

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F800772 & F907571

BARBARA BEESON, EMPLOYEE	CLAIMANT
ASHLEY FURNITURE HOME STORES, EMPLOYER	RESPONDENT NO. 1
CRAWFORD & COMPANY, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
CLEO'S FURNITURE OUTLET, EMPLOYER	RESPONDENT NO. 2
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT NO. 2

OPINION FILED JUNE 14, 2011

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appealed, claimant cross-appealed, and respondents amended their appeal of an opinion and order of the Administrative Law Judge filed January 24, 2011. In said order, the Administrative Law

Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a right shoulder injury (Claim No. F800772), date of injury was January 12, 2008.
3. The employee-employer relationship existed on or about January 12, 2008.
4. Respondents no. 1 accepted this claim and paid benefits, including a surgery by Dr. Pearce and a 4% permanent impairment rating.
5. The claimant earned an average weekly wage that entitles her to maximum compensation rates for temporary total disability and permanent partial disability of \$522/\$392 for the 2008 injury.
6. The claimant is entitled to the maximum compensation rates for 2009.
7. The employee-employer relationship existed on or about August 11, 2009.
8. Respondents no. 1 have controverted this claim for additional benefits in its entirety.
9. The claimant's treatment at the University of Arkansas for Medical Sciences (UAMS) was authorized. Therefore, respondents no. 1 are liable for this treatment.
10. The claimant proved by a preponderance of the evidence that the physical treatment rendered by Baptist Health was reasonably necessary to treat her compensable injury of January 12, 2008. She also proved by a preponderance of

the evidence her entitlement to further evaluation by her treating physician, Dr. Pearce, for her compensable injury of January 12, 2008.

11. The claimant proved that she sustained a 16% wage-loss disability, over and above her 4% anatomical impairment.
12. The claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 24, 2010, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law

Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that that the treatment at

the University of Arkansas for Medical Sciences was authorized, a finding that the physical therapy treatment rendered by Baptist Health was reasonable and necessary to treat her compensable injury of January 12, 2008, a finding that she is entitled to additional treatment by Dr. Pearce, and a finding that the claimant was entitled to a 16% loss in wage-earning capacity over and above her 4% permanent anatomical impairment rating. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant was employed by the respondent employer No. 1 as a sales associate. On January 12, 2008, a mirror fell on the claimant's shoulder. On the day of the incident, the claimant was directed to go to Saline Memorial Hospital, but instead chose to go to the University of Arkansas for Medical Sciences. The claimant ultimately came under the treatment of Dr. Charles Pearce, who performed shoulder surgery on the claimant on November 5, 2008. Dr. Pearce released the claimant on March 5, 2009 as having reached maximum medical improvement with a 4% permanent anatomical rating.

The claimant returned to Dr. Pearce on June 24, 2009, with complaints of tightness and spasms in her trapezius area of her shoulder. Dr. Pearce noted that

both complaints resolved with physical therapy and muscle relaxers. Again, he released the claimant with no restrictions.

On August 11, 2009, the claimant was working for respondent employer No. 2 when she stated that she hurt her shoulder using a rope that controlled large garage doors to lift the doors that were in a warehouse. The medical records reflect that the claimant was seen at St. Vincent Family Clinic on August 14, 2009. However, at that time, there is absolutely no mention of a shoulder problem. The history recorded by Dr. William Joseph indicates that the claimant had slipped and fallen two days prior and had "a lot of muscle aches and pains". The claimant was assessed as having a contusion on her leg.

On December 15, 2009, the claimant again sought treatment from Dr. Pearce and told Dr. Pearce about the lifting of the garage door. Dr. Pearce noted that the claimant had a trigger point in her trapezius and a mild spasm.

After the alleged incident in August of 2009, the claimant worked for the respondent employer until October of 2009. The claimant's supervisor, Scott Davidson, testified that the claimant's last day to work was October 20, 2009. He stated that the claimant's

husband had passed away and she did not come back to work. He indicated that the claimant did not complain about her shoulder. He confirmed that the claimant was required to move furniture and help load customers' cars, but she was able to do everything required of her without complaint.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Supp. 2009). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Owens Plating Co. v. Graham, 102 Ark. App. 299, 284 S.W.3d 537 (2008). What constitutes reasonable and necessary treatment is a questions of fact for the Commission. Id. Anaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable

injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. Foster v. Kann Enterprises, 2009 Ark. App. 746, \_\_\_, S.W.3d \_\_\_ (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The evidence demonstrates that the claimant cannot prove that she was entitled to additional medical treatment at the expense of respondent No. 1. The claimant was able to do heavy lifting following her recovery from the surgery she had in November of 2008. Dr. Pearce had released the claimant to full duty with a 4% permanent anatomical impairment rating. The claimant had at least two other incidents in August of 2009. One was the garage door incident with the respondent employer No. 2, which she never reported as an injury until sometime later. She also sought medical treatment a few days after that alleged incident and never complained of any shoulder pain whatsoever. She complained that she fell and that she had aches and

pains all over, but there was nothing indicating that she had shoulder pain. After I consider the evidence, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.

The majority has also awarded a 16% loss in wage-earning capacity in addition to the claimant's 4% anatomical impairment rating. In my opinion, the claimant has failed to prove by a preponderance of the evidence that she is entitled to any wage-loss disability benefits in addition to her permanent anatomical impairment rating. The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Henson v. General Elec., 99 Ark. App. 129, 257 S.W.3d 908 (2007). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education and work experience. Eckhardt v. Willis Shaw Exp., Inc., 62, Ark. App 224, 970 S.W.2d 316 (1998). Other matters to be considered are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. Henson, Supra. The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in

conjunction with the evidence to determine wage-loss disability. Oller v. Champion Parts Rebuilders, Inc., 5 Ark. App. 307, 635 S.W.2d 276 (1982).

The evidence demonstrates that the claimant has no restrictions on her activities. At the time of her injury working for respondent no. 1, she was making an average weekly wage of \$869.61. The claimant continued to work there until February 8, 2008. The claimant worked for Furniture Factory Outlet for a month or two and then went to work for respondent no. 2 in May of 2008. The claimant self-terminated from her position with respondent no. 1 in February of 2008. In October of 2009, she abandoned her job with respondent no. 2. She admitted there was no physical reason that she could not work from October 20, 2009 forward. In fact, the claimant was making more money for respondent no. 2 than she was for respondent no. 1.

The claimant went to work for Haverty's approximately one month prior to the hearing and was making less money because the commission structure was lower. The claimant has taken a lower paying job and the respondents are not responsible for any deficit in her salary as a result of that. The claimant's supervisor at respondent employer no. 1 indicated that the claimant could have continued working for the respondent employer

no. 1 and made the same or more money. There was no lifting required, and there was no limitations that would prohibit the claimant from being able to work as a salesperson. The claimant made the decision to quit with respondent employer no. 1. She also made the decision to quit working for respondent employer no. 2. There is absolutely nothing physically keeping the claimant from making more money than she was at the time of her injury. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to any wage loss disability benefits in addition to her permanent anatomical impairment. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, Commissioner