

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F506245 (05/15/05)**

**BRENDA MATHESON, EMPLOYEE**

**CLAIMANT**

**BEST PETROLEUM PLUS, INC., EMPLOYER**

**RESPONDENT**

**FIRSTCOMP INSURANCE CO., CARRIER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 25, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on July 7, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to additional workers' compensation benefits.

On June 13, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Brenda Matheson, the claimant, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Brenda Matheson, the claimant, with a date of birth of March 29, 1950, is a high school graduate who commenced her employment with respondent-employer on February 3, 1998, as an assistant manager. Claimant's work shift was from 5:00 a.m. to 3:00 p.m. In describing her employment duties, claimant testified:

I did do the tanks. I started the tanks in the morning when opening the store. And run the register, and did my paperwork, and then when stuff came in from the, like the food companies and stuff, I would put that away. Just, there's a lot of different things. It's hard to described everything that you do. (T. 8).

On May 15, 2005, claimant suffered an within the course and scope of her employment while lifting the lids on in-ground gas tanks. Claimant maintains that she suffered injuries to her neck and left shoulder in the accident. Claimant reported the May 15, 2005, injury to appropriate supervisory personnel.

Claimant received initial medical treatment for her injury at the emergency room at Walnut Ridge, and was thereafter seen by Dr. Troxel. Dr. Troxel later referred the claimant to Dr. Joseph, a Pocahontas orthopedic physician. Claimant was seen by Dr. Joseph on two (2) occasions. Dr. Joseph also obtained a MRI. Claimant maintains that because she continued to experience severe pain she thought that she had a pulled muscle so she went to Dr. Susan Mishka, a chiropractor. Claimant is uncertain how long she received treatment under the care of the chiropractic physician, however she noted that her pain got worse and her husband took her the emergency room at St. Bernards' Medical Center in Jonesboro.

Regarding the course of her medical treatment once she was admitted to St. Bernards'

Medical Center, claimant testified:

Oh. I saw Dr. Fletcher, and he did a CAT scan. and he said that I had a herniated disc in my neck. And he recommended I stay at the hospital. And he contacted a neurosurgeon because I needed surgery. And I told him I wanted to go home. So he just contacted Dr. Eichert. And then I met with him. And he ordered a MRI. (T. 10).

Thereafter, the testimony of the claimant reflects that her medical treatment was directed by respondent-carrier.

Claimant maintains that she was directed to Dr. Wayne Bruffett, a Little Rock orthopedic surgeon, by respondent-carrier. Claimant drove from her residence in Walnut Ridge, Arkansas to Little Rock, Arkansas for treatment with Dr. Bruffett. Claimant's testimony reflects, regarding her initial visit to Dr. Bruffett:

He - - the first time I visited him, I took my, the CD's he couldn't see - - their computer, the program wouldn't pull it up. So I think he recommended, at that time he recommended physical therapy. And then the next - - I saw him in another month, and he had my, the film then. And we just continued with therapy. (T. 10).

Claimant underwent the physical therapy in Jonesboro. Claimant testified regarding the results of the physical therapy:

No. I went several weeks for physical therapy. My left, my right arm responded, but my left arm didn't. And my physical therapist, David Smith, said that there was something wrong with my shoulder because the it, my neck wouldn't cause my shoulder to not respond to physical therapy. (T. 11).

Claimant testified that when she returned to Dr. Bruffett he had the physical therapist's notes, and that she was referred to Dr. Charles Pearce by Dr. Bruffett. Claimant underwent another MRI scan pursuant to the directions of Dr. Bruffett, which she maintains disclosed that

her labrum, rotator cuff, and possibly her bicep was torn in the left shoulder. Regarding her medical treatment thereafter, claimant's testimony reflects:

Well, Dr. -- I can't -- Dr. Pearce continued therapy on my shoulder. And then I believe he -- I can't remember if it was that visit or the next visit, he ordered a nerve testing on my shoulder. He wanted to make sure -- it was the first visit I saw him. He referred me to Dr. Rutherford for testing. He wanted to make sure there was no nerve damage if he didn't do surgery. And I saw Dr. Rutherford. And he said there was no nerve damage. So I just continued to see Dr. Pearce. And he continued with the therapy. (T. 12).

Claimant last received medical treatment in mid-December 2005, under the care of Dr. Pearce. Dr. Pearce issued an opinion at that time that the claimant had a 4% whole body permanent physical impairment rating as a result of her injury. Claimant asserts that she continued to have physical problems with her left shoulder and neck which she attributes to her May 15, 2005, injury. Claimant is uncertain if she was released from the care of Dr. Pearce at the time of her last visit:

I don't know. I just, I told him that I felt physical therapy had done all they could do for my arm. I didn't see continuing physical therapy would benefit me anymore. And at that time, he said well he could go in and repair the rotator cuff and the labrum. And the whole time, I didn't want surgery, if we could do it any other way. I did not want to have to have surgery. And then he said well, I asked then you're talking about three to four months of physical therapy after that. And he said yes. And I said well, I don't feel like I want to go through that. I had been going through physical therapy since June. (T. 13-14).

Claimant elaborated regarding her decision not to have surgery:

He [Dr. Pearce] didn't recommend surgery. He just suggested he could do the surgery if I -- that's what I -- I figured if I was going to have surgery, it should have been done in the beginning, and then go through the physical therapy. This is all new to me. (T. 14).

Claimant worked part-time for respondent during most of the time that she was

recovering from the injury. Claimant maintains that she is not able to work as much as she did prior to her injury, however she is not seeking further medial treatment at this time. Claimant works 25 ½ hours over the course of three days during the week, which is all she feels she can work due to residuals of her injury. Specifically, claimant noted that she has a 15-pound weight limit lifting with respect to her left arm. Claimant added that her left shoulder bothers her, and can be painful at time, a lot after working because she still has to do lifting in the discharge of her employment duties. Claimant's testimony reflects that her neck and arm ache. Claimant denies that she required medical treatment for either her neck or shoulder prior to May 15, 2005. Further, claimant denied that she took any arthritis medication prior to May 15, 2005. Claimant added that the only thing she took before she was injured on May 15, 2005, was aspirin for a headache or body ache.

Claimant is currently taking Mobic, an anti-inflammatory medication, which Dr. Troxel prescribed. Claimant testified that she continued to see Dr. Troxel on occasion, however the visits are not solely for her work-related injury. Claimant has not submitted the bill for the prescription anti-inflammatory medication to respondents for payment. The cost of the medication is \$87.00 per month. Claimant explained that she had not submitted the bill because the medication is an arthritis drug, and she did not feel that respondent carrier would believe that it was related to her compensable injury. Claimant added:

Well, I did ask Tom, he's the adjuster. Yes. With Firstcomp. I told him I felt as if that the trauma to my body had - - they diagnosed me with psoriatic arthritis. And truma to the body can bring on psoriatic arthritis. And I did tell Tom that. But I felt that they should be liable for me to seek treatment for arthritis. And their response was no, they weren't liable. (T. 16).

Claimant acknowledged that at the time she gave a recorded statement in her claim she relayed that she took Mobic because she had arthritis in both her hips. Claimant attributes her part-time work status to her lack of stamina due to having to stand for long periods and problems with her hips. While Dr. Rutherford has diagnosed her with psoriatic arthritis in her hands, claimant noted that she never had any trouble with her hands before her injury. Claimant also concedes that Dr. Rutherford indicated to her that he did not think that the psoriasis and the arthritis were related to her injury. Claimant's testimony reflects that both Dr. Towry, a dermatologist, and Dr. Troxel, have relayed to her that an outbreak of psoriasis could be brought on from trauma or stress to body.

The testimony of the claimant reflects that in 1992, she fell at work, hit her head, and suffered a concussion. Claimant testified regarding her symptoms from the accident:

I had a concussion is what they told me when I went to the emergency room. And because it hit the back of my head - - I hit the back of my head. And the doctor, the emergency room doctor, told me that I had a concussion. And I did have physical therapy because I had headaches. And the muscles in my shoulders and neck would tighten up. And I did have physical therapy for that. (T. 20).

Claimant acknowledge feeling the burning sensation in her neck at the time of the 1992, injury.

Claimant has had the psoriasis for approximately 25 years. In February 2005, prior to her May 2005, compensable injury, she suffered a severe breakout of psoriasis. Claimant denies that the psoriasis caused her to have pain in her joint or swelling in her extremities. Claimant noted that she started taking Methotrexate, which caused her legs to swell.

Claimant, who is right hand dominate, continues to experience symptoms of left sided shoulder pain and some stiffness in her neck, which she attributes to her May 15, 2005, work-

related injury. The job tasks that the claimant no longer performs in her employment with respondent since her injury are checking the gas gauges outside, stocking the cooler, and sweeping or mopping the store. Claimant acknowledged that respondent-employer has work within her restrictions, as imposed by Dr. Pearce, to work full time. Claimant stressed that the reason that she is working part-time is because she is physically unable to work full time; although she concedes that the arthritis in her hips contributes to the afore as well as her neck and left shoulder complaints.

The medical in the record reflects that claimant treated with Dr. Roger Troxel, a Walnut Ridge general practitioner, relative to her psoriasis, in October through December 2004. Further, on February 7, 2005, claimant was seen by Dr. James B. Towry, a Jonesboro dermatologist, pursuant to a referral of Dr. Troxel. (JX. #1, p. 10-17).

Claimant first received medical treatment relative to a complaint with her left shoulder which she attributed to her employment activities on May 11, 2005, when she was seen at the emergency room of Lawrence Memorial Hospital. Claimant provided a history of lifting at work with a corresponding onset of pain in the left shoulder which progressively worsened. (JX. #1, p. 18-22). Claimant was seen by Dr. Troxel on May 12, 2005, regarding her left shoulder complaint, and later referred to Dr. Joseph.

On May 19, 2005, claimant underwent a MRI of her left shoulder at Randolph County Medical Center. The Radiology Report of the May 19, 2005, MRI of the claimant's left shoulder reflects, in pertinent part:

There are hypertrophic arthritic changes of the AC joint. Large effusion is noted. No impingement syndrome is noted. Rotator cuff appears intact.

IMPRESSION:

1. Large effusion left shoulder. (JX. #1, p. 26).

Claimant was seen at the emergency room of St. Bernards Regional Medical Center on May 31, 2005, with complaints of neck pain, bilateral shoulder pain with a sense of weakness in the shoulders and pain/diminished coordination in bilateral lower extremities. A May 31, 2005, CT scan of the claimant's cervical spine, which was performed during the emergency room visit reflects, in pertinent part:

CONCLUSION:

1. The most significant stenosis is at C5-6. There is a large broad based herniation at this level with mass effect on the right C6 root sleeve. At the C5-6 level there appears to be a small broad based disc bulge that slightly indents the contour of the right C5 root sleeve. (JX. #1, p. 37).

The St. Bernards Regional Medical Center emergency room records regarding the claimant's May 31, 2005, visit reflect three diagnoses, herniated disk neck; spinal stenosis; and cervical disc displacement. Claimant was prescribed Lortab (Hydrocodone & Acetaminophen), Robaxin, and Lodine, by the attending emergency room physician and directed to follow-up with Dr. Stephen Eichert on June 2, 2005. (JX. #1, p. 34).

The claimant was in fact seen by Dr. Eichert on June 2, 2005, pursuant to the directions of the attending emergency room physician, and underwent additional diagnostic studies at St. Bernards Regional Medical Center. (JX. #1, p. 38-42). A June 2, 2005, report of Dr. Eichert regarding his examination of the claimant reflects, in pertinent part:

I examined Brenda Matheson today. She is a pleasant 55-year-old right-handed white female who works at a convenience store as an assistant manager. On May 14 she was lifting cast iron lids and developed a pulling sensation in her neck. Since that time she has developed progressive clumsiness in her arms and legs. She has had some right foot swelling. She has pain in her neck, shoulders, and

arms. Her past history is significant for psoriasis. Current medicines are Lodine, Robaxin, Lortab, and Enbrel. . . .

\* \* \*

A CAT scan performed at St. Bernards on 05/31/05 suggests a large C5-6 disk herination.

Brenda Matheson has cervical spondylotic myelopathy that is posttraumatic. She has a history of psoriasis and she is a chronic tobacco user.

We are going to obtain an MRI of her cervical spine today. Most likely, pending that, she will require an anterior cervical diskectomy and fusion and segmental fixation with plates and screws. . . . She requested That we proceed with this.

\* \* \*

Note: Brenda Matheson's MRI was reviewed this evening and reveals a massive right paramedian C5-C6 disk herniation and cord effacement consistent with the clinical picture. (JX #1, p. 44).

On June 6, 2005, claimant was evaluated by Dr. Wayne L. Bruffett at Arkansas Specialty Spine Center, at the request of the workers' compensation case manger, relative to her complaints growing out of her May 2005, work-related injury. The June 6, 2005, initial evaluation reflects, in pertinent part:

She has a history of severe psoriasis. She has never really reported a problem with her neck before. However, on approximately 05/15/05 she had an injury at work when she was lifting some gas tank lids. This resulted in severe pain her neck and in both arms and shoulders. She said initially her left side was much worse than the right. I think she was initially felt to have a shoulder injury and had an MRI of her left shoulder, which did not show any significant abnormalities. She saw a surgeon in Jonesboro who recommended surgery. She is referred her[e] for a second opinion.

She describes pain that is moderate to severe. It is aching and somewhat constant. There is some swelling, tingling and subjective weakness. Her

symptoms are getting worse and seem to be made worse with lifting, twisting, lying down and sitting. She says she awakens after sleeping for a few hours and this is painful as well. When I asked her what wakes her up, it seems to be mostly pain in her neck and over into both shoulders.

\* \* \*

**RADIOGRAPH REPORT:**

X-rays of her cervical spine reveal disc degeneration at C6-7 and to a lesser extent at the other levels.

Her MRI is reviewed on the computer. She does appear to have a herniated disc at C5-6 on the right. She has degenerative changes. It is hard to evaluate obvious cord compression or myelomalacia within the cord.

**IMPRESSION:**

1. Herniated cervical disc.
2. Diffuse complaints of neck pain and bilateral shoulder pain, etc.

**PLAN:**

I reviewed things with Ms. Matheson, and we had a detailed discussion about her condition. She could certainly have symptoms from her disc herniation in her neck. However, she says that 70% of her pain is in her neck and only 30% in her arms of which is bilateral. Therefore, I am not sure exactly how clinically relevant this disc herniation is at this point. She could certainly have pain from muscle ligament tendinous injury, exacerbation of arthritis or disc degeneration, etc.

In looking at whether she needs to have surgery or not, I think this depends on how severely she is affected by the pain, what treatment she has had thus far and how aggressively she wants to treat it. If she does elect to have surgery, I have told her that the main goal would be to relieve the C6 radiculopathy out of her right arm. I have tried to educate her about this today, and I am not sure how much she is really complaining of a C6 radiculopathy. I could not give her reassurance that surgery would make her neck pain go away, and certainly I cannot imagine it would do much for the pain in her left side.

I have discussed nonsurgical options with her such as time, medications, physical therapy and consideration of such things as injections before considering an operation. She wants to go this route. I am going to release her to some light sedentary work with no lifting greater than 10 pounds, no overhead work and no repeated twisting or turning of her neck. I will also

start her on some physical therapy. I am going to give her some Ambien to help her sleep at night and a Medrol Dosepak. I will continue her on The Lorcet Plus and Robaxin, but she understands this is not the long-term answer. Hopefully, with the therapy, time and the antiinflammatories things will settle down. I have asked her to bring her MRI scan to her next visit. (JX. #1, p. 53).

Dr. Bruffett authored a release for the claimant to return to work with restrictions effective June 7, 2005, along with a prescription for physical therapy. (JX. #1, p. 54-55).

On June 13, 2005, claimant underwent a physical therapy initial evaluation at Orthopaedic & Sports in Jonesboro, pursuant to the above prescription. The June 13, 2005, report reflects that the claimant's primary diagnosis was cervical HNP, neck pain and that the duration or certification period of the physical therapy was from June 13, 2005, to July 13, 2005.

The report further reflects, in pertinent part:

Present HX/Chief Complaint/Mechanism of Injury: The patient states that on 05/14/2005, she injured her neck while lifting some heavy metal lids at work. She states that she had had to do this several times a day over the past several days. The patient states that the pain started in the neck but gradually moved into the left upper arm and eventually into both upper arms. She states that the neck pain is greater than the bilateral arm pain. She states that the bilateral arm pain is equal in intensity. She notes that bilateral shoulder flexion and reaching behind her back will increase arm pain. She says fatigue as well as end range of motion increases the neck pain. She reports that initially she had some gait abnormality and symptoms in the left lower extremity but that this has resolved over the past month. The patient states that she is assistant manger in a convenient store and her goals of physical therapy is to have resolution of neck and arm pain so that she can return to full function with work and daily activities. (JX. #1, p. 56).

The claimant last underwent physical therapy on August 11, 2005. The physical therapy progress note regarding the August 11, 2005, visit reflects that the claimant reported that she had no complaints with HEP to flexibility and slightly less left shoulder pain. (JX. #1, p. 62).

The claimant was seen in follow-up by Dr. Bruffett on June 27, 2005. During the physical examination, Dr. Bruffett noted some generalized weakness in both arms or deconditioning but no significant change from the previous examination. The June 27, 2005, office visit note further reflects, in pertinent part:

**RADIOGRAPHIC REPORT:**

The EMG studies are reviewed. She does have a cervical disc herniation at C5-6. It is more prominent on the right side. I do not see evidence of signal change. There is no evidence of mild myalgia within the cord.

**IMPRESSION:**

Cervical disc herniation.

**PLAN:**

I reviewed things with Ms. Matheson and I think we ought to continue her with her therapy. I think some of her restrictions can be lifted at work and I would say no pushing or pulling greater than 20 pounds or no lifting greater than 20 pounds, and no overhead work. There are the things she is going to be working on in therapy. I am going to give her a prescription for some Naprosyn 500 mg twice a day 60 pills with a refill with food. I think that if she can replace the hydrocodone with this it would be helpful. She is still taking Robaxin and we may ultimately have to wean her down off of this. She said she would like to avoid surgery and I think that is admirable. . . (JX. #1, p. 63).

A July 29, 2005, NEA Orthopaedic & Sport Progress Summary relative to the claimant's physical therapy reflects, in pertinent part:

**Objective Findings:** The patient has cervical AROM within functional limits in all planes. She has attained full AROM for the right shoulder in all planes of motion. The patient's left shoulder AROM for flexion and abduction ranges between 90 degrees-100 degrees depending on level of pain at the time of measurement. PROM and AAROM for left shoulder is 110-120 degrees. The end feel of passive motion for left shoulder flexion, abduction, external and internal rotation is empty with limitation coming from pain and not adhesion.

**Clinical Assessment:** The patient's neck symptoms and function has

progressed well with PT. Her chief complaint with her cervical spine is increased stiffness at the end of day. Her right upper extremity has responded well with return to overhead function. Her left shoulder ROM and pain has improved minimally over the course of PT but it has not shown any appreciable improvement over the past week of treatment. (JX. #1, p. 66).

Claimant had a return office visit to Dr. Bruffett on August 1, 2005. After reciting the history of her injury and medical treatment regarding her May 14, 2005, injury, the clinic note of the visit reflects, in pertinent part:

. . . She initially had some pain in her left shoulder and had an MRI which showed an effusion but no rotator cuff problem. She has also been diagnosed with a herniated disc in her neck. She has neck pain and bilateral arm pain. Initially, she was a spine surgeon up in Jonesboro who recommended cervical surgery. We have tried to treat this with some physical therapy. She now returns for followup.

She says that the neck symptoms have improved to some extent, but she is having a tremendous amount of pain in her shoulder. She has also tried different medications.

**PHYSICAL EXAMINATION:**

She has severe pain with range of motion of her shoulder. She has weakness of the rotator cuff muscles. She does not have any frank neurological deficits.

**IMPRESSION:**

1. Herniated cervical disc on the right side at C5-6, which is probably not all that clinically relevant at this point.
2. Severe left shoulder pain.

**PLAN:**

I would recommend a better quality MRI scan of the shoulder. I also think Naprosyn could continue to work, and I would say no overhead use of her left arm. I think it is fine for her to do overhead work with her right arm. I am going to try to followup on the results of the MRI and call her case manager, Shy Cox, with the results. I am going to try to save Ms. Matheson a followup visit with me. I really don't think she has a significant problem in her neck that would require any surgical treatment. She may need to see a shoulder specialist. We will see what the MRI shows. (JX. #1, p. 67)

The August 1, 2005, MRI of the claimant's left shoulder obtained pursuant to the direction of Dr. Bruffett noted suspected multiple tears in the rotator cuff, but no evidence for retraction of the tendinous; moderate joint effusion/hemarthrosis; suspected joint dislocation; a labral tear is suspected, a possible split tear of the biceps tendon. (JX. #1, p. 71-72).

On August 9, 2005, claimant was evaluated by Dr. Charles E. Pearce, Jr., a Little Rock orthopedic physician, relative to her left shoulder and arm pain, at the request of Dr. Bruffett.

The August 9, 2005, report of the claimant's evaluation reflects, in pertinent part:

She was initially thought to possibly have cervical disc pathology and was scheduled for surgery, but a second opinion was done and it was found that she likely did not have pain based on her disc pathology. This led to evaluation to include a MRI scan of her left shoulder. This showed some changes in her rotator cuff. Possible supra and infraspinatus, with minimal retraction. Also seen was possible labral pathology and pathology in the biceps tendon.

She has never had a known prior injury to her shoulder. She note moderate to severe pain, which is worsening. Decreased motion. She has pain radiating from her neck into all of her fingers. No definite dermatomal pattern. Also, right shoulder and arm pain; similar.

\* \* \*

**IMPRESSION:** Left shoulder and arm pain with severe adhesive capsulitis but signs and symptoms of complex regional pain syndrome, such as reflex sympathetic dystrophy or shoulder-hand syndrome. (JX. #1, p. 73-74).

In addition to directing additional diagnostic studies and an evaluation by Dr. Rutherford for possible RSD, Dr. Pearce imposed physical limitations of no lifting greater than 10 pounds at work and no overhead work with the left arm on the claimant.

At the time of his evaluation of the claimant, Dr. Reginald J. Rutherford, a Little Rock neurologist, had access to the results of the diagnostic studies performed at the behest of Dr.

Pearce. The August 17, 2005, consultation report of Dr. Rutherford reflects, in pertinent part:

Ms. Matheson is seen for evaluation regarding possible RSD. She has suffered an injury to her left rotator cuff. She also reports bilateral wrist pain. Prior to being seen she underwent a total body bone scan with triphasic imaging of the upper extremities which reveals evidence for synovitis both wrists of moderate severity. There was no evidence for RSD. Ms. Matheson is also known to have a disk bulge/herniation at C5/6 but this is lateralized to the right with symptoms being on the left pertaining to arm pain.

Clinical examination demonstrates moderate effusion with restriction in range of motion both wrists. There is no involvement of the small joints either hand. Neurological function is normal both upper extremities pertaining to motor, reflex and sensory parameters. Background history is relevant for severe psoriasis which in the recent past has been treated with Enbrel.

Ms. Matheson underwent MRI studies of both wrists which reveals evidence for joint effusion and synovitis both wrists. The picture is indicative of an inflammatory arthropathy. She also underwent nerve conduction study and EMG. Nerve conduction study reveals no evidence of carpal tunnel syndrome. Electromyographic examination left arm is negative for evidence for radiculopathy or plexopathy.

Ms. Matheson is clear from my perspective to pursue whatever treatment Dr. Pearce feels necessary referable to her rotator cuff injury. With respect to her inflammatory arthritis it is strongly recommended that she see a rheumatologist. Her treating dermatologist is in Jonesboro, Ms. Matheson living in Walnut Ridge. It is recommended she consult with her dermatologist for recommendation as to who she might see from a rheumatological standpoint. Principal suspicion at this juncture is psoriatic arthropathy. The changes noted clinically and on her bone scan referable to inflammatory arthritis both wrists is unrelated to her employment and work place injury this being a manifestation of autoimmune disease. (JX. #1, p. 80-81).

On August 30, 2005, the claimant was again seen by Dr. Pearce. The August 30, 2005, clinic note regarding the afore visit reflects that Dr. Pearce had access to the consultation report of Dr. Rutherford as well as the August 29, 2005, physical therapy Progress Summary report. Claimant was directed to continue right hand only duty work, continue the physical therapy and

daily stretching. (JX. #1, p. 87).

Claimant continued her physical therapy subsequent to the August 30, 2005, visit to Dr. Pearce. A September 29, 2005, Progress Summary regarding the claimant's physical therapy reflects that she had continued three (3) treatment sessions per week and that she had responded well with same, reporting lower pain levels and increased left shoulder PROM. (JX. #1, p. 94). The September 29, 2005, report of Dr. Pearce reflects that claimant's diagnosis as left shoulder adhesive capsulitis. The report reflects that while the claimant has made definite progress in therapy, she was not at maximum medical improvement. Claimant was directed to continue therapy and her restrictions of lifting up to 10 pounds and no overhead work with her left arm. (JX. #1, p. 95-96).

Claimant continued to receive physical therapy and to followup with Dr. Pearce on a monthly basis through December 2005. During a October 25, 2005, visit, Dr. Pearce noted the claimant's diagnoses as left shoulder adhesive capsulitis, possible underlying rotator cuff pathology and psoriatic arthritis. Claimant's weight lifting restriction was increased to 20 pounds with no overhead work involving the left arm. (JX. #1, p. 101).

A November 15, 2005, clinic note of Dr. Pearce reflects, regarding the claimant:

**HISTORY:** Ms. Matheson returns for followup of her left shoulder adhesive capsulitis. She has psoriatic arthritis as well.

The MRI did show pathology - Perhaps, a small nonretracted supraspinatus tear and a partial tear of her infraspinatus. Her main problem has been stiffness. She is improving slowly with therapy. (JX. #1, p.108).

While noting that the claimant was not at maximum medical improvement, the November 17, 2005, clinic note of Dr. Pearce does reflect that the claimant could return to regular duty work,

“with the exception of no lifting of the lids on the underground tanks” which caused her initial injury.

The claimant’s final physical therapy Progress Summary of December 14, 2005, noted that she had achieved a higher level of function over the past month of physical therapy. The report concluded that claimant’s functional strength and range of motion seemed appropriate for the requirements of her job. (JX. #1, p. 113).

The evidence reflects that the claimant was last seen by Dr. Pearce on December 15, 2005. The December 15, 2005, report of Dr. Pearce reflects, in pertinent part:

She has done reasonably well. She has completed therapy. She says that she is satisfied with her situation. She does not want any type of surgical intervention.

**PHYSICAL EXAMINATION:** Forward flexion activity is about 130. External rotation about 70. Her passive motion is nearly full. She has mild subacromial crepitation. Reasonably good strength.

\* \* \*

**RECOMMENDATIONS:**

- 1) At this point, I am essentially releasing her from my care.
- 2) She can return to work. I would restrict her from no lifting greater than 15 pounds.
- 3) She has sustained a 7% permanent partial impairment as it pertains to the upper extremity. This would be 4% of the person as a whole. This is according to the Guides To The Evaluation of Permanent Impairment set forth by the American Medical Association’s fourth edition.
- 4) I have not made her a follow-up appointment, but I would be happy to see her back should the need arise. (JX. #1, p. 114).

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In June 30, 2006, letter to the medical case manager regarding the claimant Dr. Wayne L Bruffett relayed, in pertinent part:

. . . Ms. Matheson did have an MRI scan which revealed a disc bulge or herniation at the C5-6 on the right. However, her main clinical concern

was left-sided. She had extensive treatments with her left shoulder.

Based on the fact that her pain was opposite the side of her disc herniation, I would say that the disc herniation was of little clinical significance here and certainly did not result in any type of permanent impairment. (JX. #1, p. 119).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witness, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about May 15, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On or about May 15, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$185.00, for permanent partial disability.
4. On or about May 15, 2005, the claimant sustained injuries to her shoulders and neck arising out of and in the course of her employment with respondent.
5. The claimant reached the end of her healing period on December 15, 2005.
6. The claimant has a permanent partial disability in the amount of 4% to the body as a whole as a result of her compensable injury.
7. The respondents shall pay all reasonable hospital and medical expenses arising out of the injury of on or about May 15, 2005.

### **CONCLUSIONS**

\_\_\_\_\_ On or about May 15, 2005, the claimant sustained injuries to her shoulders and neck which required medical treatment. The injuries were accepted as compensable by respondents

and appropriated medical treatment was provided. On December 15, 2005, the claimant was released from the care of her treating physician with a permanent physical impairment in the amount of 4% to the body as a whole relative to her residual left shoulder complaint. The afore was also accepted and paid by respondents. Claimant asserts that she is entitled to additional indemnity benefits as a result of the compensable injury. Respondents deny that the claimant is entitle to additional indemnity benefits.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In the instant claim, the compensability of the claimant's May 2005, injuries are not disputed. The medical in the record reflects that the onset of the claimant's injury was actually May 11, 2005.

The claimant worked as an assistant manager for respondent-employer, which is a convenient store. Among the claimant's duties was lifting heavy lids of the gas tanks. While the medical clearly reflects that claimant registered complaints relative to her neck, which she attributed to the May 11, 2005, work activity she also complained of bilateral shoulder pain. Diagnostic studies confirmed the presence of a right paramedian C5-C6 disk herination. Although at one point claimant was referred to neurosurgeon for surgical treatment of the herination, after receiving a second opinion she elected to proceed with a non-surgical option.

The evidence reflects that with physical therapy and medication claimant's cervical complaints resolved as did her right shoulder symptoms. Claimant was released from the care of her treating physician on December 15, 2005, as having reached maximum medical improvement with a permanent physical impairment in the amount of 4% to the body as a whole relative to her

left shoulder injury. The only medical restriction placed on the claimant's employment activities at the time of her release from the care of her treating physician, Dr. Charles E. Pearce, Jr., was no lifting greater than 15 pounds with her left upper extremity.

By the claimant's own account the only residual symptom she experience regarding her neck is occasional "stiffness". Dr. Wayne Bruffett, a Little Rock orthopedic surgeon, who first saw the claimant on June 6, 2005, for a second opinion regarding her injury, and provided treatment through August 1, 2005, at which time she was referred to Dr. Pearce for her left shoulder complaint, had access to the claimant and her diagnostic studies. As noted above, Dr. Bruffett has opined that the claimant has no permanent impairment relative to her cervical spine. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained any permanent physical impairment relative to her cervical spine as a result of her May 2005, compensable injury.

Claimant, with a date of birth of March 29, 1950, is right-hand dominate, and a high school graduate. Claimant acknowledged that she has continued to work, for the most part, during the entirety of healing period relative to her May 2005, compensable injury. The respondent-employer provided the claimant with job duties compatible with her medical restriction during the claimant's healing period. Claimant asserts that her inability to work full time is due to weakness in her lower extremities and hips as well as her left shoulder. Claimant acknowledges that she has arthritis and that Dr. Reginald J. Rutherford, a Little Rock neurologist, and one of her examining physicians, informed her that the diagnosed psoriatic arthropathy, was unrelated to her employment and work place injury but rather was a manifestation of autoimmune disease.

The evidence reflects that the claimant was released to return to her regular job duties on December 15, 2005, with a 15 pound lifting restriction relative to her left upper extremity. Further, the evidence reflects that the respondent-employer has accommodated with respect to her medical restriction growing out of the May 2005, work-related injury. The claimant's part-time employment status with the respondent is the product of her pre-existing autoimmune disease rather than the residual of her work-related injury. The claimant has failed to sustained her burden of proof by a preponderance of the evidence that she has suffered a loss of earing capacity or permanent partial disability in excess of her anatomical impairment of 4% to the body as a whole. The claim for wage loss disability benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**