

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H306913

JOHN ADAMS, Employee	CLAIMANT
BUTTERBALL, LLC, Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED FEBRUARY 10, 2025

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 14, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on August 26, 2024, and a Pre-hearing Order was filed on August 27, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. The relationship of employee-employer-carrier existed between the parties on October 1, 2022.
3. The respondents have controverted the claim in its entirety.
4. The claimant's weekly compensation rates will be determined at a later date.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to his cervical spine and left shoulder on or about October 1, 2022.
2. Whether Claimant is entitled to medical treatment for his cervical spine and left shoulder injuries.
3. Whether Claimant is entitled to temporary total disability benefits from October 2, 2022, to a date yet to be determined.
4. Whether Claimant's attorney is entitled to an attorney's fee.
5. Respondents raise lack of notice as a defense in that October 25, 2023, was the first notice of the alleged work-related injury sustained on or about October 1, 2022.

The claimant's contentions are as follows:

“On October 1, 2022, claimant was working on a stack line in the course and scope of employment when he injured his left shoulder and neck. He continued to work the pain in his neck and left shoulder became unbearable. Respondents denied the claim in its entirety and claimant sought treatment on his own. Claimant underwent an MRI which revealed a herniation at C5-6. Claimant underwent a cervical spine surgery in December 2023. Claimant contends that he sustained a compensable injury in the scope and course of employment and that he is entitled to medical benefit, TTD and that his attorney is entitled to an attorney fee. All other issues are reserved.”

The respondents' contentions are as follows:

“The claimant was not injured at work on 10-1-22. He does not have a compensable injury.”

The claimant in this matter is a 48-year-old male who alleges to have sustained compensable injuries to his cervical spine and left shoulder on or about October 1, 2022. The claimant was employed in the respondent's shipping department. That job required the claimant

to move and shrink wrap boxes of product. On direct examination the claimant was asked about the events surrounding his alleged October 1, 2022, injury as follows:

Q Okay. Tell me what happened on October 1, 2022.

A Well, when I got to work, I probably worked I would say an hour and a half in my shipping area. And then Roger, my supervisor, had said he wanted me to go over to stacking and work with the scanners on product to help him get the products scanned in by pallet because that is how they ship it is by pallet and make sure everything was good.

I had been over there for a few hours before Eder, the supervisor over stacking, second shift, had put me on the stack line. And within, I don't know, an hour and a half – somewhere between an hour and a half and two hours is when I hurt my shoulder. I mean I felt it. So I reported to the supervisor first.

Q To who?

A Eder Sawatsky. He sent me to the nurse, which at the time was Alfred, and Alfred just gave me pretty much a basic aspirin and said, "Oh you will be fine. Go back to work."

Q Okay.

A So I went back and, of course, I worked for however many hours longer it was. I remember leaving in the early a.m. I was still hurting and I told my supervisor Roger about it and he said, "Well, what do you want to do?"

I said, "I am going to go home."

And then I also reported to work the next day like I was supposed to, but that is what happened on that day.

Q Okay. Now, you continued to work; correct?

A Yes, I did.

Q And you were back at work on Monday; correct: Well, that was a Monday; correct?

A Yes, that was a Monday.

Q And you continued to work until Wednesday; is that correct?

A Yes, when the next incident occurred.

Q What happened on Wednesday?

A Well, when I got to work on Wednesday, I got sent back over to stacking, which is not normal. They usually rotate us out. But I got sent back over there and I was doing the same thing I normally do. I would go in and scan the products. I would help make sure the pallets were good.

And then Eder, the supervisor, had put me back on the line again. Of course, I argued with him about it. "I got hurt once. I don't need to get it again."

And he said, "You work here and you do whatever you are told to do or you won't have a job."

So I went and got on the line and within a couple of hours, sure enough, I hurt my back and my neck went pop. The guy working next to me heard it. I think his name was Michael, but I can't be for sure.

Q What were you doing when it popped?

A Stacking off the roller lines to the pallets so that is from the floor up.

Q Okay. And other than the gentleman that was working next to you, did you tell anybody else that day?

A The supervisor afterwards.

Q And who was your supervisor?

A The supervisor over the position was Eder.

Q Okay. And did he send you to the nurse that day?

A He did.

Q And did you see Nurse Alfred again?

A Yes, ma'am.

Q And what did Nurse Alfred do?

A The same outcome as the previous on Monday, give you an aspirin and send you back to work. Obviously, it's an ongoing ordeal here. I could only do what I am supposed to do, which I did. I went to the supervisor first with the predicament and he sent me to the nurse, which I discussed with them what happened. Now beyond that, I felt that my job was done.

Q Did they send you to a doctor?

A No. It wasn't even suggested.

Q Did they have you fill out any workers' comp paperwork?

A Not any.

Q Okay. Did you continue to work?

A Yes.

I note that there are no documents in evidence that support or indicate the claimant was seen by the company nurse or reported his alleged workplace injuries while in the employment of the respondent. The claimant continued to work for the respondent until he was terminated in December of 2023.

The first medical record in evidence is a November 2, 2022, record from the Clarksville Family Medical Center. The claimant is seen by APRN Haley Duff. Following is a portion of that medical record:

HPI
Neck Pain
Reported by patient.
Trauma: no.
Neurological Complaints: none

Pain: worse with movement; worse with activity; radiates to right shoulder; pt states he thinks his right shoulder was improved with PT

Pain Duration: 3+ months; 5-8/10 pain level

Treatment: PT/OT (PT has helped the right shoulder, has not helped anything else)

1. Neck pain –

Worsening, neck pain after 6 weeks of PT, celebrex, Flexeril and steroid

M54.2: Cervicalgia

XR, CERVICAL SPINE – Note to imaging Facility: 2 or 3 views

MRI: CERVICAL SPINE, W/O CONTRAST

The claimant's November 2, 2022, medical record indicates that he had already been receiving medical treatment for his cervical spine in the form of physical therapy at least two weeks prior to the date he alleges to have injured his cervical spine and left shoulder at work.

The claimant was asked on direct examination about this inconsistency as follows:

Q Okay. In the very first note in here, it is dated November 2, 2022, and it notes, "Worsening neck pain after six weeks of physical therapy."

So this is approximately one month following that accident and it shows that you've already done some physical therapy. What is the discrepancy there?

A That one I woke up with a crick in my neck. I am sure people know what a crick is. And I couldn't turn my head, so I went in and they did the heat treatment and stuff and that ended up being fine. But they wanted to do some other stuff and I did all the stuff they wanted me to do prior to getting the MRI. The state's requirement is to get medical done. There is a process.

Q When was this waking up with the crick in your neck?

A I don't remember what day.

Q Was it before or after the accident?

A I think it was – I think it was after, but I can't recall exactly.

Q Okay. Okay. So after the accident, how solid are you that you know for a fact this was October 1, '22? Do you think it could be a different date?

A There is no way. When I first started working for them, I felt great. It was not the first time I have done a shipping job where you had to put a product – except when I worked at Zero Mountain, we had to floor load out trucks.

Q Now, Mr. Adams, let me ask you this question.

A Yes.

Q According to this medical report, you were treating for neck pain two weeks prior to October 1, 2022.

A Right, but it was only for the crick.

Q So the crick was prior to your work injury, then?

A I would have to guess so because – yeah, I would have to guess so because I remember going in and having the procedures done for the heat treat.

Q Okay. So you were already treating for some neck pain prior to this injury at work?

A I would guess. I mean, yes.

Q Okay. Did this incident at work make your pain better, worse, or did it gradually get worse over time?

A It was pretty much gradually. I mean I would start feeling numbness, tingling. You know, it is hard to tell if you are having a stroke, but it pretty much comes down to had some nerve damage that goes with associated with it, so...

Q Okay. So the pain after October 1st, was it different than the pain that you had experienced following the crick in your neck?

A Yes.

Q Okay. tell me how it was different.

A Because with a crick, I just couldn't move. With the other, it was constant pain as if like somebody were either stabbing, jabbing, or you know, poking around, so I was in pain. That was the only thing I could do was just do what I had to to get my MRI to see what was wrong with my neck.

The claimant underwent an MRI of the cervical spine on November 28, 2022, at Clarksville Family Medical Center. Following is a portion of that diagnostic report:

Impression: Moderate canal stenosis with right-sided foraminal narrowing secondary to disc osteophyte complex at C5-6

On February 16, 2023, the claimant is seen at Mercy Clinic Neurosurgery in Fort Smith.

Following is a portion of that medical record:

HISTORY OF PRESENT ILLNESS:

John C. Adams is a 46 y.o. male who works at local Butterball factory being seen in the office today for midline neck pain x 1 year. States his pain radiates to R shoulder, occasionally L shoulder, but does not go into either arm. He has tried PT with minimal relief. He does IM steroid injections q 3 months. States Flexeril and Gabapentin help him sleep but he does not take it during the day to drowsiness. He does not have numbness or tingling but he does have finger pain in all 10 fingers that he thinks is due to arthritis. Denies falls, decr hand dexterity or changes in handwriting. He reports that he has been told his R hand is weaker than L but he is R hand dominant.

Encounter Diagnoses

Cervicalgia

Cervical Radiculopathy

Osteoarthritis of spine with radiculopathy, cervical region

Orders Placed This Encounter

Celecoxib (Celebrex) 200 mg capsule

Plan:

1. Celebrex 200 mg daily x 5 days for osteoarthritis pain. Given one refill.

2. Pain management referral for evaluation of possible epidural steroid injections.

Pt discussed with Dr. Lee and he is in agreement with the plan. I would like to see John back here in the clinic in 3 month(s) to follow up after ESI. Should he have any questions before then I have encouraged him to give us a call.

On February 23, 2023, the claimant is again seen at Clarksville Family Medical Center.

The medical report from that visit, in part, states:

HPI

Neck Pain

Reported by patient.

Trauma: no.

Neurological Complaints: none

Pain: arching; worse with movement; worse with activity

Pain Duration: 6-8 months

Treatment: steroids

Assessment/Plan

1. Neck pain –

Note may return to work without restrictions

M54.2 Cervicalgia

Dexamethasone sodium phosphate 4mg/mL injection solution –

Inject 2 mL by intramuscular route. Quantity: (2) mL

Route: Injection

Ketorolac 60 mg/2 mL intramuscular solution – Inject 2 mL by

intramuscular route. Quantity: (2) mL. Route: Intramuscular

On March 14, 2023, the claimant is seen by Dr. Brian Goodman at Mercy Clinic

Department of Pain Medicine. Following is a portion of that medical report:

Chief Complaint:

Neck Pain

History of Present Illness

Mr. Adam is a 46 y.o. male who presents to the pain clinic with neck pain which has been gradually worsening over time.

The pain has been occurring for sev mo and is described as a constant aching/throbbing in the right neck and shoulder.

Radiation: right shoulder and arm.

Possible accident or event leading to this pain: no.
The pain is worsened by looking up while rest helps to ease the pain.

The claimant again saw Dr. Goodman on March 27, 2023, for a cervical epidural steroid injection. The claimant reports to Dr. Goodman on May 8, 2023, that the steroid injection gave him significant relief.

On August 1, 2023, the claimant underwent a second cervical MRI. Following is a portion of that diagnostic report:

IMPRESSION:

1. Central disc protrusion C5-6 level which may contact and have slight mass effect anterior aspect of the cord with mild central canal narrowing unchanged.

This MRI shows a central disc protrusion that was not present in the claimant's November 28, 2022, cervical MRI.

On December 7, 2023, the claimant is seen by Dr. Arthur Johnson and Dr. Johnson performed surgery on the claimant's cervical spine in the form of an anterior L5-6 decompression with discectomy and removal of osteophyte and an anterior C5-6 Mobi-C total disc replacement. Medical records from that same day also, in part, state:

Chief Complaint

Patient presents with

* Neck Pain

Cervical disk herniation C5-6

Subjective:

John C. Adams is a 47 y.o. year-old male admitted for Mobi-C TDR C5-6 with a history of Pt states has had pain for years, no injury. Radiates down BIL shoulders into arms to fingers, seems worse on the right. Has numbness and tingling at times. PT with cervical traction in 7/2022. He states the relief did not really last more than 2-3 days. he has had CESI by Dr. Goodman and he states first one lasted 4-6 weeks but the 3rd one only lasted 7 days. He states that Dr. Goodman told him more injections were not

going to help. He has had NCV/EMG on 5/24/2023 by Dr. Phillips which noted mild carpal tunnel on the left and no evidence of any other entrapment neuropathy. He has tried NSAIDS, muscle relaxants, opioids, Gabapentin and Cymbalta but he states that his pain level stays at about a 7/10. He has seen Dr. Gardon, neurosurgery at Mercy, who gave patient a Medrol Dosepak for inflammation of the cervical joints which pt states helped some but did not last. Patient was notified of NCV/EMG results by Dr. Gardon's nurse. Dr. Gardon felt that surgery would not benefit him and patient asked his PCP for a referral to BH neuroscience for a second opinion.

10/4/2023: has had neck pain for several years on and off this episode started last year. The pin is on the posterior aspect of his neck, bil. Shoulder and upper arms, they ache constantly without numbness, tingling or burning sensation. Has difficulty looking up at times and also reaching above his head. Has had physical therapy, no chiropractor, or neck brace. Had CESI #3 injections and did not help.

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.

The claimant alleges injury to his left shoulder and cervical spine on or about October 1, 2022. In considering the claimant's allegation of left shoulder injury the medical evidence presented is found lacking. There are no medical records in evidence that show any type of objective medical findings regarding the claimant's left shoulder. Without objective evidence of a left shoulder injury the claimant is unable to prove a compensable left shoulder injury.

The credibility of witnesses and the weight to be given to their testimony are matters

solely within the province of the Commission. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993).

In considering the claimant's alleged cervical spine injury, I note the conflict that exists between the claimant's hearing testimony and the medical evidence. Clearly, the claimant was receiving medical treatment for his cervical spine in the form of physical therapy at least two weeks before his alleged cervical spine incident. The claimant attempts to frame his need for medical treatment prior to his alleged injury date as simply waking up with a crick in his neck. I find it unreasonable that medical providers or any individual would order or undergo six weeks of physical therapy for a simple morning crick in someone's neck.

The claimant alleges the medical treatment for his cervical spine, including surgery, is a result of his alleged October 1, 2022, cervical spine injury. However, not one medical record in evidence discusses or talks about any type of injury to the claimant's cervical spine. In the first medical record dated November 2, 2022, the claimant reported no trauma. At the claimant's February 16, 2023, Mercy Clinic Neurosurgery visit the claimant states, "midline neck pain x one year", and reports no injury. At his March 14, 2023, visit with Dr. Goodman the claimant reports, "neck pain which has been gradually worsening over time." The claimant also reports no possible accident or event leading to this pain at that time. On October 4, 2023, the claimant tells Dr. Johnson, "has had neck pain for several years on and off, this episode started last year." On the day of his December 7, 2023, surgery with Dr. Johnson, the claimant, "states he has had pain for years, no injury."

The claimant certainly does have objective medical findings of derangement in his cervical spine given his November 28, 2022, cervical spine MRI, his August 1, 2023, cervical spine MRI, and Dr. Johnson's December 7, 2023, operative report. I note a disc protrusion in his

second MRI that was not present at his first MRI. Although the claimant can show objective medical findings of cervical spine derangement, he is unable to prove a causal connection between those objective medical findings and the incident on October 1, 2022, he alleges. The claimant began treating at least two weeks prior to his alleged injury date and medical records consistently show he had no injury by his own accounts to medical providers. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable cervical spine injury on or about October 1, 2022.

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 the pre-hearing conference conducted on August 26, 2024, and contained in a Pre-hearing Order filed August 27, 2024, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his cervical spine and left shoulder on or about October 1, 2022.
3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment for his cervical spine and left shoulder.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
5. The claimant has failed to prove by a preponderance of the evidence that his attorney is entitled to an attorney's fee.

6. The respondents lack of notice defense is moot.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**