

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901705

STEVEN C. CARRICK, EMPLOYEE

CLAIMANT

**BAPTIST HEALTH,
SELF-INSURED EMPLOYER**

RESPONDENT #1

**CLAIMS ADMINISTRATIVE SERVICES,
INSURANCE CARRIER/TPA**

RESPONDENT #1

**DEATH AND PERMANENT TOTAL DISABILITY
TRUST FUND**

RESPONDENT #2

OPINION FILED DECEMBER 21, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 8th day of November, 2022, in Little Rock, Arkansas.

Claimant is *Pro Se*.

Respondent #1 is represented by Mr. Jarrod S. Parrish, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 is represented by Mr. David L. Pake, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 8th day of November, 2022, to determine the issue of again seeking additional medical in regard to a work-related, right shoulder injury and the payment of outstanding medical bills. The claimant contends his shoulder has worsened since the last full hearing on August 5, 2020, and multiple appeals. Respondents #1, again contend that all appropriate benefits have been paid in regard to the claim and that claimant's new allegations are barred by the doctrine of *res judicata* and the applicable statute of limitations. Additionally, respondents #1 contend the claimant originally requested medical treatment and payment of outstanding medical bills

as provided in the Prehearing Order of March 11, 2020, which was entered prior to the first full hearing of August 5, 2020, on the same issues, where it was found that the claimant had not satisfied his burden of proof in regard to additional medical. This decision was affirmed by the Full Commission and later the Court of Appeals who both affirmed and adopted the original finding. Additionally, the Arkansas Supreme Court declined the Claimant's Petition for Review. The claimant's most recent request comes more than two (2) years after the injury date and more than one year after the last payment for medical care. The respondents #1 contend that the claim for additional medical is consequently barred by Ark. Code Ann. §11-9-702(b). Respondents additionally contend that the medical treatment requested is not reasonable and necessary and all appropriate benefits have been paid. Respondent #2 deferred to the litigation and waived its right of appearance.

A copy of the Prehearing Order was filed September 13, 2022, for the latest hearing and was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on November 21, 2018, the date of the injury. The claimant was released to work in a full-duty capacity on April 29, 2019, and a zero percent (0%) permanent impairment rating was assigned by the claimant's treating physician, Dr. Vargus. Further the claimant earned an average weekly wage of \$176.86, which was sufficient for a temporary total disability/permanent partial disability rate in the amount of \$118.00 a week. Finally, the previous decisions of the Administrative Law Judge (9/15/2020), the Arkansas Worker's Compensation Commission (01/05/2021), and

the Arkansas Court of Appeals are the law of the case. There was no objection to these stipulations.

The parties responses to the prehearing questionnaire, as well as the claimant's "Appellant's Petition for Review" are all set out and made a part of the record without objection. In addition, on the day of the hearing after its completion, an email was received by the attorney for respondent #1, who then forwarded it to the Commission requesting that it be added to the record. The email from the claimant provided he basically planned on continuing to litigate this matter and the respondents should settle. The parties were notified that it was the intention of the Commission to make this email part of the record, absent an objection. No objection was received, and consequently this email is blue-backed and made part of the record. Additionally, the claimant submitted documents to the Commission on the date of December 12, 2022, after the full hearing, contending that these documents were not made part of the record as he requested. These documents are blue-backed, also attached to this opinion, and treated appropriately. These medical records confirm the claimant's testimony that he returned to St. Vincent for additional treatment in regard to right shoulder pain on June 30, 2022. The report refers to an additional injury to the shoulder a few weeks earlier while carrying his groceries. The respondents submitted three (3) exhibits which were admitted into the record without objection. The sole witness in this matter was the claimant, Steven Carrick. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on November 21, 2018, the date of the right shoulder contusion. At that time, the claimant earned an average weekly wage of \$176.86 a week, sufficient for a temporary total disability/permanent partial disability rate of \$118.00 per week.
3. That the contusion to the right shoulder occurred on November 21, 2018, when a ceiling tile fell on the claimant, was accepted as compensable.
4. That the claimant's second claim for additional medical in regard to his right shoulder which occurred on November 21, 2018, is barred by the doctrine of *res judicata* and the applicable statute of limitations, and consequently the claimant has failed to satisfy the required burden of proof.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, Steven C. Carrick, the only witness to testify, stated the reason he filed for additional medical and a second hearing when he did was because he was told he would have to wait for the appeal process to conclude after all of his appeals had concluded in regard to the original hearing which occurred on August 5, 2020. These appeals were not concluded until on or about June 26, 2022. He testified his condition had worsened and he had seen by doctors at St. Vincent on June 30, 2022, where they performed an x-ray and referred him to an orthopedic doctor who wanted a MRI to determine why his condition was worsening. Consequently, he then again filed for additional medical for the second time. He stated that, "But this hasn't been litigated in the first go-round for this is new," so I just wanted to try to get that medical taken care of. "That's the only matter that I'm seeking today is just the additional medical that I have

added since the first hearing.” The claimant contended that his “body as a whole” felt a lot worse than before it was injured. (Tr.8, 9)

Under cross-examination, the claimant admitted that he was seeking additional medical, the same thing he was seeking at the time of the last full hearing. He further agreed he lost on this issue before the Judge, the Court of Appeals, and that the Supreme Court declined to review his case. He also agreed that back when he was complaining of pain in his shoulder and of his limited range of motion, his medical reports also mentioned that he suffered pain into his neck. (Tr.10) The claimant stated he was having new complications which had subsided at one point in time, but then had gotten worse due to his daily activities that “I never experienced before the injury,” and he received a new recommendation for a MRI. The claimant also agreed he had records of the pain going up to his neck at the time of the original hearing. (Tr.11) The claimant was also questioned about last seeing a doctor in May of 2021, prior to his Petition for Review being denied in May of 2022, and he agreed that his last doctor visit prior to his Petition for Review being denied was on May 19, 2021. (Tr.13) He agreed that after getting the denial of the Petition of Review, he then again returned to the doctor. (Tr.14) The claimant denied telling Doctor Schock he had sustained a partial thickness rotator cuff tear and also would not agree he had not seen the tear on an MRI report. (Tr.15) However, under further questioning, the claimant, when asked if he agreed with the statement that he had not seen a partial tear on an MRI report, replied, “I have not seen it, sir.” He also admitted he had only filed a claim for a right shoulder injury on either of his Form C’s. Again, when asked, “Did you not make mention earlier of problems in your neck” the claimant responded, “I spoke about problems in my right shoulder and my body as a whole. That’s

my right shoulder and my body as a whole.” (Tr.16) The claimant also agreed he did not have a claim pending in regard to any additional body parts and that the last payment made in regard to his workers’ compensation claim was a payment to Doctor Ahmadi in 2019, and further, that the hearing on the issue of additional medical was on August 5, 2020. Additionally, he agreed his claim had been denied three (3) times over, with the Supreme Court rejecting his petition for review, that this request for additional medical was more than two (2) years from his original injury date, and more than one year from the last time the workers’ compensation carrier paid Doctor Ahmadi, the last doctor workers’ compensation paid. (Tr.17-18)

The claimant was also questioned about an email sent to respondent #1’s attorney in regard to unjust and foul play. He denied seeing it and denied stating he would stop at nothing until he exhausted every listening ear from state officials to the President of the United States and everything in between. He added “I don’t see how this is relevant, sir” (Tr.19)

Under questioning by the Commission, the claimant provided, “I’m not asking for treatment for anything that’s unrelated to my, to my right shoulder injury.” (Tr.22) The claimant was then further cross-examined as follows:

Q. Mr. Carrick, we agreed at the last hearing, it’s in that transcript that’s in the record now, the only thing showed up that showed up on your MRI in 2019 was evidence of a contusion and possibly a sprain, correct?

A. That’s what the, I guess the person at UAMS, the MRI examiner, is what they put in their examination. I haven’t seen the physical copy of the MRI myself.

Q. Okay. That’s what the report says, right?

A. Yes, the examination part.

Q. And you don't have any diagnostics to indicate you have anything other than a contusion or sprain, correct?

A. Other than the symptoms and things that I –

Q. Right. I'm talking about as far as diagnostic tests or scans or anything.

A. Right.

Q. And we litigated whether you were entitled to additional medical treatment based on what was on that MRI at the last hearing, correct?

A. Yes, sir. (Tr.23-24)

In addition to the testimony, the pertinent and relevant documentary evidence provided the claimant filed an "Appellant's Petition for Review" with the Arkansas Supreme Court in April of 2022, where he requested a review of the decision of the Arkansas Court of Appeals. The record also included the Response to the Petition for Rehearing and the Brief in Support, filed by respondents #1. (Commission Ex. 4)

Respondents also submitted thirty-two (32) pages of medical records that were admitted without objection. All of these medical records are dated prior to the original hearing on this claim which occurred on August 5, 2020. (Resp.Ex. 1, pp.1-32) It is noted that the transcript of the original hearing has also been entered into the record as "Respondent's Exhibit 4" and it contains all of the original exhibits.

The Prehearing Order filed on March 11, 2020, provided that the issues were additional medical and payment of the outstanding medical bills, TTD, and permanent partial disability or wage-loss. (Resp. 2, pp.14-18) An Opinion was filed of record on September 15, 2020, which provided that the matter had been heard on August 5, 2020, and among other issues, the claimant had failed to satisfy the required burden of proof that the additional medical treatment requested was reasonable and necessary and

further finding that all reasonable and necessary medical had been provided. (Resp. Ex. 3, pp.19-42) The Arkansas Workers' Compensation Commission issued an Opinion on January 5, 2021, affirming and adopting the decision of the Administrative Law Judge. (Resp. 2, pp.43-46. The matter was again appealed and the Arkansas Court of Appeals issued an opinion on March 16, 2022, again affirming and adopting the earlier opinion. (Resp. 2, pp.47-59) On May 26, 2022, the Arkansas Supreme Court denied the claimant's *Pro Se* Petition for Review. (Resp. 2, p.64)

It is also noted that respondent's attorney received an email in reference this matter on May 3, 2022, that provided among other things that the claimant would pursue this matter through state officials to the President of the United States. (Resp.Ex. 3, P.62) Additionally, the respondent's attorney also received a second email in regard to this matter on November 8, 2022, which has been blue-backed and made part of the record which provides a somewhat similar position by the claimant, which is that the respondents should go ahead and settle because the claimant intends to continue to pursue this matter.

It is also noted that the claimant's packet of documents which he hand-delivered to the Commission on December 12, 2022, after the hearing, confirmed the claimant's testimony that he returned to St. Vincent for additional treatment in regard to right shoulder pain on June 30, 2022. The report refers to an additional injury to the shoulder a few weeks earlier while carrying his groceries.

DISCUSSION AND ADJUDICATION OF ISSUES

In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt

to either party. Ark. Code Ann §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter in regard to the first hearing for additional medical, a Prehearing Order was entered on March 11, 2020, which provided, among other matters, that the issues before the Commission were additional medical and payment of outstanding medical bills. An Opinion was issued in regard to the original hearing on August 5, 2020, which provided the claimant had failed to satisfy the required burden of proof for additional medical and treatment and the additional medical treatment requested was not reasonable and necessary. This matter was then appealed to the Full Commission and later to the Arkansas Court of Appeals and both affirmed and adopted the original findings. The claimant even requested a review by the Arkansas Supreme Court which was denied.

The claimant also agreed that the only thing that he was seeking at the time of the current or second hearing on November 8, 2022, was also additional medical in regard to his right shoulder. Under cross-examination, he admitted he was again seeking additional medical, the same thing that he was seeking in the original hearing. He further agreed that prior to the original hearing, he was complaining of pain in his shoulder with a limited range of motion, and that the medical reports provided the pain extended into his neck at that time. He was not making a claim for any additional body parts and only seeking treatment for his right shoulder.

He did not deny that he lost at the trial level, the Full Commission level, and the Court of Appeals level, and also agreed the Supreme Court denied reviewing his case. In addition, he agreed that this claim for additional medical was more than two (2) years from the date of the last hearing and more than one year from the last payment by the workers' compensation carrier.

The doctrine of *res judicata* applies in workers' compensation cases, and bars not only the re-litigation of claims litigated in the first proceeding but also those which could have been litigated. *Parker v. Johnson*, 95 Ark. App. 213, 236 S.W.3d 1 (2006); *Nucor v. Yamato Steel Co. v. Kennedy*, 2017 Ark App. 126. Here the claimant admitted he was not making a claim for anything new and only seeking treatment for his right shoulder, the original issue litigated all the way to the Arkansas Supreme Court.

Additionally, the one-year statute of limitations period in Ark. Code Ann. §11-9-702(b)(1) begins to run from the last payment of compensation, which the Supreme Court of Arkansas has held means from the date of the last reimbursement of medical services. *Nabholz Construction Corp. v. White*, 2015 Ark. App. 102; *Plants v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994) Here the claimant admitted that there had been no payment in regard to medical in over a year and blamed it on his appeal in regard to the original hearing for additional medical back on August 5, 2020.

Here, based upon the evidence and testimony presented, there is no alternative but to find that the current or second filing for additional medical in this matter involving the right shoulder is barred by the doctrine of *res judicata* and the applicable statute of limitations and that consequently, the claimant has failed to satisfy the required burden of

proof. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge