

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300192

RONNIE J. CORTER, Employee	CLAIMANT
COMMERCIAL AUDIO SYSTEMS, INC., Employer	RESPONDENT
STONETRUST INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 10, 2024

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

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

Respondents represented by JASON RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 13, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 6, 2023 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/carrier relationship existed among the parties on September 26, 2022.

3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$453.00 for total disability benefits and \$340.00 for permanent partial

disability benefits.

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

1. Compensability of injury to claimant's left shoulder on September 26, 2022.
2. Related medical.
3. Temporary total disability benefits from September 27, 2022 through a date yet to be determined.
4. Attorney's fee.

The claimant contends he sustained a compensable left shoulder injury on September 26, 2022, and is entitled to medical treatment and temporary total disability benefits from September 27, 2022 to a date yet to be determined. Claimant reserves all other issues.

The respondents contend the claimant did not suffer a 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 witnesses and to observe their 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 September 6, 2023 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 suffered a compensable injury to his left shoulder on September 26, 2022.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

4. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning September 29, 2022 and continuing through a date yet to be determined.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

Claimant is a 35-year-old man who began working for respondent as an installer in May 2021. Respondent primarily designs and installs audio, video, and lighting for commercial facilities such as courtrooms, churches, and performing arts centers. As an installer, claimant's job duties included running the lines for speakers and audio equipment; installation of speakers, audio equipment, tvs, et cetera.

Claimant has an extensive history of prior injuries to his left shoulder, having suffered injuries to both shoulders while serving in the military. He testified that the first surgery on his left shoulder occurred while he was stationed in South Korea. His second left shoulder surgery was in 2009 or 2010. He underwent a third procedure on the left shoulder at Fort Bliss which included Bankart and SLAP revision with five anchor screws implanted. Claimant's fourth left shoulder surgery was a Latarjet procedure in May 2013. Claimant believes that this surgery was necessitated by job activities for another employer, but he did not file a workers' compensation claim. On May 23, 2022, claimant underwent a Latarjet revision procedure by Dr. Cox.

All of these prior procedures were paid for by the military or the VA. Following the most recent surgery in May 2022, Dr. Cox initially gave claimant a lifting restriction of no more than two pounds with his left arm. Notably, claimant is left-hand dominant. By August 31, 2022, Dr. Cox had increased claimant's ability to lift to 20 pounds with an additional restriction of no climbing ladders.

Claimant had returned to work for respondent as an installer within his restrictions. Claimant testified that on September 26, 2022, he was in the process of opening the door with his left hand when another employee, Miguel Martinez, who had entered the building just before him abruptly closed the door which resulted in a jerking motion on his left arm. Claimant testified that he immediately felt sharp, searing pain radiating into his neck and shoulder and believed he had pulled a muscle in his arm.

Claimant performed his job duties on September 26, 2022, and again for the next two days. On September 29, 2022, claimant indicated that he did not want to ride to a church job site in the same vehicle with Martinez. Upon arriving at the job site a heated discussion took place with claimant using some profanity. Claimant was terminated by respondent at that time. Claimant testified that later that same day, he was home washing dishes when his left shoulder dislocated.

Claimant sought medical treatment from the emergency room where he was diagnosed with a shoulder sprain; given a sling to wear; and instructed to return to his orthopedist. Claimant returned to see Dr. Cox on November 30, 2022, who noted that claimant had three left shoulder dislocations since the door incident on September 26, with an additional seven to eight times that the shoulder had tried to dislocate.

Medical records from Dr. Cox indicate that he continued to treat claimant

conservatively with an effort to avoid any further surgery. His treatment consisted of anti-inflammatories and an injection. When claimant's condition did not improve Dr. Cox performed a total shoulder replacement procedure on August 17, 2023.

Claimant has filed this claim contending that he suffered a compensable injury to his left shoulder on September 26, 2022. He requests payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his shoulder as a result of the incident with the door on September 26, 2022. Clearly, claimant had significant pre-existing left shoulder problems. In fact, claimant had just recently undergone a Laterjet revision procedure by Dr. Cox on May 23, 2022, and was still working within restrictions given to him by Dr. Cox following that procedure. However, an employer takes the employee as it finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W. 3d 336 (1999). An aggravation is a new injury resulting from an independent incident. *Crudup v. Regalware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Insurance Company v. DuBois*, 54 Ark. App. 141, 923 S.W. 2d 883 (1996); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W. 2d 5 (1998).

Thus, the fact that claimant had a pre-existing condition to his left shoulder does not disqualify him from compensation benefits if he can prove that his pre-existing condition was aggravated by a work-related injury. Claimant contends that he suffered his compensable injury as the result of a specific incident which occurred on September 26, 2022, when the front door of respondent's place of business was forcefully shut, causing a jerking sensation on his left arm. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

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 suffered a compensable injury. First, I find that claimant's injury arose out of and in the course of his employment with the respondent. Respondent contends that claimant was not performing "employment services" at the time the accident occurred. A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. A.C.A. §11-9-102(4)(B)(iii). The Courts have determined that an employee is performing employment services when he is doing something that is generally required by his or her

employer. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W. 3d 1 (2002). We use the same test to determine whether an employee is performing employment services as is used when determining whether an employee was acting within the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W. 3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* In *Texarkana School District v. Conner*, 373 Ark. 372, 284 S.W. 3d 57 (2008), the Court stated that where it was clear that the injury occurred outside the time and space boundaries of employment, the critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. In addition, the issue of whether an employee was performing employment services within the course of employment depends upon the particular facts and circumstances of each case.

I find based upon the evidence presented that claimant was performing employment services at the time of his injury. Respondent notes that claimant had not actually entered the building at the time of the incident and that he had not clocked in and was not performing any job duties at the time the incident occurred. However, the evidence indicates that claimant was in the process of actually clocking in at the time the accident occurred. According to claimant's testimony, he and other employees used an app on their phone to clock in for work. Claimant testified that he was in the process of clocking in when the incident occurred:

Q And you were using it [phone] to clock in?

A Yes, sir. You just tap on the app, it pops up, you tap on it to clock in and you are done and you close that app and put it back in your pocket.

Q Did you successfully clock in before this incident occurred?

A I was in the process of clocking in as it happened.

Q Okay. So had you pressed the button or not?

A I think I was actually in the process of pressing the button when he pulled on the door which caused me to actually probably miss the button.

Q Okay. So if not for that incident - -

A I would have been clocked in.

Thus, claimant was actually in the process of clocking in at the very moment this incident occurred. In addition, he was also in the process of walking through the front door to begin his work day at the time the incident occurred. While respondent contends that there are a number of cases involving injuries which occurred to employees before they enter a building in which a claimant is not performing employment services, I note that those are generally in a parking lot or other areas of the business. In this particular case, claimant was literally prevented from clocking in and entering the building to begin his job duties by the actions of Martinez. Therefore, even though claimant's injury did occur outside the time and/or space boundaries of his employment, "The critical inquiry is whether the interests of the employer were being directly or indirectly by the employee at the time of the injury." (Emphasis added.) See *Wood v. Wendy's Old Fashioned Hamburgers*, 2010 Ark. App. 307, 374 S.W. 3d 785. Claimant was clearly advancing his

employer's interest, either directly or indirectly, by clocking in and entering the building at the time this incident occurred. Accordingly, I find that claimant was performing employment services at the time of his injury. Therefore, I find that claimant's injury arose out of and in the course of his employment with respondent.

I also find that claimant has proven by a preponderance of the evidence that his injury was caused by a specific incident identifiable by time and place of occurrence. Claimant testified that his injury occurred on September 26, 2022, when he was holding the door handle to open the door to respondent's business and it was jerked closed, resulting in pain in his left shoulder. Although there was some initial question at the hearing as to whether or not this incident occurred, the co-employee, Miguel Martinez, testified as a witness. The following testimony occurred:

THE COURT: Mr. Martinez, I have got a question for you. You said you noticed that Mr. Corter was about two or three steps behind you when you went in the building.

THE WITNESS: Well, the door is here. I am coming from around the building. He is coming this way. So like he is coming straight and I am coming from the side.

THE COURT: So my question to you is why did you close the door behind you when you knew he was right behind you?

THE WITNESS: It was just one of those deals. I guess just to mess with him.

THE COURT: So you did do it to mess with him?

THE WITNESS: I guess so.

THE COURT: And you do affirm that he came in and told you immediately after that that you had injured his shoulder as a result of that; is that correct?

THE WITNESS: He was telling me something about that he just had surgery on it and that I could have possibly hurt him or something.

Martinez had also previously testified that claimant mentioned that the incident had injured his left shoulder immediately after it had occurred.

Q Did Mr. Corter say anything at that time?

A Yes. After that, I proceeded to the breakroom. He talked to me about saying that I messed up his shoulder intentionally. Something about a surgery that he had. I told him that it was an accident. I didn't mean to harm him in any way and I apologized to him.

It is clear from the evidence presented at the hearing that there was animosity between Martinez and claimant at the workplace. However, claimant's claim for a compensable injury does not require him to prove that Martinez intentionally meant to cause him an injury. Even if this incident was accidental and the result of Martinez's effort to "mess" with claimant, that is sufficient under Arkansas law. Accordingly, I find that claimant has proven that his injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant's injury caused internal or external harm to his body that required medical services or resulted in disability and that he has offered medical evidence supported by objective findings establishing an injury.

First, it should be noted that on the day of this door incident, claimant did seek medical treatment from an emergency room later that day for complaints of groin pain. At no time during that examination did claimant make any complaints involving his left shoulder. Claimant testified that at that time it was his belief that he had simply pulled a

muscle in his shoulder and that he would not be provided any treatment at the emergency room other than a recommendation to place ice on the shoulder and use over-the-counter medications. Two days later after the claimant was terminated and he was home washing dishes his left shoulder dislocated. Claimant sought medical treatment from the emergency room that day and the emergency room records contain a history of claimant's left shoulder pain having begun three days ago as a result of an incident in which claimant was attempting to open the door and an individual on the other side was attempting to close the door causing a pull on his left shoulder. Subsequent medical records from Dr. Cox also support a notation of history consistent with claimant's testimony.

As previously noted, Dr. Cox initially attempted to treat claimant conservatively and according to Dr. Cox's report of December 21, 2022, while the incident at work had caused increased pain in the claimant's left shoulder, his x-rays were not significantly different than they were before that incident. However, claimant continued to complain of left shoulder pain and Dr. Cox eventually ordered an MRI scan which revealed a small interstitial tear of the conjoint/anterior infraspinatus tendons. Thereafter, Dr. Cox performed the total shoulder replacement procedure on August 17, 2023. Dr. Cox's operative report of that date contains the following post-op diagnosis:

1. Left shoulder DJD
2. Left bicipital tenosynovitis and tearing.
3. Left shoulder pain and dysfunction secondary to 1 and 2. (Emphasis added.)

This tearing observed by Dr. Cox during his surgical procedure constitutes an objective finding.

Accordingly, based upon the objective finding of tearing noted by Dr. Cox as well

as the remaining medical records from Dr. Cox, I find that claimant has proven by a preponderance of the evidence that his injury caused internal harm to his body that required medical services and that he has offered medical evidence supported by objective findings establishing an injury.

Based upon the foregoing, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left shoulder on September 26, 2022. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left shoulder injury. This includes the surgical procedure performed by Dr. Cox on August 17, 2023.

Claimant also contends that he is entitled to temporary total disability benefits. In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages as a result of his compensable injury. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning September 29, 2022 and continuing through a date yet to be determined. First, I find that claimant has remained within his healing period since September 29, 2022. On that date, claimant sought medical treatment from the Washington Regional Medical Center emergency room and he was referred back to his orthopedist, Dr. Cox. Since that time, claimant has continued to be evaluated and treated by Dr. Cox and that treatment has now included

surgery on August 17, 2023. As of September 15, 2023, claimant was continuing to receive care from Dr. Cox with no indication that claimant has reached maximum medical improvement. Accordingly, I find that claimant has remained within his healing period since September 29, 2022.

I also find that claimant has suffered a total incapacity to earn wages since that date. When claimant sought medical treatment from the emergency room he was given a sling to wear on his left arm. As previously noted, claimant is left-hand dominant. Accordingly, claimant would only be able to perform job duties involving his non-dominant hand. In *Farmers Co-Op v. Biles*, 77 Ark. App. 1, 69 S.W. 3d 899 (2002), the Arkansas Court of Appeals stated:

If, during the period while the body is healing, the employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, his temporary disability is deemed is total.

Based upon the fact that claimant's dominant arm was in a sling and that he would only be capable of performing work with his non-dominant arm, I find that claimant has proven by a preponderance of the evidence that he suffered a total incapacity to earn wages since September 29, 2022 and continuing through a date yet to be determined. Following claimant's surgery, Dr. Cox placed a two-pound lifting restriction on claimant's ability to lift with his left arm.

In summary, I find that claimant is entitled to temporary total disability benefits beginning September 29, 2022 and continuing through a date yet to be determined.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left shoulder on September 27, 2022. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with his compensable left shoulder injury. Claimant is entitled to temporary total disability benefits beginning September 29, 2022 and continuing through a date yet to be determined. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$853.95.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE