

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G902953 & H000123

LONNIE ECHOLS,
EMPLOYEE

CLAIMANT

NUCOR YAMATO STEEL COMPANY,
EMPLOYER

RESPONDENT

ARCH INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JANUARY 7, 2022

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ZACHARY F. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed July 14, 2021. The administrative law judge found that the claimant proved he sustained a compensable injury to his left shoulder as a compensable consequence of the claimant's work-related right shoulder injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained an injury to his left shoulder as a natural consequence of his compensable right shoulder injury.

I. HISTORY

Lonnie Echols, now age 54, testified that he became employed with the respondents, Nucor Yamato Steel Company, in 1996. The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times. The claimant testified that he worked as a “Fire Bricker” for the respondents, which position required heavy manual labor. The claimant testified on direct examination:

Q. So tell me what happened on April 24th, 2019.

A. April 24th. I was lifting – we have different types of material that we use for the ladle, and we have bags of ladles, which is called back-fill or done a round two with – have three or four different types of material that we use for the ladles, and they weigh from 50 to 55 pounds each....When I picked the mortar bucket up, I felt a pop in my right – right shoulder, and it start – start having pain in my shoulder.

The claimant testified that he reported the accidental injury to his employer, and that the respondents provided medical treatment. According to the record, the claimant treated with Dr. Mark Harriman on May 7, 2019: “This is a 51 year old male who is right hand dominant and comes in for Initial Evaluation for Workers Comp involving a right shoulder injury. The injury occurred on 4/24/2019. This occurred in the context of picking up a heavy load. The right shoulder pain is described as sharp and associated with hand tingling.” Dr. Harriman diagnosed right shoulder pain and “Rotator Cuff Tear, Complete.”

Dr. Harriman performed surgery on July 17, 2019: “Diagnostic arthroscopy with debridement, right shoulder.” The post-operative

diagnoses were “1. Chronically torn biceps tendon. 2. Chronically torn superior labrum with flap tear.” The claimant testified that he was provided follow-up treatment after surgery. Dr. Harriman returned the claimant to restricted work duty on September 5, 2019. An Express Report from Feather Case Management & Consulting indicated that the claimant returned to full work duty on September 23, 2019. The claimant testified on cross-examination that he returned to work for the respondents on September 23, 2019.

Dr. Harriman opined that the claimant reached Maximum Medical Improvement on October 21, 2019, and he assigned the claimant a 4% whole-body impairment rating. Dr. Harriman released the claimant to full unrestricted duty on October 21, 2019 but noted, “He has some early mild symptoms on the left shoulder which I will not be able to evaluate today as this represents a different issue.”

The claimant testified on direct examination:

Q. And how was your shoulder doing – your right shoulder doing, when you went back to work?

A. Well, my shoulder was still hurting and I did tell Dr. Harriman that my shoulder was still hurting, before he released me.

Q. Okay. But you went back to work full duty anyway, is that right?

A. Yes, I did.

Q. And did you go back to that same job as a bricker?

A. Yes, ma’am....

Q. And were you able to do that job fully with your right shoulder?

A. No, I wasn't.

Q. Okay. Tell me about your return to work.

A. When I returned to work, I returned to the bricker stand, a release to full duty and I was – I guess, I was trying to baby my right arm, because it was still hurting. So I was doing a lot of work using my left – my left arm and shoulder.

Q. Okay. And well us what happened to you on or about October 28th, 2019.

A. I started feeling discomfort in my left shoulder, I don't recall what I was carrying or – but I start feeling – we used so many different materials, and have to do a lot of shoveling in the bottom of the ladle. So I don't recall exactly what I was carrying, when I hurt my left shoulder, but I felt a lot of discomfort in my left shoulder.

Q. Okay. And was it the same type of pain that you had with the right shoulder?

A. No, it was – it was a sharper pain and every time I – like use the shovel, I can really feel the pain in my shoulder, and I went to my supervisor, in that job. Melt Shop Manager and told him that I am having a lot of pain in my left shoulder, and it hurts worse than my right shoulder.

The claimant testified that the respondent-employer authorized physical therapy to treat his left shoulder, but that he began to suffer from “excruciating” pain.

The record contains a Closure Report from Feather Case Management & Consulting dated November 6, 2019:

On 4/24/19, Mr. Echols was lifting a 55-pound bucket of mortar and felt a pop in his right shoulder....

Mr. Echols is a 52-year male with a history of a right shoulder rupture of the biceps tendon. He was treated by Dr. Harriman with conservative measures. Mr. Echols' pain continued, and arthroscopic debridement of the right shoulder was performed. Dr. Harriman recommended physical therapy and light duty on 8/19/19 and full duty on 9/23/19. On 10/21/19, Dr. Harriman discharged Mr. Echols from medical care at MMI to full duty with impairment rating....

On 10/21/19, the NCM attended the six-week follow up appointment with Mr. Echols and Dr. Harriman. Mr. Echols reported he was able to do his job. He reported he has had some discomforts/pain in his right shoulder since returning to full duty and he stated he expected as such. He reported a new onset of pain in his left shoulder since returning to full duty. He denied a work injury [to] his left shoulder. Dr. Harriman interviewed Mr. Echols and examined the right shoulder strength and range of motion. Dr. Harriman asked if the adjuster would approve a work-up for the left shoulder. NCM contacted adjuster who stated the left shoulder is not part of the right shoulder claim. Dr. Harriman explained this to Mr. Echols but advised he can have the left shoulder examined under his medical insurance. Mr. Echols stated he probably has arthritis and getting back to full duty may be causing some pain. Dr. Harriman advised Mr. Echols that he was discharged from care for his right shoulder injury and to continue full duty at MMI....

The claimant testified that he continued to work for the respondents through approximately November 22, 2019. The claimant was evaluated at Premier Physical Therapy on December 6, 2019 at which time it was noted, "Pt presents to therapy with L shoulder pain which he has been dealing with since he went back to work after his R shoulder surgery, states his R UE was still hurting so he thinks he was overusing his L UE. Pt reports no pain on arrival, but notes pain can increase to 7-8/10 with lifting or overhead activity."

An MRI of the claimant's left shoulder was taken on December 24, 2019:

HISTORY: Left shoulder pain with limited range of motion for several months. No known injury. No history of shoulder surgery provided....

IMPRESSION: 1. Moderately severe rotator cuff tendinosis. Bursal surface fraying/shallow partial-thickness bursal surface tear of the supraspinatus addition to a tiny partial-thickness/rim rent tear of the insertional fibers. Small partial-thickness/intrasubstance tear of the subscapularis. No full-thickness tendon tear or tendon retraction.

2. Small amount of fluid in the subacromial/subdeltoid bursa related to bursitis versus sequela of recent therapeutic injection.

3. Moderate glenohumeral joint effusion. Mild degenerative changes of the glenohumeral joint.

4. Findings consistent with a tear of the superior to posterior glenoid labrum on this non arthrographic study as described.

5. Marked tendinosis and partial-thickness tear of the intra-articular segment long head of the biceps extending to biceps anchor. Tenosynovitis more distally.

6. Marked hypertrophic degenerative changes of the acromioclavicular joint.

Dr. Matthew C. Baker noted on January 15, 2020:

RHD works at Nucor Yamato Steel. Had a right shoulder injury at work 22 April 2019. He had surgery on that shoulder and had surgery in Memphis. He was then released back to work 23 Sept 2019. He reports having a permanent disability rating on his right shoulder. Injured left shoulder on 28 Oct 2019. He does a lot of lifting at the job lifting 50 pounds. He has been doing PT 8 session and did not help.

Dr. Baker assessed “Biceps tendonitis. Glenoid labral tear.” Dr. Baker recommended “diagnostic arthroscopy with biceps tenodesis, rotator cuff debridement versus repair, capsular release, and subacromial decompression.” The claimant testified that Dr. Baker performed left shoulder surgery on February 21, 2020.

A pre-hearing order was filed on September 23, 2020. The claimant contended, “On 4/24/2019, claimant was lifting items at work and injured his

right shoulder. The respondents accepted this claim and provided benefits. The claimant underwent surgery to his right shoulder on 7/17/19 and was released to Full Duty work with a 4% impairment rating on 10.21.19. On 10.28.19 claimant was lifting heavy items at work and injured his left shoulder. The respondents denied this claim and claimant has treated on his own. An MRI revealed a tear, and on 2/21/20, the claimant underwent surgical repair. Claimant contends that he sustained a compensable left shoulder injury in the scope and course of employment and that he is entitled to TTD, medical benefits, and that his attorney is entitled to an attorney fee. All other issues are reserved.”

The respondents contended, “The claimant did not suffer a compensable work related injury. He did not report the accident to the employer. He initially said that the condition was a gradual injury. His job does not involve rapid and repetitive activity.”

The parties agreed to litigate the issues, “Compensability, temporary total disability from October 29, 2019 to a date yet to be determined, medical benefits, and attorney’s fees.”

A hearing was held on November 6, 2020. At that time, an administrative law judge announced that the parties agreed to litigate the issue of whether the claimant sustained a compensable left shoulder injury as a compensable consequence of the compensable right shoulder injury.

The parties agreed to litigate the issue of whether the claimant was entitled to temporary total disability benefits beginning November 23, 2019 until a date yet to be determined. The claimant testified at hearing that he continued to treat with Dr. Baker, and that Dr. Baker had not yet released him to return to work.

An administrative law judge filed an opinion on February 22, 2021. The administrative law judge found that the claimant did not prove he sustained a compensable injury to his left shoulder. The administrative law judge also found, “5. Because the parties have not stipulated that Claimant sustained a compensable right shoulder injury and/or made the compensability of such an injury an issue in this proceeding, the issue of whether Claimant sustained an injury to his left shoulder that is a compensable consequence of his purported right shoulder injury cannot be addressed herein. Instead, it will be considered a reserved issue.”

The claimant appealed to the Full Commission. The Full Commission remanded the case to the administrative law judge on June 17, 2021 and stated, “We direct the administrative law judge to adjudicate, based on the record established before the Commission on November 6, 2020, whether the claimant sustained an injury to his left shoulder as a ‘compensable consequence’ of the compensable right shoulder injury.”

The administrative law judge filed an amended opinion on July 14, 2021. The administrative law judge found, among other things, that the claimant did not prove he sustained a compensable injury to his left shoulder as the result of a “specific incident” or “gradual onset.” The claimant does not appeal those findings. The administrative law judge found, “5. Claimant has proven by a preponderance of the evidence that he sustained an injury to his left shoulder that is a compensable consequence of his right shoulder injury that Respondents accepted as compensable.” The administrative law judge awarded reasonably necessary medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

II. ADJUDICATION

If an injury is compensable, then every natural consequence of that injury is also compensable. *Hublely v. Best Western Governor’s Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The basic test is whether there is a causal connection between the two episodes. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The Full Commission is unaware of any appellate precedent or statutory authority which requires an employee to prove a natural consequence “utilizing all of the statutory elements of compensability,” as the administrative law judge concluded. Nevertheless, it is the Full Commission’s duty to enter findings

in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The Full Commission finds in the present matter that the claimant proved he sustained an injury to his left shoulder as a natural consequence of his compensable right shoulder injury. The claimant has been employed with the respondents since 1996. The claimant's work for the respondents requires manual labor. The claimant credibly testified that he sustained a workplace accidental injury to his right shoulder on April 24, 2019. The claimant felt a "pop" in his right shoulder while lifting a mortar bucket. The respondents accepted compensability of the April 24, 2019 accidental injury and authorized reasonably necessary medical treatment. Dr. Harriman performed an arthroscopy of the claimant's right shoulder on July 17, 2019. The claimant testified that he returned to work for the respondents on September 23, 2019. Dr. Harriman assigned a permanent impairment rating for the claimant's right shoulder on October 21, 2019 and released the claimant to full unrestricted work duty. We note Dr. Harriman's report on October 21, 2019 that the claimant was already experiencing "some

early mild symptoms on the left shoulder” since the claimant’s return to work for the respondents.

The Full Commission reiterates that the claimant was a credible witness. The claimant testified that he “babied” his right arm after returning to work “because it was still hurting.” The claimant testified, “I was doing a lot of work using my left – my left arm and shoulder.” The claimant began suffering from sharp pain in his left shoulder at work on or about October 28, 2019. As we have discussed, the respondent-employer authorized physical therapy for the claimant’s left shoulder but his pain symptoms increased. The case manager’s Closure Report dated November 6, 2019 corroborated the claimant’s testimony. The case manager reported, “He reported a new onset of pain in his left shoulder since returning to full duty.” The claimant testified that he was physically unable to continue performing his manual labor duties for the respondents after approximately November 22, 2019. A physical therapist’s report on December 6, 2019 corroborated the claimant’s testimony. The physical therapist noted that the claimant has been “overusing” his left upper extremity since returning to work for the respondents. An MRI of the claimant’s left shoulder on December 24, 2019 showed abnormal findings which included “severe rotator cuff tendinosis.” Dr. Baker corroborated the claimant’s testimony that the work-related pain symptoms in his left shoulder markedly increased on or about October 28,

2019. The claimant testified that Dr. Baker performed left shoulder surgery on February 21, 2020. The claimant testified that Dr. Baker had not yet released him to return to work.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained an injury to his left shoulder as a natural consequence of his compensable right shoulder injury. The claimant proved that the medical treatment of record was reasonably necessary in connection with Ark. Code Ann. §11-9-508(a)(Supp. 2021). Based on the record currently before us, we find that the claimant proved he remained within a healing period and was totally incapacitated from earning wages beginning November 23, 2019 until a date yet to be determined. The claimant therefore proved that he was entitled to temporary total disability benefits beginning November 23, 2019 until a date yet to be determined. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Supp. 2021). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Supp. 2021).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner