

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F410671 & F410670

WILMA L. KING, EMPLOYEE	CLAIMANT
ST. MARY'S REGIONAL MEDICAL CENTER, EMPLOYER	RESPONDENTS NO. 1
SPECIALTY RISK SERVICES, TPA	RESPONDENTS NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MAY 30, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on April 23, 2008, in Russellville, Pope County, Arkansas.

The claimant was represented by The Honorable Laura McKinnon, Attorney at Law, Fayetteville, Arkansas.

Respondents no. 1 were represented by The Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent no. 2 was represented by the Honorable David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived participation in the hearing due to the issues being litigated at this time.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 23, 2008, in Russellville, Arkansas. A Prehearing Order was entered in this case on January 7, 2008. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties

either during the prehearing conference or at the time of the hearing, these are hereby accepted.

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including March 10, 2003, and on April 11, 2003. (The parties modified this stipulation at the time of the hearing to exclude the admission of compensability of any injury).

3. The parties will stipulate to claimant's compensation rate at the time of the hearing or provide briefs on the same. (At the time of the hearing, the parties agreed that the claimant's weekly compensation rate is \$440.00 for temporary total disability compensation, and \$330.00 for permanent partial disability).

4. Respondents no. 1 stipulate that they authorized the claimant's initial visit of treatment with Dr. Russell Allison. Therefore, they further stipulate to pay for this initial visit.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Compensability of the claimant's alleged lower back, and cervical spine injury of March 10, 2003 (the claimant also alleges

that her lower back injury may have resulted from the second incident), and left shoulder injury of April 11, 2003.

2. Medical benefits.

3. Medical group's entitlement to reimbursement/subrogation through March 12, 2005. (The claimant withdrew this issue at the time of the hearing).

4. Whether the group carrier's subrogation interest ended on March 12, 2005. (The claimant withdrew this issue at the time of hearing).

5. Temporary total disability and/or temporary partial disability from date of injury until March 12, 2005. (At the time of the hearing, the claimant alleged her entitlement to only two weeks of temporary total disability compensation. However, she was uncertain as the exact dates for this period of disability).

6. Whether respondents no. 1 are entitled to a setoff under Ark. Code Ann. §11-9-411 for benefits paid under a group health care plan.

7. Controversion and an attorney's fee.

CONTENTIONS

The claimant contends that she sustained a compensable lumbar injury arising out of and in the course of employment with the respondent/employer on or about March 10, 2003. Claimant contends entitlement to workers' compensation benefits as set forth in the issues response in the Prehearing Memorandum, and specifically,

reasonable, necessary, and related medical expenses; temporary total disability benefits and/or temporary partial disability benefits; permanent partial/total disability benefits (reserved) and/or rehabilitation benefits (reserved); and controverted attorney's fees. All other benefits are reserved under the Act.

Respondents no. 1 contend that claimant did not sustain a compensable injury while working for respondent/employer on March 10, 2003, or on April 11, 2003. Respondents contend that a group medical policy has paid for claimant's treatment, and that she has received short-term disability. Therefore, respondents no. 1 further contend that pursuant to Ark. Code Ann. §11-9-411, they are entitled to an offset for benefits paid under said polices.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of January 7, 2008, the claimant's Response to the Prehearing Questionnaire, and respondents no. 1's Response to the Prehearing Questionnaire, as these have all been marked as Commission's Exhibit No. 1. The claimant's Medical Packet with index and abstract was marked as Claimant's Exhibit No. 1. The claimant's Subrogation Release dated June 3, 2007, was marked as Claimant's Exhibit No. 2. Respondents no. 1's Medical Packet was marked as Respondents No.1's Exhibit No. 1. Respondents No. 1's Non-Medical Packet was marked as Respondents No. 1's Exhibit No. 2.

The following witnesses testified at the hearing: the claimant

and Mr. Robert King.

DISCUSSION

The claimant, age 60 (4/04/48), has an Associate's Degree, and has primary work experience in nursing. She admitted that in March and April of 2003, she worked for the employer-respondent as a staff nurse, in the recovery room for surgery.

With respect to what happened on March 10, 2003, the claimant testified that she was taking care of a surgery patient in the recovery room alone. Specifically, the claimant testified:

... I pushed the bed through the double doors that lead out of the recovery room into the surgery area, pushed the bed through then got to the other end to try to pull and turn the bed down the hallway. And when I did that I felt a strong strain or pain in my left back.

She testified that the patient was an adult patient, of normal size, and the bed was probably a regular hospital bed with wheels. According to the claimant, it took quite a bit of effort to move the surgery patient, as the patient was a back patient, and she was trying to be very careful not to bump the bed as she went through the doors.

The claimant described her back pain as being quick, but not continuing at that moment. According to the claimant, she later went to a room to help the surgery crew move another patient, and she was not able to pull the patient onto the bed due to back pain. As far as discussing her injury, the claimant testified she did talk to the operating crew, (the circulating nurse, the scrub tech,

and the anesthesia doctor) about her having pulled her back and that it was hurting. The claimant further testified that she did attempt to help them move their patient, but was unable so they had her step aside and they did the moving without her help. The claimant testified that during the remainder of her shift, she only recovered the one patient and took him to the room, and then she went home.

She testified that the next day she had soreness in the back and leg. According to the claimant, the next night she went in and did a surgery case, and at that time filled out an incident report and slipped it under the door of the nursing surgery supervisor, Jack Small. The claimant essentially testified that Mr. Small called her the next morning to see how she was doing and asked if she needed to come in and go to the emergency room and see the doctor, but she chose not to go in to the emergency room, because she was resting and doing okay.

Although the claimant did not remember the chronology of the next weeks as far as working, but she did recall having scheduled vacation for one week. On return from vacation, she did not remember if she worked a full week on days or went directly to evenings. However, after the March incident, the claimant essentially admitted to working up until April 11th, with the exception of her scheduled vacation, which was for one week. She denied having sought medical treatment during this period of time.

According to the claimant, she attempted to modify her duties at work during that time by being careful to have her fellow workers help her move patients and by not moving carts by herself. The claimant admitted to resting and using heat on her back during the period from March until April 11th. She denied having injured her back at home.

Regarding the April 11th incident, the claimant testified that she was taking care of a restless male patient in the recovery room during an evening shift on call. The claimant testified that the male patient had tubes, an IV and a NG tube in his nose. According to the claimant, the patient was slinging his arms and trying to get up out of bed, as she was caring for him alone. Specifically, the claimant testified:

... And I was reaching from the patient opposite direction to try to get medication for this patient who obviously was in pain. And at that time I felt a pull in my neck and my shoulder and pain down my arm.

According to the claimant, this was a sharp pain, which was in the back of her left shoulder and then down the back of her arm. The claimant essentially testified that although this was a quick pain that left, she still felt some pressure in the shoulder area and the front area of her chest. The claimant testified that a co-worker (Brenda Randalls) who came in to help her a short time after, was afraid she was having a heart attack. She testified that Ms. Randalls helped her take the patient to the room and would not let her go home without going to the emergency room because of

possible relation to a heart problem. The claimant went to the emergency room and was admitted to the hospital overnight.

She admitted to filing out forms for the first injury, which was in March and turning them in to Jack Small, but did not recall filling out an incident report for the second injury. However, the claimant testified that in this instance, she called B.J. Meyers personally, as she is the employee health nurse.

According to the claimant, she reported the second incident to B.J. Meyers, and told her about her hospital stay and that she felt it was related to the other back injury because it was a muscle pain. The claimant testified that she asked to see a doctor, and Ms. Meyers told her she could not be seen under workers' comp because it has been too long since her March injury. At which point, the claimant told Ms. Meyers she would see her own doctor and go from there. Ultimately, the claimant testified that Ms. Meyers made the appointment for her to see Dr. Russell Allison and went to the appointment with her, and was in the exam room with her and answered questions for her. According to the claimant, she told Dr. Allison that she had been working and did not want a release to be off work at that time. Although at that time, the claimant continued working, she could not remember the exact date she was taken off work. Specifically the claimant testified:

... I don't know if it was that week or another Dr. Allison put me on some physical therapy. And I was at work following therapy and my back went into full spasm, and I was taken off work. I took off work at that time.

The claimant testified she was off work during this period of time for a total of six weeks. She further testified that there were two weeks that she was not taking vacation or sick pay leave. However, the claimant could not remember the exact dates for these two weeks of leave without pay.

According to the claimant, she called Dr. Allison and she stopped her physical therapy due to her back going into full spasms, and tried to send her to a different doctor but she would have had to wait six weeks after that date. So, instead she stayed home in bed not using her back. On the recommendations of others, the claimant testified that she called Dr. Bruce Brown and he agreed to see her. The claimant testified that Dr. Brown ordered different physical therapy treatment for her at Lane Physical Therapy, and eventually sent her to a Little Rock doctor, Dr. Julia McCoy. The claimant testified that Dr. McCoy did some testing for carpal tunnel problems and also saw her regarding the pain in her shoulder, for which she directed her to see Dr. Annette Meador for some trigger point injections. She admitted to seeing Dr. Valley, a pain doctor in Russellville, prior to seeing Dr. Meador, but he eventually left and at that point, the insurance company allowed her to see Dr. Meador. The claimant admitted to seeing her family doctor, Dr. Tim Johnson for her injury.

With respect to the time period from April 2003 until December 2005, from an injury standpoint, the claimant testified that she

continued to have pain in her back and shoulders. According to the claimant, she had to work with her co-workers and have their help in moving patients in order not to stress and re-injure her back. The claimant admitted that during the course of this two-year period, she did not have any modified work duty, nor did any doctor have her on any restrictions. She denied having done anything at home during this two-year period to injure her back, neck or shoulder.

The claimant admitted to being involved in a motor vehicle accident approximately some 12 years ago. She further admitted to having received medical treatment for this injury from Dr. Lowery, who put her on physical therapy for a few months. The claimant denied having missed any time from work due to this injury. However, she essentially admitted that the body areas affected as a result of this car accident, included her low back, legs, the calves in her legs and left low back, but she denied that it involved the same area of the back as her alleged compensable injury.

After having received the initial treatment after the car accident, the claimant denied any subsequent treatment during the next 13 years for this injury. She also denied any subsequent physical problems performing her work activities as a nurse during this time period.

On cross examination, the claimant admitted to an incident in

December 2005 while working for the employer-respondent. According to the claimant, this incident involved the lifting of a piece of equipment, an IV, and a monitoring device from a pole, shoulder height or a little bit higher. The claimant admitted she has not filed a claim for this incident.

The claimant admitted that the March 10th incident occurred as she was taking a patient from the recovery room to his room. The claimant further admitted to having experienced a pull on the left side of her lower back. She admitted to completing a report and putting it under Jack Small's door. The claimant also admitted to telling Mr. Small she did not need any treatment. She admitted to not getting any treatment until April.

She admitted that during the April 11th incident, she had pain in her left shoulder down her left arm. The claimant testified that incident took place on a Friday night during a call weekend. She admitted that after this, she kept working full duty.

The claimant admitted that the treatment she received after seeing Dr. Allison was treatment that she sought on her own, as she did not make Ms. Meyers aware of this treatment. She also admitted to having filed everything on her personal insurance. The claimant testified that she could not recall if Dr. Allison actually took her off work during the six-week period of time that she was off.

She essentially admitted that there has not been any recommended treatment that she has not had. She admitted that Dr.

Allison sent her for MRI's of the cervical spine and thoracic spine, but she denied having seen these reports, which were within normal ranges. The claimant did not recall telling Dr. Bruce Brown on June 5, 2003, her back pain had resolved. However, she admitted that her back pain around this time was better, but not gone.

The claimant did not recall that Dr. Julia McCoy had indicated in a report dated February 27, 2004 that her cervical and thoracic problems were due to scoliosis or a muscular imbalance. She also did not recall that Dr. McCoy had indicated in a report dated May 24th that there was no history of an accident, and that it was a spontaneous problem that she had.

The claimant admitted that the carpal tunnel that Dr. McCoy tested her for, she is not claiming it as being work-related. The claimant testified:

Q. Dr. Meador also sent you to a Dr. Money. Is that right?

A. Yes.

Q. Is that for headaches?

A. Yes.

Q. Is that related to the claim at all?

A. I was having headaches. I'm not sure why. Dr. Meador sent me to Dr. Money to see if there was a problem.

Q. And he did various tests?

A. He did some tests to make sure that there was not a brain problem that was related to those headaches.

Q. His report of January 12th, '06 indicates that you re-

injured yourself three weeks previously. Would that be the December of '05 injury that you told us about today?

A. I'm sorry I didn't hear the date.

Q. His report is dated January 12th of '06.

A. Okay.

Q. Does that sound right, three weeks before?

A. That sounds right.

Upon being questioned by the Commission, the claimant admitted that the two asserted weeks for which she is claiming temporary total disability occurred after the April 11th incident. She further testified that she was unable to work during this period of time due to her left shoulder and back. According to the claimant, Dr. Bruce Brown took her off work for the six weeks. The claimant admitted that her various group health care service plans have paid for the treatment of her asserted injuries.

The claimant's husband, Robert King gave testimony during the hearing. He testified that between the claimant's car accident and the March 2003 incident, he did not observe the claimant having any back, neck or shoulder problems.

On April 23, 2003, the claimant was seen by Dr. Russell Allison due to complaints of back, shoulder, and left arm pain. The claimant gave a history of having injured her back on March 10, 2003, while moving a patient, which she reported as being somewhat better, but it started to hurt higher in the back and even in the shoulder. The claimant reported left arm pain, for which she had

received emergency treatment. His assessment was "low back and midback strain," for which he ordered a physical therapy regimen.

An MRI of the thoracic spine taken on May 1, 2003, with the following impression: "Negative MRI of the thoracic spine." Also, an MRI of the cervical spine was taken on that same day, with the following impression, "Minimal disc ridge complex left paracentral at C4-C5."

X-rays were taken of the dorsal spine on May 1, 2003, with an impression of "Minimal thoracic spondylosis."

A review of the medical evidence shows that on May 9, 2003, the claimant was seen for a return visit by Dr. Russell Allison due to complaint of back strain. He reported having seen the claimant a few days ago in the emergency room. He noted among other things, that her MRI's of the cervical spine and thoracic spine were within normal ranges. He noted in part concerning her physical examination, "... She is able to ambulate, but she stays bent forward. I did not check specific muscle strengths, but she was in obvious spasms in the cervical and thoracic area of her back." His assessment was "back strain," which he further assessed as being a strain of the muscles. He also reported that the claimant did not appear to have any other abnormalities, nor did he think she had herniation or some other problem causing this.

On May 15, 2003, the claimant saw Dr. Bruce Brown due to a chief complaint of back pain. He reported the following concerning

the claimant's History of Present Illness:

Wilma is a 55 year old recovery room nurse who has had pain in her midback and shoulders. She has had this off and on for years but apparently in March she was reaching to move a bed and the symptoms began at that point. She has some pain radiates into her left arm and some down into the left side of her back and upper hip. She denies any bowel or bladder dysfunction or significant weakness. No specific paresthesias to her fingers or feet. She is here for evaluation and treatment without being able to tolerate PT for only two visits.

RECOMMENDATIONS:

I don't feel Wilma has any neurologic deficit. I have recommended that she be seen by PT to work with MedX and modalities. I have started her on Vioxx to see if we can improve her symptoms. I have also given her a prescription for Ultracet to use for pain only at night, and she will followup with us for reevaluation in three weeks. I have encouraged her to return to normal activity as quickly as possible and try to regain normal function.

The claimant underwent physical therapy treatment at Lane Physical Therapy Center beginning on or about May 16, 2003, and continuing through until January of 2005, which was primarily due to complaints of back, cervical and left shoulder pain and related symptoms.

On October 21, 2003, the claimant was seen by Dr. Timothy Johnson due to pain in the left side of her neck extending into her shoulder and low back. Dr. Johnson reported that examinations of the shoulder and back were unremarkable. He assessed the claimant with, "neck, shoulder, and back pain." Dr. Johnson also stated that this was likely secondary to muscle

spasm.

Dr. Willis Courtney saw the claimant on November 25, 2003 due to left sided neck pain associated with left upper extremity pain. With respect to examination of the neck, he reported, "Supple. Spasms over the left paraspinous muscles from her occiput down to approximately T2." Dr. Willis assessment was:

1. Cervical/thoracic myofascial strain.
2. Left upper extremity pain, may be related to #1.
3. Mild degenerative disk disease of the cervical spine.

The claimant was seen by Dr. Julia McCoy on February 27, 2004 due to neck and back pain. Dr. McCoy reported, in pertinent part:

Impression:

1. Right carpal tunnel syndrome: Much improved with carpal tunnel release as per Dr. Brown.
2. Probable cervical and thoracic myofascial pain secondary to muscular imbalance (thoracolumbar scoliosis). I had a long discussion with Ms. King regarding the etiology of her back and neck pain. She agrees to take her Elavil one at bedtime every night and add Flexeril 10 mg at bedtime. We will arrange for her to be evaluated by Dr. Annette Meador for trigger point injections and then hopefully Dr. Meador will arrange to have some physical therapy up in Russellville through Dr. Brown's office whenever she is seen. I will see her again in two months.

An MRI of the lumbar was taken on March 10, 2004, with an impression of, "Mild degenerative change of the vertebral endplates at L4-5. Otherwise unremarkable lumbar MRI."

On April 20, 2004, the claimant underwent pain evaluation

and management with Dr. Marc Valley. His assessment was "fibromyalgia and muscle spasms," for which he recommended trigger point injections in coordination with aggressive physical therapy.

The claimant saw Dr. Annette Meador on July 27, 2004 due to a chief complaint of low back pain. She reported, in part, the following:

History of Present Illness

Ms. King is a 56-year-old nurse at St. Mary's Regional Medical Center. She experienced the sudden onset of pain in her left back extending from her neck to her hips on March 10, 2003. She moved a hospital bed thru double doors and while turning the bed felt a sharp pull on the left side of her back. The pain has persisted. She has been seen by Dr. Mark Valley in the past who did some type of Marcaine injections. These records are not available. She denies pain or numbness in her extremities. She has had physical therapy for one week on her shoulder. She was doing the Medex program for back strengthening and I believe is still doing so. Her MRI of the lumbar spine reveals mild degenerative changes at L4-L5 and her MRI of the thoracic spine is normal. She has a minimal disc ridge complex paracentrally at C4-C5. She has a moderately severe carpal tunnel syndrome on the right, based on the study of January of 2004.

With respect to myofascial findings, Dr. Meador reported:

There are active trigger points of the left trapezius, left levator scapula tendon, left quadratus lumborum, left lumbosacral ligaments, and left gluteus medius minimus.

Dr. Meador's impression was:

1. Myofascial neck and shoulder pain.
2. Levator tendinitis.
3. Quadratus lumborum tendinitis.
4. Strain of the left lumbosacral ligament.

5. Possible degenerative joint disease of the hip.

Dr. Meador recommended that the claimant undergo an x-ray of the hip, trigger point injections and physical therapy treatment.

An MRI of the cervical spine was taken on May 17, 2005, with the following impression, "Disc ridge complexes at C4-5 and C5-6."

ADJUDICATION

The claimant has alleged compensable injuries occurring on two separate occasions to three areas of the body, namely, her back, neck and left shoulder. I will address these two incidents separately.

Specifically, the claimant contends that on March 10, 2003, she sustained a specific incident injury to her low back and cervical spine while pushing a hospital bed of a surgery patient into the recovery area.

She also contends that she sustained a low back injury (alternatively) and left shoulder injury while reaching from a patient's opposite direction to get pain medication for the patient on April 11, 2003.

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §

11-9-102(4)(D). The claimant must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has met her burden of proving by a preponderance of the credible evidence that she sustained a compensable injury to her back and neck in the form of "back and cervical strain" as a result of pushing a surgery patient's bed through to the recovery area on March 10, 2003.

Specifically, the claimant gave a credible account of the incident and her testimony is corroborated by the medical records. The claimant's testimony is further corroborated by the Form AR-N, which was filed on March 28, 2003, wherein the claimant reported neck and back problems as a result of the March 10, 2003 incident. The claimant further testified that immediately after the incident, she told the surgery crew about her having pulled her back and explained to them that she was hurting. Shortly thereafter the claimant testified that she completed an incident report and slipped it under the door of her nursing supervisor, Mr. Jack Small. The next morning, Mr. Small offered the claimant medical care, but she testified that she refused it since her back was "doing okay with rest." Although at that time, the claimant did not seek immediate medical treatment for her back and cervical conditions, ultimately she did seek medical treatment for her back and neck after a second

incident at work. This treatment was rendered by Dr. Russell Allison pursuant to directives from the respondent-employer. Medical records demonstrate that on April 23, 2003, the claimant underwent evaluation with Dr. Allison due to complaints of back, shoulder and left arm pain, for which he ordered a physical therapy regimen. On May 9, 2003, Dr. Allison assessed the claimant with "back strain" and noted that the MRI's of the C-spine and T-spine were within normal ranges. However, he noted that the claimant was in "obvious spasms in the cervical and thoracic area of the back." Although respondents no. 1 contend that the spasms referred to by Dr. Allison were subjectively told to him by the claimant, I am not persuaded by this argument, considering these findings were reported in the physical examination section of his report rather than the history portion of this report. Therefore, I find these to be objective findings of an injury to the claimant's neck and back. Also, on November 25, 2003, Dr. Courtney reported spasms over the left paraspinous muscles from her occiput down to approximately T2.

I find the testimony of the claimant to be credible, considering she gave a credible account of the incident, her testimony is corroborated by the medicals, the form AR-N, and in light of the absence of testimony from St. Mary's Regional Medical Center controverting the same. As a result, I find that the claimant has proven by a preponderance of the credible evidence that her back and cervical injury arose out of and in the course of her employment with respondents no. 1, and that her

injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that the claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm to her body which required medical services and she has offered medical evidence supported by objective findings establishing an injury to her back and cervical areas, so as to prove every element of a compensable back and cervical injury.

With respect to the claimant's alleged left shoulder injury, I also find that the claimant proved by a preponderance of the credible evidence that she sustained a compensable injury to her left shoulder during and in the course of her employment with the respondent-employer on April 11, 2003.

I find the claimant's testimony credible and worthy of belief. Specifically, I find that the claimant gave a credible account of an April 11th incident of having an immediate onset of a sharp pain in her left shoulder and then down the back of her arm while reaching from the opposite direction of a restless patient to retrieve pain medication for the patient. The claimant credibly testified to having told a coworker about the incident, and to having sought treatment from the emergency room as a result of this incident. Subsequently, the claimant also received extensive conservative treatment for this injury, which included, but was not limited to trigger point injections, and physical therapy treatment. There are objective findings

establishing this injury in the form of "active trigger points." Specifically, on July 27, 2004, Dr. Meador opined, "There are active trigger points of the left trapezius, left levator scapula tendon, left quadratus lumborum, left lumbosacral ligaments, and left gluteus medius minimus." The observation of palpable trigger points, have been recognized as objective findings. See High Capacity Prods. v. Moore, 61 Ark. App. 1, 962 S.W. 2d 831 (1998); Lewis v. WSD Turner, Arkansas Workers' Compensation Commission F212623 (July 12, 2004). While I recognized that these trigger points were not observed until July 27, 2004 (more than a year after the claimant's April 11, 2003 incident), I find these objective findings to be causally connected to the claimant's work-related incident, in light of the claimant's persistent complaints of pain since this incident for which she has received extensive conservative medical treatment, the fact that the claimant had no prior complaints of problems with her left shoulder, and there being no evidence of any independent intervening cause. With this in mind, I am persuaded that the claimant suffered a compensable injury to her left shoulder as a result of the April 11, 2003 incident in the form of "a left shoulder strain."

The next issue for determination is whether the claimant is entitled to the medical treatment of record for her compensable neck, back, and left shoulder injuries, as the claimant alleges only her entitlement to the medical treatment of record. In

addition, at the time of the hearing, respondents no. 1 stipulated/agreed that they would be responsible for the medical treatment that the claimant sought from Dr. Russell Allison pursuant to directives from the respondent-employer.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

On the basis of the record as a whole, I find that the claimant proved that the medical treatment of record for her compensable back, neck, and left shoulder injuries beginning in April of 2003, and continuing through until March 12, 2005, was reasonably necessary in connection with these injuries pursuant to Ark. Code §11-9-508(a). Specifically, all of the aforementioned medical treatment was geared toward evaluating, diagnosing, and treating the claimant's compensable neck, back and left shoulder injuries.

The claimant also contends that she is entitled to two weeks of temporary total disability compensation for her compensable injuries. The claimant's injuries are unscheduled injuries. In

order to be entitled to temporary total disability compensation for these injuries, the claimant has the burden of proving by a preponderance of the evidence that she has remained within her healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981).

Although the claimant testified she was off work for six weeks after her April 11th incident, she is only asserting her entitlement to two weeks of temporary total disability compensation from this period of time. While the claimant could not recall the exact dates she was off work, she essentially testified at one point that her six week-period of disability occurred after the April 11th incident and that Dr. Bruce Brown directed her to refrain from working for six weeks. Hence, the only treatment of record from Dr. Brown is dated May 15, 2003. However, at that time, he directed the claimant to return to her normal activities as quickly as possible in order to regain her normal function. In addition to this, the claimant's testimony concerning her asserted period of disability is conflicting and confusing in that she also testified that no doctor ever directed her to refrain from working. Nonetheless, while the claimant may have remained within her healing period for her compensable injuries during this six-week period of time, the claimant has failed to prove by a preponderance of the evidence that she was

totally incapacitated from earning wage. Therefore, the claimant is not entitled to any temporary total disability compensation.

Respondents no. 1 contend that they are entitled to a setoff for medical bills paid by the claimant's group health and short-term disability plans. The evidence demonstrates that the claimant received benefits from these plans. As a result, I find that pursuant to Ark. Code Ann. §11-9-411, respondents no. 1 are entitled to a credit in an amount equal to, dollar-for-dollar, the amount of benefits previously paid by the claimant's group health care and short-term disability plans for the claimant's compensable injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times.
3. The claimant's weekly temporary total disability compensation rate is \$440.00, and her weekly permanent partial disability rate is \$330.00.
4. The claimant proved that she sustained compensable injuries to her back, neck, and left shoulder during and in the course of her employment with respondents no. 1.
5. Respondents no. 1 stipulated to pay for medical treatment that the claimant received from Dr. Russell Allison per directive from the employer-respondent.
6. The claimant proved that the medical treatment of record for her compensable injuries beginning in April 2003, and continuing through March 15, 2005 was reasonably necessary in connection with her

compensable injuries pursuant Ark. Code § 11-9-508(a).

7. The claimant failed to prove by a preponderance of the evidence her entitlement to any temporary total disability compensation.
8. Pursuant to Ark. Code Ann. §11-9-411, respondents no. 1 are entitled to a credit in an amount equal to, dollar-for-dollar, the amount of benefits paid under the claimant's group health care and short-term plans for the claimant's compensable injuries.
9. No statutory authority exists under the Act for awarding a controverted attorney's fee on the medical benefits awarded herein.

AWARD

Respondents no. 1 are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth in this Opinion. Respondents no. 1 are entitled to a set-off pursuant to Ark. Code Ann. §11-9-411.

Because the claimant's injury occurred after July 1, 2001, there is no statutory authority under Ark. Code Ann. §11-9-715 to award the claimant's attorney an attorney's fee on the medical benefits awarded herein.

All other benefits are reserved under the Act.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml