

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F004211**

**MARGARITA GARCIA  
BARBOSA BASSON,  
EMPLOYEE**

**CLAIMANT**

**CURT BEAN  
LUMBER COMPANY,  
EMPLOYER**

**RESPONDENT**

**COMPENSATION  
MANAGERS, INC.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MAY 25, 2007,**

Pursuant to a hearing conducted February 26, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Thomas W. Mickel, Attorney at Law, Conway, Arkansas, appearing for the claimant and

Mr. Walter A. Murray, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This was a hearing to consider the extent of permanent disability resulting from the claimant's admittedly compensable on-the-job injury.

The claimant requested benefits for wage loss disability exceeding the level of her anatomical impairment, and an attorney's fee for controversion. She further contended that she was available for any vocational rehabilitation services offered by the respondents. Other possible issues, including additional surgery and benefits for disfigurement, were reserved.

The respondents contended that the claimant suffered no wage loss as the result of her compensable injuries and, specifically, contended that she has returned to the workforce performing similar work and receiving wages equal to or greater than her average wage at the time of the injury.

The record, which included documentary evidence and the testimony of the claimant at the hearing and by deposition, was closed at the conclusion of the hearing consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employee-employer-insurance carrier relationship existed at all pertinent times; compensable injuries, including an injury to her face, as a result of a motor vehicle accident April 6, 2000; an average weekly wage of \$671.68; and anatomical impairment of 12% to the body as a whole.

3. The preponderance of the evidence shows that, as a result of her compensable injuries, the claimant has sustained permanent disability in a total amount equal to 20% to the body as a whole and consisting of her anatomical impairment of 12% to the body as a whole, together with wage loss disability in the additional amount of 8% to the body as a whole.

4. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

**DISCUSSION**

On April 6, the claimant was injured during her employment as an over-the-road truck driver when the vehicle she was operating was involved in an accident in Minnesota. Medical records from

a local hospital indicate that she received a cut across the forehead and was experiencing a significant amount of right shoulder pain, although x-rays and a CT scan were reported to be negative.

When she returned to Arkansas, orthopedic surgeon Dr. J. Todd Ghormley of Conway treated her right shoulder injury. After the claimant's symptoms failed to respond to the surgeon's care, she was eventually diagnosed as having a rotator cuff tear, which was surgically repaired by Dr. Ghormley February 7, 2001. A followup note dated February 20, 2001, indicated that the claimant was doing well and was having some numbness in her left hand, as a result of using her left hand due to her right hand being incapacitated. She was diagnosed at that time with left carpal tunnel syndrome as a result of her cuff repair. Cl. Ex. 1 at 16.

On May 8, 2001, Dr. Ghormley examined the claimant and wrote that she was doing very well from her right shoulder rotator cuff repair and released her to work full duty without restriction. However, on July 3, 2001, he examined the claimant and noted that she had been doing well but then was lifting a trailer hitch and started having pain. On August 14, 2001, he examined the claimant and noted that she continued to have pain in her right shoulder but it had gotten a little bit better. An August 20, 2001, report of an arthrogram suggested a small partial thickness tear or residual deep post surgical defect in the rotator cuff. By December 20, Dr. Ghormley noted that the claimant still had pain and commented that she was able to do her job, except for hooking up the hitches. An April 9, 2002, note indicated that the claimant was doing fairly well with her shoulder and could go back to work at that time.

On May 29, 2002, Dr. David N. Collins performed an independent medical examination of the claimant and opined that she would benefit from a Deltoid muscle strengthening program. He

assessed her impairment at 12% to the body as a whole and stated that she could work without restriction. However, on September 22, 2003, the claimant returned to Dr. Ghormley, who noted that she was continuing to have pain in her right shoulder and recommended an injection, strengthening exercises, and medication. On November 20, 2003, Dr. Ghormley wrote that the claimant was doing well with her shoulder and had full range of motion and good cuff strength. He noted that the injection did not really help the claimant and he recommended strengthening exercises and medication. On April 26, 2004, he reported that the claimant had pain every so often, excellent full range of motion, very minimal weakness in the rotator cuff, and rated her impairment at 6% to the whole person for chronic pain. Previously, in May, 2002, Dr. David Collins had assessed the claimant's impairment at 12% to the body as a whole, based on objective findings, and opined that she could return to work without restriction. On July 22, 2004, Dr. Ghormley wrote that the claimant was continuing to have pain in her shoulder, waking up at night with pain. He opined that she had right shoulder possible recurrent subsurface tear and he recommended exercise and Celebrex and stated that he would consider "scoping" her shoulder if problems continued.

The record reveals that the claimant has a basic education and some variety in her work experience. She did not complete high school but started working, first, at a fast food restaurant where she did various jobs such as opening, closing, cooking, cleaning, and serving. She also worked as a cashier in a grocery store.

She then decided to add to her education and she received her GED and completed courses in data entry and as an accounting specialist. She also completed the courses required for her to obtain a commercial driver's license and is an A.S.E. certified mechanic, as well.

Her other employment included work in a home improvement store as a supervisor over customer service and returns, as well as cash registers. She also worked as a cook and evening supervisor in a restaurant. She worked full time as an over-the-road truck driver since 1998 and began her employment with Curt Bean Lumber Company as a truck driver in September, 1999.

She testified that she had worked for this employer without problems until the accident, which is the subject of this case, that was followed by surgeries to her shoulder and to repair her nose. She stated that she returned to the employer but was refused employment and then immediately returned to work as an over-the-road truck driver for another employer, C. X. Roberson, which used vehicles with automatic transmissions. She stated that she had some difficulty with parts of the job beyond merely driving with the automatic transmission. She described the other activity in some detail which included opening and closing doors, cranking up and down the fifth wheel, coupling and uncoupling trailers, and checking tires and equipment. She said at first after these activities her shoulder was uncomfortable and then it became throbbing. She worked two years for this employer but did not remember if she made more or less money than her average weekly wage at the time of her injury. Eventually, she felt that this business was too demanding and that she could not make sure that drivers were doing their job, so she ceased that operation.

She then worked as a service adviser for Cogswell Motors setting up appointments for service on vehicles, responding to customer questions, and doing data entry from mechanic's notes. This job paid \$7.00 per hour and she worked there six to eight months, but left because of the strain on her family situation. The claimant also worked for the South Conway School District driving a school bus on a contract for \$7,450.00. This involved working about three hours a day, five days a week, for nine months of the year, and also some bus driving during the summer school program.

Other employment included work at a dairy queen on a full-time basis until the business closed. She also worked at Lowe's in Conway as a cashier for about six months but quit because the schedule conflicted with her schedule for when school was going to start. She stated that she was not required to do anything that exceeded her physical limitations and was paid about \$7.65 an hour. She also worked for Conley Transport for about a week.

She has not had a functional capacity evaluation but states that her shoulder is painful and limits her activity, both at work and at home, and that she sleeps with a heating pad. She also states that she has had some nose bleeds, which she attributes to the injury to her face, although she also admits to having high blood pressure. In November, 2005, she failed a DOT physical examination and was told to lose weight, start walking, quit smoking, and exercise regularly. She also suffers from sleep apnea. The claimant feels that activity has continued to aggravate her shoulder condition which she thinks is more painful now than it was after her surgery in February, 2001.

Presently, the claimant is 38 years of age, has a basic education, and work experience primarily centering on truck driving and retail sales. Her attempt to return to work following her injury indicates that she is well motivated but has found her physical condition and the demands of her family to impede her return to employment at the level she enjoyed at the time of the injury. Nevertheless, although she has experienced continuing physical problems as the result of her compensable injuries, she has continued to be able to work, but at a diminished capacity, so that she has sustained permanent disability in the above stated above.

#### **AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge