BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G801665

CLIFFORD E. BURTON, EMPLOYEE	CLAIMANT
BENTON COUNTY JUDGE, EMPLOYER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 3, 2021

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

Claimant represented by the HONORABLE WESLEY A. COTTRELL, Attorney at Law, Rogers, Arkansas.

Respondents #1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondents #2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed May 11, 2020. The administrative law judge found that the claimant proved he sustained a compensable injury to his low back and left shoulder. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable injury to his left shoulder. We

find that the claimant did not prove he sustained a compensable injury to his back.

I. <u>HISTORY</u>

The record indicates that Clifford Edward Burton, now age 46, became employed with the Benton County Sheriff's Office in 2015. The parties stipulated that the employee-employer-carrier relationship existed on February 18, 2018. The claimant testified that he was a Corporal in the respondent-employer's Special Operations unit. The claimant testified on direct examination:

> Q. Can you tell the judge briefly up to right before the incident what you were doing and how you were injured?
> A. A vehicle had been stolen by a suspect at gun point, as notified by our dispatch. I was on Little Flock Drive. One of the other deputies was behind me in another marked Benton County Tahoe. We were traveling westward on Little Flock Drive when we seen the suspect coming toward us with a marked patrol deputy behind it. Suspect vehicle turned left on to Hilltop Drive. We started pursuit. I was the third in line….I cut across a grassy wooded area trying to keep the suspect from getting back on the highway. Suspect's car slammed into my passenger front quarter knocking my Tahoe sideways when I struck a tree head-on on the driver's front. It jammed my driver's door shut….I used my head and shoulder to finally – was finally able to bust the door open, exit the vehicle.

The parties have stipulated that the claimant "sustained a compensable injury to his neck and bilateral hands" on February 18, 2018. According to the record, the claimant treated at Northwest Medical Center on February 18, 2018: "Patient is a 43 yo male who presents to the ED with

the complaint of MVA. He was the restrained driver stopped when a [suspect] he was pursuing rammed into the front of his vehicle….He does have some neck pain and had briefly some numbness and sharp pain down his L arm. He does have some upper back pain." A physician's assistant diagnosed "Cervical strain" and "Strain of thoracic spine." A CT of the claimant's cervical spine was taken on February 18, 2018 with the impression, "No acute fracture or subluxation identified." An x-ray of the claimant's thoracic spine was also taken on February 18, 2018 with the findings, "There appears to be a short segment mild levoscoliosis in the upper thoracic spine. Thoracic kyphosis is normal. There is no appreciable fracture or listhesis. There is mild multilevel degenerative disc disease. Impression: No acute findings in the thoracic spine."

A Workers Compensation – First Report Of Injury Or Illness was prepared on February 20, 2018. The First Report Of Injury indicated that the claimant injured his "Neck and Back," "During a vehicle pursuit I was rammed by the suspect." The record indicates that Dr. Ryan Hueter saw the claimant at Arkansas Medical and Wellness PA on February 27, 2018:

> Patient is here for follow up WC. He was in vehicle pursuit 2/18/18. He was trying to block another car. Was going about 20 when hit by other car in passenger front quarter which drove him into a tree. Seat belt on, air bags didn't deploy. Had to force himself out of car. Went to Northwest Hospital. X-rays and CT scan of neck done. No acute fractures. Wasn't given anything for muscle spasms only Ibuprofen. He went back to work the next day. He wears a

> vest which does contribute to his pain. Bilateral back pain bilateral shoulder blade pain. Neck pain persists. Intermittent numbness and tingling down to fingers and hands. Worse in the left arm. Waxes and wanes. Nothing causes it to go numb. Abducting shoulders improves the sensation in the bilateral hands and fingers….
> Musculoskeletal decreased range of motion to rotation bilaterally. Decreased range of motion to side bending and flexion. Negative Spurling's bilaterally. Some decreased sensation in bilateral upper arm. Pain bilateral paraspinal cervical musculature to palpation.

Dr. Hueter assessed "1. Strain of neck muscle, initial encounter. 2. Motor vehicle accident, initial encounter. 3. Cervical radiculopathy." The claimant continued to follow up with Dr. Hueter, who noted on April 2, 2018, "He has some lower back pain that has worsened over the last couple weeks." Dr. Hueter assessed the following on April 9, 2018: "1. Paresthesia of upper extremity. 2. Motor vehicle accident, subsequent encounter. 3. Strain of muscle and tendon of back wall of thorax, subsequent encounter. 4. Lumbar strain, subsequent encounter."

The claimant began receiving physical therapy at Ozark Orthopedics Bentonville on April 18, 2018. A physical therapist assessed the following: "Pt is a 43 y/o male police officer presenting to physical therapy for evaluation and treatment of cervical and low back pain following a MVA during pursuit and altercation DOI 2/18/18."

An MRI of the claimant's cervical spine was taken on April 26, 2018 with the impression, "1. At C5-C6, a moderate sized, posterior disc

osteophyte complex consists of a prominent soft disc component. This disc osteophyte complex results in mild central canal narrowing and very mildly distorts the anterior aspect of the cervical spinal cord."

An MRI of the claimant's lumbar spine was also taken on April 26, 2018 with the following findings:

> Anatomic alignment of the lumbar spine. Lumbar vertebral bodies are normal in height. A hemangioma in the L1 vertebral body is incidentally noted. The conus medullaris ends normally at the T12-L1 disc space level. No disc protrusion, disc extrusion, central canal narrowing, or neural foraminal narrowing.
> Impression: Normal MRI of the lumbar spine.

Dr. George W. Deimel performed cervical epidural steroid injections on May 16, 2018 and May 30, 2018.

A physician's assistant examined the claimant at NWA Neuroscience Institute on September 28, 2018:

> The patient is being seen for a consultation regarding cervical radiculopathy. Patient was involved in MVA during work, is a Corporal with the Benton County Sheriff's office. Since then, has had neck and back pain with BUE paresthesias, numbness. He has tried physical therapy which initially was helping his neck and back pain however was stopped by his worker's compensation benefits. He has tried 2 CESI's without help. He states the entire left and right arm will be "dead" and numb, states the left is fairly constant and more consistent than the right….
> Patient here for evaluation of cervical pain and BUE paresthesias with started after MVA while working. Cervical MRI shows straightening of lordosis with C5-6 DDD, disc protrusion without significant canal or foraminal stenosis. We discussed that this is not significant enough to explain his symptoms. Recommend neurology consultation. Physical

> exam did show positive Tinel's at the left cubital tunnel suggestive of peripheral nerve involvement. Will have patient follow up w/Dr. Deimel for further evaluation and discussed neurology consultation. I do not appreciate a surgical solution.

The physician's assistant assessed "1. Cervicalgia. 2. Bulge of cervical disc without myelopathy. 3. Paresthesia of upper extremity."

Dr. Miles M. Johnson evaluated the claimant on November 15, 2018 and assessed "Severe bilateral carpal tunnel syndrome." The record indicates that Dr. C. Noel Henley performed a left carpal tunnel release on December 6, 2018 and a right carpal tunnel release on December 20, 2018. Dr. Henley noted on January 31, 2019, "Cliff comes in for recheck after his staged bilateral carpal tunnel releases. He is doing well….He is still working through some worker's compensation issues with his back and is not back to fully (sic) duty with respect to that….I am releasing him from my care. He is at MMI. No PPI rating necessary. I will see him back as needed. No restrictions with respect to the hands."

Dr. Daniel Shepherd saw the claimant at NWA Neuroscience Institute on February 19, 2019:

> Mr. Clifford Burton is a 44-year-old male who presents with multiple complaints today. He is a [Benton County] police officer that was involved in an accident in February of 2018, and he presents to clinic with his wife worker's comp agent. His predominant complaints are axial neck pain. He does have pain that radiates through the trapezius muscle to the left shoulder. Denies radicular arm pain past the shoulder….He initially had some symptoms such including

> numbness and paresthesias in the hands, but these symptoms resolved following carpal tunnel surgery….He has had extensive conservative measures thus far including physical therapy, steroid injections, over-the-counter analgesics, opiate analgesics, and muscle relaxants….
> **Thoracic Spine examination demonstrates** no visible abnormalities.
> **Lumbar/Sacral Spine examination demonstrates**
> Lumbosacral Spine: Appearance: no deformity, no erythema, no ecchymosis and no swelling. Tenderness: lumbar spine….
> I reviewed his cervical and lumbar MRI images. His lumbar MRI shows mild degenerative changes throughout without any evidence of significant lumbar stenosis. His cervical MRI shows loss of normal cervical lordosis. He has a central disc herniation at C5-6. This is causing some ventral flattening of the spinal cord without significant compression….
> It is difficult to say if his shoulder pain is due to nerve compression. While shoulder pain is possible from disc herniations, it is an atypical presentation of radiculopathy. His EMG in Nov of 2018 was negative for radiculopathy, and he denies any pain past the shoulder. Furthermore, he has a positive Hawkins sign on the left as internal rotation of the shoulder replicates his left sided pain symptoms. I recommend bilateral shoulder X-rays and a referral to Dr. Heinzelmann to assess for shoulder pathology.
> His lower extremity numbness is also atypical for a cervical disc herniation. I do not appreciate any significant pathology in the lumbar spine that would contribute to this symptom. However, his thoracic spine has not been addressed. I recommend an MRI of the thoracic spine without contrast to rule out thoracic pathology….

An MRI of the claimant's thoracic spine was taken on February 28, 2019 with the impression, "1. MILD THORACIC SPINE SCOLIOSIS. 2. NO THORACIC DISC HERNIATIONS, CENTRAL CANAL STENOSIS, FORAMINAL STENOSIS, CORD OR NERVE ROOT IMPINGEMENT."

Dr. Andrew D. Heinzelmann reported on March 1, 2019:

> The patient is a 44-year-old white male who was involved in a car accident at work, so he is here for Workers Compensation. He is a police officer. He reports that on 02/18/2018 he had an accident. He was driving, seat belt. He was struck by another vehicle head on. Airbags did not deploy. He had both hands on the steering wheel and he has had shoulder pain ever since. He is also being treated by Dr. Deimel and Dr. Shepherd of neurosurgery. There was some concern that he may have some shoulder problems. He says it has not gotten better. He is here for evaluation. He says it hurts at night. It hurts when he is sleeping. It hurts when he is trying to use it, reach, push, pull….
> **IMAGING:** X-rays that were taken previously show no fracture, no dislocation of the left shoulder.

Dr. Heinzelmann's impression was "Left shoulder pain with biceps tendinitis and rotator cuff syndrome. **PLAN:** I think at this point he is continuing to have problems and pain. He had a traumatic injury. He needs an MRI. We will do an MRI of the left shoulder. We will also do one arm duty only at work."

An MRI of the claimant's left shoulder was taken on March 13, 2019 with the following findings:

> Moderate supraspinatus and infraspinatus tendinosis is seen without tear. The subscapularis tendon is normal. The teres minor tendon is normal. Normal muscle bulk and symmetry is maintained. The long head of the biceps tendon is intact.
> On this non arthrographic study, no definite labral tear is identified. There is a small subchondral cyst of the posterior glenoid at 7 o'clock. No definite chondral defect is seen. No joint effusion. Tiny subchondral cysts are seen at the base of the superior labrum. The biceps anchor is intact.
> A Type I acromion is present without subacromial spur. The AC joint demonstrates a small amount of effusion and periarticular edema. This is probably related to a low grade

> sprain of the AC joint. The coracoclavicular ligament is intact. The coracoacromial ligament is normal.
> IMPRESSION: 1. GRADE I SPRAIN OF THE AC JOINT.
> 2. MILD TO MODERATE TENDINOSIS OF THE SUPRASPINATUS AND INFRASPINATUS TENDONS WITHOUT EVIDENCE OF ROTATOR CUFF TEAR.
> 3. MILD DEGENERATIVE CHANGES OF THE
>
> GLENOHUMERAL JOINT.

Dr. Heinzelmann reported on March 15, 2019:

> Clifford Burton is seen back for his left shoulder MRI. He has a grade 1 sprain of the AC joint with some arthrosis of the AC joint, mild degenerative changes of the glenohumeral joint. There is no obvious rotator cuff tear. He does have mild to moderate tendinosis.
> **PHYSICAL EXAMINATION:** On his exam today I can appreciate more of a posterior instability. He is able to re-create and then reduce the shoulder with a positive posterior jerk test. He did use the steering wheel. He said he had his hands on the steering wheel when this was happening. This was an accident. That mechanism could represent a subtle instability posteriorly. In addition to that, he is not getting any better, and when he lifts the arm away from his body and externally rotates he has pain and weakness.
> **IMPRESSION:** Left shoulder pain and weakness with some posterior instability.
> **PLAN:** I have talked to him and his case manager at length about it. It is one of those things. He does not have an obvious issue that needs repair on his MRI, however, clinically he has signs and symptoms consistent with instability and rotator cuff pathology. I think it is possible that arthroscopically we could identify and further delineate and make a better diagnosis and treatment strategy for his shoulder problems. I think it is reasonable to consider. It has been going on now for over a year. He is not getting better, so at this point my recommendation would be left shoulder arthroscopy, diagnostic purposes, treatment of the labrum and rotator cuff, subacromial space, and distal clavicle as indicated.
> His current work restrictions will remain the same.

Dr. Shepherd performed an anterior cervical discectomy and fusion on April 15, 2019. Dr. Shepherd noted on May 9, 2019, "His chronic debilitating neck pain and chronic persistent headaches have largely resolved. He states that he feels much better. He continues to have some left shoulder pain with shoulder movement….I continue to feel that this is an orthopedic/shoulder related pain. Dr. Heinzelmann recommended further investigation of the shoulder, but this was denied by Workman's Comp. I would encourage them to reconsider because I think further investigation is warranted."

A pre-hearing order was filed on November 12, 2019. The claimant contended that the "sustained an injury which arose out of and in the course of his employment with the respondent-employer. The claimant is entitled to additional temporary total disability benefits, and reasonable and necessary medical benefits and expenses. The claimant is entitled to medical expenses, rehabilitation and a controverted attorney's fee and reserves all other issues and benefits."

The parties stipulated that the respondents "have controverted the claim in regard to the claimant's left shoulder and lumbar spine." The respondents contended that the claimant "injured his cervical spine in a motor vehicle accident while on the job. He is now working light duty. He did not injure his shoulder (MRI was negative) and he did not injure his

lumbar spine (MRI was negative). He is not entitled to additional temporary total disability or treatment for his shoulder or lumbar spine."

The parties agreed to litigate the following issues:

> 1. Whether the claimant sustained a compensable injury to his low back and left shoulder.
> 2. Whether the claimant is entitled to medical treatment.
> 3. Whether the claimant is entitled to temporary total disability benefits.
> 4. Fees for legal services.

A hearing was held on January 16, 2020. The parties stipulated that the claimant was "performing light duty" for the respondents, but the claimant testified regarding his left shoulder, "I can't raise my left arm with my palm up higher than my shoulder without severe pain."

An administrative law judge filed an opinion on May 11, 2020. The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury to his low back and left shoulder. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external 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. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

1. <u>Back</u>

An administrative law judge found in the present matter, “3. The claimant has proven by a preponderance of the evidence that he suffered a compensable injury to his low back on February 18, 2018.” The Full Commission does not affirm this finding. The Full Commission finds that the claimant did not sustain a compensable injury to his back by medical evidence supported by objective findings. As we have discussed, the parties stipulated that the claimant sustained a compensable injury “to his neck and bilateral hands” on February 18, 2018. The claimant, a Sheriff’s Deputy for the respondents, testified that he was involved in a work-related motor vehicle accident on February 18, 2018. The claimant testified that

while pursuing the occupant of a suspected stolen vehicle, the suspect drove into the claimant's service vehicle and caused the claimant to strike a tree.

The record shows that the claimant was treated on February 18, 2018 for pain symptoms in his neck, left arm, and back. An x-ray of the claimant's thoracic spine was taken on February 18, 2018 with the impression, "No acute findings in the thoracic spine." A First Report of Injury on February 20, 2018 indicated that the claimant reported he sustained an injury to his "Neck and Back." Dr. Hueter's assessment on February 27, 2018 was "1. Strain of neck muscle, initial encounter. 2. Motor vehicle accident, initial encounter. 3. Cervical radiculopathy." Dr. Hueter subsequently assessed "4. Lumbar strain, subsequent encounter." The claimant received numerous physical therapy visits beginning April 18, 2018. However, the evidence does not demonstrate that the physical therapists reported or observed any objective medical findings such as bruising, swelling, or muscle spasm.

The Full Commission recognizes the physical therapist's notation on April 18, 2018, "R lumbar posterolateral protrusion (L2-3) w/chemical radiculitis s/p work injury DOI 2/18." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84

S.W.3d 878 (2002). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the prevailing weight of evidence does not corroborate the physical therapist's April 18, 2018 notation of a protrusion at L2-3. The Full Commission attaches greater evidentiary weight to the findings which resulted from the MRI of the claimant's lumbar spine taken April 26, 2018. The impression from the MRI of the claimant's lumbar spine was "Normal MRI of the lumbar spine." We reiterate that the x-ray of the claimant's thoracic spine on February 18, 2018 did not establish a compensable injury by medical evidence supported by objective findings. Dr. Shepherd reported on February 19, 2019, "**Thoracic spine examination demonstrates** no visible abnormalities. **Lumbar/Sacral Spine examination demonstrates** Lumbosacral Spine: Appearance: no deformity, no erythema, no ecchymosis and no swelling." An MRI of the claimant's thoracic spine on February 28, 2019 showed "1. MILD THORACIC SPINE SCOLIOSIS. 2. NO THORACIC DISC HERNIATIONS, CENTRAL CANAL STENOSIS, FORAMINAL STENOSIS, CORD OR NERVE ROOT IMPINGEMENT."

The Full Commission finds that the claimant did not establish a compensable injury to his back by medical evidence supported by objective

findings as required by Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012) and Ark. Code Ann. §11-9-102(16)(Repl. 2012). We therefore reverse the administrative law judge's finding that the claimant proved he sustained a compensable injury to his low back on February 18, 2018.

2. Left Shoulder

The administrative law judge found, "5. The claimant has proven, also by a preponderance of the evidence, that he suffered a compensable injury to his left shoulder on February 18, 2018." The Full Commission affirms this finding. As we have discussed, the parties stipulated that the claimant "sustained a compensable injury to his neck and bilateral hands" on February 18, 2018. The Full Commission finds that the claimant also sustained a compensable injury to his left shoulder on February 18, 2018. The claimant testified that, after his service vehicle crashed into a tree, his driver's door was jammed shut and he used his head and left shoulder to forcibly open the door. The initial medical report on February 18, 2018 indicated that the claimant complained of pain and numbness radiating down his left arm. Dr. Hueter examined the claimant on February 27, 2018 and corroborated the claimant's testimony that he was suffering from left arm pain as a result of the motor vehicle accident. The claimant subsequently underwent surgical treatment for his compensable neck injury

and bilateral hand injuries. Dr. Henley, who treated the claimant for his bilateral hand injuries, released the claimant on January 31, 2019.

Dr. Heinzelmann reported on March 1, 2019 that the claimant had been suffering from left shoulder pain since the February 18, 2018 motor vehicle accident. An MRI of the claimant's left shoulder on March 13, 2019 showed, among other things, "effusion and periarticular edema. This is probably related to a low grade sprain of the AC joint." The impression was "1. GRADE I SPRAIN OF THE AC JOINT." Dr. Heinzelmann subsequently recommended a left shoulder arthroscopy.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his left shoulder. The claimant proved that he sustained an accidental injury causing physical harm to the left shoulder. The claimant proved that the injury arose out of and in the course of employment and required medical services. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on February 18, 2018. In addition, the claimant established a compensable injury to his left shoulder by medical evidence supported by objective findings not within the claimant's voluntary control, namely the report of "effusion and periarticular edema" shown in the March 13, 2019 MRI. We

find that these objective medical findings were causally related to the February 18, 2018 accidental injury.

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant proved he sustained a compensable injury to his left shoulder. We reverse the administrative law judge's finding that the claimant proved he sustained a compensable injury to his back. The Full Commission finds that Dr. Heinzelmann's treatment recommendations were reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

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M. SCOTT WILLHITE, Commissioner