

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H300528

SCOTT DIEDERICH, Employee	CLAIMANT
TRANSCO LINES, INC., Employer	RESPONDENT
NATIONAL INTERSTATE INS. CO, Carrier	RESPONDENT

OPINION FILED NOVEMBER 5, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

Claimant represented by DANIEL E. WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 8, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on May 20, 2024, and a Pre-hearing Order was filed on May 21, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on January 8, 2023.
3. The respondents have controverted the claim in its entirety.
4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$835.00 for temporary total disability benefits and \$626.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to his left shoulder, left knee, and left hip on or about January 8, 2023.
2. Whether Claimant is entitled to medical treatment for his left shoulder injury.
3. Whether Claimant is entitled to temporary total disability benefits from January 9, 2023, to June 24, 2024, less eight weeks when the claimant worked as a truck driver.
4. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“The Claimant was an over the road truck driver for the Respondent employer, Transco Lines, when on January 8, 2023, he was cleaning out the cab of his 18-wheeler when he slipped and fell from the cab onto the truck stop parking lot.

As a result of the fall, the Claimant suffered injuries to his left hip, left shoulder, and left knee and has been unable to work since the date of the incident.”

The respondents' contentions are as follows:

“The claimant allegedly injured his left knee, left hip and left shoulder on 1-8-23 due to his job as a truck driver. The tests following the incident were all negative for an acute injury. The claimant had a left total shoulder replacement in April 2024 that is not the result of anything that happened in January 2023.”

The claimant in this matter is a 63-year-old male who alleged to have sustained compensable injuries to his left shoulder, left knee, and left hip on or about January 8, 2023. The claimant's attorney was asked about the extent of his request for benefits regarding the claimant's injuries by this administrative law judge at the initiation of the hearing in this matter. Following is that exchange:

THE COURT: Thank you. The Respondent Employer is Transco Lines, Incorporated. The Claimant is represented by Mr.

Wren, Mr. Daniel Wren, and the Respondent is represented by Mr. Mike Ryburn and we are here today for a full hearing.

I have before me a Prehearing Order that was filed May the 21st of 2024. That Order was signed by myself and I have marked it as Commission Exhibit 1.

In talks with both parties prior to going on the record, we determined that an alteration needed to be made to my Prehearing Order. Issue No. 3 now reads, ‘Whether the Claimant is entitled to temporary total disability benefits from January 9, 2023 to June 24, 2024, less eight weeks when the Claimant worked as a truck driver.’”

MR. WREN: Your Honor, the hip and knee, we are not asking for treatment on those. It’s really just the left shoulder, so you can actually subtract the left hip and knee.

THE COURT: Even as to compensability at this point or no?

MR. WREN: We will leave them in just for compensability, yes.

THE COURT: But you want them out for treatment?

MR. WREN: Yes, That is correct.

THE COURT: So just the left shoulder for treatment?

MR. WREN: Yes.

The claimant has made clear he is not asking the Commission to decide any benefits related to the alleged left knee or left hip injury. Given the position that the claimant has taken this administrative law judge will not make any determination involving those body parts because a determination without a benefit request to a body part alleged to have been injured would be advisory in nature. Going forward this administrative law judge will only consider the claimant’s left shoulder injury which he alleges is compensable and, if so, he alleges entitlement to medical treatment and temporary total disability benefits.

The claimant in this matter was working for the respondent as an over-the-road truck driver. The claimant at that time had a Class A CDL license to operate said vehicle. However, his medical card, which was also required to operate a semi tractor-trailer, was set to expire on January 7, 2023. The claimant testified that he made the respondent aware of this situation a week prior to his medical card expiring. The claimant testified that he continued to drive, but on January 7, 2023, at midnight he stopped because of his expired medical card.

The claimant stopped driving near a truck stop and parked his semi tractor-trailer. The claimant testified that the respondent knew that he had to stop driving because of his expired medical card. The claimant testified that he was to stay with the semi tractor-trailer until a replacement driver arrived at his location to continue his previous assignment. During that down time the claimant decided to clean the truck. Following is his testimony about doing so:

Q All right. The morning of the 8th, did you get up before the sun had come up?

A Yes. I didn't sleep well that night, so I was up a lot. But, yes, I was up early that day.

Q All right. And did you start cleaning out your cab?

A Yes. I started getting my things together and I was cleaning the cab.

Q Do you carry a little whisk broom with you?

A Yes.

Q So tell me specifically what happened. Describe how you – did you fall out of the cab?

A Yes.

Q All right. How did you come to fall out of the cab?

A Well, I was sweeping the truck out because my stop prior to

that had a gravel parking lot so there is gravel in the truck. So I was sweeping that out of the passenger door and as I was sweeping, I was backing up out of the door and I missed the step and fell.

Q And did you land on your left side or your right side?

A My left side.

Q And did you feel pain immediately?

A Yes.

Q Where did you feel pain when you fell from the cab?

A My left shoulder, my left hip, and my left knee.

Q Did you notify Transco at some point of this injury?

A Yes. I talked to my dispatcher and told them what happened on the phone. Saben was my dispatcher. I called him.

And then, also, before I evacuated the truck on Tuesday, I sent him a text message to remind him that when I get home I am going to see my personal doctor to see if anything was seriously hurt or not because I was still in quite a bit of pain.

Q All right. So you had to wait a couple of days until the replacement driver came and took possession of the truck and tractor from you?

A Yes. Company rule, you can't abandon a load, so I had to stay with the trailer until a driver came and picked up the trailer, so that's why I was there until Tuesday.

Q And how did you get home from Tennessee to Alabama?

A I had to rent a car and drive home.

When the claimant returned home, he went to his family physician. He was asked on direct examination about his initial doctor's visit as follows:

Q When you got home, did you see your family physician?

A Yes, I did.

Q At some point did someone from either Transco or their workers' comp carrier call you and tell you you couldn't see your family doctor and you had to see someone else?

A Well, they instructed me that they wanted me to see their doctor.

Q Okay. So who was your family?

A Dr. Shekar, Dr. Chandra Shekar with Pro-Med.

Q All right. And then I have that you went to a place – well, I don't know if you remember. Do you remember what the name of the place was that they sent you to, the name of the clinic?

A It was Care something.

Q Was it American Family Care?

A Yes. American Family Care, yes, AMC.

The claimant testified that the respondent denied his claim after a second visit to his doctor who had recommended an MRI of the claimant's left shoulder.

Medical records introduced into evidence show that the claimant was seen at American Family Care in Montgomery, Alabama, on January 23, 2023. At that time, the claimant complained of left shoulder pain. The claimant was diagnosed with an unspecified sprain of the left shoulder. The medical record is signed by Dr. Jesse Austin. On January 27, 2023, the claimant was again seen at American Family Care. At that time, Nurse Practitioner Edward Moore referred the claimant for a left shoulder MRI.

On September 7, 2023, the claimant was seen at Regional Medical Clinic Orthopedics in Greenville, Alabama. At that time, the claimant complained of left shoulder pain. The claimant gave a consistent history of a fall from his truck in early January of 2023 at which time he had

left shoulder pain. The medical record from that visit includes an “Impressions” section that states, “Cuff tear arthropathy left shoulder, neglected.” That same record is signed by Dr. Gilbert Holland.

On September 14, 2023, the claimant underwent an MRI of the left shoulder. Following are the findings and impressions of that diagnostic test:

FINDINGS:

Large effusion is noted. No os acromiale is seen. The acromion is type 2. Advanced degenerative changes are seen in the AC joint. Edema is seen in the distal acromion. Fracture line is noted through the distal acromion. This is nondisplaced. Humeral head is high riding. Full-thickness tears of the supraspinatus and infraspinatus tendons are noted. Shoulder effusion is present. Subscapularis tendon is torn. Abnormal signal is noted in the posterosuperior, posteroinferior, and anterior inferior labrum. Small marginal osteophyte arises from the humeral head. Fatty atrophy of the supraspinatus, infraspinatus, and subscapularis tendons is present.

IMPRESSION:

1. Full-thickness tears of the supraspinatus tendon, infraspinatus tendon, and subscapularis tendon.
2. Nondisplaced acromion fracture.
3. Degenerative changes of the AC joint. Joint effusion.
4. Labral tears.

On October 4, 2023, the claimant was seen at the Regional Medical Clinic at Greenville, Alabama, by Dr. Holland. Following is a portion of that medical record:

HISTORY OF PRESENT ILLNESS: Dietrich Scott is a very pleasant 62-year-old male who returns today for a follow up of left shoulder and left hip pain. He is here today to review MRI results.

Today, the patient reports that he has not had any improvement with his shoulder pain. He fell out of an 18-wheeler in January of 2023. He had had left hip x-rays done that need to be reviewed.

ASSESSMENT:

S42.122A – DISP FX OF ACROMIAL PR LEFT SHLD
INI FOR CLOS FX (PRIMARY)

M75.102 – UNSP ROTATR-CUFF TEAR/RUPTR OF L
SHLD NOT TRMA

M25.552 – PAIN IN LEFT HIP

Z68.35 – BODY MASS INDEX (BMI) 35.0-35.9, ADULT

PLAN:

MRI REVIEWED WITH PATIENT AND PATIENT WILL
NEED REVERSE TOTAL SHOULDER SURGERY. PATIENT
WILL CONTACT US WHEN HE IS READY TO HAVE
SURGERY.

FOLLOW UP PRN.

On April 22, 2024, the claimant underwent surgical intervention for his alleged left shoulder injury at the hands of Dr. Holland. Following is a portion of that surgical intervention:

PREOPERATIVE DIAGNOSIS: LEFT SHOULDER ROTATOR
CUFF ARTHROPATHY

POSTOPERATIVE DIAGNOSIS: LEFT SHOULDER
ROTATOR CUFF ARTHROPATHY

PROCEDURE PERFORMED: LEFT REVERSE TOTAL
SHOULDER ARTHROPLASTY

It appears that the claimant's surgery to his left shoulder provided improvement for his left shoulder injury. The claimant began working on June 24, 2024, but still had some additional problems. On direct examination the claimant described his difficulties as follows:

Q Explain the trouble that you are having now.

A Well, I am still having problems with doing the landing gear. And, you know, any of the physical job, even opening the trailer doors and that, I have wrenched my shoulder a number of times.

Q Have you been released from the doctor's care?

A Not 100 percent, no.

Q Why did you go back to work? Well, let's just go back to the period of time that you worked back in 2023. Why did you

work for those eight weeks?

A Well, I wanted to see if I could do the job. I wanted to see if my shoulder was well enough to perform.

Q Was this impacting your household finances?

A Yes. I depleted – being off work that long and then depleted our savings completely, so that is why I tried going back to work, also.

Q Is that the case now that you are working since you started working in June?

A Yes, that is it exactly. I had to pay the bills.

Q And do you want to see how this shoulder does?

A Yes.

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. I find that the claimant is able to prove by a preponderance of the evidence that he sustained a compensable injury to his left shoulder on January 8, 2023.

Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31

(2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996). The claimant’s medical treatment is found to be reasonable and necessary treatment for his compensable left shoulder injury which includes his initial treatment and surgical intervention and aftercare period.

The claimant has also asked the Commission to determine his entitlement to temporary total disability benefits from January 9, 2023, to June 24, 2024, less eight weeks when the claimant resumed work as a truck driver.

In order to be entitled to temporary total disability benefits, the 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). After a review of the evidence in this matter and after giving the claimant’s working interruption consideration, I find that the claimant is entitled to temporary total disability benefits from April 22, 2024, until June 24, 2024.

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 the pre-hearing conference conducted on May 20, 2024, and contained in a Pre-hearing Order filed May 21, 2024, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left shoulder on January 8, 2023, when he fell from the respondents' tractor-trailer.

3. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment including initial conservative medical measures and surgical intervention and its aftercare.

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from April 22, 2024, until June 24, 2024.

5. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney fee in this matter.

ORDER

The respondents shall pay claimant temporary total disability benefits from April 22, 2024, through June 24, 2024. The respondents shall also pay for medical expenses associated with the claimant's compensable left shoulder injury. Those expenses include initial conservative care and surgical intervention and its aftercare.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one-half of said attorney's fee to be paid by the respondent in addition to such benefits and one-half of said attorney's fee to be withheld by the respondent from such benefits pursuant to Ark. Code Ann. § 11-9-715.

All sums herein accrued are payable in a lump sum and without discount and shall earn interest at the legal rate until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**