

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605149 (4/28/06)

DEBRA STAFFORD, EMPLOYEE

CLAIMANT

BUFFALOS OF PARAGOULD, LLC., EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 15, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 20, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North 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 May 20, 2008, 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 Debra Stafford - the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Debra Stafford, the claimant, with a date of birth of October 1, 1953, completed the 9th grade and later obtained her GED. Claimant commenced her employment with respondent May 7, 2005. As reflected in the stipulations there is not a dispute that the claimant sustained a compensable injury to her right humerus in a April 28, 2006, work-related accident. Claimant asserts entitlement to additional medical treatment relative to complaints growing out of the April 28, 2006, compensable accident. Specifically, treatment associated with her ulnar nerve.

Claimant's testimony reflects that her initial job duties in the employment of respondent-employer entailed helping prepare food before opening and washing dishes after opening.

Claimant testified, with regard to the food preparation:

Okay. Food prep, we made everything, we had a recipe for, we prepped the food, they had food for every shift and they would put it in the freezer or the cooler. (T. 8).

The testimony in the record reflects that the claimant's starting hours varied from 7:00 a.m. to 8:00 and sometimes 9:00 a.m. Claimant noted that sometimes she worked evening shift.

Claimant's testimony reflects the her job was one that required her to be on her feet the entirety of the time that she worked, whether it was a six hour shift, eight hour shift or a ten hour shift.

In addition to the food prep, claimant also washed dishes. Claimant washed pots and pans in the sink. Dishes were scraped, rinsed off and stacked in the dishwasher. The testimony of the claimant reflects that the heaviest load that she was required to carry in the discharge of her employment duties was stacks of plates.

The claimant performed the above job duties the entirety of her employment with respondent through April 28, 2006, the date of her accident. In describing the mechanics of her

accident, claimant testified:

Okay. I come in, I'm thinking I came in at 9:00 that day.

And I was getting the dishwasher set up, went to put it all back together, the inside of it, I was taking out the trash, I went to get a trash bag, I was walking toward the back of the restaurant and there was a drain and I slipped, and luckily I fell backwards because I missed a steel table, may two inches.

But I fell on something that was in the drain and I fell on my arm behind my back and I fell on it and cracked it. (T. 10-11).

Claimant's testimony reflects that she fell onto of her right arm, to include her shoulder, in the accident. Following the accident, claimant testified:

The manager, I can't think of his name, and his son came in there, and one got me by the feet and one got me by the waist, and they picked me up, and is said Woops, there is something broken, because my arm was totally loose, I could not move it. They sat me in a chair, they rolled me in the office and that's where I stayed until I went to the hospital. (T. 11-12).

The claimant was transported to the emergency room by the director of Helping Hands, Mr. Perry, who had been contacted by the claimant's manager. Claimant explained her connection to Helping Hands:

Because I was in a work program and they tried to call for me, the one that was over the work program, she was not there, so Mr. Perry, he's a nurse also, and he came to get me and they placed me in the truck and he took me to the hospital.

Helping Hands is a day treatment program. They help you to be trained and they have groups to help you to learn how to cope with different problems in you life.

Okay. I got into a program that, in 2004, because I was having a lot of depression, suicide thoughts, and I decided to take myself to the home, and since I have been going there they have helped me, in fact, they created a monster. (T. 12-13).

The testimony of the claimant reflects that once she arrived at the hospital she was admitted and treated by Dr. Schecter for her arm complaint growing out of the April 28, 2006, accident fall. Claimant testified that it is her understanding that in the treatment of her injury a steel plate was placed in her right shoulder. Claimant noted the her humerus was fractured at the shoulder in the accident. Claimant estimates that she was in the hospital for about a week and that she went and stayed with her mother following her discharge. Claimant's testimony reflects that she underwent six to eight weeks of physical therapy at St. Bernards Rehab in Paragould completing same at the end of August 2006. Claimant noted that she benefitted from the physical therapy. After undergoing a functional capacity evaluation on November 6, 2006, claimant's last appointment with Dr. Schecter was November 9, 2006, at which time she was released from his care.

Claimant testified that she did not returned to work following the November 9, 2006, date, because she could not. Claimant explained that she was not allowed to lift anything above her head or weights in excess of five or fifteen (15) pounds because of the injury. Claimant noted that it was hard for her to pick up a skillet. Claimant's testimony reflects that she continued to have difficulties with her right arm, maintaining that she relayed all along complaints of pain/hurting in an area of her right arm. With respect to the afore claimant testified:

And my arm would freeze and I would have to get somebody to help put it behind my back and exercise it. I had to keep that up. (T. 15-16).

The claimant obtained a change of physician relative to her April 28, 2006, work-related accident from Dr. Schecter to Dr. Spencer Guinn, a Jonesboro orthopedic surgeon. The

testimony of the claimant reflects that she was later referred by Dr. Burchfield, a general practitioner, to Dr. Campbell, a Jonesboro neurosurgeon. The claimant's testimony reflects that at the time she was seen by Dr. Campbell her chief complaint was numbness of the fingers of her right hand. Under Dr. Campbell's care the claimant underwent a nerve conduction study and an MRI of her cervical spine. Claimant later underwent surgery relative the ulnar nerve in her right elbow under the care of Dr. Campbell on November 8, 2007.

Claimant's testimony reflects that following the elbow surgery, while she still had some numbness it was not as bad and that she is now able to use her right arm a lot better. Claimant testified that prior to the surgery she had numbness in the elbow area and she was unable to bend her right elbow or to put her arm behind her back, which she attributes to the ulnar nerve damage. Since the surgery claimant has been able to bend her right elbow and put her right arm behind her back. Claimant testified that following her April 28, 2006, accident and prior to her surgery by Dr. Campbell she used her left arm to perform most activities. Claimant explained the differences in her physical capabilities relative to her upper extremities prior to the surgery by Dr. Campbell:

Before the surgery, I could maybe raise my hand like this but I could not leave it up more than a few minutes. I could not lift anything, like a pitcher of tea or like a heavy pan or something with water in it. I could not. (T.19).

The claimant testified that she did not undergo additional physical therapy following the surgery by Dr. Campbell, however she was provided a TENS unit for pain because she was unable to take pain medicine. Claimant explained that the pain medicine that she was put on following her initial surgery resulted in her ending up in the crisis center because it counteracted

her other medicines. Claimant testified that the use of the TENS unit along with over-the-counter Advil or Tylenol allowed her to sleep. Claimant wore the TENS unit until November 2007. Claimant last saw Dr. Campbell on February 1, 2008, and released relative to the ulna nerve treatment.

Claimant testified that she has not had to see any doctor since February 2008, for either her elbow or for the plate and screws in her right shoulder. Claimant does see Dr. Campbell periodic for her neck complaint. Claimant is currently looking for employment. Claimant does volunteer work:

Okay. What I'm doing, is I help with Helping Hands issues. There I work in the office, I answer the phone, I do filing and paperwork.

Yes. That is called "the program." They train, they will help you find a job but you have to go and you have to be independent which is what I do, you know, filing and all of that. (T. 21).

The evidence in the record reflects that respondents paid temporary total and medical benefits associated with the claimant's treatment and surgery under the care of Dr. Schecter, April 28, 2006 through November 9, 2006. Respondents have disputed the payment of workers' compensation benefits to and on behalf of the claimant relative to the November 8, 2007, surgery by Dr. Campbell, to include indemnity benefits.

In describing the current status of her right arm, claimant testified:

I have pain sometimes, like this morning, with getting dressed, it was hurting just a little bit in my shoulder. But not enough that I can't live with. (T. 23).

Regarding the status of the right elbow claimant testified:

The elbow is doing, okay, lie me bending my arm like I am right now, it hurts. It does hurt. (T. 23).

Claimant continues to experience “a little bit” of numbness in the small finger of her right hand. Claimant noted that before she had ulnar nerve surgery the numbness was in two fingers on her right hand, adding:

And it was starting to have an effect on my hand, if I write for a while, sometimes I would pick up a pencil and I could not write. (T. 23-24).

Claimant testified that when she fell on her arm during the April 28, 2006, accident, the fall also involved falling on her right elbow. Claimant fell on the concrete surface at the time of the April 28, 2006, fall. In describing her immediate sensation when she got up following the April 28, 2006, fall claimant testified:

The only thing, I was in such shock I think too, that when they came and they got me and they lifted me, and my arm was just hanging there.

And I’m like, oh, my god, I’ve got broken bones, and they said, yes you do. Cause my arm was just hanging there. And every bit in my right arm was hurting me. (T. 26).

Claimant testified that at the time of her April 28, 2006, fall she weighed 210 pounds.

During cross examination claimant testified regarding her current medications, which included vitamins, a generic of Effetra, and Diazepam, both of which are for depression.

Claimant has been diabetic for eleven years and also takes a diabetic medicine. Claimant has been on social security disability since 1999. The claimant continued on social security disability during the time of her employment with respondent, explaining:

Yes. That is the program, like the rehab program related to the job. (T. 27).

