

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G707843

MICHAEL COLLINS, Employee	CLAIMANT
MCKEE FOODS, INC., Employer	RESPONDENT
CCMSI, Carrier/TPA	RESPONDENT

OPINION FILED NOVEMBER 4, 2021

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

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondent represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On September 22, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 4, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on July 25, 2017.
3. The claimant sustained a compensable injury to his left shoulder on July 25, 2017.

3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$661.00 for total disability benefits and \$496.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to additional medical treatment from Dr. Chris Arnold for his left shoulder.

The claimant contends that he is entitled to receive additional medical treatment by Dr. Arnold for his left shoulder. The claimant reserves all other issues.

Respondent contends that the recommended surgery is unreasonable, unnecessary, and does not arise out of the compensable injury.

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

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on August 4, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. Arnold for his compensable left shoulder injury.

## FACTUAL BACKGROUND

Claimant suffered an admittedly compensable injury to his left shoulder while working for respondent on July 25, 2017. Claimant initially received medical treatment for his left shoulder injury from Amanda Bell, ANP, who treated claimant conservatively with medications, an injection, work restrictions, and physical therapy. When claimant's complaints continued, an MRI was ordered by Bell. The MRI scan revealed severe tendinitis and bursitis of the left shoulder.

Bell referred claimant to an orthopedist, Dr. Coker, who in a report dated September 29, 2017 indicated that after reviewing the MRI scan he believed claimant had some partial tearing in the shoulder. Dr. Coker treated claimant with an injection and physical therapy. Dr. Coker also ordered an MRI arthrogram that according to his report of December 15, 2017 showed a partial tear of the subscap and tendonosis of the supraspinatus but no labral tear. At that time Dr. Coker stated he did not see anything that would require surgery and instead gave claimant another injection.

On February 2, 2018, claimant was evaluated by Dr. Heinzelmann who diagnosed claimant's condition as rotator cuff impingement syndrome and recommended an arthroscopic procedure. Claimant underwent that procedure on February 16, 2018, which included an arthroscopic rotator cuff repair; subacromial decompression; and coplaning of the distal clavicle. Dr. Heinzelmann released claimant as having reached maximum medical improvement on August 10, 2018, and on September 4, 2018, assigned him an impairment rating equal to 1% to the body as a whole.

Following a change of physician, claimant was evaluated by Dr. Arnold on November 13, 2018. Dr. Arnold diagnosed claimant with a partial cuff tear and gave him

an injection. In a report of January 15, 2019, Dr. Arnold noted that the injection only provided relief for one week and he recommended a second arthroscopic procedure. On March 8, 2019, Dr. Arnold performed an arthroscopic revision of the rotator cuff repair; acromioplasty; and distal clavicle resection. Dr. Arnold's post-surgical reports indicate that claimant's condition was better than before the surgery, but that he still had some shoulder pain.

Dr. Arnold released claimant at maximum medical improvement on September 10, 2019, and assigned him a 6% impairment rating to the body as a whole. On October 1, 2019, Dr. Arnold indicated that claimant could return to work per the restrictions set forth in a functional capacities evaluation and he limited claimant's lifting to no more than 100 pounds at waist level; 50 pounds at shoulder level; and 25 pounds overhead. He also limited claimant's pushing and pulling to 50 pounds.

Claimant returned to Dr. Arnold on July 13, 2020 with continued complaints of left shoulder pain. Dr. Arnold attributed the complaints to rotator cuff tendinitis or early osteoarthritis. Dr. Arnold gave claimant a steroid injection and indicated that if conservative treatment failed then additional surgery might be necessary. In his report of October 26, 2020, Dr. Arnold noted that the steroid injection had helped a little. He also discussed a possible intra-articular injection but claimant wanted to continue with observation. Dr. Arnold again noted that if conservative treatment failed, surgery might be necessary.

In April 2021 claimant was working on a piece of farm machinery on his parent's farm. Claimant was using his left hand to hold a wrench on a bolt while using a ratchet with his right hand when he felt a popping in his left shoulder. After this incident, claimant

returned to Dr. Arnold on April 13, 2021. Dr. Arnold noted that claimant was being seen for left shoulder pain that began when his shoulder popped when working with a wrench.

Reports that he was trying to remove a bolt this past Saturday and felt pain in shoulder similar to RTC tears previously. He has failed rest, ice, time, monitoring, NSAIDS, HEP. Opts for MRI to evaluate for recurrent RTC tear.

Dr. Arnold in that same report indicated that he was concerned that claimant had a recurrent cuff tear.

Claimant underwent an MRI scan on April 14, 2021, and in his report dated April 20, 2021 Dr. Arnold stated that the MRI scan showed a partial rotator cuff tear. He prescribed medications and rehabilitation and stated that if in six weeks claimant's condition did not improve he would consider an arthroscopic procedure. Claimant returned to Dr. Arnold on June 1, 2021, who indicated that claimant's findings were consistent with a recurrent tear and he recommended a revision cuff repair.

Claimant has filed this claim contending that he is entitled to additional medical treatment from Dr. Arnold for his compensable left shoulder injury.

### ADJUDICATION

Claimant contends that he is entitled to additional medical treatment from Dr. Arnold for his compensable left shoulder injury. An employer is to promptly provide for an injured employee medical treatment that is reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9508(a). Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and

necessary. *Butler v. Lake Hamilton School District*, 2013 Ark. App. 703, 430 S.W. 3d 831. What constitutes reasonable and necessary medical treatment is a question of fact for the Commission to be determined. *Id.*

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. Arnold for his compensable left shoulder injury. Although the claimant sought additional medical treatment after an incident that occurred while he was working on his parent's farm, I find based on the evidence presented that his complaints and need for additional medical treatment are causally related to his original compensable shoulder injury. Therefore, respondent remains liable for medical treatment associated with that condition.

As previously noted, claimant has undergone two prior surgical procedures on his left shoulder. Initially, claimant underwent an arthroscopic procedure by Dr. Heinzemann on February 16, 2018 and he underwent a second arthroscopic procedure by Dr. Arnold on March 8, 2019. Although the medical reports indicate that claimant's condition had improved after his second surgical procedure, those reports also indicate that claimant was still having problems with his left shoulder. These continued problems are reflected in Dr. Arnold's reports of September 10, 2019; October 1, 2019; July 13, 2020; and October 26, 2020.

In addition to the fact that claimant was continuing to have problems with his left shoulder, I also note that Dr. Arnold has opined that claimant's current problems are still related to claimant's work injury. In his report of April 20, 2021, Dr. Arnold stated:

This is still work-related

In addition, Dr. Arnold in his report of June 1, 2021 also noted:

Left shoulder recurrent cuff tear work-related.

Claimant does have the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable work-related injury. According to the medical records from Dr. Arnold, claimant continued to have complaints involving his left shoulder even after his second surgical procedure. Claimant's continued left shoulder complaints were noted by Dr. Arnold as late as October 26, 2020. In fact, Dr. Arnold in his report of that date further noted that if conservative treatment failed, additional surgery might be necessary.

In addition to the medical records indicating that claimant continued to have complaints involving his left shoulder, I also note that Dr. Arnold has opined that claimant's condition is still related to his work-related injury. I find that Dr. Arnold's opinion is credible and entitled to great weight.

Based upon the evidence presented indicating that claimant continued to have complaints involving his left shoulder as well as Dr. Arnold's opinion stating that claimant's continued complaints are related to his original work-related injury, I find that claimant has met his burden of proving by a preponderance of the evidence that the medical treatment provided by Dr. Arnold for his current left shoulder complaints is reasonable and necessary medical treatment for his original compensable left shoulder injury.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. Arnold for his compensable

shoulder injury.

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

Respondent is responsible for paying the court reporter’s charges for preparation of the hearing transcript in the amount of \$461.25.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE