

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H003073

KENNETH BREWTON, Employee	CLAIMANT
MAY AVENUE PLUMBING, INC., Employer	RESPONDENT
UNITED FIRE & CASUALTY COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 22, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 13, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 2, 2023 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. Claimant sustained compensable injuries to his left shoulder and low back on January 7, 2020.
3. Claimant was earning an average weekly wage of \$840.00 which would entitle him to compensation at the weekly rates of \$560.00 for total disability benefits and

\$420.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's cervical spine on January 7, 2020.
2. Related medical.

The claimant contends that he sustained a compensable injury to his cervical spine as a result of his January 7, 2020 job related accident and that he is entitled to compensation in the form of medical benefits as needed and any additional compensation to which he may become entitled.

The respondents contend the claimant did not sustain a compensable cervical spine injury on January 7, 2020. While some medical was paid associated with an alleged cervical spine injury, claimant's issues are degenerative in nature. Alternatively, respondents contend that additional medical treatment is not reasonable and necessary.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on August 2, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine on January 7, 2020.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable cervical spine injury through July 30, 2021.

### FACTUAL BACKGROUND

The claimant began working for respondent in 2010 or 2011. On January 7, the claimant was sitting at a stoplight when he was rearended by another vehicle. Although claimant initially denied having been injured in that accident, later that day he sought medical treatment from the emergency room for complaints of neck and back pain.

After the initial emergency room treatment, claimant was treated at Elite Chiropractic and those notes indicate that claimant was treated for cervical and lumbar spine sprains. At some point claimant's left shoulder became his primary concern and claimant was referred to Dr. Greg Jones for further evaluation. In a report dated April 3, 2020, Dr. Jones indicated that an MRI scan and his examination had confirmed that claimant suffered a rotator cuff tear. Dr. Jones performed surgery on claimant's left shoulder on May 26, 2020.

Dr. Jones' medical reports also indicate that he evaluated claimant for his cervical spine complaints and provided treatment in the form of a Medrol Dosepak and physical therapy. Dr. Jones subsequently released claimant from his care for the cervical spine injury.

Claimant continued to have complaints involving his left shoulder, and as a result Dr. Jones performed a second surgical procedure on January 21, 2021.

Most recently, claimant has been evaluated by Dr. Saer and Dr. Blankenship for

continued complaints involving his low back injury.

The respondent accepted as compensable injuries to claimant's left shoulder and low back as a result of the accident on January 7, 2020. The respondent apparently also paid some benefits for claimant's cervical spine complaints, but have now controverted compensability of an injury to claimant's cervical spine. Accordingly, claimant has filed this claim contending that he suffered a compensable injury to his cervical spine on January 7, 2020. He seeks payment of medical related to that compensable injury.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his cervical spine as a result of the motor vehicle accident on January 7, 2020. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine on January 7, 2020. First, I find that claimant's injury arose out of and in the course of

his employment and that the injury was caused by a specific incident identifiable by time and place of occurrence. As previously noted, the parties have stipulated that claimant suffered compensable injuries to his left shoulder and low back as a result of the motor vehicle accident which occurred on January 7, 2020. Accordingly, there is no question that at the time of the injury claimant was in the course and scope of his employment and that he was involved in a specific incident identifiable by time and place of occurrence.

I also find that claimant's injury caused internal harm to the body that required medical services and that he has offered medical evidence supported by objective findings establishing an injury. Here, as previously noted, claimant sought medical treatment on the day of the accident from the emergency room where his complaints included both neck and low back pain. Shortly thereafter, claimant came under the care of Elite Chiropractic on January 31, 2020. In the medical notes from that date, Dr. Carroll stated:

Hypertonicity is palpable in the left cervical region, left trapezius, left scalenus and left SCM.

In *Walker v. Fort Smith Rim & Bow*, Full Commission Opinion filed November 14, 2006 (F206791), the Full Commission found that hypertonicity or muscle spasms were considered objective findings for purposes of permanent impairment. Accordingly, hypertonicity would be considered an objective finding for purposes of compensability as well. In addition, I note that in Dr. Jones' report of September 9, 2020, he stated that claimant had a lot of cervical spasm. Spasms are considered objective findings.

As a result of claimant's cervical complaints, he has received medical treatment in the form of chiropractic treatment and evaluations by Dr. Jones.

Based upon the foregoing evidence, I find that claimant's cervical spine injury caused internal or external harm to his body that required medical services and that he has offered medical evidence supported by objective findings establishing an injury.

Accordingly, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine on January 7, 2020.

Claimant contends that he is entitled to payment of related medical treatment for his compensable cervical spine injury. Respondent acknowledges that it paid some medical treatment associated with claimant's cervical spine complaints. I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to payment for medical treatment provided for his cervical spine injury through July 30, 2021.

As previously noted, following the emergency room evaluation claimant received chiropractic care for his cervical spine based upon a cervical sprain diagnosis. Medical reports from Elite Chiropractic dated April 30, 2020 and June 30, 2020 indicate that claimant at that point in time stated that he was experiencing no pain in his neck.

On May 26, 2020, claimant underwent the first surgery on his left shoulder by Dr. Jones. In a report dated September 9, 2020, Dr. Jones stated that he was seeing claimant for an evaluation of pain in his neck with a crick. He also stated that claimant was suffering from cervical spasm. Dr. Jones indicated that he was going to get an MRI scan of claimant's cervical spine, place claimant on a Medrol Dosepak, and send claimant to physical therapy for his cervical spine complaints.

Claimant began physical therapy for his cervical spine on September 17, 2020 and

returned to see Dr. Jones on September 30, 2020. In his report of that date, Dr. Jones indicated that claimant's neck pain had resolved.

We had seen him at the last visit in early September. He had a tremendous crick in his neck and head [sic] terrible radicular pain. I put him on a Medrol Dosepak and a category one cervical spine program and he has responded beautifully. He has full range of motion of his neck today. He states the pain is gone and in fact he states he wants to go back to work.

PLAN: I think he had a spell. He is over it. We are going to release him at this point. No permanent disability is assigned and he is to return to his regular duty status and a note is added to the chart.

Thereafter, claimant returned to Dr. Jones with increased shoulder pain as a result of his work activities and Dr. Jones eventually performed a second surgery on claimant's left shoulder on January 21, 2021.

In that interim period of time between the release by Dr. Jones on September 30, 2020 and the second surgical procedure on his left shoulder on January 21, 2021, claimant had returned to Elite Chiropractic. In a report dated December 14, 2020, Elite stated that claimant denied the presence of pain in his neck.

Subsequent medical records from Elite do mention claimant's cervical region but do not indicate that claimant received any treatment to his cervical spine during those visits. In addition, claimant returned to Dr. Jones on January 6, 2021 for complaints involving his left shoulder. However, Dr. Jones also stated:

His cervical spine we worked up. He has some degenerative disc disease. He has asked why can we not "fix that". In the spirit of a plumber, in the idea of fixing things, it makes sense,

and we have spent some time today counseling that that's not quite how the neck works and that, unless he is having specific radicular or more straight axial pain, I don't think that surgery in his neck will be of benefit in terms of his improvement for return to work.

There is no indication that Dr. Jones provided any additional medical treatment for claimant's cervical spine after that date. The medical reports also indicate that claimant was evaluated by Dr. Saer on July 30, 2021. Dr. Saer indicated that he had seen claimant in June for problems with his neck and that a cervical MRI scan was not "terribly impressive." As a result, Dr. Saer ordered an EMG/NCV study to explain numbness in claimant's left arm and hand. According to Dr. Saer, the study was performed on July 19, 2021 and was basically normal. There is no indication that claimant received any additional treatment by Dr. Saer for any cervical spine complaints subsequent to that date. Likewise, claimant has since come under the care of Dr. Blankenship for complaints involving his low back injury. Dr. Blankenship's medical reports do not indicate any treatment regarding claimant's cervical spine.

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his cervical spine complaints. While I find that claimant has proven that he suffered a compensable injury to his cervical spine, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment for his cervical spine injury subsequent to July 30, 2021, when he was evaluated by Dr. Saer.

In reaching this decision, I note that according to claimant's testimony the respondent went out of business and as a result claimant decided to obtain his own



master plumber's license. Claimant obtained that license in 2021 and according to documents from the Arkansas Secretary of State the claimant incorporated Brewton Plumbing Service on March 1, 2022.

Accordingly, as of September 30, 2020, Dr. Jones indicated that claimant had responded to treatment for his cervical spine and that he had full range of motion and that his pain had gone. In addition, claimant indicated that he wanted to return to work. In fact, claimant acknowledged that he had no pain as of that date and wanted to return to work.

Q You indicated to Dr. Jones on that date that you had no pain and wanted to return to work; is that right?

A I believe so, right.

Although Dr. Jones mentioned claimant's cervical spine in his report of January 6, 2021, he had no additional treatment to offer claimant as of that date but instead continued to treat claimant's left shoulder including a second surgery on January 21, 2021. After that date, claimant became a master plumber and began performing work for his own plumbing business. Subsequently, Dr. Saer ordered an MRI scan that was not impressive and he provided no further treatment to claimant's cervical spine.

Based upon the foregoing evidence, I find that respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's cervical spine injury through July 30, 2021. I find that claimant has failed to prove by a preponderance of the evidence that any subsequent cervical complaints after July 30, 2021 are causally related to his original compensable injury. On September 30, 2020, claimant informed Dr. Jones that he was not having any neck pain and he had full range

of motion. Thereafter, claimant began performing work as a plumber for his own plumbing business.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine on January 7, 2021. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's cervical spine injury through July 30, 2021. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his cervical spine injury subsequent to that date.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$453.80.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE