of her shoulder joint, but could logically be the cause of the onset and progression of her difficulties with this joint. There is no other logical explanation for the onset and progression of these difficulties. There is absolutely no evidence of any other activities being performed by the claimant, during this period, that would involve either specific or cumulative trauma to this joint, which would even remotely be of equal magnitude with the cumulative trauma produced by the claimant's employment activities.

In summary, I find that the greater weight of the credible evidence establishes that the claimant's employment activities for this respondent involved "rapid repetitive motion" of her right shoulder joint, that this employment related "rapid and repetitive motion" of her right shoulder joint was the probable and likely cause of the onset and progression of her right shoulder difficulties, that this employment related rapid repetitive motion of her right shoulder joint caused internal physical harm to this portion of her body (at least, on a temporary basis) , and that this employment related rapid repetitive motion was the "major cause" of her need for medical treatment and the onset of her temporary disability. Therefore, I further find that the claimant has satisfied all of the statutory requirements necessary to prove that her right shoulder difficulties represent a "compensable injury" under the Arkansas Workers' Compensation Act.

II. BENEFITS

The final issue concerns the nature and extent of benefits to which the claimant is entitled as the result of the compensable injuries to her right shoulder and right wrist/forearm. In this regard, the claimant is requesting the payment of medical expenses and temporary total disability benefits from October 24, 2004 through February 18, 2005.

The claimant's entitlement to the payment of medical expenses is controlled by the provisions of Ark. Code Ann. §11-9-508. In order to be entitled to benefits under this subsection, the claimant must prove by the greater weight of the credible evidence that the disputed medical expenses were incurred for services that were "reasonably necessary" for her compensable injuries. Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose of goal for which they are intended.

Initially, the respondents sent the claimant for evaluation and treatment of her compensable injuries to the company physician. However, she was only seen by the company physician's nurse practitioner. Regardless, the respondents are liable for any expense incurred as the result of services rendered to the claimant by or at the direction of this nurse practitioner. Such liability is based not only on the provisions of Ark. Code Ann. §11-9-508, but also on the contractual agreement between the respondents and the company physician.

When the respondents refused to provide the claimant with any further medical services by the company physician, the claimant was free to seek such services elsewhere and these services would be at the respondents' expense, should they be shown to be reasonably necessary for the claimant's compensable injuries. At that point, the claimant consulted Dr. Benafield, an orthopaedic surgeon in the northwest Arkansas area.

A review of the reports and records of Dr. Benafield clearly show that all of the medical services he rendered to the claimant were necessitated by or connected with her compensable right shoulder and compensable right wrist/hand injuries, together with the difficulties and symptoms these injuries produced. The type of service provided by Dr. Benafield were of a type and nature commonly employed by the medical community in northwest Arkansas for the evaluation and treatment of injuries such as those experienced by the claimant. These medical services not only had a reasonable expectation of accomplishing the purposes or goals for which they were intended but actually did so. The evaluation and testing performed by and at the direction of Dr. Benafield accurately diagnosed the nature and extent of the claimant's compensable injuries, and the treatment he provided appears to have resolved, or at least improved the actual physical damage occasioned by these compensable injuries, together with the resulting symptoms and complaints.

Therefore, I find that all of the medical services provided to the claimant for her right upper extremity difficulties by and at the direction of the company physician's nurse practitioner and by and at the direction of Dr. Bryan Benafield represent "reasonably necessary medical services" for the compensable injuries. Pursuant to Ark. Code Ann. §11-9-508, the expense of such services is the liability of the respondents herein. This liability is subject to the medical fee schedule established by this Commission.

As the evidence shows that the claimant has sustained two compensable injuries, while in the employ of the respondent, both of these compensable injuries may be considered in determining her entitlement to temporary total disability benefits. The compensable injury to the claimant's right shoulder would represent a compensable injury to a "unscheduled" member or portion of her body. In order to be entitled to temporary total disability benefits for this type of injury, the claimant must prove that she continued within her healing period from the effects of this compensable injury and was rendered totally disabled from performing regular gainful employment as a result of this injury. However, the compensable injury to the claimant's right wrist/hand is to a portion of her body that is "scheduled" under the provisions of Ark. Code Ann. §11-9-521. In order to be entitled to temporary total disability benefits for this compensable injury, the claimant need only prove that she continued within her healing period from the effects of this compensable injury and had not returned to work.

The medical evidence is sufficient to prove that the claimant continued under active medical treatment for her compensable right carpal tunnel syndrome from October 24, 2004 through February 18, 2005 (the actual corrective surgery was performed on the claimant's right carpal tunnel on February 8, 2005). The claimant's testimony indicated that she continued working (at light duty) for some 3 to 4 days

following her evaluation by Mr. Beasley, the nurse practitioner, on October 27, 2004. The respondents ceased to provide the claimant with light duty, at that time, and the claimant was unable to perform her regularly assigned employment tasks. The evidence shows that the claimant did not "return to work" within the meaning of Ark. Code Ann. §11-9-521(a) during the period of November 1, 2004 through February 18, 2005. Thus, satisfying the second requirement for her entitlement to temporary total disability benefits for her compensable right wrist/ hand injury.

In summary, I find that the claimant has proven her entitlement to temporary total disability benefits for her compensable right wrist/hand injury (carpal tunnel syndrome) for the period of November 1, 2004 through February 18, 2005). Based upon this finding, it becomes unnecessary to determine if the claimant was also rendered concurrently temporarily totally disabled as a result of her compensable right shoulder injury.

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-third party administrator existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$295.00 for total disability and \$221.00 for permanent partial disability.
4. During the claimant's employment with this respondent, she sustained compensable injuries to her right shoulder and right wrist/hand. In regard to these compensable injuries, the claimant has proven by the greater weight of the credible evidence that these injuries satisfy all of the statutory requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a),

§11-9-102(4)(D), and §11-9-102(4)(E)(ii).

5. The claimant has failed to prove 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 to this portion of her body.
6. The claimant is entitled to all reasonably necessary medical expenses provided her for her compensable right shoulder and right wrist/hand injuries. These reasonably necessary medical services specifically include those service rendered her by and at the direction of the nurse practitioner, of the company physician, and by and at the direction of Dr. Bryan Benafield. The respondents are liable for the expense of these services, subject to the medical fee scheduled established b this Commission.
7. The claimant has proven by the greater weight of the credible evidence that she was rendered temporarily totally disabled as a result of the effects of her compensable right wrist/hand injury (carpal tunnel syndrome) for the period of November 1, 2004, through February 18, 2005. Specifically, she has proven by the greater weight of the credible evidence that during this period she continued within her healing period from the effects of this compensable injury and had not returned to work. This finding makes it unnecessary to address the issue of whether the claimant was also rendered concurrently temporarily totally disabled as a result of the effects of her compensable right shoulder injury.
8. The respondents have denied that the claimant sustained any compensable injuries to her right shoulder, right elbow, or right wrist

and hand and have controverted her entitlement to any benefits under the Act for such injuries.

9. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the temporary total disability benefits, which are herein awarded, and on any future benefits which may be due and payable directly to the claimant.
10. It is apparent that some benefits have been paid to and on behalf of the claimant under a group policy of insurance maintained through the respondent for medical services and disability which would coincide with the benefits herein awarded. However, the sufficient evidence was not presented to establish the actual amount and extent of these group benefits. However, it is clearly apparent that Ark. Code Ann. §11-9-411 is applicable to the present claim and any benefits herein awarded for temporary total disability or the payment of medical expenses that have previously been compensated under this policy of group insurance are subject to the reduction provided by this subsection.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period of November 1, 2004 through at least February 18, 2005. These payments are subject to the reduction provided by Ark. Code Ann. §11-9-411.

The respondents are liable for the expense of the medical services provided to the claimant for her compensable right shoulder and right wrist/hand injury by and at the direction of the offices of the company physician (the Occupational Health Clinic) and by and at the direction of Dr. Bryan Benafield. This award is also subject to the offset or discount provided by Ark. Code Ann. §11-9-411. Finally, liability for the expense of the medical services provided to the claimant by and at the direction

of Dr. Benafield is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted 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 by the respondents from the benefits herein awarded to the claimant.

The respondents shall place in reserve or escrow an amount equal to the offset or discount provided by Ark. Code Ann. §11-9-411. Pursuant to the provisions of this subsection, this amount shall be held in reserve, until releases are obtained from the group carrier, an Order is otherwise obtained directing the payment of these sums, or a period of five (5) years expires from the date of this Order. If the latter eventuality occurs, the respondents shall pay any sums in this reserve to the Death & Permanent Total Disability Trust Fund of the State of Arkansas.

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