

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H505556**

RODNEY R. DEHAVEN, EMPLOYEE CLAIMANT

RODNEY DEHAVEN, EMPLOYER RESPONDENT

MISSOURI EMPLOYERS MUTUAL INSURANCE COMPANY, CARRIER/TPA
RESPONDENT

OPINION FILED **MARCH 26, 2026**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney, Fayetteville, Arkansas.

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 22, 2026, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 21, 2025, 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 this claim.
2. The employee/employer/carrier relationship existed on November 8, 2024.
3. The respondents have controverted the claim in its entirety.

At the conclusion of the hearing, the parties also stipulated that claimant's average weekly wage was \$701.13, which yields a temporary total disability rate of \$468.00 and a permanent partial disability rate of \$351.00.

Dehaven-H505556

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant sustained a compensable injury on November 8, 2024.
2. Whether claimant is entitled to medical expenses.

All other issues are reserved by the parties.

The claimant contends that “He sustained a compensable bilateral shoulder injury on November 8, 2024, while tiling a shower in Fayetteville, Arkansas. The claimant contends that he is owed medical benefits as a result of his bilateral shoulder injury. Due to controversion of entitled benefits, the respondents are obligated to pay one half of the claimant’s attorney’s fees.”

The respondents contend that “The claimant did not sustain a compensable injury as defined under the Arkansas Workers' Compensation Act for which he is entitled to benefits.”

From a review of the entire record including 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 November 21, 2025, and contained in a pre-hearing order filed on that same date, as well as the stipulation announced at the hearing, are hereby accepted as fact.

2. Claimant has met his burden of proving that he suffered a compensable injury to his right and left shoulder on November 8, 2024, and is entitled to reasonable and necessary medical treatment for those injuries as recommended by his treating physicians.

FACTUAL BACKGROUND

This case is unusual in that claimant is also the respondent employer. Since the interest of the employee and employer are not adverse, for the purposes of this opinion, any reference to “respondent” is to the insurance carrier Missouri Employers’ Mutual Insurance Company

HEARING TESTIMONY

Claimant was the only witness to testify. He stated that he is 60 years old and the sole owner and employee of his tile installation business. He said that his job involved lifting from fifty to one hundred pounds every day, required him to be on his feet and knees frequently, and involved working overhead. Claimant said that he hurt his shoulders while he was working on a bathroom tub. Claimant did not know the exact address of where he was working, but he knew it was in Fayetteville and located the invoice for that job. According to claimant, the injury occurred when he was doing “a total gut of the tub”, part of which involved hanging drywall. As he was placing the top piece of drywall, a five foot by four foot section, he lost his balance stepping on the side of the tub. Claimant testified that he did not completely fall because he regained his balance, but in doing so he felt “a jerk and a popping in both shoulders right and left.” He felt soreness but was able to finish the job that day and the next week he went to see Dr. Youmans, who is his primary care physician. Claimant was referred to Dr. Benafield at Ozark Orthopedics where he was treated with physical therapy and injections. The physical therapy did not help, but the injections did relieve some pain. As of the date of the hearing, claimant had surgery on his right arm and intends to have surgery on the left when he has healed sufficiently from the first surgery. Claimant paid for the surgery through his wife’s health insurance.

Claimant said that although the injury occurred on November 8, 2024, he did not pursue his claim until August 2025, because he had other things to do and had worked through the pain. Claimant did not realize how serious the injury was before he had an MRI. Claimant conceded that he had seen

Dehaven-H505556

a doctor about some shoulder pain before November 2024. He received a steroid injection and did not return to the doctor for any additional treatment for his shoulder. He said that in the previous instance, he had tried to toss a bag full of tile into a trash can, which stressed his arm and shoulder. Claimant testified that pain in 2022 was quite different than what he described regarding falling while holding a sheet of drywall on November 8, 2024.

On cross-examination, claimant agreed that he was working alone that day and is the only person who had any knowledge of what happened on the job site on November 8, 2024. At his deposition, claimant had not seen the invoice for that job and was not sure of the size of the tile that he was installing. At the deposition, claimant said “I think they were two and a half inches by twelve inches of subway tile,” while the floor was twelve by twenty-four.

Claimant stated that he carried workers’ compensation insurance because he needed it for jobs that he does. He agreed that the policy told him what he needed to do as the owner of the company if an employee was injured. He conceded that he did not report the injury until August 2025.

Respondent pointed out that claimant specifically remembered how the injuries to his shoulders occurred, but when asked about a prior hernia surgery, stated that he did not know what caused it. Respondents’ attorney noted that while claimant said that his injuries occurred on Friday, November 8, 2024, he did not see the doctor on Monday as he testified, but rather on Tuesday, November 12.¹ Claimant was shown the report from Dr. Youmans and agreed that the report said that he complained of right shoulder pain that had been present for a couple of weeks. He did not know if he had mentioned anything about the left shoulder; but he did not write the report that omitted that he was injured while putting up drywall five days previously. Claimant was definite that he received an injection in both shoulders, but the doctor’s record does not state that it was a bilateral injection.

¹ I announced without objection that I was taking judicial notice of the days of the week on which those dates fell.

Dehaven-H505556

When claimant was asked about his previous shoulder injury which he was treated on October 5, 2022, claimant stated that he did not remember going to the doctor when he was deposed. Claimant read from Dr. Caswell's report that he had pain in his shoulder a year ago after lifting trash, but that had not really bothered him until about two weeks ago. Dr. Caswell's report said claimant "did something, unsure what made the pain flare." He agreed that he had been having pain in his shoulders for a couple of weeks before he saw Dr. Youmans. Claimant acknowledged Dr. Benafield's records showed that he had had significant pain for two months as of November 26, 2024.

On redirect examination, claimant explained the first time he was asked about an invoice in this matter was at his deposition, and reviewing the deposition helped him remember the size of the tiles he was using the day he maintained he was injured. When asked why he waited so long to make a claim for workers' compensation, he stated that he worked through the pain until it became unbearable. When he received the results of the MRI, he understood that his injuries were worse than he thought.

REVIEW OF THE EXHIBITS

Claimant's Exhibit #1 is one page of index and 39 pages of medical records; Respondent's Exhibit #1 is one page of index and nine pages of records; respondent's Exhibit #2 is one page of index and 13 pages of non-medical records; respondent's Exhibit #3 is claimant's deposition which was taken on December 18, 2025.

Claimant first saw Dr. Roger Youmans at Community Physicians Group on November 12, 2024. The history of the present illness was right shoulder pain for a couple of weeks. The assessment was a subacromial bursitis of the right shoulder joint, which was injected with an unspecified medication. X-rays of claimant's right and left shoulder were performed.

On November 26, 2024, claimant saw Dr. Robert Benafield regarding a bilateral shoulder

Dehaven-H505556

problem. The history and physical states:

“He has had bilateral shoulder pain for the last two months pretty bad and on and off previously. It is worse on the right than the left. He went and saw his primary care provider Dr. Youmans who told after x-rays that he had bone on bone arthritis and was referred over. He has had pain with abduction and internal rotation and pain at night. He was given an injection by Dr. Youmans, but it did not help at all.”

After examining the claimant, Dr. Benafield recorded that his assessment/plan that his findings were consistent with “impingement syndrome of the shoulders bilaterally.” Claimant was given a corticosteroid in the subacromial space bilaterally and was given home exercises to do. Dr. Benafield released the claimant to return to his office as needed.

Claimant returned to Dr. Benafield on February 11, 2025, reporting that his shoulder pain went away for about a month but then came back. Dr. Benafield believed that an MRI was necessary to assess the rotator cuff and AC joint. Claimant instead had a course of physical therapy and then returned to Dr. Benafield on May 1, 2025. The physical therapy was done at the insurer’s request and did not help claimant, so Dr. Benafield again requested an MRI. The MRI was not performed until July 31, 2025, and at that time showed as follows:

MRI of the Right Shoulder

Technique: Multiplanar, multisequence images of the right shoulder were obtained without the use of intravenous contrast.

Comparison Study: None.

History: Right shoulder pain.

Findings:

- Rotator Cuff: There is a full-thickness tear involving the anterior footplate of the supraspinatus tendon at its attachment. The infraspinatus, subscapularis, and long head of the biceps tendons are intact. No muscle belly atrophy or edema is noted. There is no fluid in the subacromial-subdeltoid bursa.
- Coracoacromial Arch: The acromion is Type I. There are acromioclavicular (AC) joint degenerative changes. The coracoacromial and coracoclavicular ligaments are intact. The rotator interval is unremarkable.

Dehaven-H505556

- Glenohumeral Joint: Normal glenohumeral joint articulation is observed. The glenohumeral ligaments are unremarkable. There is no joint effusion. The bicipital-labral complex is unremarkable.

Impression:

1. Full-thickness tear involving the anterior footplate of the supraspinatus tendon at its attachment site.
2. AC joint degenerative changes causing mass effect on the supraspinatus, which could result in impingement.

MRI of the Left Shoulder

Technique: Multiplanar, multisequence images of the left shoulder were obtained without the use of intravenous contrast.

Comparison Study: None.

History: Left shoulder pain.

Findings:

- Rotator Cuff: The supraspinatus, infraspinatus, subscapularis, and long head of the biceps tendons are all intact. There is no muscle belly atrophy or edema. There is no fluid in the subacromial-subdeltoid bursa.
- Coracoacromial Arch: There is a Type I acromion. There are acromioclavicular (AC) joint degenerative changes. The coracoacromial and coracoclavicular ligaments are intact. The rotator interval is unremarkable.
- Glenohumeral Joint: There is normal glenohumeral joint articulation. The glenohumeral ligaments are intact. There is no joint effusion. There is a multilobulated paralabral cyst along the anterior inferior margin of the glenoid measuring up to 1.5 cm. An associated anterior inferior labral tear is not well seen but is suspected.

Impression:

1. There is a 1.5 cm multilobulated paralabral cyst adjacent to the anterior inferior margin of the glenoid, and an associated labral tear cannot be excluded.
2. There are AC joint degenerative changes which could be a cause for impingement.

Dr. Benafield reviewed the MRI results with claimant on August 13, 2025, and surgery was discussed, but claimant was too busy to take off work at that time, so his shoulders were injected again and surgery was delayed.²

While not part of the course of treatment claimant received in 2024 and 2025, respondent

² There were no records submitted after that consultation; claimant testified that he had surgery on his right shoulder on December 22, 2025, and will schedule the left shoulder surgery when his right shoulder is sufficiently healed.

Dehaven-H505556

submitted medical records from Dr. John Caswell at the Community Physicians Group from October 5, 2022, in which claimant was seen for right shoulder pain. He related that about a year prior to this visit, he had lifted a bag of trash with just his right arm and caused pain in his shoulder. Claimant said he wasn't too bothered by it until about 2 weeks earlier, but the pain had flared to the point that he sought medical treatment. He was given an injection of triamcinolone acetonide into his right deltoid.

The tax records were submitted for the purpose of determining an average weekly wage, but as I have accepted the parties' stipulation as to claimant's earnings, I have made no calculations based on those records.

ADJUDICATION

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence, Ark. Code Ann. § 11-9-102(4). Claimant bears the burden of proving a compensable injury by a preponderance of the credible evidence, Ark. Code Ann. § 11-9-102(4)(E).

As I said above, it is rare that the employee and employer are the same, but not unheard of, see *Gilbert v. Gilbert Timber Co.*, 292 Ark. 124, 728 S.W.2d 507 (1987); *Vite v. Vite*, 2010 Ark. App. 565, 377 S.W.3d 453; and *Baxter v. Baxter*, 2012 Ark. App. 251, 413 S.W.3d 561 for claims made by sole proprietors.

Approaching respondent's questions regarding claimant's credibility in the order raised at the hearing, he was first asked about the difference in his deposition testimony regarding the size of the tile he was working with on the day he maintains he was injured (T. 22). Claimant responded that he had not seen the invoice at the time of his deposition, but after seeing it, he realized he was using 12

Dehaven-H505556

X 12 mosaic tile for this job instead of the 2.5 X 12 subway tile. Since claimant testified he was injured while working with drywall instead of the tiles, I'm satisfied that he did not remember exactly what size of tile he was working with because that had nothing to do with his injury claim.

Respondent next moved to the delay in reporting the injury (T.31), which is a proper line of inquiry even though it did not raise a lack of notice defense³, see *Tyson Foods, Inc. v. Brown*, 2000 Ark. App. 723, *Swink v. Rest. Mgmt.*, 2012 Ark. App. 490. Claimant agreed that he did not file any claim until after the MRI showed the extent of the damage to his shoulders. I am satisfied that claimant did not understand the extent of the damage to his shoulders until that time, and as he continued to work, he could not have made a claim for disability benefits because he did not miss the requisite amount of time mandated by A.C.A. §11-9-501. His wife's insurance paid his medical expenses, eliminating the need to file a claim for medical benefits.

Claimant was shown Dr. Youmans' note of November 12, 2024, which recorded that he had right shoulder pain for a couple of weeks and made no entry of a problem with his left shoulder (T. 36). Claimant was definite that he received an injection in both shoulders, and said he did not prepare the doctor's note, so he could not explain what was and was not contained therein. I do not know if claimant received bilateral injections on that first visit, but I am convinced that he believes he did. The X-rays taken of both shoulders supports his contention that he reported pain in both shoulders. I also put no weight in claimant believing he went to the doctor on a Monday when the records show it was actually on a Tuesday; he did not have an unreasonable delay in seeking treatment and may have been at the doctor's office at the first available appointment.

³ Such a defense would have failed had it been raised, see *Baxter v. Baxter, supra*. "The present case involves an unusual fact pattern in that Baxter is both the employer and the employee. It is true that Baxter did not report his injury to Union Standard Insurance Company until December 27, 2006; however, the notice statute provides that an employee must report the injury to his employer, not his insurance carrier. Moreover, section 11-9-701(b)(1)(A) provides that failure to give the notice shall not bar any claim if the employer had knowledge of the injury. Clearly, Baxter knew of his own injury."

Dehaven-H505556

Somewhat problematic is claimant's testimony that he had not had any shoulder problems before November 2024 (T. 40). The records from the same clinic where he saw Dr. Youmans show he had been in to see Dr. John Caswell on October 5, 2022, for pain in his right shoulder. The records show claimant went to his physician for several issues including right shoulder pain, and he received an injection into that shoulder. While such treatment is the kind of event many people might recall, the record as a whole reflects that claimant is not a precise historian regarding dates and prior medical events. There is no medical evidence that he had a pre-existing full-thickness rotator cuff tear or labral tear before November 8, 2024. I do not attribute his failure to recall the 2022 visit to deception, but rather to poor memory, and do not find that it sufficiently undermines his credibility as to the occurrence of the drywall incident and his subsequent bilateral shoulder symptoms.

In closing argument, respondent asserted that the failure of claimant as employer to make a timely report denied it the opportunity to investigate this claim. This argument would have some appeal to me if respondents had identified how it was prejudiced in defending this claim by claimant failing to report the day it happened. There were no witnesses to interview, no equipment to inspect and nothing to photograph that would have been of any value to support or refute how claimant said the injury happened.

Working in claimant's favor is the fact that what he described is a plausible explanation as to how he was injured while working with a sheet of drywall. He reported an injury to his doctor a few days after it happened and continued to receive conservative treatment thereafter. When that course of treatment failed, an MRI showed the injuries to his shoulders required surgery to correct. Both MRIs documented AC joint degenerative changes. These degenerative changes are consistent with claimant's age and his fifteen years working as a tile installer performing overhead work. However, AC joint degeneration would not cause a full-thickness supraspinatus tear or a labral tear with

Dehaven-H505556

paralabral cyst. These are acute traumatic injuries superimposed on underlying degenerative changes that would be expected in a sixty-year-old worker in a physically demanding occupation.

Looking at his tax records, I understand why claimant felt the need to continue working until he just couldn't; he had a net income from his business of under \$36,000.00 in both 2023 and 2024. As a sole proprietor, he had no sick leave or other income if he wasn't working. In his role as the insured employer, claimant should have reported the claim as soon as he first sought medical treatment. However, he is a self-employed tile installer, not a human resources officer, and I accept that he only brought the claim when he understood how serious his injury was. The financial records support his explanation that he continued working out of financial necessity and did not initially pursue a claim because he believed he could work through the pain.

Weighing all the evidence before me, I find claimant met his burden of proving a compensable injury on November 8, 2024. The preponderance of the evidence shows the injury arose out of and in the course of his employment, caused internal harm requiring medical services, was established by objective MRI findings, and was caused by a specific incident identifiable by time and place.

ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right and left shoulder on November 8, 2024. Respondent is liable for payment of all reasonable and necessary medical services provided in connection with claimant's compensable 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." The issue regarding indemnity benefits was reserved; 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).

Dehaven-H505556

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$654.00.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE