

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901705

STEVEN C. CARRICK,
EMPLOYEE

CLAIMANT

BAPTIST HEALTH, EMPLOYER

RESPONDENT

CLAIMS ADMINISTRATIVE SERVICES,
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED MAY 31, 2023

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents No. 1 represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 21, 2022. The administrative law judge found that the claimant failed to prove he was entitled to additional medical treatment. After reviewing the entire record *de novo*, the Full Commission finds that the additional medical treatment sought by the claimant is unauthorized in accordance with Ark. Code Ann. §11-9-514(Repl. 2012).

I. HISTORY

The record indicates that Steven Carrick, now age 34, became employed as a Food Service worker for the respondents, Baptist Health, on September 17, 2018. The parties stipulated that the employee-employer relationship existed on November 21, 2018, “the date of the claimed injury.”

The *pro se* claimant testified:

MR. CARRICK: Well, November 21, 2018 at approximately 6:56 p.m. I was performing my closing duties, which consists of cleaning up the area. And we have four-wheeler coolers that are plugged into the ceiling panel that we have... So I attended to my closing duties and we moved that four-wheeler cooler and we closed those joints so that the product can remain cold for the next shift. And as I was moving that cooler the ceiling fell, along with a metal shard fell, and struck my right upper arm, along with the shoulder region.

The parties stipulated that the claimant “sustained a compensable work-related right shoulder contusion when an acoustical panel fell on him” on November 21, 2018.

The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on November 26, 2018. The Accident Information section of the Form AR-N indicated that the Date of Accident was November 21, 2018 and that the claimant injured his “Right upper arm.” The claimant appeared to write, “roof fell on top of me” on November 21, 2018, and that the accident occurred while he was performing employment services.

According to the record, the claimant treated at CHI St. Vincent on November 26, 2018. Dr. Chen Wang noted “1. SORE RIGHT UPPER

ARM – ceiling tile fell and hit him on right shoulder and upper arm on Wed Nov 21....Pt. presents with c/o a contusion to his right upper arm from a falling ceiling tile 4 days ago. Report the arm is still tender but denies any swelling, weakness/numbness or ROM limitations....right upper arm with a small area of ecchymosis at the lateral portion of biceps with local ttp, no edema or other palpable abnormalities, shoulder/elbow rom is full.”

Dr. Wang assessed “1. Right arm pain....Looks like a minor contusion. F/u if any persistent issues.” Dr. Wang prescribed medication, and he released the claimant to return to regular work effective November 28, 2018. The parties stipulated that the claimant “returned to work” on November 28, 2018.

Christopher Vinson, APRN saw the claimant at CHI St. Vincent on January 28, 2019: “Pt is a 30 yr old male who reports that a piece of ceiling tile fell on his right upper arm at work at Baptist Hosp. in the cafeteria back in November and his arm hurts intermittently when bumped since that time.” Mr. Vinson assessed “1. Right upper limb pain.”

The parties stipulated that the claimant “resigned from work” on February 18, 2019.

The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on March 7, 2019. The Accident Information Section of the Form AR-C indicated that the date of accident was November 21, 2018, “As I was

moving the cooler which is plugged into the outlet in the roof, the roof fell on top of me, injuring (sic) my upper right arm, huge bruise lots of pain.”

The claimant signed another Form AR-C, CLAIM FOR COMPENSATION, on March 22, 2019. The Accident Information section of the Form AR-C indicated, “Claimant was getting food for a patient from the overhead cooler when the overhead cooler fell on the Claimant. He sustained injuries to his right shoulder and other whole body.” The Claim Information section of the Form AR-C indicated that the claim was for “initial” benefits to include Medical Expenses, and that the claim was for “additional” benefits to include Additional Medical Expenses.

The respondents arranged for Dr. Victor Vargas to treat the claimant. Dr. Vargas first examined the claimant on April 2, 2019: “In brief, the patient presents to my clinic for the first time to have evaluation of right shoulder pain....Ecchymosis: negative....The x-rays of the right shoulder, AP, axial of the scapula, axillary view were done in the clinic today, reviewed, and interpreted that showed acceptable subacromial space, acromion type I, no significant osteoarthritis of the acromioclavicular joint.”

Dr. Vargas assessed “Right Shoulder pain” and “Right Subacromial impingement with bursitis.” Dr. Vargas planned physical therapy, and he returned the claimant to full work duty with no restrictions. The record indicates that the claimant was provided an extended series of physical

therapy visits beginning April 8, 2019. The claimant followed up with Dr. Vargas on April 29, 2019: "Patient stated that he is doing physical therapy and he feels improved. No pain, no swelling. The patient stated that he is not working currently because he has no job." Dr. Vargas assessed "Right Shoulder pain improved....The patient has no restrictions and can work on full duty." Dr. Vargas assigned the claimant a 0% permanent impairment.

The claimant returned to Dr. Vargas on July 12, 2019:

The patient presented again to my clinic for an evaluation and a pain in the shoulder after being released at MMI.

The patient improved with conservative treatment and therapy, now he has a relapse of the pain and is not clear exactly if he has a pathology related to the accident that he sustained at work or he has some independent pathology in the right shoulder that is causing his pain.

At this point I am considering that the patient required MRI of the right shoulder to have objective findings of injury that eventually guide further treatment and recommendation. We will follow up after the MRI.

Dr. Vargas assessed "Pain of right shoulder joint."

The record contains a Change of Physician Order dated July 22, 2019: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Steven Carrick to change from Dr. Victor Vargas to Dr. Shahryar Ahmadi[.]" The claimant treated with Dr. Ahmadi beginning August 21, 2019. Dr. Ahmadi arranged for an MRI of the claimant's right shoulder, which was taken on August 21, 2019 with the following impression: "No intra-articular abnormality noted within the right

shoulder articulation. Focal subcutaneous fat contusion and mild focal deltoid musculature strain in this patient with history of prior direct injury.”

Dr. Ahmadi reported on September 18, 2019: “Patient is a 31-year-old man with right shoulder pain, normal MRI. Ultrasound was reviewed today and discussed with the radiologist, no pathology was seen. From an orthopedic standpoint, there is no pathology in the shoulder to warrant further treatment. He can return to full activities as tolerated. No need for follow-up with us.”

Dr. Ahmadi planned the following on October 22, 2019: “In summary this is a 31-year-old gentleman right shoulder pain without any finding on MRI or ultrasound. At this point we do not have any reason to operate on the patient so we are going to continue with conservative management. We did [a] new impairment rating for the patient based on passive range of motion. Patient has significant guarding and I do not know if this was due to pain or it was intentional.”

A pre-hearing order was filed on March 11, 2020. According to the text of the pre-hearing order, the claimant contended, “Claimant contends that he is entitled to additional medical and payment of outstanding medical bills. Claimant also contends that he is entitled to TTD and a permanent partial impairment rating or a wage loss. Claimant contends that he resigned from work due to unsafe conditions.” The respondents contended,

“Respondents contend that all appropriate benefits have been paid and that additional medical associated with claimant’s right shoulder injury is not reasonable and necessary. Respondents also contend that indemnity benefits are not due and owing with regard to the claim and that there are no objective findings to support any permanent impairment.”

The parties agreed to litigate the following issues:

1. Additional Medical and payment of outstanding medical bills.
2. TTD.
3. Permanent partial disability rating or a wage loss.

The claimant treated with Dr. William F. Hefley on April 29, 2020, and Dr. Hefley noted on May 20, 2020, “I spoke with Steven via phone call today as he had concerns regarding his medical records after his visit with us on 4/29/2020. Patient reports he was not working on the ceiling when the ceiling tile fell on him, but was moving a large cooler when the ceiling tile fell and hit his right shoulder. He also informs me that the numbness and tingling in his hand has only happened 2-3 times, the last time was February. Steven does not want his neck evaluated, states all of the pain is in his shoulder. He is wanting a repeat MRI (this time MR arthrogram). Will obtain this imaging and have him return to discuss results. He has tried multiple rounds of PT and steroid injections, was released from UAMS ortho at MMI.”

After a hearing, an administrative law judge filed an opinion on September 15, 2020. The administrative law judge found, among other things, that the claimant did not prove additional medical treatment was reasonably necessary. The administrative law judge found that the claimant did not prove he was entitled to temporary total disability benefits, an anatomical impairment rating, or wage-loss disability.

The Full Commission affirmed and adopted the administrative law judge's September 15, 2020 opinion in a decision filed January 5, 2021. The Arkansas Court of Appeals affirmed the Full Commission in an opinion delivered March 16, 2022. *Carrick v. Baptist Health*, 2022 Ark. App. 134, 643 S.W.2d 466. The Court of Appeals issued an order on April 20, 2022: "APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED."

The Arkansas Supreme Court issued an order on May 26, 2022: "APPELLANT'S PRO SE PETITION FOR REVIEW IS DENIED."

The claimant returned to CHI St. Vincent on June 30, 2022. Dr. William Joseph reported at that time:

Stephen is a 33-year-old male who relates a 4-year history of right shoulder pain. He says he was struck on the shoulder by some ceiling tiles and other materials. He has increased pain with abduction and rotation of the shoulder. Pain with extension of the affected shoulder....
EXTREMITIES: Tenderness of the upper deltoid region of the right shoulder. Pain with abduction and rotation. Positive scratch test. Difficulty resisting adduction.

Dr. Joseph assessed "1. Tendinitis of right shoulder." Dr. Joseph appeared to recommend an x-ray of the claimant's right shoulder and a referral to Dr. Ethan Schock.

Dr. Schock saw the claimant on or about August 11, 2022:

Steven Carrick is a 33 year old male who presents to discuss concerns about their Shoulder, that began on 11/21/2018....

Injury occurred: Ceiling tile along with metal shard fell and struck my right shoulder and upper arm....

Mr. Carrick (sic) is here today in consideration of the right shoulder. He is a pleasant 33-year-old male who is here today on referral from his primary care physician's office in consideration of the right shoulder. He initially sustained an acute injury in 2019 while working. He was treated with physical therapy and anti-inflammatory medications.

Unfortunately, he sustained another injury a few weeks ago when he was carrying his groceries. He has had progressively worsening right shoulder pain and dysfunction. He is here today for initial orthopedic evaluation.

Pain is localized primarily to the anterior aspect of the shoulder. This is worse with abduction.

He has undergone MRI evaluation back in 2019. He was noted to have partial-thickness rotator cuff tear at that time. This was treated with conservative management. He also underwent corticosteroid injection at that time and received some significant relief.

Since his most recent injury he has had progressively worsening shoulder pain and dysfunction and "weakness." He denies any neurologic symptoms. He denies any cervical spine source of symptoms or pain....

EXAM:

Examination today shows no evidence of atrophy about the RIGHT shoulder and neck. RIGHT upper extremity is neurologically intact and shows normal pulses. Compartments are soft. ROM is limited secondary to patient discomfort, but there does not appear to be a capsulitis or mechanical block to motion.

AC joint shows normal stability with no pain on cross body adduction or provocative maneuvers. AC joint is mildly tender with direct palpation....

RADIOGRAPHIC INTERPRETATION:

Xrays of right shoulder taken today show no obvious sign of fracture or gross malalignment. The glenohumeral and acromioclavicular joints are well aligned. Minimal degenerative changes are noted about the before meals (sic) and glenohumeral joints. Type 1 acromion is appreciated.

Dr. Schock assessed "Right rotator cuff tendinopathy with subacromial impingement." Dr. Schock planned, "I have recommended an MRI of the shoulder to further evaluate the status of the rotator cuff. We will see them back to review these results. Failed conservative management to date has included anti-inflammatory medications, home strengthening program, and activity modification. Follow-Up: We will see the patient back in the clinic after the MRI to review these results."

A pre-hearing order was filed on September 13, 2022. According to the text of the pre-hearing order, the parties contended the following: "1. Claimant contends the work-related injury has caused his condition to worsen through aggravation, affecting his body. 2. Claimant contends that he is entitled to additional medical treatment." The respondents contended, "3. Respondents contend that all appropriate benefits have been paid with regard to this claim. Claimant's claim is barred by the doctrine of *res judicata*, and the applicable statute of limitations. Claimant listed his request for 'additional medical treatment and payment of outstanding

medical bills' at the pre-hearing conference on March 11, 2020. Claimant litigated the matter at the hearing on August 5, 2020, and he lost on the subject before the ALJ, the full commission and the court of appeals (the Arkansas Supreme Court declined claimant's petition for review. Claimants most recent request comes more than two years after the injury date and more than one year after the past payment of compensation. Therefore, claimant's claim is barred by section 11-9-702(b) of the Arkansas Code Annotated. To the extent, Claimant's claim is not barred by either *res judicata* or the statute of limitations, the respondents contend that the medical treatment is not reasonable and necessary in regard to the right shoulder contusion."

The pre-hearing order indicated that the parties agreed to litigate the following issue: "1. According to the Form AR-C filed and claimant's response to prehearing questionnaire he is seeking additional medical treatment."

After a hearing, an administrative law judge filed an opinion on December 21, 2022. The administrative law judge found, in pertinent part, "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.” The claimant appeals to the Full Commission.

II. ADJUDICATION

The 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)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The employer has the right to select the initial treating physician. Ark. Code Ann. §11-9-514(a)(3)(A)(i)(Repl. 2012). However, an employee may request a one-time change of physician. Ark. Code Ann. §11-9-514(a)(2)(A), (a)(3)(A)(ii), (iii)(Repl. 2012). When a claimant seeks a change of physician, he must petition the Commission for approval. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 279, 19 S.W.3d 36, 39 (2000). Treatment or services furnished or prescribed by any physician

other than the ones selected according to the change-of-physician rules, except emergency treatment, shall be at the claimant's expense. Ark. Code Ann. §11-9-514(b)(Repl. 2012).

In the present matter, the parties stipulated that the claimant "sustained a compensable work-related right shoulder contusion when an acoustical panel fell on him" on November 21, 2018. The claimant testified that part of a ceiling fell and struck him on the right upper arm. Dr. Wang's assessment on November 26, 2018 was "1. Right arm pain....Looks like a minor contusion." The parties stipulated that the claimant returned to work on November 28, 2018, but that the claimant "resigned from work" on February 18, 2019. The record does not show that the claimant's resignation from employment was causally related to the November 21, 2018 compensable injury.

Dr. Vargas' assessment on April 2, 2019 was "Right Shoulder pain" and "Right subacromial impingement with bursitis." Dr. Vargas recommended conservative treatment. Dr. Vargas subsequently opined that the claimant had reached maximum medical improvement, with zero permanent anatomical impairment, no later than April 29, 2019. On July 22, 2019, the Commission granted the claimant a Change of Physician from Dr. Vargas to Dr. Ahmadi. Dr. Ahmadi arranged for an MRI of the claimant's right shoulder, which was taken on August 21, 2019 with the impression,

“No intra-articular abnormality noted within the right shoulder articulation.”

Dr. Ahmadi reported on September 18, 2019 that the MRI was “normal.”

Dr. Ahmadi recommended conservative management. According to a pre-hearing order filed March 11, 2020, the claimant contended that he was entitled to additional medical treatment.

An administrative law judge filed an opinion on September 15, 2020. The administrative law judge found, among other things, that the claimant did not prove additional medical treatment was reasonably necessary. The Full Commission affirmed and adopted the administrative law judge’s opinion. The Arkansas Court of Appeals affirmed the Full Commission in an opinion delivered March 16, 2022. The Court of Appeals and Arkansas Supreme Court thereafter denied petitions for review filed by the claimant.

The claimant now contends that he is entitled to the medical treatment provided by Dr. Joseph on June 30, 2022 and by Dr. Schock on August 11, 2022. The Full Commission finds that said medical treatment was unauthorized and therefore not the responsibility of the respondents. The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on November 26, 2018 following the November 21, 2018 compensable injury. Unauthorized medical expenses incurred after the employee received his Form AR-N are not the employer’s responsibility. See Ark. Code Ann. §11-

9-514(c)(3); *Tempworks Management Services, Inc. v. Jaynes*, 2023 Ark. App. 147.

After reviewing the entire record *de novo*, the Full Commission finds that the medical treatment sought by the claimant is unauthorized in accordance with Ark. Code Ann. §11-9-514(Repl. 2012), said treatment shall be at the claimant's expense. Because the requested medical treatment was unauthorized, the Full Commission need not adjudicate the issue of *res judicata* or the applicable statute of limitations. The claim for additional medical treatment is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton concurs.

CONCURRING OPINION

I concur with the Majority's finding that the claimant failed to prove he is entitled to additional medical treatment.

While the Majority relies upon the language of Ark. Code Ann. § 11-9-514 in its findings, we would be remiss in not simultaneously addressing the ALJ's findings in his December 21, 2022 Opinion and Order. The ALJ

was correct in his findings that the claimant's petition for additional medical treatment was barred by the statute of limitations and the doctrine of *res judicata*.

Arkansas Code Annotated § 11-9-702(b)(1) provides that "[i]n cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater." Our Supreme Court has determined that the statute of limitations commences upon the date of the last payment of benefits, whether medical or indemnity. *Wynne v. Liberty Trailer & Death & Permanent Total Disability Tr. Fund*, 2022 Ark. 65, 641 S.W.3d 621 (2022). Here, there is no evidence of any benefits paid to or on behalf of the claimant after May 22, 2020, for services rendered prior to that date. (Respondent's Exhibit 2, page 8). The claimant did not file a Form AR-C requesting additional benefits until June 6, 2022, well over two years from the date of the last payment of benefits. The administrative law judge was correct in his ruling that the statute of limitations has expired and the claim is barred.

Additionally, the claimant's request for additional medical treatment is barred by the doctrine of *res judicata*. *Res judicata* applies where there

has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 987 S.W.2d 281 (1998). The key question regarding the application of res judicata is whether the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993). *Res judicata* does not apply if a claimant has sustained a change in condition or seeks benefits for a subsequent period of complications. *Rothrock v. Advanced Env'tl. Recycling*, 2018 Ark. App. 88, 544 S.W.3d 61 (2018). Before analyzing the claim under the doctrine of res judicata, the burden of proof rests with claimant to establish whether there had been a change in his physical condition. *Id.* The issue-preclusion provision of res judicata is also referred to as collateral estoppel and will bar relitigation of issues if the following requirements are met: "(1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment." *Rothrock v. Advanced Env'tl. Recycling*, 2018 Ark. App. 88, 544 S.W.3d 61 (2018). It is well settled that

res judicata applies to decisions of the Commission. *Craven v. Fulton Sanitation Serv.*, 361 Ark. 390, 206 S.W.3d 842 (2005).

The issues presented by the claimant in this case were fully litigated at a hearing before the Commission on August 5, 2020. The administrative law judge ruled against the claimant and the claimant appealed and was unsuccessful at the Full Commission and Court of Appeals levels. In addition, the Supreme Court of Arkansas declined the request of the claimant to review the findings of the Court of Appeals. The claimant's request for additional medical treatment has been fully litigated and is barred by *res judicata*. The claimant is obviously unhappy with the results of the 2020 hearing and his lack of success on appeal and seeks to relitigate the same issues in this case and apparently intends to keep relitigating the same issues. His request for additional medical treatment has been repeatedly denied by bodies of competent jurisdiction, and there is no basis for the continued review of these findings as the contentions of the claimant for additional medical treatment are clearly barred by not only *res judicata*, but also the statute of limitations.

Based on the above findings, I would affirm the Opinion filed by the administrative law judge that the claim of the claimant is barred by the statute of limitations and the doctrine of *res judicata*.

MICHAEL R. MAYTON, Commissioner