

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H406315

HEATH DAVIS, EMPLOYEE

CLAIMANT

PECO FOODS INC., EMPLOYER

RESPONDENT

**OCCUSURE CLAIMS SERVICES, LLC
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 16, 2025

Hearing before Administrative Law Judge, James D. Kennedy, on the 29th day of July, 2025, in Little Rock, Arkansas.

Claimant is represented by Daniel Wren, Attorney at Law, Little Rock, Arkansas, who appeared at the hearing.

Respondents are represented by Stephen Carmody, Attorney at Law, Jackson, Mississippi, who submitted a brief on behalf of the respondents.

STATEMENT OF THE CASE

A hearing was conducted on the 29th day of July, 2025, to determine the sole issue of whether the Respondents are entitled to an independent medical exam of the claimant.

A copy of the Pre-hearing Order filed May 19, 2025, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the within claim and that an employer/employee relationship existed on September 18, 2024. The Claimant reported an alleged work-related injury to his left bicep on or about September 18, 2024, while performing a service growing out of and in the course of his employment with the Respondent employer. At the time of the injury, Claimant's average weekly wage was \$1,125.10, equating to a temporary disability rate of \$750.00 and a permanent partial disability rate of \$563.00. Claimant was treated by Dr. Ron Bates of

White River Family Medical Clinic, and Dr. Joel N. Smith of Martin Orthopedics, for the reported injury.

The Claimant's and the Respondent's contentions were all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record. The claimant contends that he suffered a compensable injury on September 18, 2024, when pulling the release on a fifth wheel. The claim was originally accepted, and all benefits were paid until December 17, 2024, after he was questioned by the Nurse Case Manager, and when Dr. Joel Smith recommended surgery. Dr. Smith affirmatively stated that the claimant had suffered a work-related injury. (Com. Ex. 2)

The Respondents contended that the relationship of employer and employee existed on September 18, 2024, and Peco Foods, Inc. was a self-insured employer under Arkansas law. The Respondents included proposed medical records in its response to the Pre-hearing Questionnaire. The Claimant reported an alleged work-related injury to his left bicep on or about September 18, 2024, while performing services growing out of and in the course of his employment with the Respondent. The Respondents provided the Claimant with prompt medical treatment which included treatment at White River Family Medical Clinic with Dr. Ron Bates and later with Martin Orthopedics and Dr. Joel N. Smith, for the reported injury. This treatment included two months of physical therapy for bilateral shoulder pain, from the date of July 15, 2024, through September 17, 2024. On September 19, 2024, Dr. Bates assessed the claimant with non-specific left bicep pain, placed him on restricted duty, and referred him for an MRI of his left humerus. Claimant underwent an MRI without contrast to his left humerus on October 1, 2024. The MRI showed mild-to-moderate biceps tenosynovitis, with no other abnormalities, and no

evidence of tears, bone contusions, or fractures. On October 2, 2024, the Claimant returned to Dr. Bates following his MRI, at which time Claimant first reported a new complaint of pain in his left shoulder. Dr. Bates noted that Claimant's MRI showed mild-to-moderate tendonitis, but no evidence of tears to any muscles or tendons. At that time, Dr. Bates referred the claimant to an orthopedic specialist and released Claimant to return to work at full duty. Claimant began treating with Dr. Smith on October 29, 2024. Dr. Smith reviewed the prior MRI and noted its findings. He then elected to send the Claimant for an MRI of his left shoulder, which was performed on November 8, 2024. Claimant then returned to Dr. Smith following the MRI, which showed a partial subscapularis tear, along with AC arthritis, glenohumeral arthritis, and tendinosis in the biceps, supraspinatus/subscapularis. Dr. Smith then assessed Claimant with adhesive capsulitis to his left shoulder and referred him for physical therapy. Following a regimen of physical therapy, Dr. Smith recommended surgical intervention for Claimant's left shoulder, specifically a left shoulder arthroscopy with capsular release, SAD, DCR, possible RCR, and OIP. Dr. Smith opined that Claimant's left shoulder complaints and his need for the left shoulder surgery were work related.

On January 20, 2025, Dr. Sean Lager, at the request of the respondents, provided a medical PEER Review of Claimant's medical records, including Dr. Smith's opinions on causation and recommendations for surgical intervention. Dr. Lager assessed Claimant with a Grade 1 left bicep strain and Grade 1 left shoulder sprain/strain as it related to the reported work injury. Dr. Lager further opined that Claimant's work-related injury was not a major contributing factor for the surgical procedure recommended by Dr. Smith. Claimant would achieve maximum medical improvement for his work-related condition

upon completing physical therapy, which Claimant had previously completed on January 3, 2024. To date, Respondent has paid \$14,251.33 for TTD and \$5238.50 for Medical in regard to the claim. (Com. Ex. 3)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That the stipulations set out above are reasonable and are hereby accepted.
3. It is determined that a preponderance of the credible evidence establishes that the claimant should submit to an independent medical evaluation by an independent medical provider selected by the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission under A.C.A. 11-9-511(a) and A.C.A. 11-9-811. The evaluation shall be at the expense of respondents and the claimant shall be entitled to mileage reimbursement for any travel.
4. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY, EVIDENCE AND A BRIEF BY THE RESPONDENT

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. No in person testimony from a witness was taken. The claimant's first exhibit consisted of a letter from Brea Burnett, a claims adjuster for OccuSure, directed to Dr. Joel Smith, of Martin Orthopedics, dated December 20, 2024.

The letter provided that the claimant had treated with Dr. Ron Bates on September 19, 2024, complaining of left bicep pain, and denying any additional complaints. The claimant received an MRI on October 1, 2024, and the images provided for mild to moderate tenosynovitis. Later on, October 2, 2024, the claimant reported new pain in his

left shoulder and after an MRI, Dr. Bates issued a full duty work release and then referred the claimant to Martin Orthopedics and Dr. Joel Smith.

The letter provided that the claimant started treating with Dr. Smith on October 29, 2024, that he received another MRI of the left shoulder on November 8, 2024, and the MRI demonstrated a partial tear of the subscapularis tendon, tendinosis, and mild to moderate degenerative changes throughout the shoulder. The letter also provided that Dr. Smith ordered a left shoulder arthroscopy with a capsular release and possible repairs. A review of current and prior PT notes revealed a history of bilateral shoulder pain for 1.5 years. Questions were then asked of Dr. Smith who answered as follows: The claimant's work-related injury of September 18, 2024, resulted in adhesive capsulitis and biceps tendinosis. The work injury of September 18, 2024, to the left bicep, was the major contributing factor for the recently ordered surgery and the claimant has not reached MMI. (Cl. Ex. 1, P. 1, 2)

A Peer/Medical Review was requested by the respondents and was provided by Dr. Sean Lager, a member of the American Board of Orthopedic Surgery, with a sub-certification in Sports Medicine. Dr. Lager reviewed the medical files that were provided and issued an opinion which provided that the claimant's diagnosis as it related to the September 18, 2024, work-related injury to his left bicep, was a grade 1 left bicep strain and a grade 1 left shoulder sprain/strain. He went on to state that the MRI of the left shoulder dated November 11, 2024, revealed a partial articular surface tear of the subscapularis tendon with tendinosis of the rest of the subscapularis tendon and tendinosis of the supraspinatus tendon, with thickening and a hyperintense signal involving the inferior glenohumeral ligament. This can be due to an injury or can be due

to adhesive capsulitis, mild changes of osteoarthritis in the glenohumeral joint, mild to moderate degenerative changes in the AC joint, with hypertrophic spurs, mild lateral down-sloping of the acromion, and edema along the articular margins of the AC joint. Dr. Lager concluded that based upon the records showing that the claimant had bilateral shoulder pain for 1.5 years prior to the work injury, the work injury on September 18, 2024, to the left bicep, was not the major contributing factor for the need of the recently ordered surgery. (Cl. Ex. 1, P. 3 -14)

The records from the Arkansas Surgical Hospital and Dr. Joel N. Smith provided surgery for the left shoulder that involved adhesive capsulitis and acromioclavicular joint arthritis which occurred on March 19, 2025. The report went on to provide that the claimant suffered from severe left shoulder pain and had a limited range of motion. Findings were consistent with acromioclavicular joint arthritis and adhesive capsulitis. The MRI reported concern for a possible partial thickness cuff tear. Diagnostic arthroscopy was then performed. (Cl. Ex. 1, P. 15 -18)

The Respondents submitted a Motion to Compel an Independent Medical Exam that consisted of a total of 126 pages, which included legal arguments, forms, and medical records, including medical records that predated the date of the injury. The Motion to Compel an Independent Medical Evaluation went into great detail involving the history of the claim and relied on A.C.A. 11-9-511 and A.C.A. 11-9-811. The Motion also included detailed medical records from Dr. Ron J. Bates dated September 19, 2024, in regard to the claimant and going forward. These documents included reports from physical therapy and documents also submitted by the claimant. Pre-date of injury medical records were

also submitted which provided that the claimant had been receiving physical therapy for his bilateral shoulders as far back as July 15, 2024. (Resp. Ex. 1, P. 1 – 112)

DISCUSSION AND ADJUDICATION OF ISSUES

The sole issue before the Commission is the issue of requiring the Claimant to submit to an independent medical evaluation. The Commission has faced this issue previously. Only by a preponderance of the evidence can it be established that the claimant must submit to independent medical evaluation. See A.C.A. § 11-9-705(a)(3) (Repl. 2012). The standard “preponderance of the evidence” means the evidence having greater weight or 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 determination of a witness’s credibility and how much weight to accord to that person’s testimony are solely up to the Commission. White v. Gregg Agricultural Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact those portions of the testimony that it deems worthy of belief. Additionally, the Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002); Green Bay Packing v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999). 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, the Commission is required to evaluate the conflicting medical evidence and issued opinions.

The claimant was promptly and originally treated by Dr. Ron Bates of White River Family Medical Clinic and later referred to Dr. Joel Smith of Martin Orthopedics who reviewed the original MRI ordered by Dr. Bates and then ordered another MRI. Dr. Bates, the original treating physician, found mild to moderate tendonitis with no evidence of tears of any muscles or tendons and returned the claimant to work with no restrictions, but due to the claimant's continued issues, referred the claimant to Dr. Smith at Martin Orthopedic, who recommended surgical intervention of the claimant's left shoulder, specifically a shoulder arthroscopy. This surgery had occurred by the time of the above hearing in regard to the Motion to Compel an Independent Medical Evaluation. Dr. Smith, the treating physician opined that claimant's left shoulder complaints and need for the left shoulder surgery were in fact work-related.

The respondents obtained a peer review by Dr. Sean Lager which included Dr. Smith's opinions on causation and his recommendations for surgical intervention. Dr. Lager opined that the Claimant's work-related injury was not a major factor for the surgical intervention by Dr. Smith.

It is noted that the claimant was receiving bilateral shoulder physical therapy prior to the date of the alleged injury and that the claimant was originally receiving benefits before they were stopped. It is also clear that there are competing medical opinions in regard to the treatment of the claimant's injuries and what caused them. A.C.A. 11-9-511 (a) provides that an injured employee claiming to be entitled to compensation shall submit

to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the Commission may require from time to time if reasonably necessary. It is also noted that A.C.A. 11-9-811 provides that upon its own initiative at any time where compensation payments are being made without an award, the Workers' Compensation Commission may and in any case where the rights to compensation has been controverted or where payments of compensation have been suspended, or where an employer seeks to suspend payments made under an award or an application of an interested party, the Commission shall make such investigation, cause such medical examination to be made, hold such hearings, and take such further action as the commission deems proper for the protection of all parties.

Based upon the above, and after weighing the evidence impartially, it is found that an independent medical examination would be beneficial to the fact finder in this matter and that a preponderance of the credible evidence establishes that the claimant should submit to an independent medical provider determined by the Medical Cost Containment Division for the Arkansas Workers' Compensation Commission under A.C.A. 11-9-511 and A.C.A. 11-9-811, for an independent medical evaluation. Further, it is found and determined that the parties shall work together to expedite this evaluation. The evaluation shall be at the expense of the respondents and the claimant shall be entitled to mileage reimbursement for travel. 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