Claimant receives \$776.00, a month in social security disability benefits. The testimony reflects that the only time the claimant’s social security disability benefits were cut was during the time

she received temporary total disability benefits growing out of the April 28, 2006, compensable accident.

Claimant acknowledged that most of her shifts during her employment with respondents were either six or eight hours, for which she was paid \$6.15 per hour. Further, the testimony of the claimant reflects that she was off work from November 2005 through March 2006 because of pneumonia.

The testimony of the claimant reflects that in her younger days she was in a couple of motor vehicles accidents in which she suffered severe head injury. Further, the claimant's testimony reflects that she was retrained in a rehabilitation program to be either a teacher's assistant or housekeeping. Claimant asserts that she is unable to do the teacher's assistant job because of her nerves. With respect to her ability to do the teacher's assistant job from a physical standpoint, claimant testified:

You could check with the Helping Hands and their staff and they would tell you. Because when these spells do not hit me very often, these panic attacks or whatever, but when I really, really, really get upset I start a manic panic attack. (T. 30).

Regarding any complaints with respect to her right elbow at the time of her initial hospital visit following the April 28, 2006, accident, claimant testified:

I cannot remember. But upper arm was this and I did tell him about, later, about me not being able to do things, you know, like at my home, I could not go behind my back. (T. 31).

Claimant concedes that she did not specifically complain about her right elbow to Dr. Schecter during her initial hospital visit in April 2006. Claimant further testified that she "was pretty well out of it" on April 28, 2006. (T. 31).

Contrary to the August 10, 2006, office note of Dr. Schecter regarding favorable progress relative to her right shoulder claimant maintains that she was doing much better at the time of the visit. Claimant also disputes other indications of improvement reflected in the August 10, 2006, office note of Dr. Schecter regarding her right shoulder. (T. 32). Claimant testified, regarding her contact with Dr. Schecter following her shoulder surgery:

I did not with my fingers. I just kept complaining about my arm and he said it is probably a muscle, and it was not. He did not do no different thing on me at that time. (T. 33).

Claimant insist that she was having problems with the area of her right elbow at the time of her August 10, 2006, visit to Dr. Schecter:

Yes. Like I showed him a while ago, I could not put my arm down and that was due to my elbow and it was also due to elbow that I could not put my hand behind my back. Because it would not bend. (T. 33).

Claimant also denies being returned to work with no restrictions by Dr. Schecter during the August 10, 2006, visit.

As a part of the functional capacity evaluation, which the claimant underwent on November 6, 2006, a notation was made on a chart reflecting the area of pain. Claimant acknowledged that the afore does not reflect an indication of pain at the elbow. Claimant disputes that her flexion and extension were the same on the right and left, as reflected in the functional capacity evaluation.

Claimant maintains that when she returned to Dr. Schecter on November 9, 2006, there was no testing performed relative to her right elbow. Accordingly, the claimant disputes the accuracy of Dr. Schecter's November 9, 2006, progress note reflecting that the checked all of her nerves to include the ulnar nerve and the same was found to be normal. The claimant

acknowledged registering complaints of increase pain in her right shoulder during one of her visits to Dr. Schecter bought on by cleaning a ceiling fan:

Yes. And I had to do that because I had lost my house and I had to move and I was on a ladder. I had to do that. (T. 36).

Claimant acknowledged securing a change of physician from Dr. Schecter to Dr. Guinn. Further, claimant's testimony reflects that she understood that Dr. Guinn would be her authorized treating physician relative to the April 28, 2006, accidental injury once the change of physician order was effective. The claimant was seen by Dr. Guinn in April 2007. Claimant agrees with Dr. Guinn's assessment of her complaints as low grade non-specific pain in the shoulder. (T. 36). The testimony of the claimant reflects that at the time of the visit to Dr. Guinn in April 2007, she was taking Advil and using the TENS unit to address her pain. Further the testimony of the claimant reflects that the TENS unit was furnished to her by the rehab once she completed the physical therapy. With respect to her ability to do normal activities, as reflected in the report of Dr. Guinn, claimant added, "I did what I had to do with one arm". (T. 36).

Claimant testified that she did not mention complaints regarding her right elbow or numbness in the finger of her right hand at the time of her April 2007 visit to Dr. Guinn. Further claimant acknowledged that Dr. Guinn did not recommend any treatment.

The testimony of the claimant reflects that when she was seen by Dr. Campbell the cost of her treatment was paid by Medicare. Claimant acknowledged that the numbness in her finger started while she was at Helping Hands. Claimant testified that she was in day treatment in August 2007, when she first experienced numbness in her fingers. Claimant concedes that the onset of the numbness which led to the second surgery occurred sixteen (16) months following the

April 28, 2006, injury.

Claimant asserts that Dr. Campbell attributed her finger numbness to the right shoulder surgery. Claimant acknowledged that the report of Dr. Campbell in evidence reflects that she [the claimant] was unable to attribute her finger numbness to the right shoulder surgery. Claimant concedes that the nerve conduction study disclosed carpal tunnel syndrome in addition to the ulnar nerve problem. Further, the testimony of the claimant reflects that Dr. Campbell is treating her for a C-7 radiculopathy. Claimant testified that she believes that her neck complaint is related to the April 28, 2006 work-related fall. (T. 39).

Claimant acknowledged that she has not been out of any out-of-pocket expenses with respect to medical bills as a result of the April 28, 2006, accident and subsequent medical treatment. In February 2008 claimant underwent cataract surgery.

Claimant maintains that her visit to Dr. Campbell in February 2008 was for both her elbow and neck complaints. Further claimant testified that she is scheduled to follow-up with Dr. Campbell for the neck complaint. Claimant concedes that following her November 2007 surgery Dr. Campbell did not recommend any more treatment regarding her elbow and finger. Regarding the status of her elbow condition since the end of November 2007, claimant testified:

I don't know, I can't really say because I have had a little bit of pain in my elbow but I am just tickled to death that I can use my arm. (T. 40).

Claimant concedes that her condition, with respect to her elbow, is about the same as when she saw Dr. Campbell at the end of November 2007.

The August 10, 2006, report of Dr. Schecter relative to the claimant does note the claimant's "biggest remaining problem" as stiffness and difficulty with internal rotation and

reaching behind her back. Claimant maintains that the afore involved the use of her elbow. The claimant confirmed the reported complaints to Dr. Guinn as reflected in the April 19, 2007, report of difficulty reaching behind her back and working prolonged overhead, both of which she attributed to her elbow. With the October 1, 2007, visit to Dr. Campbell claimant relayed a complaint of “several months” of increasing numbness in the little finger. Claimant testified that she never recognized the numbness until August 2007 when her finger went totally numb. The claimant was diagnosed by Dr. Campbell in October 2007, with severe right ulnar nerve entrapment at the elbow.

The medical in the record reflects that on April 28, 2006, the claimant was seen at the emergency room of Arkansas Methodist Hospital relative to her complaint of right shoulder and upper arm pain. The April 28, 2006 ER consultation report of Dr. Ron Schechter relative to the claimant reflects, in pertinent part:

PRESENT ILLNESS:

Ms. Stafford is a 53 year old right hand dominant female being seen as an ER consult at the request of Dr. Wilson for right shoulder and upper arm pain. Ms. Stafford works at Buffalo’s restaurant. She reports that earlier today she slipped on the floor and fell onto her right shoulder area. She had immediate right shoulder and upper arm pain and was unable to move her arm. She was brought to the ER for further evaluation. She was found to have a fracture and I was consulted. She only complained of right shoulder and upper arm pain. She denied Other pain or injuries.

* * *

PHYSICAL EXAMINATION:

* * *

Extremities: Pertinent findings are related to her right upper extremity. Right upper extremity was laid at her side. She had good

distal pulses and sensation and motor function intact distally in the radial, median and ulnar nerve distributions. She had sensation intact over the axillary nerve. She had mild swelling in the upper arm. No other visible swelling or ecchymosis. She had diffuse tenderness to palpation around the proximal humerus area, otherwise nontender. No pain with wrist or elbow motion. She had pain with any attempted motion of the shoulder.

X-RAYS: Right upper arm and shoulder - surgical neck proximal humerus fracture. The fracture was somewhat of an oblique fracture which was comminuted with fracture lines extending from the surgical neck area down about 4 cm into the humeral shaft. The fracture overall was in good alignment with minimal valgus angulation of less than 5 degrees. Her glenohumeral joint was in good position.

ASSESSMENT/PLAN:

Right proximal humerus fracture.

I had a long discussion with the patient about the injury and the risks, benefits and options of non-operative treatment. I explained to her that theoretically this injury could be treated non-operatively. It could be treated in a sling with comfort with progressive motion and activity later. . . . However, one of the problems with non-operative treatment, people often have increased pain for a quite a long period of time and therefore have difficulty regaining their motion and often do not completely regain their motion. The alternative would be surgery for ORIF. ORIF would stabilize the fracture and provide pain relief much earlier and allow much earlier motion with a better chance of regaining full motion. However, surgery includes the extra risks of tissue injury, nerve damage and associated medical problems. This is even more so true in a middle aged female with diabetes and recent significant lung disease. . (JX. #1, p. 1-2).

On May 1, 2006, the claimant underwent a right proximal humerus ORIF at Arkansas Methodist Hospital under the care of Dr. Schecter. The operative report regarding the afore procedure reflects, in pertinent part:

Ms. Stafford is a 53 year old female who towards the end of last week had a work related injury in which she fell onto her right upper extremity. She sustained a comminuted displaced proximal

humerus fracture. She had a three part proximal humerus fracture through the surgical neck area with a displaced greater tuberosity fracture and fracture line extending into the humeral shaft. . . (JX. #1, p. 6).

On May 18, 2006, Dr. Schecter restricted the claimant's activities to light duty and no use of the right arm. Physical therapy was also prescribed. (JX. #1, p. 8).

The August 10, 2006, report of Dr. Schecter regarding a follow-up visit of the claimant reflects, in pertinent part:

She reports that she is doing much better. She only has a mild occasional aching discomfort, but otherwise has no significant pain. She feels like she is moving her arm well and feels like she could do all of her regular home and work activities at this point. She's very pleased with her progress. Her biggest remaining problem is stiffness and difficulty with internal rotation and reaching behind her.

PHYSICAL EXAM

She has no tenderness to palpation over the fracture site. She has full forward flexion, full abduction, and full external rotation compared to the contralateral arm. However, she only has about 20 degrees of internal rotation with her arm in 90 degrees of abduction. With her left arm, she can reach to her mid back around her mid thoracic spine and with her right arm she can only reach about her right buttocks. Her strength in her right shoulder was equal to the strength in her left.

* * *

Assessment and Plan

Diagnosis:

I advised the patient and her case manager that I think she's doing excellent. Clinically and radiographically her fracture appears to be healed. I believe her residual discomfort stiffness will improve with time. She has regained most of her functional strength and most of her motion. Her biggest remaining deficit is in rotation. I anticipate this will continue to improve. She is going to continue with aggressive home program and she was instructed on home exercises by the therapist and myself. At this point, we agree that she's doing well enough that I'm going to release her to activities as tolerated with no restrictions. Work comp has requested

that I do an impairment rating, but I recommended waiting at least three more months to allow for maximum medical improvement and to give her more time to regain more into rotation to lessen her impairment rating. . . . (JX. #1, p. 11).

The September 5, 2006, report of Dr. Schechter regarding the claimant's follow-up visit of the same date reflects, in pertinent part:

She reports that she was doing well after her last visit. Then about two weeks ago she started to have increasing pain in the shoulder and upper arm. I questioned her about work, she explained how she never returned to work. . . . I asked her if her activity level had changed at all over the last two weeks with her increased pain. At first, she said no, but then she mentioned that she was cleaning some ceiling fans at home about two weeks ago.

* * *

Assessment and Plan

* * *

I reviewed the patient's progress and status with her and the case manager and advised them as follows. Boney wise, her fracture is stable and healing well and it appears healed enough that I would let her progress with any activities as tolerated without restrictions. She is actually rehabilitated very nicely and has good motion and strength considering how far out she is from her injury. I do believe she's really hurting and reminded her again that it is very common for people to have pain with activity for at least six months from the time of injury. Some people hurt longer for one to two years. I tried to reassure her that I do not think anything serious is going wrong, but that her muscles are just a little tight and weak and it is normal for her still have pain at this point. I think that likely with her increased activity ___ home with activity such as cleaning the ceiling fans, she may have aggravated things a little. I still encouraged her to continue to do as much activities as she can tolerate because the more she uses her arm, I think the more loose it will get and the stronger it will get and feel better. She voiced understanding. Unfortunately, it sounds like she does not have any options for work right now. If the position does open for her, she an progress as tolerated, but understandably may have some difficulty with heavy lifting and overhead activities. On top of all this, I do believe her psychiatric issues are contracting to her problem and she seem to be quite anxious

and depressed. I tried to encourage her and motivate her. Overall, she is just going to need more time to heal and I will see her back as needed. I explained to the case manager that if at some point work comp wanted to do an impairment rating, I would be happy to do so, but would recommend waiting at least until six months out from surgery. . . .(JX. #1, p. 14-15).

On November 6, 2006, the claimant underwent a functional capacity evaluation pursuant to the recommendation of Dr. Schecter. The FCE report reflects that the claimant gave a reliable effort and demonstrated the ability to perform work in the Medium classification. (JX. #1, p. 17-27). The claimant was last seen by Dr. Schecter on November 9, 2006. The follow-up report reflects:

She reports that she is about the same. She feels like her condition has plateau. She is doing her daily activities and she did before but still has mild pain and weakness with activities about shoulder height or above.

* * *

Assessment and Plan

I had a long discussion with the patient about her status and advised her as follows. I believe that with time she may have improvement in her discomfort and her strength, but this may take two to three years. For mor comp standpoint, it appears that she has plateaued and we are going to do an impairment rating today. With her exam today, she did demonstrate some relative loss of motion compared to her uninjured side. However, use in the Guides to the Evaluation of Permanent Impairment, Forth Edition, her range of motion of the injured side was within normal limits and gives her no true impairment for loss of motion. . . . Her strength loss is in the 10 to 30% range which corresponds to a 10% upper extremity impairment. This in turn converts to a whole person impairment of 6%. At this point, her condition has stabilized enough that I'm going to release her from care with follow-up as needed. . . (JX. #1, p. 28).

Pursuant to a March 12, 2007, Change of Physician Order entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, Dr. Spence

Guinn, a Jonesboro orthopedic physician, was designated the claimant's treating physician relative to the April 28, 2006, compensable injury. (RX #1, p. 1-2). The claimant was seen by Dr. Guinn pursuant to the afore order on April 28, 2007. Dr. Guinn's report relative to claimant's April 18, 2007, visit reflects, in pertinent part:

This is a 54-year-old right hand dominant female. She is within a few weeks of being one year out status-post-ORIF of a right comminuted proximal humerus fracture by Dr. Schechter in Paragould. Greater than 30 minutes we spent reviewing all of her outside medical records. . . . She apparently had an uneventful post-operative course and was given a release by Dr. Schechter in November 2006. At that point he also placed her at MMI and gave her an impairment rating. Ms. Stafford is here for what she describes as a second opinion because she does not agree with his rating. She would like a re-evaluation. She states she continues to have relatively non-specific pain in the shoulder. It seems to be low grade. She has difficulty reaching behind her back and working prolonged overhead. She seems to be able to do normal activities but doesn't seem to have returned to work. . . Her past medical is significant for insulin dependent diabetes.

* * *

ASSESSMENT: Approximately one year status-post ORIF of her right shoulder with request for re-evaluation for her impairment rating.

PLAN: I had a lengthy discussion with Ms. Stafford. Discussed that I thoroughly reviewed her FCE report and this seemed appropriate. Discussed with her that I would use her numbers obtained today for the AMA Guides to Evaluation of Permanent Impairment and deliver a report to her workman's Comp carrier. Also discussed with her that it appears that she appears to be well healed and technically her surgery was done well. (JX. #1, p. 31).

On October 1, 2007, the claimant was seen by Dr. John A. Campbell, a Jonesboro neurosurgeon, pursuant to a referral by Dr. John Hines, with a chief complaint of increasing numbness of the right little finger. The October 1, 2007, report reflects, in pertinent part:

PRESENTING SYMPTOM AND PROBLEM: Here is a 54-year-old diabetic woman, who has had several months now of increasing numbness

of the right little finger as her chief complaint. I believe sometime last year she had a right humerus fracture, which required surgery by Dr. Schechter up in Paragould. She does not seem to be able to directly attribute her finger numbness to her surgery. However, her finger is getting more and more numb and it is an uncomfortable feeling. She denies any weakness in the hand. She has had no EMG nerve conduction studies performed.

* * *

PHYSICAL EXAM: On exam she generates 5/5 strength in the upper extremities. Reflexes are diminished, but symmetric. On sensory testing she is slightly diminished to light touch in the right little finger. The ring finger, however, is normal. There is no weakness of the intrinsic muscles off the left hand. She has a positive Tinel's over the right elbow. C-spine has normal range of motion.

ASSESSMENT/PLAN: Suspect ulnar entrapment at the right elbow with mild neuropathy. This could be complicated by diabetic peripheral neuropathy. The plan is for EMG nerve conduction study of the right upper extremity and followup thereafter. (JX. #1, p. 32).

The claimant underwent the EMG nerve conduction studies at St. Barnards Medical Center on October 3, 2007. The afore studies disclosed mild right carpal tunnel; severe entrapment of the right ulnar nerve across the elbow; and evidence of deinnervation consistent with a right C7 radiculopathy, for which imaging of the cervical spine was recommended. (JX. #1, p. 34).

The claimant was seen in follow-up by Dr. Campbell on October 8, 2007, following the EMG nerve conduction study. At the time of the afore visit the claimant relayed "continuing and worsening numbness in the right little finger into the right finger". The October 8, 2007, report further reflects:

ASSESSMENT/PLAN: I have explained these findings to the patient based on her 10/03/07 EMG nerve conduction study. I have recommended that we proceed with an MRI of the cervical spine to look for a possible cause of her right C7 radiculopathy. I have explained that the most likely reason for numbness, though is the ulnar nerve is being entrapped at the elbow. She has had some previous surgery on the proximal right humerus,

which I believe was a metal plate that was implanted. I told her this should not preclude her from having an MRI. . . (JX. #1, p. 35).

The October 10, 2007, office note of Dr. Campbell relative to the claimant reflects diagnoses of C4-5 disk herniation, right ulnar nerve neuropathy at the elbow, mild carpal tunnel syndrome and a history of diabetes mellitus. The afore office further reflects, in pertinent part:

PRESENTING SYMPTOMS AND PROBLEM: Refer to my dictated history and physical regarding this pleasant 54-year-old woman with severe entrapment of the right ulnar nerve across the elbow. She is symptomatic with numbness and tingling in the right little finger and the ulnar aspect of the right ring finger. We have obtained a recent MRI of her cervical spine that does show some protruding disks at the left C4-5 level. This does not appear to be causing any of her symptoms. She would like to proceed to the OR tomorrow for the right ulnar nerve release at the elbow under general anesthesia. (JX. #1, p. 36).

The claimant underwent the ulnar nerve surgery on November 8, 2007, and was seen in follow-up by Dr. Campbell on November 26, 2007. The November 8, 2007, report reflects, in pertinent part:

This is a postoperative followup visit for Ms. Stafford, who is a pleasant 54-year-old woman, who I took to the OR at St. Bernards Medical Center back on 11/08/07 for a right ulnar nerve decompression at the right elbow. She has had excellent recovery and is very happy with the result. She has had remarkable improvement in the symptoms in her right arm and feels better now with the grip strength on the right hand. I have examined her today and the wound is healing nicely. She generates good strength now in the right hand and cannot really demonstrate any weakness in the grip strength. Sensory function is improved. (JX. #1, p. 44).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, 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 April 28, 2006, the relationship of employee-employer-carrier existed among the parties, at which time the claimant earned wages sufficient to entitle her weekly compensation benefits of \$80.00, for temporary total/permanent partial disability.
3. On April 28, 2006, the claimant sustained an injury to her right upper extremity arising out of and in the course of her employment.
4. The claimant's severe right ulnar nerve entrapment at the elbow is a compensable consequence of the April 28, 2006, compensable injury and resulting surgery, for which respondents are liable.
5. The claimant was temporarily totally disabled for the periods beginning April 29, 2006 through November 9, 2006, and from November 8, 2007 through February 1, 2008.
6. Medical treatment rendered to the claimant relative to her right upper extremity complaint under the care of Dr. John Campbell was reasonably necessary in connection with the compensable injury of April 28, 2006.
7. Respondents shall pay all reasonably necessary and related medical, hospital, and nursing expenses in connection with the April 28, 2006, compensable injury.
8. Respondents have controverted the claimant's entitlement to additional medical and temporary total disability benefits subsequent to October 1, 2007.

CONCLUSIONS

It is not disputed that the claimant suffered work-related fall on April 28, 2006, which resulted in a fracture to her right humerus. Claimant asserts that in addition to the fractured right humerus she also required medical treatment as a result of severe right ulnar nerve entrapment at

the elbow which she attributes to the April 28, 2006, compensable injury. Claimant seeks corresponding temporary total disability and medical benefits as a result of the afore.

Respondents that the position that the claimant's right ulnar nerve entrapment complaint is not causally related to the April 28, 2006, compensable injury.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional 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 occurrence of the April 28, 2006, work-related accident is not disputed. There is no evidence in the record to reflect that the claimant, though insulin dependent diabetic, experienced any physical limitations or restrictions relative to her right upper extremity prior to the April 28, 2006. The severity of the claimant's most apparent injury, fractures of the right humerus which required the placement of hardware, is not disputed. Further, at the time the claimant selected surgery for ORIF Dr. Schechter outlined the "extra risks" entailed in same to include "nerve damage and associated medical problems". Further Dr. Schechter allowed how the afore was even more so for a middle aged female with diabetes and recent significant lung disease.

While the medical reflects that the examination of the claimant's right shoulder following the surgery yield good results, the credible evidence in the record reflects that the claimant had not been symptom free since sustaining the April 28, 2006, work-related fall. The evidence in the record reflects that the claimant displayed limitations with respect to the movement of her right arm behind her back and overhead following the surgery by Dr. Schechter. The claimant under a functional capacity evaluation which disclosed a reliable effort. Dr. Schechter relayed at

the time of his November 9, 2006, release of the claimant as having reached maximum medical improvement that “with time she may have improvement in her discomfort and her strength” however the same “make take two to three years”.

The claimant was seen by Dr. Spencer Guinn, a Jonesboro orthopedic surgeon, pursuant to Change of Physician Order on one occasion on April 18, 2007. A review of Dr. Guinn’s report clearly reflects that the focus of his evaluation/examination of the claimant was the claimant’s right shoulder. Nevertheless the April 19, 2007, report of Dr. Guinn recites that the claimant relayed difficulty reaching behind her back or working prolonged overhead.

When seen by Dr. John Campbell, a Jonesboro neurosurgeon, on October 1, 2007, claimant relayed a history of several months of increasing numbness in the right little finger. Claimant first noticed the numbness in August 2007. Accordingly, while the medical records document physical limitations/and restrictions with respect to the movement of the right upper extremity since the April 28, 2006, injury and subsequent right shoulder surgery, the numbness was not noted by the claimant until August 2007. As such, the claimant could not have conveyed complaints of numbness to Dr. Schecter, the FCE administrator, or Dr. Guinn because those contacts were had prior to the August onset of the numbness.

Following the surgery by Dr. Campbell regarding the severe right ulnar nerve entrapment, document improvements were noted by the claimant. Dr. Campbell noted the improvement in the claimant’s right hand grip strength.

When an employee sustains a compensable injury, then every natural consequence of that injury is also compensable. *Hublely v. Best Western Governor’s Inn*, 52 Ark App. 226, 916 S.W.2d 143 (1996). Consequential injuries need not arise within the time and space boundaries

of the employment. Employers may be liable for injuries resulting from medical treatment obtained in response to a work-related injury. *Air Compressor Equipment Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

In the instant claim the evidence preponderates that the claimant's severe right ulnar nerve entrapment is a compensable consequence of the April 28, 2006, work-related injury and subsequent surgery. Dr. Schechter outlined the risks associate with the surgery for the treatment of the claimant's fracture humerus, to include possible nerve injury. Further, subsequent to the April 28, 2008, work-related injury and surgery in the treatment of same, the claimant consistently relayed complaints of pain and limitations regarding the right arm, which was document in the medical records. Once the claimant's symptoms progressed to complete numbness of the right little finger she sought treatment for same and diagnostic studies disclosed severe right ulnar nerve entrapment in the elbow. Respondents have controverted the compensability of workers' compensation benefits associated the treatment of the afore.

The claimant underwent surgery under the care of Dr. Campbell on November 8, 2007, relative to the severe entrapment of the ulna nerve in the elbow. The claimant remained within her healing period from the surgery through February 1, 2008. A claimant is entitled to temporary total disability during her healing period if she shows by a preponderance of the evidence that she had a total incapacity to earn wages. *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period is that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102 (12). The evidence preponderates that the claimant was within her healing period and totally incapacity from earning wages from November 8, 2007 through February 1, 2008, as a result of the compensable consequence of the

April 28, 2006, compensable injury. Respondents have controverted the claimant's entitlement to the afore benefits.

Ark. Code Ann. §11-9-508 (a), mandates that the employer provide such medical services as may be reasonably necessary in connection with an employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). Following the surgery with respect to the claimant's severe right ulnar nerve entrapment in the elbow, claimant experience relief of her symptoms as well as an increase of grip strength in the right hand. The evidence preponderates that the treatment rendered by Dr. Campbell was reasonably necessary in connection with the treatment of the claimant's compensable injury. Respondents controverted the compensability of the claimant's right ulnar nerve entrapment.

The evidence in the record reflects that medical treatment in connection with the claimant's right ulna nerve entrapment in the elbow was paid for by Medicare or Medicaid. It is clear the neither Medicare or Medicaid fall into the category of "other insurers" for purpose of a dollar-for-dollar off-set or reduction contemplated in Ark Code Ann. §11-9-411. As such, it is the responsibility of respondents to either reimburse the afore.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$80.00, for the period November 8, 2007, through February 1, 2008, as a result of the compensable ulnar nerve entrapment in the right elbow growing out of the April 28, 2006, compensable injury. Said sums accrued shall be paid in lump

without discount.

Respondents are further ordered and directed to pay all reasonably necessary medical expenses in connection with the treatment with the claimant's severe right ulnar nerve entrapment in the right elbow growing out of the April 28, 2006, compensable injury, to include medical related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein, to include permanency, are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE