

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H302750

KEVIN BRIGGS, EMPLOYEE

CLAIMANT

UTC RAILCAR REPAIR SERVICES, LLC,  
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE COMPANY/  
CONSTITUTION STATE SERVICES, LLC,  
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 5, 2025

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Texarkana, Miller County, Arkansas.

Claimant represented by the Honorable GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the Honorable SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On May 6, 2025, the above-captioned case came on for a hearing before the Commission in Texarkana, Arkansas. A pre-hearing telephone conference was held in this matter on February 12, 2025. A Pre-hearing Order was entered on that same day. The parties' pre-hearing information filings have been made a part of the record without objection; and thus, been marked accordingly, as Commission's Exhibit No. 1.

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed among the parties, on

March 16<sup>1</sup>, 2023.

3. The Claimant's average weekly wage was \$908.72 on the day of his alleged compensable injury. His weekly compensation rates are \$672.00 for temporary total disability/TTD, and \$467.00 for temporary total disability/TTD.
4. The Claimant reached maximum medical improvement/MMI on September 24<sup>2</sup>, 2024.
5. The Claimant received short-term disability in the amount of \$321.00 per week, which the Respondents are entitled to an offset in the event indemnity benefits are awarded.
6. The Respondents have controverted this claim in its entirety.
7. The parties agreed that all issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
8. During the hearing, the parties stipulated that if the Claimant drew unemployment benefits during a period that overlaps with the award of temporary total disability compensation, then Respondents are entitled to an offset. (Tr. 47)

During the pre-hearing telephone conference, the parties agreed to litigate the following issues:

1. Whether the Claimant sustained a compensable injury to the left shoulder/bicep rupture on March 16, 2023, during and in the course of his employment with the respondent-employer.
2. Whether the Claimant is entitled to temporary total disability benefits from April 28, 2023, through September 23, 2024.
3. Whether the Claimant sustained a 4% impairment and wage-loss disability (Claimant's counsel amended this issue from 2% to 4% at the beginning of the hearing Tr. 9).
4. Whether the Claimant is entitled to reasonable and necessary medical treatment of record, as well as future treatment.
5. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

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<sup>1</sup> The Claimant's counsel amended the Claimant's injury from March 17, 2023, to March 16.

<sup>2</sup> Counsel also amended the Claimant's MMI date from September 23, 2024, to September 24.

The Claimant's and Respondents' contentions are set out in their respective response to the pre-hearing questionnaire and those made at the beginning of the hearing. Said contentions are as follows:

Claimant:

The Claimant contends that he sustained a compensable injury to his left shoulder on or about March 17, 2023.

He contends that the medical treatment he has received to date has been reasonable, necessary, and related to his compensable injuries such that Respondents should be ordered to pay for same.

The Claimant contends entitlement to temporary total disability benefits from April 28, 2023, through September 23, 2024.

He also contends the medical treatment received to date has been reasonably necessary and related such that the Respondents should be ordered to pay for same, including reimbursement to Blue Cross Blue Shield for any expenses paid for medical treatment.

The Claimant contends the Respondent should be ordered to pay attorney's fees as provided by law.

At the beginning of the hearing, the Claimant contended that he is entitled to a 25% wage loss disability.

Respondents:

The Respondent contends that they have controverted this claim in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of the record as a whole, to include medical reports, documentary evidence, and other matters properly before the Commission, and having had an opportunity to listen to the

testimony of the Claimant and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant proved by a preponderance of the credible evidence that he sustained a compensable injury to his left shoulder on March 16, 2023, during and in the course and scope of his employment with UTC.
4. The Claimant proved by a preponderance of the credible evidence that all the medical treatment of record was reasonably necessary in connection with the left shoulder injury received by him. No further medical treatment has been recommended for the Claimant's left shoulder injury.
5. The Claimant proved his entitled to temporary total disability compensation from April 28, 2023, through and until September 23, 2024.
6. The Claimant proved by a preponderance of the evidence that he sustained a 5% whole person permanent impairment for his left shoulder injury.
7. The Claimant proved by a preponderance of the credible evidence that he sustained wage loss disability in the amount of 22%.
8. The parties stipulated that the Respondents have controverted this claim in its entirety. Therefore, the Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded to the Claimant herein.

#### Summary of Evidence

The entire record is made up of the May 6, 2025, hearing transcript, which includes the documentary evidence of Commission's Exhibit No. 1; Claimant's Exhibit No. 1, which is an Abstract of the Table of Contents consisting of 13 pages; and Claimant's Exhibit No. 2 includes the Table of Contents comprising eight pages and 308 numbered pages of medical records. The Claimant, Kevin Briggs, was the only witness to testify during the hearing.

HEARING TESTIMONY

Mr. Kevin Briggs/the Claimant

As of the date of the hearing, the Claimant was 53 years of age. He graduated from high school in 1992. Majority of the Claimant's high school and school years included regular classes, but he also took some special education classes. According to the Claimant, he was diagnosed with dyslexia and ADD/attention deficit disorder around the age of five. The Claimant confirmed that he ended up having to repeat some grades in school along the path. He specifically testified that he repeated the 2<sup>nd</sup> and 6<sup>th</sup> grades. The Claimant confirmed that he can read and do simple math. However, the Claimant denied that he attended any college or vocational school after graduating from high school. Per the Claimant's testimony, he served as a volunteer firefighter for roughly 18 years. He stopped volunteering with the fire department in 2009. The Claimant confirmed that during his years as a volunteer firefighter, he had to go through some certifications and training associated with his firefighting service.

About the Claimant's alleged injury, he confirmed that he is asserting an injury while working for Union Tank Car/UTC Repair Service, on March 16, 2023. He began working there in November 2022. The Claimant testified that he was hired in to repair tanks, rail, and hopper cars.

The Claimant testified:

Q Can you describe the general job duties, the expectations of that job in terms of what you were doing there on a daily basis?

A I was assigned a car and was given a tablet with each repair that needed to be done either by welding, cutting, replacing parts, or generalizing things like that.

Q Well, maintaining and repairing the railcars?

A Yes.

Q What type of lifting and carrying of weights were expected to have to be able to carry out from day to day?

A It varies from day to day, but some of the heaviest was a hundred pounds that we had to pick up and put back onto the car.

According to the Claimant, he has prior work experience doing this same or similar type of work before he went to work for UTC. According to the Claimant, he had previously performed this type of work for about five years. However, in terms of doing welding and maintenance type of work, the Claimant has been doing that type of work over the years for various places over the last 18 to 20 years. His hourly pay at the time of hire for UTC was \$21.39. The Claimant confirmed that his pay remained unchanged on the day of his alleged injury. Typically, the Claimant worked a standard 40-hour workweek, with some overtime. According to the Claimant, on average, each week he worked 45 to 48 hours. The Claimant testified that he worked the night shift, which was from 7:00 p.m. until 8:00 a.m., the next morning.

When the Claimant went to work for UTC, he was on medications for diabetes and back pain. The Claimant confirmed that he takes hydrocodone for his back. He confirmed that he has undergone two prior back surgeries, one in 2011 and another one in 2012. Per the Claimant, he takes two 7.5 milligrams of hydrocodone, twice a day to manage his pain. The Claimant is insulin-dependent, he confirmed that he had this condition at the time of his hire with the railcar company. He testified that he takes Effexor for his temper, which helps to calm him down. The Claimant also suffers from high blood pressure, which is controlled with medication. In addition to these conditions, the Claimant had problems with his neck and wrists prior to going to work for the railcar company. He testified that he started having issues with his wrists in 2013 or 2014. Per the Claimant, his problems with his wrists began with pain that radiated into his hands and fingers. His neck issues started in 2003 or 2004. The Claimant testified that he has occasional flare-ups of inflammation, for which he gets a shot to boost and bring down the inflammation.

Before his employment with the railcar company, the Claimant admitted that he had prior treatment for his left shoulder, in the form of injections. The Claimant testified that he was

diagnosed with bursitis in the left shoulder. He testified that prior symptoms of the left shoulder for which he sought medical treatment included stiffness and some pain. According to the Claimant, he had some pain but “not a whole lot of pain.” The first time he sought treatment for his left shoulder was in 2016 or 2017. However, the Claimant denied that he ever had to see a specialist for his left shoulder. The Claimant did not recall having an MRI of the left shoulder prior to his alleged work-related accident of March 16, 2023.

When the Claimant began working for UTC, his family doctor was Wendy Gammon. Prior to his alleged work injury of March 16, 2023, the Claimant confirmed that when he saw her on January 14, 2023, he complained of stiffness and some pain. Per these medical notes, Dr. Gammon reported in the history part of her clinical notes that the Claimant had bursitis, for which joint injections provided relief in the past. The Claimant confirmed that this is correct and what he reported to Dr. Gammon. He testified that she gave him an injection in his shoulder, which helped to relieve his symptoms.

The Claimant confirmed that prior to March 16, 2023, he performed all aspects of his job with the railcar repair company. He denied missing any days from work due to his left shoulder condition.

On March 16, 2023, the Claimant testified that he lifted the car and removed the wheel sets. According to the Claimant, he used heavy duty hydraulic jacks to pick up one end of the car, so that he could remove the entire wheel set. He agreed that he was lifting the car up, to get underneath it. Once the Claimant had it lifted above him, he testified that he used a pair of pliers to take the wheel sets off. Next, the Claimant rolled the wheel set out, and started to remove the wheels so that he could spread the side frame apart to replace what is called the brake beam. At that point, the Claimant was swinging a sledgehammer that weighed roughly ten pounds.

The Claimant's counsel questioned him further:

Q These sides that you're describing, what is it that .....

Why would you need a hammer to do that?

A Certain frames, side frames, they had what they called a ride cushion, which is, basically, a wedge that just free floats, and they are tight all the time, so you have to take a hammer, a sledgehammer to hit the inside of the side frame to spread the side frame out so that we can get that part out.

Q All right. So as you described the process, what were you doing then?

A I had taken the one side set of wheels off and started hitting the inside of the side frame with the sledgehammer, and as I was swinging, that's when I felt and heard the pops in my shoulder the two pops in my shoulder.

Q In your left shoulder?

A My left shoulder. Yes, sir.

Q When you say you heard pops, what did you hear?

A Almost like a .22 going off.

Q What sort of pain did you experience?

A Extreme pain.

Q Where was your pain?

A Throughout my shoulder.

Q Can you be more specific?

A The sides and the front.

Q If you'll describe for us, when you say the front, where are you talking about?

A Where my biceps connect to my shoulder.

Q When you say the side, where are you talking about?

A The area where the rotator cuff is.

The Claimant further explained that his pain was on the left side of the top of his left shoulder. According to the Claimant, he tried to continue working but figured out really quick he could not do so. The Claimant confirmed that he at once reported what had happened to him to his managing lead person, Jeff Sapp. Although there were others working in proximity with the Claimant, no one saw his incident. Per the Claimant, he was working alone.

About the reporting of his injury to Mr. Sapp, the Claimant testified that he told him to report his injury to the area manager, Michael Delgado. At that point, Mr. Delgado had the Claimant fill out an incident report and gave him an ice pack to put on his shoulder. Thereafter,

Mr. Delgado sent the Claimant home for the night. Next, the Claimant was shown a copy of his exhibit, which was from page 41. The Claimant confirmed that it is the statement that he provided management. This statement mirrors the Claimant’s testimony. He admitted to having signed the document.

The Claimant confirmed that he sought medical attention from the company doctor, the next morning, on March 17, 2023. He admitted that he treated initially with Dr. Raker at Ark-La-Tex Health. At that time, the Claimant testified that he had pain in the top part of his shoulder, and he could hardly move it. Per the Claimant, he could barely reach down to tie his shoes. Dr. Raker took x-rays and placed the Claimant’s arm in a sling and placed him on light duty restrictions. The Claimant ended up seeking treatment with Dr. Raker four times. Ultimately, Dr. Raker ordered an MRI of the Claimant’s left shoulder. The Claimant admitted that workers’ compensation paid for the visits he had with Dr. Raker.

Next, the Claimant was shown an exhibit packet with documents showing that the respondent-employer controverted the claim on May 2. After they denied the claim, UTC did not continue to offer him light duty work. The Claimant agreed that his last day of work was April 28, 2023. He confirmed that he was able to follow-up with a specialist after he underwent the MRI. Dr. Mitchell evaluated the Claimant after he had the MRI. On May 19, 2023, he performed surgery on the Claimant’s shoulder. The Claimant paid for the surgery using his own personal health insurance, Blue Cross, and Blue Shield. However, he had to pay for out-of-pocket expenses, such as deductibles, and things of that nature. Per the Claimant, he has paid approximately \$600.00 for out-of-pocket expenses.

According to the Claimant, he had the surgery because “the ligament in his biceps had torn loose” from his shoulder. As a result, they had to go in and repair it by reattaching it. After his

surgery, the Claimant underwent physical therapy for roughly eight or nine weeks. The Claimant confirmed that surgery helped his shoulder. While off work, the Claimant drew short-term disability for about six months. Thereafter, he ended up applying for long-term disability and for short-term disability for a brief period of time. He confirmed that Aflac paid him approximately four or five checks, which totaled \$1,800.00.

The Claimant agreed that Dr. Mitchell's progress notes and physical therapy records from September 6, 2023, show that Dr. Mitchell ordered a follow-up MRI and arthrogram because he was having symptoms of pain and still did not have full mobility of his arm. The Claimant specifically explained, "I couldn't pick my arm up and straight out lift it up, and I couldn't twist my arm in any direction without pain." However, Dr. Mitchell did not have any recommendations after these diagnostic tests were ordered. The Claimant testified that he saw Dr. Syed for hydrocodone pain management. He admitted that after the MRI and arthrogram had been ordered, Dr. Mitchell wanted to refer him for an injection in his neck to see if that might be creating some of the symptoms he had been complaining about.

Ultimately, the Claimant was able to get an injection in the neck that had been suggested to him by Dr. Syed. He denied that this treatment modality provided him with any relief of his symptoms about his shoulder. The Claimant confirmed that Dr. Mitchell referred him to another doctor, Dr. Sharp, for an impairment rating. He admitted that he saw Dr. Sharp just for one evaluation which was on September 23, 2024. The Claimant agreed that Dr. Sharp conducted an examination of his shoulder and arm. Per the Claimant, Dr. Sharp lifted his arm up and moved it around and did some measurements. According to the Claimant, Dr. Sharp spent approximately one hour with him. Dr. Sharp did not assign him any written physical restrictions or limitations. He denied he had a job with UTC by the time Dr. Sharp addressed his permanent impairment.

The Claimant confirmed that UTC sent him a letter on November 8, 2023, informing him that they could not continue to hold his job. At that point, Dr. Sharp assigned the Claimant an impairment rating. The Claimant testified that his shoulder was still limited in terms of how he could move it. He explained more specifically the condition of his shoulder and the limited range of motion: “Being able to pick my arm up and out to the side still pain with some rotation. Like holding my arm up and twisting it side to side.” According to the Claimant, he experiences a lot of pain if he tries to stick his arm straight out to the left side. He denied being able to fully extend his arm straight out to his left side, without severe pain. However, the Claimant admitted that he could move his left arm in front of him directly. The Claimant denied that he could move his arm in front of him and take it up over his head.

Per the Claimant, he can lift, carry, and manage fifteen pounds. The Claimant further testified that anything more than that causes his arm to hurt. He testified that it causes him to try and pull his arm straight out to the side, but if he moves it to the side that is where the problem comes in.

He confirmed that he has performed some job searches for work. Per the Claimant, his efforts include online applications. The Claimant testified that he has put in approximately seventeen applications. According to the Claimant, he has put in applications for a forklift operator, anything relating to operating equipment, office work, and warehouse type jobs. The Claimant denied that he would be able to physically do the type of work at UTC he was doing even if his job had still been available. In the job at UTC, the Claimant explained that you must put your arms and body in awkward positions to be able to get to what you need to work on. According to the Claimant, he must be able hold his arms straight out, sideways, and crawl in holes. The Claimant also denied that he would be able to perform any of the welding jobs he

performed in the last eighteen years. He testified that he would not be able to put his arms in certain positions to do the job, because his shoulder will not allow him to do that type of work. His deposition testimony shows that years ago he worked as a security officer. The Claimant denied that he would be able to work as a security officer. He agreed that he could manage the part of observing and watching, but he would not be able exert physical force. The Claimant denied that he has had an interview or gotten a response from anybody in terms of getting an opportunity to interview for a job. He confirmed that he applied for unemployment benefits and drew \$2,300.00 for three or four months.

Financially, the Claimant testified that his wife works. He explained that without his income, it is incredibly stressful. The Claimant agreed that he is in the process of applying for Social Security Disability benefits but has not completed the process. He confirmed he has been out of the work force for two years. According to the Claimant, his physical activities since he has not been working and have not had a job to be able to return to work is limited. However, the Claimant can operate and drive a vehicle. He lives in a house, and can take care of his own lawn, except for the weed eating. Per the Claimant, he is not able to do any weed eating because he is unable to swing the weed eater around. He uses a zero-turn lawn mower. The Claimant can do simple things such as getting groceries out of the car. He denied having any hobbies, such as hunting and fishing. He spends his free time on his tablet, doing housework and yard work, using the mower. The Claimant continues to look for work. He does stretches, but he does not have weights or anything of that nature. The Claimant was sent home with bands to use but they started to deteriorate.

Since October 2023, the Claimant has not returned to Dr. Mitchell for any follow-up medical treatment. He continues to take hydrocodone, which is being prescribed for his back

issues that he has had since 2014 or 2015. According to the Claimant, the pain medication provides him with benefits (pain relief) for his shoulder condition. He stated that he believes his arm does not have as much range of motion and strength now as it did when he saw Dr. Sharp. He confirmed that he saw Dr. Huggins for a second opinion evaluation of his shoulder. The Claimant testified that he examined his arm and shoulder. He spent about an hour with the Claimant examining his arm. He described the nature of his examination as the same as what Dr. Sharp performed. The Claimant confirmed that he took control of his arm and did some measurements. He also confirmed that the Respondents have not paid for his medical treatment or compensated him for the permanent impairment of his shoulder. The Claimant confirmed that he is asking for consideration of the higher impairment rating of 4%.

Doctors placed the Claimant at maximum medical improvement for his shoulder in September of 2024. He testified that he is asking for wage-loss disability of 25%. He confirmed that his average weekly wage at the time of his accident was \$932.00 a week. The Claimant has not been able to earn any money since his doctor released him from care.

On cross-examination, the Claimant was again asked to confirm that before March 2023, he had prior problems with his left shoulder. However, he testified that after the incident, he had a different kind of problem. He admitted that he has gone riding four wheelers since his accident. The Claimant confirmed that James McShane sent a letter in November terminating him. At that time, he offered the Claimant the ability to come back and re-apply or be re-hire. He admitted that he has not applied for work at UTC since his release. The Claimant was asked if there was a reason for him not applying for a position with the company. He replied, “I don’t know if this politically correct but bad blood.” The Claimant admitted that he does not want to return to work for them. He admitted that he was not aware of any security jobs that involved monitoring and had no risk

of getting involved in an altercation. The Claimant admitted that he has not looked or tried to find a security job. He confirmed that he does not believe he could perform that type of job.

The Claimant admitted that he worked for Lowes's at one point. He testified that he could still do that type of work, depending on the type of lifting involved in the job. The Claimant testified that depending on the department, you must lift anywhere from half a pound to as much as twenty-five pounds. He agreed that Lowe's has multiple departments. The Claimant admitted that he has not looked for any kind of work in customer service or retail. However, the Claimant testified that he has narrowed his focus down in terms of looking for work involving jobs such as a forklift driver. The Claimant confirmed that he has a job history of operating heavy equipment such as a forklift driver. He agreed that there are jobs outside that field that might have jobs available, but he has not even considered. The Claimant denied that he is contending he is unable to work.

Under further cross examination, the Claimant testified:

Q And the sad reality of it is there are all kinds of jobs out there that you feel like you can do, it's just that no one has given you a chance or even offered you an interview?

A Correct.

Q So that doesn't really have anything to do with your physical ability to do the job, they're just not giving you a chance to get a foot in the door, are they?

A No.

The Claimant confirmed that he drew unemployment benefits in Arkansas last year. He was unable to recall if he drew these benefits before or after Dr. Mitchell sent him for a rating. Per the Claimant, he was unsure whether he went for the rating in March 2024. He testified that he applied for a job at Amentum. According to the Claimant, they repair a lot of things and have contracts with Red River Army Depot. He confirmed that he previously worked at the Depot. The Claimant agreed that he could drive a tractor trailer. However, the Claimant denied that he has

explored job opportunities in that field.

On redirect examination, the Claimant “bad blood” with UTC. He testified that they fought his claim for unemployment benefits, and just the way they let him go. According to the Claimant, UTC told the hearing officer he voluntarily left although he had paperwork saying they let him go. Per the Claimant, as a result, it is a buildup of things. The Claimant confirmed that he has put in a number of applications, but he is not getting an interview. He agreed that with him being out of the workforce for the last two years and potentially a gap in his resume plays a part in him getting a call back.

On recross examination, the Claimant testified that he could use his left arm, and it is fully functional for a lot of things, it is mostly a positional issue. He confirmed that he testified during his deposition that he can drive his zero-turn mower. The Claimant admitted that it involves pushing and pulling levers out in front of him and he can do that type of activity. He confirms that those controls would be similar to the controls in a bobcat or a skid steer. The Claimant agreed that when he has past work involving working out at a landfill and running heavy equipment. He admitted that he operated a dozer, what they call a scraper. The Claimant testified that it is a piece of equipment that has a belly pan that scrapes up dirt, packer similar to what you see on the roads when they are packing the dirt. Per the Claimant, he has never used a backhoe.

The Claimant confirmed that as a forklift driver, the going rate is \$21.00 an hour. He was not sure of the rate of pay for a dozer driver. He testified that he has not had any prior accidents involving his left arm. The Claimant stated that he has not been hunting or fishing in many years. Per the Claimant, he got rid of his boat in 2019.

MEDICAL EVIDENCE

A review of the medical records shows that the Claimant sought medical attention for his primary care under the attention of Wendy Gammon, FNP-C, FNP. The Claimant has been treated for several conditions unrelated to his alleged shoulder injury. These conditions include insomnia, depression, obesity and hyperlipidemia, vitamin D disorder, diabetes, high blood pressure, and anxiety disorder.

The Claimant sought medical attention for his left shoulder from Nurse Gammon diagnosed the Claimant with left shoulder bursitis, on January 14, 2023.

On March 16, 2023, Jeff Sapp, a coworker, wrote the following statement:

I (Jeff Sapp) was walking past Kevin Briggs about 11:30 to 11:45 as he was taking apart some side frames. I witnessed him pick a sledge hammer up and prepare to swing it. From what I saw Kevin started to swing it like putting a golf ball. Kevin put very little effort into the swing and suddenly started to stumble. Kevin came up to me shortly after that and told me that he thinks he messed his shoulder up. I referred him to Michael Delgado to report his injury.

Mr. Jeff Gregory authored a note on March 17, 2023. He wrote:

I (Jeff Gregory) witnessed Kevin Briggs working on a set of trucks that required a set of brake beams to be changed out. He was in the process of spreading the side sills far enough apart to remove the old beams using a sledgehammer. This is normal and a pry bar is usually all that it takes. In this case I never actually saw him swing the hammer to move the side sill. I did notice him dragging the hammer to his work areas prior to any work being done. This was approximately 30 minutes after the start of the shift. He waited till shortly after he drug the hammer to his work area to come report that he hurt his shoulder to the Area Manager who was covering for the night shift supervisor who was on vacation. I never actually saw him swing the hammer.

On March 17, 2023, the Claimant sought medical attention under the care of Dr. James D. Raker. At that that time, the Claimant’s chief complaint was very severe frequent sharp shoulder pain on the left. X-rays of the Claimant’s shoulder revealed no gross fractures, dislocation, or other defects. Dr. Raker diagnosed the Claimant with an “unspecified strain of the left shoulder

joint.” The Claimant reported the date of injury as being March 16, 2023. He gave a history of swinging a long hand 9-pound hammer, midswing and his left shoulder popped twice. Per these clinic notes, the Claimant had two prior back surgeries and three knee surgeries. Dr. Raker noted that the Claimant was already on opinions because of two prior back surgeries. The Claimant’s subjective complaints show that on a numerical rating scale of 0 to 10, he had a value rating of 9 due to frequent sharp shoulder pain on the left. Dr. Raker stated that his observation of the Claimant revealed a normal level of physical flinching guarding that coordinated with the level of muscle spasm reported by the patient. The Claimant was instructed to perform home exercises and follow up in three days. Dr. Raker instructed the Claimant to use cold packs, and OTC meds were discussed.

The Claimant was seen in a follow-up clinic by Dr. Raker on March 20, 2023. At that time, the Claimant reported a history of any motion invoking severe pain in the shoulder. Passive motion by Dr. Raker caused pain at 80 degrees of abduction and with both internal and external rotation. Per these clinical notes, Dr. Raker stated that the Claimant needed an urgent MRI of the left shoulder due to severe due to risk of frozen shoulder due to immobility. Also, Dr. Raker stated that the Claimant was at risk for a frozen shoulder due to immobility. As a result, he instructed the Claimant to perform daily home exercises. Dr. Raker instructed the Claimant follow-up for reevaluation in five days.

Dr. Raker saw the Claimant for follow-up evaluation on March 24, 2023, due to his left shoulder condition. The Claimant reported an improvement in his symptoms compared to his last visit. On physical examination, Dr. Raker noted that he observed that the Claimant had an increase in abduction with less pain, but internal rotation was still “very limited and very painful.” Dr. Raker noted that the Claimant’s pain level was at a level of 6 with frequent sharp shoulder pain on

the left which was quite an improvement since the previous treatment. On that same day, Dr. Raker referred the Claimant for an MRI of the left shoulder.

On April 6, 2023, Dr. Raker reported that the MRI showed proximal biceps tendon with 6cm tear, and DJD in the AC joint. He referred the Claimant for an orthopedic surgeon evaluation.

An MRI of the Claimant's left shoulder was performed on April 6, 2023. Dr. Douglas A. Trippe rendered the following IMPRESSION:

1. Acute full-thickness tear and retraction of the proximal biceps tendon. Tendon appears retracted approximately 6 cm.
2. Diffuse abnormal signal of the superior labrum consistent with tear and/or edema. Discrete tear at the base of labrum extends both anteriorly and posteriorly.
3. Left supraspinatus tendon: Advanced tendinosis with partial tear/articular surface erosion.
4. Left infraspinatus tendon: Moderate tendinosis with tiny partial insertional tear.
5. Moderate DJD at the AC joint with mild subacromial spurring.

Per a Form AR-N, the Claimant made a report of injury on April 11, 2023. Specifically, the Claimant provided a brief discussion of the cause of injury: "I was swinging an 8-pound sledge hammer from left to right in midswing my left shoulder popped twice."

On April 21, 2023, Dr. Feit Sheldon authored an Age of Injury Report Abnormal Radiological Findings.

CONCLUSION: The findings are chronic in nature.

SUMMARY:

1. Impingement on the supraspinatus muscle secondary to hypertrophic change at the acromioclavicular joint-chronic.
2. Partial tearing of the distal supraspinatus tendon-chronic.
3. Joint effusion-chronic.
4. Superior labral fraying-chronic.

Dr. Darius F. Mitchell evaluated the Claimant's left shoulder on May 3, 2023. The Claimant reported a history of being injured on March 17, while swinging a 10-pound

sledgehammer, when he felt a pop in his upper arm. The Claimant appeared with weakness with supination and flexion pain. Dr. Mitchell opined in relevant part.

**IMAGING**

My interpretation of the films is MRI that shows a retracted acute proximal biceps tendon rupture with coiling of the proximal biceps tendon and a residual superior labral stump also shows rotator cuff changes in the articular side of the superior labral degenerative change of the AC joint.

**PLAN:**

This gentleman needs surgical intervention. He works as a welder he has a proximal biceps rupture and will have weakness. He stated to me that his work comp is trying to decide whether or not this is an acute injury. Per the patient this is because the MRI report says there is a retraction of the long head of the biceps obviously whoever is interpreting this data does not understand the way a long head of a biceps tendon injury occurs rotator cuff tears that are retracted dealing with chronic injuries but biceps tendon ruptures or other tendons that have retractions have nothing to do with chronicity there is edema and blood in his biceps tendon groove there is retraction because it acutely snapped while swinging this sledge hammer. This is something that occurred at work, his biceps was normal the day he showed up and now he does not have the long head of the biceps attachment and has a Popeye sign. I do not know how more clear this could be this occurred while he was at work unless you just do not understand pathoanatomy. I believe he needs a biceps tenodesis, SLAP debridement, bursectomy and probably distal clavicle excision. I have suggested that if he does not get this approved that he should hire a lawyer because this is a clear-cut-case of work-related trauma. Risks, benefits, and convalescence were discussed to include but not limited to infection, wound complications, DVT, PE, disability, blood vessel and nerve injury and up to an including death.

An Operative Report was completed by Dr. Mitchell on May 19, 2023.

**Pre-Op Diagnosis**

Left proximal biceps rupture

**Post-op Diagnosis**

Biceps rupture, proximal

**Procedure Performed:**

1. Arthroscopic subacromial decompression.
2. Arthroscopic distal clavicle excision.
3. Arthroscopic SLAP debridement.
4. Arthroscopic bursectomy.
5. Open subpectoralis biceps tenodesis.

On May 31, 2023, the Claimant saw Cody Ray, FNP-BC, for follow-up of his left shoulder arthroscopy, with Dr. Mitchell two weeks ago. Operative findings were discussed with the Claimant. He seemed to be doing quite well. Ray noted that the Claimant also underwent proximal biceps tenodesis. He had a proximal biceps rupture. The Claimant had been doing fairly well with minimal complaints of pain. They discussed limiting weight that he uses on his left upper extremity to no more than a coffee cup. Since the Claimant's work did not have light duty, Ray gave the Claimant another four weeks off work. He was scheduled to start physical therapy to work on his range of motion. Ray's assessment was "Biceps rupture, proximal, left, initial encounter."

The Claimant underwent physical therapy at Wadley Regional Medical Center beginning on June 16, 2023, through August 15, 2023.

On September 6, 2023, the Claimant returned to Dr. Mitchell for follow-up of his rotator cuff repair. Per these progress notes, the Claimant was five months out of rotator cuff repair. The Claimant was given an injection, but it really did not give him a lot of relief. He stated that this was most likely scar. Dr. Mitchell's assessment was "Biceps rupture, proximal, left, on initial encounter." At that point, Dr. Mitchell's concern was that he possibly had a rotator cuff tear, for which he recommended an MRI arthrogram to evaluate his left shoulder. He continued the Claimant's off work restrictions.

The Claimant underwent a left shoulder arthrogram MRI with contrast, on September 29, 2023, with the following impression:

1. High- grade partial-thickness articular surface tear of the subscapularis tendon superimposed on mild tendinosis.
2. High-grade tear of the intra-articular long head of the biceps tendon.
3. Mild supraspinatus insertional tendinosis.
4. Mild glenohumeral and moderate acromioclavicular osteoarthritis.
5. Mild subacromial/subdeltoid bursitis.

On that same day, the Claimant underwent a LEFT shoulder arthrography:

**FINDINGS:** There has been opacification LEFT glenohumeral joint. There is no abnormal extracapsular contrast seen. Scout film demonstrates calcification adjacent to the humeral head consistent with calcific tendinitis.

**Impression:** Successful opacification LEFT glenohumeral joint prior to an MRI Arthrogram. Plain film findings consistent with calcific tendinitis.

Dr. Mitchell saw the Claimant for a follow-up visit for discussion and interpretation of MRI of the left shoulder, on October 16, 2023. At that time, Dr. Mitchell's interpretation of the films was inflammation of the subscapularis and supraspinatus, at the upper border there is a partial tear. Absent biceps tendon with an obvious biceps tendon tenodesis in the humeral shaft. SLAP debridement as not as well as distal clavicle excision. No sign of an acute rotator cuff tear. His assessment was "Biceps rupture, proximal, left, initial encounter." At that point, they planned an injection in his neck. With a normal MRI assume that he does not have a rotator cuff insertional issue nor does he have any sign of atrophy other than Grade 1 in his cross-sectional anatomy of supraspinatus. He recommended that they proceed with the neck injection because he believed his condition was most likely neurologic in nature. Dr. Mitchell directed the Claimant not to return to work until cleared by a physician.

On December 6, 2023, Dr. Harold Fite authored a clinic note. Per these medical notes, the Claimant presented for back pain. Dr. Mitchell referred the Claimant for evaluation of his left shoulder pain as well as pain the upper extremities and numbness in the hands at times. It appears that Dr. Mitchell was concerned there may be a component of cervical radiculopathy involved since the Claimant had continued pain with the use of his shoulder and weakness following left shoulder surgery. On physical examination, the Claimant had fairly maintained cervical range of motion, pain limited to range of the left shoulder. Positive Tinel's test of at the wrist bilaterally,

upper extremity strength and sensation were grossly intact. As a result, Dr. Fite recommended a cervical MRI. He also discussed the possibility of epidural steroid injections as a treatment option.

The Claimant was evaluated by Dr. Ifequer Syed on January 29, 2024, due to a chief complaint of chronic low back pain. Dr. Syed stated that his chronic low back pain could be related to his job as a welder although the Claimant reported a history of back pain since his teens. The Claimant was reported to have undergone lumbar discectomy in June 2011 and a lumbar fusion in 2012. He continued the Claimant's medication regimen while he still continues to recover from his surgery. Dr. Syed noted that he needed a copy of the recent left shoulder MRI.

On April 10, 2024, the Claimant returned for a follow-up evaluation with Dr. Syed and medication review. He recommended that the Claimant see a neurosurgeon again. Dr. Syed opined that the Claimant's problem seemed to be centered around his left shoulder and aggravated by both active and passive movements. However, Dr. Syed stated that a cervical MRI might be needed to rule out any contributing pain from the cervical spine.

The Claimant underwent a cervical epidural steroid injection at C5-6 level interlaminar approach with fluoroscopic guidance on June 21, 2025.

Dr. Syed saw the Claimant for a follow-up evaluation and medication review on August 26, 2024. The Claimant reported that he did not have much relief with the left shoulder injection. He was still having pain and limited range of movements at the left shoulder. Also, the Claimant reported reduced abduction, adduction and extension of the shoulder which is also associated with pain. The Claimant was told there was a tear, but it was uncertain whether this was the cause of his continued pain. Dr. Syed opined that the Claimant's problems seem to be centered around his left shoulder and aggravated by both active and passive movements.

Dr. Richard B. Sharp evaluated the Claimant on September 23, 2024, for a determination of maximum medical improvement and an impairment rating for his shoulder. The Claimant described the painful range of motion at the left shoulder, which was accompanied by weakness. He is unable to lift over 5 to 10 pounds on the left. He is right-handed. Functionally the Claimant was noted to have difficulty with overhead movement and heavy lifting on the left. Pursuant to Dr. Sharp's physical examination of the Claimant, his assessment was "1. Strain of muscle of the rotator cuff of left shoulder. 2. Strain of fascia of other parts of biceps of left arm. 3. SLAP lesion of left shoulder." He opined that his injury to his shoulder was consistent with the work-related injury he described of "slinging a sledgehammer." At that time, Dr. Sharp opined that the Claimant was at maximal medical as of September 24, 2024, for his left shoulder surgery. According to these clinical notes, Dr. Sharp stated that no further intervention to the Claimant's left shoulder was needed. Based on page 44, figure 41, the Claimant would receive 4% UEI for left shoulder abduction 90 degrees and 0% for normal abduction. Specifically, Dr. Sharp opined "Based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, combining these would give a 4% upper extremity impairment rating, or a 2% whole percent impairment rating."

The Claimant underwent an impairment rating on April 8, 2025, by Dr. Joe Huggins for his left shoulder. Per these notes, the purpose of Dr. Huggins physical examination was to determine two issues: "1. Whether the Claimant reached maximum medical improvement. 2. Appropriate impairment should be assessed. His physical examination of the Claimant revealed limited range of motion in the left shoulder compared to the right. Dr. Huggins stated that all R.O.M. studies using dual inclinometer or goniometer as required as required by TWCC as outlined in the AMA Guides to Permanent Impairment, Fourth Edition. He stated that the Claimant reached clinical maximum medical improvement on August 26, 2024, for the left bicep injury that

occurred on March 16, 2023. Dr. Huggins stated that there were no diagnosis related impairments for surgically repaired biceps tendon rupture. He utilized physical examination findings to assess impairment. According to this note, Dr. Huggins utilized the rating motion values obtained in his office on April 8, because they most closely resemble the range values documented in Dr. Syed's evaluation on August 26, 2024. To summarize, Dr. Huggins used the following information to reach his assessment "... According to Figure 38 maximum left shoulder flexion of 155 ° yields 1% Upper Extremity Impairment and maximum extension of 32° also yields 1% Upper Extremity Impairment. The sum of these values is 2% Upper Extremity Impairment. According to Figure 41, maximum abduction of 88 ° yields 4% Upper Extremity Impairment and maximum adduction of 42° yields 0% Upper Extremity Impairment. The sum of these values is 4% Upper Extremity Impairment. According to Figure 44, the maximum internal rotation of 62° yields 2% Upper Extremity Impairment, and maximum external rotation 74° yields 0% Upper Extremity Impairment. The sum of these values is 2% Upper Extremity Impairment. When the 2% Upper Extremity Impairment for flexion/extension is added to the 4% Upper Extremity Impairment for abduction/adduction and the 2% Upper Extremity Impairment for internal/external rotation, the sum of these values is 8% Upper Extremity Impairment... When the 8% Upper Extremity Impairment for the left shoulder is added to the 0% Upper Extremity Impairment for the left elbow, the total Upper Extremity Impairment is 8% ... According to Table 3 on page 20, 8% Upper Extremity Impairment converts to 5% Whole Person Impairment.

ADJUDICATION

A. Compensability- Specific Incident Right Shoulder Injury

The Claimant has alleged that he sustained a specific incident injury to his right shoulder during and while in the course and scope of his employment with the respondent-employer, UTC Railcar Repair Service on March 16, 2023.

In that regard, for the Claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury must be proven by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the Claimant’s injury and their employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a Claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the Claimant does not show by a preponderance of the evidence any of the requirements for proving compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*,

56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means evidence that has greater weight or more convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W. 2d 462 (Ark. App. 1979). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *See, Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 SW. 2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W. 2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W. 3d 449 (2004).

An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability of the aggravation. *Hickman v. Kellog, Brown & Root*, 372 Ark. 501, 277 S.W. 3d 160 (2007).

After reviewing the evidence as a whole, without giving the benefit of the doubt to either party, I find that the Claimant has proven by a preponderance of the credible evidence that he sustained a specific incident injury to his shoulder on March 16, 2023 in the form of “a left proximal bicep rupture.”

As noted above, the courts have held in several cases that an increase in symptoms following a work-related accident is sufficient proof to prove compensability of the aggravation. This is the identical situation with the Claimant’s left shoulder condition following the March 16,

2023, incident, which occurred while he was slinging a 10-pound sledgehammer. His left shoulder pain following this incident was severe and sharp in intensity. It is clearly understood that the Claimant suffered from pre-existing *buritis* of the left shoulder for which he sought medical treatment. The Claimant underwent prior non-surgical treatment modalities consisting of injections. This treatment provided the Claimant with relief of his symptoms of pain and stiffness, and he continued with his normal employment duties and activities of daily living. His testimony, which I found to be credible proves that he never missed work due to left shoulder problems and he did not recall ever having to undergo an MRI of the left shoulder prior to his work incident. However, on March 16, 2023, the Claimant was involved in a work incident, which caused a significant worsening of his left shoulder condition that differed from his average stiffness and pain. The Claimant reported that his pain following the work incident, which was frequent, very severe, and sharp. According to the Claimant, while swinging a 10-pound sledgehammer to remove brakes, his shoulder popped twice, which was accompanied by an immediate onset of shoulder pain. He immediately stopped working and reported his injury to the lead person.

The Claimant sought initial treatment for his shoulder injury from the company doctor, Dr. Raker, with minimal improvement in his left shoulder symptoms. The Respondents paid for this treatment and thereafter they controverted the claim in its entirety. At which point, Dr. Raker recommended that the Claimant undergo an MRI of the left shoulder.

I am persuaded that the Claimant's description of the work incident is consistent with the type of injury he sustained to his shoulder. Specifically, on April 6, 2023, an MRI of the Claimant's left shoulder revealed, among other things, "An acute full-thickness tear and retraction of the proximal biceps tendon..." These abnormalities are sufficient to establish an injury to the Claimant's left shoulder by medical evidence supported by objective findings. Although Dr.

Sheldon opined that these findings along with the other findings are all chronic in nature, I am not persuaded that this is the case here. Given the fact that the magnitude of the Claimant's left shoulder pain significantly intensified in severity, sharpness and frequency leads me to conclude that he sustained a work-related left shoulder injury. As such minimal weight has been assigned to his expert opinion in this regard. However, I have assigned significant weight to Dr. Mitchell's expert opinion wherein he stated that the Claimant's work activities caused the above abnormalities and his need for left shoulder repair surgery, which he performed on May 19. Dr. Mitchell provided an expert opinion wherein he stated that the Claimant sustained a work-related injury. I am persuaded that his expert opinion should be assigned significant weight because it is based on a well-reasoned explanation for the basis of this being a work-related injury. Per Dr. Mitchell's reasoning, there was blood and edema in the Claimant's bicep tendons groove and there was retraction because it acutely snapped while swinging this sledgehammer. This accounts for the Claimant's increase in symptoms following his work-related incident.

Therefore, based on all of the foregoing, I find that the Claimant has met all of the requirements for establishing a compensable injury to his left shoulder on March 16, 2023. Thus, I therefore find that the Claimant proved by a preponderance of the evidence that he sustained a compensable injury to his left shoulder on March 16, during and in the course of his employment with the respondent-employer/UTC Railcar Repair Services.

I realize that the Claimant's coworkers made written statements about the Claimant's work incident. Considering that the Claimant was not given the opportunity to cross-examine and/or confront these individuals about their statements, I have attached minimal weight to these statements.

B. Medical Benefits

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The Claimant has the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005).

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).

Based on my review of the record as a whole, I find the Claimant proved by a preponderance of the evidence that the medical treatment of record was reasonably necessary in connection with the compensable left shoulder injury received by the Claimant on March 16, 2023.

All the treatment modalities were used to diagnosis and treat the Claimant's left shoulder injury, including the surgery performed by Dr. Mitchell on May 19, 2023, along with the physical therapy sessions, follow-up care appointments, diagnostic tests, and the other subsequent evaluations for his left shoulder.

Per Dr. Sharp, no further medical treatment is indicated for the Claimant's shoulder injury.

C. Temporary Total Disability Compensation

Here, the Claimant contends that he is entitled to temporary total disability compensation for his shoulder injury beginning April 28, 2023, and continuing until September 23, 2024.

The Claimant sustained an unscheduled injury to his shoulder on March 17, 2023, while performing his employment duties for UTC Railcar Repair Services. An injured employee for an unscheduled injury is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated from earning wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Id. Temporary total disability cannot be awarded after the Claimant's healing period has ended.

In the present case, the Claimant remained in his healing period for his compensable shoulder injury beginning March 16, 2023, and continuing until September 24, 2024. In fact, the parties have stipulated that the Claimant reached maximum medical improvement for his shoulder injury on September 24, 2024. As such I find that the evidence shows that the Claimant healing period began on March 16, 2023, and continued until September 24, 2024. Also, the Claimant remained under the care and treatment of various doctors beginning on March 17, 2023, and continued to do so during this period in question.

Moreover, the evidence shows that the Claimant was totally incapacitated from earning wages during this same time frame. The Claimant was taken off work and/or placed on restricted work duty during this time. The Respondents initially provided the Claimant with light duty work, but his option was stopped after they controverted the claim. Following his work incident, the Claimant complained of limited range of motion and severe pain in his left shoulder. After an MRI revealed a bicep tendon rupture injury, the Claimant underwent left shoulder surgery on May

19, 2023, and thereafter attended several physical therapy sessions. Here, the evidence clearly shows that the Claimant was totally incapacitated from earning his regular wages at least from April 28, 2023, through September 23, 2024.

Therefore, based on all the foregoing, I find that the Claimant proved by a preponderance of the evidence his entitlement to temporary total disability compensation from April 28, 2023, through September 23, 2024.

D. Anatomical Impairment Rating

The Claimant contends that he sustained a 4% impairment due to his compensable left shoulder injury of March 16, 2023.

Permanent impairment generally is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule 099.34*; Ark. Code Ann. §11-9-522(g) (Repl. 2002). It is the Commission's duty, using the *Guides*, to determine whether the Claimant has proved he is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical mental findings. Ark. Code Ann. §11-9-704(c)(1) (B) (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).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a) (Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of

major cause shall be proven according to a preponderance of the evidence. Ark. Code Ann. §11-9-102(14). 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). Medical opinion addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102 (16) (B).

I find that the Claimant sustained a 5% impairment for his compensable left shoulder of March 16, 2023. On May 19, 2024, Dr. Mitchell performed left shoulder surgery as described above. The Claimant had no prior left shoulder injuries or complaints, although his MRI of April 2024 of the left shoulder revealed pre-existing degenerative changes. The Claimant had occasionally treated for bursitis, with injections that provided him with relief from his symptoms, and he was able to continue his work and home activities without any difficulties. However, the Claimant had previously experienced stiffness and minor aches and pain of the left shoulder. However, following his work incident, the symptoms and complaints of the Claimant's left shoulder was significantly magnified in intensity and frequency. The Claimant's treating physician, Dr. Mitchell attributed the Claimant left biceps rupture injury to his employment activities of March 16. In addition to this, both Drs. Sharp and Huggins related the Claimant's left bicep tendon injury to his work injury.

However, both Drs. Sharp (his assessment was 2% impairment rating) and Huggins (he found that the Claimant sustained a 5% rating) have assessed the Claimant with an impairment for his injury. I have assigned minimal weight to Dr. Sharp's expert analysis of 2% whole person impairment rating because it does not take into account all of the Claimant's resulting deficits from his compensable left shoulder injury. Dr. Huggins' assessment is well-reasoned and comports with my review of the *Guides*.

On April 8, 2025, Dr. Huggins assessed the Claimant with a 5% permanent anatomical impairment for his biceps injury, using the *AMA Guides* (4<sup>th</sup> ed. 1993), at page 3/20, Table 3, which provides for the Relationship of Impairment of the Upper Extremity to Impairment of the Whole. Per Table 3, an upper extremity impairment of 8% converts to a 5% impairment to the whole person. Dr. Huggins stated that he utilized his physical examination findings to assess the Claimant's impairment to the shoulder. Specifically, his physical examination of the Claimant's left shoulder when compared to the right was found to be limited in all R.O.M. studies performed using dual inclinometer or goniometer as required by the *AMA Guides to Permanent Impairment, Fourth Edition*. The Claimant's own credible testimony is consistent with Dr. Huggins' conclusion and other probative evidence of record demonstrating deficits of his limited range of motion in the left upper extremity. As such, I have assigned significant evidentiary weight and probative value to Dr. Huggins' expert opinion.

Accordingly, I find that the Claimant has proven by a preponderance of the evidence that his March 16, 2023, accidental injury was the major cause of his 5% permanent partial anatomical impairment. The supporting objective medical findings include the range of motion deficits as documented by Dr. Huggins during his April 2025 physical examination of the Claimant's left upper extremity region.

Per my own review of the entire record and the *Guides*, I find that Dr. Huggins' assessment of a 5% permanent anatomical impairment for the Claimant's compensable left shoulder injury of March 16, 2024, comports with the *Guides* and my own review of the *Guides*, and is thus valid. I therefore find that the Claimant has proved by a preponderance of the evidence that he sustained a 5% anatomical impairment on the body as a whole for his compensable left shoulder injury. The Respondents are liable for payment of these indemnity benefits.

E. Wage Loss

The Claimant contends that he sustained a 25% wage loss disability due to his compensable left shoulder injury of March 16, 2025.

The wage-loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Rutherford v. Mid-Delta Cmty. Servs., Inc.*, 102 Ark. App. 317, 285 S.W. 3d 248 (2008). In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other factors reasonably expected to affect his future earning capacity. Ark. Code Ann. §11-9-522 (b) (1).

The Claimant is 53 years of age. His age is somewhat advanced, and he has performed laborious job duties all his life, primarily as a welder. The Claimant has a very limited educational background which includes some resource classes. He has no special skills or training. The Claimant can do simple math, and he reads on an extremely basic level. He has limited range of motion in his shoulder due to his compensable injury of March 16, 2023. He is unable to return to work as a welder but believes he could operate heavy equipment. The Claimant has been diagnosed with attention deficit disorder and dyslexia. He also failed two grades while in elementary school. There is no evidence showing that the Claimant has any transferable skills. His ability to obtain employment earning wages at the level that earned at UTC has been reduced significantly by his left shoulder injury. Although the Claimant has done several searches for jobs online, he has not been called for an interview. The Claimant has applied for Social Security disability. He has problems getting in certain positions due to his shoulder injury to perform the type jobs he previously worked as a welder. The Claimant can perform daily activities of living

and is able to operate a vehicle. He also does his own yard work using a zero-turn lawn mower. The Claimant sustained a 5% permanent impairment to the left shoulder because of his compensable injury. As a result, the Claimant has been found to be limited in his right shoulder. These deficits include limited to range of motion and impairment for limited abduction/adduction.

Based on the Claimant's advanced age, limited education, prior work experience, and other factors reasonably expected to affect his future earning capacity, I find that the Claimant proved his entitlement to wage-loss disability in the amount of 22% over and above his 5% impairment rating due to his compensable left bicep injury of March 16, 2023.

F. Attorney's Fee

The parties stipulated that the Respondents have controverted this claim in its entirety. As such, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012).

**AWARD**

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809(Repl 2002). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995). Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**

