

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005667

RICHARD FREEMAN,
EMPLOYEE

CLAIMANT

RCN ENTERPRISES d/b/a MCDONALD'S,
EMPLOYER

RESPONDENT

AR MCDONALD'S SELF-INSURANCE TRUST/
RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED SEPTEMBER 3, 2021

Hearing before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held in the above-styled claim on June 16, 2021, in Little Rock, Arkansas. A Prehearing Telephone Conference was held in this matter on April 20, 2021. A Prehearing Order was entered on that same day. This Prehearing Order set forth the stipulations offered by the parties, their contentions, and the issues to be litigated.

At the Prehearing Telephone Conference, or at the start of the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within

claim.

2. The employee-employer-insurance carrier relationship existed on October 14, 2019.
3. The Claimant's average weekly wage at the time of his October 14, 2019 work-related incident was \$895.30. His weekly compensation rates are \$597.00 and \$448.00.
4. The Respondents have controverted this claim for additional benefits.
5. All issues not litigated herein are reserved under the Arkansas Workers'

Compensation Act.

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the Claimant's right shoulder condition (tear in the bicep) is compensable due to his work injury of October 14, 2019
2. Whether the Claimant is entitled to additional reasonable and necessary medical treatment, including surgery.
3. Whether the Claimant is entitled to temporary total disability compensation.
4. Whether the Claimant received unauthorized medical treatment. However, after the hearing on June 17, 2021, the Respondents' attorney sent an e-mail to the Commission withdrawing his argument of "unauthorized medical treatment."
5. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

The Claimant contends that he injured his right shoulder while in the scope and course of

employment. Claimant was sent to Concentra and was diagnosed as having a right shoulder strain. The Respondents denied the claim in its entirety. The Claimant was seen by Dr. Tucker and Dr. Reynolds, who both opined that the Claimant needed to undergo surgery and that 51 % of the claimants[sic] symptoms are related to the Claimant's work injury.

Claimant contends that he sustained a compensable injury in the scope and course of employment that he is entitled to medical benefits and temporary total disability (TTD) and that his attorney is entitled to an attorney's fee.

The Respondents contend that Claimant suffered a right shoulder strain on October 14, 2019. The Claimant was released as having reached maximum medical improvement[sic] associated with that strain on December 12, 2019. No permanent impairment was assigned associated with the same. The Claimant sought unauthorized medical treatment subsequent to his release and it is Respondents' position that Respondents are not liable for that treatment. It is also Respondents' contention that the Claimant's current need for medical treatment is not related to his acute injury and that Respondents have not accepted compensability of a split bicep tendon tear. In light of this, it is Respondents' contention that they should not be liable for benefits beyond the Claimant's MMI.

Following the hearing, per an e-mail of June 17, 2021, the Respondents submitted the following arguments:

1. That there is no split tear in the biceps tendon; and

2. To the extent you find there is a split tear in the biceps tendon, it was not present when Claimant underwent MRI or when he was placed at MMI and it is not causally related to his original 2019 work injury.

Summary of Evidence

The record consists of the hearing transcript of June 16, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit No. 1 includes the Commission's Prehearing Order of April 20, 2021, and the parties' respective response to the Prehearing Questionnaire. The Claimant introduced into evidence a Medical Packet, consisting of 46 numbered pages. These have been marked as Claimant's Exhibit No. 1. Respondents introduced into evidence Respondents' Hearing Exhibit Index Medicals. It consists of 19 numbered pages and was marked Respondents' Exhibit 1. Respondents' Hearing Exhibit Index Non-Medical consists of four numbered pages, which has been marked as Respondents' Exhibit No. 2. The Respondents submitted an e-mail on June 17, 2021, clarifying their position and arguments on certain issues. Said email exchange has been made a part of the record. It has been blue-backed and marked as Respondents' Exhibit No. 3.

During the hearing, the Claimant, Mr. Richard Freeman, was the sole witness to give testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to

hear the testimony of the witness and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant failed to prove by a preponderance of the credible evidence that he sustained split tear in the biceps tendon while working for the respondent-employer on October 14, 2019.
4. All other issues have been rendered moot and not discussed herein this Opinion.

Testimony

The Claimant was 53 years of age at the time of the hearing. He is a high school graduate. According to the Claimant, he has on-the-job training, life learning, ongoing self-education learning in different fields of trade. Since leaving high school, the Claimant has worked in the food service industry his entire career, in all aspects of it starting with low level work, all the way up to management and supervisory positions. Currently, the Claimant works in the repair side of the industry.

He began working for RCN Enterprises approximately 14 years ago. The Claimant worked as their in-house service technician. According to the Claimant, he worked on everything from the “roof to the floor and everything in between, if it needed to be fixed, he fixed it.” He confirmed that RCN owns McDonald’s restaurants-they are a franchisee. The Claimant serviced the

McDonald's in the central Arkansas area, which included Jacksonville, Hot Springs, and Little Rock.

Regarding the Claimant's shoulder injury of October 14, 2019, he testified that the company had collected some old equipment in their warehouse in Maumelle. As a result, the owner, Ray Nosler, wanted to get rid of some of it. So, they made a plan and scheduled for a construction dumpster to be delivered. Each of them had a trailer hooked to their truck for things that were going to go directly to the scrapyard. The Claimant essentially testified that he met up with Ray, Jamie, and Dewayne at the location and they started getting rid of old equipment. He testified that the largest items included old ice machines, an oven, rolling freezers, and other numerous pieces of equipment. According to the Claimant, he felt a pop in his shoulder as he and Dewayne lifted an oven up to throw it into the side of the trailer.

The Claimant basically testified that he assumed he had just pulled a muscle in his shoulder. Per the Claimant, he said to Ray, "Man, I just pulled my shoulder." According to the Claimant, he [Ray] kind of looked and gave him a look, and they just kept going and worked throughout the day. He essentially testified that they realized it was more work than they had predicted, so they made a second day of it and finished up.

The Claimant essentially testified that the initial pain was intense and then it went away, and it was just mild, but then the next day his shoulder was "pretty sore." According to the Claimant, over the next few days, his pain got progressively worse. The Claimant went to the

office and asked the secretary, Evelyn, for medical treatment for his shoulder. At that point, the process started from there and they filled out paperwork for his injury. They sent the Claimant to Concentra for medical treatment. There, the Claimant treated with Dr. Scott Carle. X-rays were taken of the Claimant's shoulder, and they referred him to physical therapy. However, the Claimant attended only two sessions of therapy. During these visits, the Claimant sat in a chair and performed peddling motions with his hands. This caused the Claimant increased pain. As a result, Dr. Carle stopped the physical therapy at once.

He confirmed that Dr. Carle ordered an MRI of the Claimant's shoulder. The Claimant testified that initially when the results came back, the report basically said there was nothing wrong with his shoulder. Dr. Carle gave him an injection into his shoulder, and it worked. By the next day, the Claimant's pain was gone. Per the Claimant, the shot lasted only two to three weeks, and all his pain was back and was worse than what it was initially. According to the Claimant, Dr. Carle performed more steroid injections on his shoulder. The next day, the Claimant testified that he felt wonderful. The Claimant further testified that he used his left arm for all heavy lifting and things of that nature for about two and a half months. Then one day, he was lifting something, and he felt like a needle stuck in his shoulder. However, the Claimant kept going, but from that day forward, his pain just progressively worsened. He testified that his pain came back with a vengeance. According to the Claimant, his pain was off the charts.

The Claimant asked to return to Concentra, and Respondents allowed him to do so. At that point, on March 16, 2020, Dr. Carle/the nurse practitioner referred him to an orthopedic specialist.

The Claimant testified that his paperwork stated that they would be contacting him in three to five days about his orthopedic appointment. Following this COVID started, and they never let him know anything concerning his appointment. About a month after this, the Claimant went to the secretary (Evelyn) and inquired about his orthopedic appointment. At that point, she told him his claim was denied.

He sought treatment on his own from Drs. Tucker and Vargas. First, the Claimant saw Dr. Tucker, and then he recommended that the Claimant see Dr. Vargas for an injection. The Claimant confirmed that he gave Dr. Tucker a copy of the MRI that was performed of his right shoulder in November of 2019. He further confirmed that Dr. Vargas performed an injection in his shoulder. The Claimant admitted that the injection helped. Following the injection, the Claimant returned to Dr. Tucker and recommended surgery.

After receiving this recommendation, the Claimant talked to Ray Nosler about his shoulder. He told the Claimant to get a second opinion. It appears that the Claimant saw Dr. Tucker, but they still denied the claim. Next, the Claimant chose to go to Dr. Kirk Reynolds. He explained everything to the Claimant in laymen's terms. The Claimant confirmed that Dr. Reynolds opined that he needed right shoulder arthroscopic surgery with distal clavicle excision. He agreed that this is the same surgery that Dr. Tucker recommended. The Claimant agreed that the workers' compensation carrier denied the surgery. He confirmed that he is asking the Commission to award the surgery that has been recommended for his shoulder.

According to the Claimant, after he received the recommendations of both Drs. Tucker and Reynolds, he continued to follow-up with Dr. Tucker until the last couple of months. The Claimant has continued to work and not missed any days from work. However, the Claimant left RCN because he felt Jamie Nosler was creating an environment that was not comfortable for him to be in. The Claimant testified that there was a lack of regard for his injury.

The Claimant started a new job on March 1, 2021. Currently, he works for a company called TFG, Taylor Fortune Group. He works as a technician. The Claimant essentially testified that he works on various pieces of equipment such as ice cream machines, blended ice machines, pressure cookers, margarita machines, grills, and machinery of that nature. His current work is a lot lighter and easier. The Claimant does not have to work outside on roofs or climb ladders. Per the Claimant, his work is less demanding physically.

With respect to his shoulder, the Claimant does not do any heavy lifting. He has full mobility of his shoulder. However, the Claimant testified that he continues to have pain in his shoulder. He uses ice packs and a heating pad. He also takes Ibuprofen to manage his pain. According to the Claimant, his left arm is his dominant arm.

The Claimant confirmed that he had a left arm injury that was a workers' compensation claim. He testified this injury occurred when they were throwing away some old equipment off the roof at the location on Rodney Parham. Specifically, the Claimant further testified that they were throwing a 400-pound piece of equipment over the fence. At that point, he immediately felt

a pop in his arm. He agreed that he sustained a torn bicep tendon to his left forearm. The Claimant underwent treatment and had surgery for that injury. His prior left arm surgery was performed by Dr. Tucker back in 2018. Ultimately, the Claimant received a full duty release from Dr. Tucker for his prior injury. The Claimant confirmed that the injury in question is for his 2019 injury of his right arm/shoulder.

He confirmed that twenty-seven (27) years ago he injured his left arm in a car wreck. The Claimant denied that he had any injuries or accidents after his 2019 accident at work.

On cross examination, the Claimant confirmed that he thought the world of Ray Nosler and considered him to be a good man. The Claimant denied “slanging mud” on Mr. Nosler. He confirmed that he has been released to full duty, maximum medical improvement (MMI), with a zero percent rating by Dr. Carle in December 2019. However, the Claimant denied that the nurse practitioner opined the same in March (of 2020). He agreed that Dr. Reynolds released him to full duty on July 31, 2020. The Claimant denied that Dr. Carle reviewed the MRI by the time he said the Claimant was at MMI. He testified that to his knowledge, Dr. Carle never reviewed the MRI. Instead, they had an outside party review it. According to the Claimant, Dr. Carle only reviewed the results that were stated by the radiologist.

He verified in addition to working as a technician, has worked on the side as a process server. The Claimant has done some independent HVAC repair for a private citizen along with a friend from RCN.

Regarding the Claimant's injury of October 14, 2019, the Claimant testified during his deposition that he testified that he was injured as he, Ray, and Dewayne lifted an oven together over into a trailer. However, the Claimant denied that Ray was assisting in the lifting the oven when his injury occurred. The Claimant went on to explain that there is a big difference when you have two people lifting something as opposed to three.

Under further questioning, the Claimant testified:

Q Okay. When we look at your medical when you get to Tucker, Vargas, Reynolds we see you saying on page 31 and 32 of the Claimant's exhibit that you were throwing a box. The oven wasn't in a box, was it?

A No. I don't recall saying that.

Q Okay. Of course you don't.

A Can you show me?

Q You tell us today about some sensation of needle stabbing you two months plus after your last injection; right? Early 2020 you indicated you had a needle sensation in your arm?

A I don't remember the exact time frame after the injection, but when I was lifting something, it did feel like – I mean, that's the way I could describe the pain was like somebody stabbing a needle or an ice pick into shoulder.

Q Okay. And you had been okay up until that point?

A Yes. Because I had injections into my shoulder.

The Claimant confirmed that he testified on direct examination that on December 12, 2019, Dr. Carle brought in four syringes on a tray and gave him injections. However, there is no documentation of any injections taking place in December. The Claimant testified that if they did not document it then it is something for further review and is a question for Dr. Carle.

On redirect examination, the Claimant denied that when he saw Dr. Reynolds on July 31, 2020, he reported an injury. It appears that Dr. Reynolds signed off on the report on August 1, 2020. Again, the Claimant denied having any other injuries after October 2019. The Claimant confirmed that when he felt another pain in his shoulder; and this led him to go back to Concentra. At that point, the Claimant was back at work. According to the Claimant, the pain in his shoulder this time was not as bad because the injections had not worn off.

He confirmed that it he felt the same pain that he had prior to the injections. However, the Claimant agreed that it was not quite as bad as the pain he had prior to the injections. At that point, the Claimant went back to Concentra and was referred to an orthopedic surgeon. The Claimant denied any problems with his right shoulder prior to his work injury of 2019. He denied having any accidents or injuries at any of his other jobs.

Medical Records

On October 18, 2019, the Claimant sought treatment from Concentra, in Little Rock, Southwest, due to right shoulder pain. Dr. Scott Carle assessed the Claimant with, “Strain of AC joint, right, sequela (S46.911S),” for which he prescribed medications. He also suggested the Claimant use a cold pack, undergo X-rays of his shoulder and physical therapy. At that time, the Dr. Carle gave the Claimant work restrictions of no lifting over 25 pounds and no reaching above shoulders.

The Claimant returned for a follow-up visit on October 22, 2019 due to shoulder pain. Per this clinic note, Dr. Carle noted that the Claimant was eight days out from right AC joint strain.

The Claimant reported that he was better after the shot, but his pain was back after the shot wore off. On physical examination, Dr. Carle noted that the Claimant had positional AC pain, but no radiation, and no central neck pain. He also noted that the Claimant had AC joint hypertrophy and tenderness in the AC joint. Dr. Carle gave the Claimant an acromioclavicular joint injection in his right shoulder. At that time, he noted the Claimant's AC bursa on the right had an indication of inflammation. Dr. Carle placed the Claimant on restrictions of no lifting more than 15 pounds and no reaching above shoulders.

On October 29, 2019, the Claimant returned for a follow-up visit with Dr. Carle. At that time, the Claimant was over two weeks out from his injury. Although the Claimant was doing better after the injection, he remained in some pain. At that time, Dr. Carle placed the Claimant on physical restrictions of no lifting more than 35 pounds and no reaching above shoulders.

Dr. Carle reevaluated the Claimant on November 12, 2019 for right shoulder pain. The Claimant reported continued pain over the AC joint and described it as burning, and worse with use, motion, and overhead use. Dr. Carle started the Claimant on Medrol and ordered an MRI of the right shoulder.

On November 14, 2019, the Claimant underwent an MRI of the right shoulder with the following impression:

1. Moderate to advanced acromioclavicular osteoarthritis.
2. Fatty infiltration, atrophy and edema signal in the teres minor muscle suggest degeneration.
3. Edema signal in the subacromial/subdeltoid bursa may be reactive to acromioclavicular arthritis or may represent subacromial impingement.

The Claimant returned to Concentra on November 21, 2019. At that time, the Claimant presented for a recheck of his right shoulder MRI. Dr. Carle assessed the Claimant with “1. Strain of AC joint, right sequela. 2. Subacromial bursitis of right shoulder joint.” Specifically, Dr. Carle wrote, “No medications were prescribed or dispensed for this encounter.” Dr. Carle released the Claimant from his care at maximum medical improvement. However, further review of these notes show that the Claimant had inflammation of the subacromial bursa on the right. As a result, Dr. Carle performed a subacromial bursa injection on the Claimant’s right shoulder. Per the History of Present Illness, Dr. Carle wrote: “Problem with right shoulder continues but remaining active. MRI showing AC arthropathy and Subacromial Bursitis. No labral or rotator cuff injury. Pain mostly over the AC joint with some posterior radiation.”

On December 12, 2019, the Claimant returned to Concentra for a follow-up visit due to his right shoulder injury. On physical examination of the Claimant’s right shoulder, Dr. Carle noted that it was normal in appearance, with no deformity. The Claimant had no tenderness and full range of motion and no signs of impingement. In addition to this, Dr. Carle again released the Claimant to be at maximum medical improvement for his injury. It appears that no medications were dispensed or prescribed for the encounter. Dr. Carle opined that the Claimant could return to work with no restrictions effective December 12, 2020. He also stated that the Claimant reached the end of his healing period on that date and had suffered no permanent impairment due to his injury.

Further review of the medical records show that the Claimant sought treatment from

Concentra on March 16, 2020. His chief complaint was right shoulder pain. Dr. Merritt Finney noted that the Claimant had an MRI and injections last year. The Claimant reported that the injections provided short term relief. He also stated that he had recent burning that began primarily in the anterior of his shoulder. According to this note, the Claimant stated that there was no reinjury, just regular work activities. The Claimant described his pain as aching in nature and its severity was moderate. His pain did not radiate. Dr. Finney noted that on physical exam the Claimant's shoulder appeared to be normal. The Claimant had full range of motion without any pain.

On May 13, 2020, the Claimant underwent evaluation by Dr. James Tucker due to complaints of right shoulder pain. Dr. Vargas reviewed the Claimant's MRI of November 2019. He was concerned that the Claimant had an injury to the rotator cuff and the bicep tendon which he stated could certainly be a work-related injury.

Dr. Tucker saw the Claimant on May 19, 2020 for a telemedicine follow-up after his biceps tendon sheath injection. Dr. Tucker reported that the Claimant had complete relief of his pain with the injection. At that time, Dr. Tucker reported in relevant part, "Again I reviewed the MRI and he does have changes in the tendon and so at this point I think this was an acute injury with instability and possible split tear of the biceps tendon. This best treated with biceps tenodesis and resection of the proximal damaged portion of the tendon." Dr. Tucker planned a diagnostic arthroscopy of the shoulder with arthroscopic versus open biceps tenodesis.

On June 17, 2020, Dr. Justin Long rendered the following opinion concerning the Claimant's MRI of November 2019, in relevant part:

In my professional opinion, the abnormal findings at the RIGHT acromioclavicular articulation from 11/14/2019 MRI are probably chronic and related to acromioclavicular joint osteoarthritis. The trace of subacromial/subdeltoid bursal fluid is probably reactive in etiology. The mild bursal sided fraying and thinning of the distal supraspinatus tendon and infraspinatus tendon is undoubtedly chronic as well. While an etiology for the teres minor muscle belly atrophy and edema is not identified on this MRI, this also probably chronic given the presence of mild volume loss in the muscle belly. The mild thinning and increased signal in the biceps long head tendon is consistent with mild tendinopathy and is typically unrelated to an acute traumatic event.

Dr. Kirk Reynolds evaluated the Claimant on July 31, 2020 for continued complaints of right shoulder pain. At that time, Dr. Reynolds made the following statements within a reasonable degree of medical certainty. Specifically, Dr. Reynolds wrote, in relevant part:

Assessment

Persistent right shoulder pain after a work-related injury involving lifting with cross-body adduction. Clinical examination and available imaging are consistent with distal clavicle osteolysis likely secondary to a contusion of the acromioclavicular joint with forceful cross-body adduction, as well as, a partial tear, intratendinous split tear of the long head biceps tendon.

Recommendations

It is my professional medical opinion that greater than 51% of Mr. Freeman's current symptoms are directly and causally related to his work-related injury as described. He has failed to respond to appropriate nonsurgical management. I agree with Dr. Tucker that his best option would be a right shoulder arthroscopy with planned biceps tenodesis and distal clavicle excision. Again, it is my professional medical opinion that this is directly related to his injury at work. Although he certainly has some underlying arthrosis of the acromioclavicular joint this is an acute exacerbation of a chronic underlying condition and the recommend surgical treatment is secondary to the work injury and not the chronic underlying condition.

On November 19, 2020, the Claimant presented to Dr. Victor Vargas for an ultrasound

guided right shoulder steroid injection, which was performed. He assessed the Claimant with “Bicipital tendinitis, right shoulder.”

Dr. Tucker evaluated the Claimant’s right shoulder on January 5, 2021. At that time, the Claimant presented with increased pain and popping in his right shoulder with any type of forceful activity. Dr. Tucker opined: “He has a biceps tendon tear with instability along with AC arthritis which is a result of his work injury. This is not going to clear until he has a biceps tenodesis and distal clavicle resection.”

On February 2, 2021, the Claimant returned to Dr. Tucker for right shoulder pain. The Claimant reported no significant improvement since the last visit. At that time, Dr. Tucker told the Claimant that until this is repaired, he will not have any significant improvement.

Adjudication

Compensability

In the case at bar, the crucial issue for determination is whether the Claimant’s current right shoulder condition (a split tear in the biceps tendon) resulted from his work incident of October 14, 2019.

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2012). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012).

The Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i) (Repl. 2012). 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).

After reviewing the evidence impartially, without giving the benefit of the doubt to either party, I find that the Claimant failed to establish by a preponderance of the evidence a causal connection between his October 14, 2019 injury and his current right shoulder condition.

Here, the Claimant worked as an in-house service technician for RCN, servicing McDonald's locations in the central Arkansas area. The Claimant sustained an admittedly compensable injury on October 14, 2019 in the form of a right shoulder strain. His injury occurred during a lifting incident while discarding some old equipment. The Claimant testified during the hearing that he and a coworker were lifting an oven to throw it over the side of a trailer when his injury occurred. However, the Claimant's deposition testimony shows that there were two coworkers helping him to lift the oven into the trailer.

Nevertheless, the evidence shows that following this lifting incident, the Respondents paid for extensive conservative treatment (primarily in the form of steroid injections and medications) due to the Claimant's right shoulder injury. The Claimant treated at Concentra, primarily under the care of Dr. Carle. On October 19, 2019, Dr. Carle diagnosed the Claimant with "Strain of AC joint, right sequela." Although the Claimant was placed on certain lifting restrictions and no

reaching above shoulders, he continued working full-time. However, the Claimant continued to complain of right shoulder pain. On November 14, 2019, the Claimant underwent an MRI of the right shoulder, which revealed significant degenerative changes including, but not limited to moderate to severe acromioclavicular joint osteoarthritis and possible subacromial impingement (see full Impression of the MRI above).

The Claimant returned to Dr. Carle on November 21, 2019 for follow-up of his right shoulder strain. At that time, the Claimant had some inflammation of the subacromial bursa on the right. The Claimant complained of pain over the AC joint with some posterior radiation. As a result, Dr. Carle performed a subacromial bursa injection.

On December 12, 2019, the Claimant returned to Dr. Carle for recheck of shoulder strain/pain. At that time, Dr. Carle opined that on his physical examination of the Claimant's right shoulder, it appeared normal with no deformity. Dr. Carle also opined that the Claimant had full range of motion and normal strength in his shoulder. Moreover, Dr. Carle specifically opined that there were no signs of impingement. As result, Dr. Carle pronounced the Claimant to be at the end of his healing period for his shoulder injury of October 14, 2019. Dr. Carle returned the Claimant to full duty without any physical restrictions and no permanent impairment.

Following his release from care by Dr. Carle for his shoulder injury, the Claimant continued working his regular employment duties at RCN. His testimony show that he did not miss any days from work due to his shoulder after his release from care by Dr. Carle in December

2019. However, the Claimant testified that then one day while lifting something, it felt like someone was “stabbing a needle or ice pick into his shoulder.” On cross examination the Claimant admitted that up to that point he had been “okay.” The Claimant vehemently denied being able to recall how much time lapsed after this incident that he sought medical treatment for his shoulder.

Nevertheless, the medical record shows that on March 16, 2020, the Claimant returned to Concentra complaining of “an aching and burning pain” in his right shoulder. The medical report demonstrates that on March 16, 2020, the Claimant reported to Dr. Finney that the injection provided short term relief and recently the burning began primarily in the anterior of his shoulder.

Conversely, the Claimant’s testimony demonstrates that the steroid injection had been working and not worn off at that point; however, there is no documented complaints of any problems with the Claimant’s shoulder from November 21, 2019 until March 16, 2020. Therefore, the Respondents controverted the claim.

Ultimately, the Claimant sought medical treatment for his shoulder on his own from Drs. Tucker, Vargas and Reynolds for his shoulder condition. On May 19, 2020 Dr. Tucker opined that the Claimant sustained an “acute injury with instability and possible split tear of the biceps tendon.” He recommended that the Claimant undergo surgery. On June 17, 2020 Dr. Reynolds agreed with Dr. Tucker that the best option would be a right shoulder arthroscopy with planned biceps tenodesis and distal clavicle excision. At that time, Dr. Reynolds opined with a reasonable

degree of medical certainty that it was his professional medical opinion that greater than 51% of the Claimant's current symptoms were causally related to his work-related injury as described.

Here, the only evidence supporting the Claimant's claim that his right shoulder strain never resolved; and that this current shoulder condition is related to his admittedly compensable injury of October 14, 2019 is his own testimony. The uncorroborated testimony of an interested party is never to be considered uncontradicted. *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W. 2d 811 (1998). Therefore, after having observed the Claimant's demeanor at the hearing, I find that the Claimant was not a credible witness. I am persuaded that the Claimant's testimony was incredulous because during the hearing he testified that there was only one other coworker helping him lift the oven when his injury occurred. During his deposition testimony, the Claimant testified that there were two other coworkers helping him. He also testified that Dr. Carle gave him injections in December of 2019. However, the medical records reflect that no medications were prescribed or dispensed during this encounter. Instead, the medical records show that the Claimant received his last steroid injection on November 21, 2021.

I find that the preponderance of the credible evidence demonstrates that the Claimant's right shoulder strain injury completely resolved on December 12, 2019. At that point, the Claimant was pronounced to be at the end of his healing period with no permanent impairment. On physical examination the Claimant had no swelling or tenderness. In fact, his shoulder appeared to be normal. More notably, the Claimant had full range of motion normal strength in shoulder at that time.

In addition to this, following his release from care in December 2019, the Claimant did not seek treatment for his shoulder until March of 2020, some three months later. Up until that point, his shoulder had been doing “okay.” However, when the Claimant experienced the subsequent lifting incident, the nature and severity of his symptoms significantly changed. Per the Claimant’s own testimony, it felt like someone had stuck a needle or ice pick in his shoulder. He also complained of new symptoms of the shoulder that included an aching and burning pain, along with a needle-like sensation in his right arm.

Although both Drs. Tucker and Reynolds have related the Claimant’s current condition to his work activities of October 14, 2019, I have afforded minimal weight to their expert opinions as to the cause of the Claimant’s current right shoulder complaints because they are completely based on the self-reported incomplete history of a sequence of events provided to them by the Claimant. Specifically, two physicians’ opinions do not take into consideration the Claimant’s subsequent lifting incident. In fact, there is no mention of this subsequent event in either of their reports. Nor does it appear that the Claimant told them about the change in the nature and severity of the Claimant’s shoulder symptoms.

On June 17, 2020, Dr. Long opined, among other things, that the Claimant’s current right shoulder symptoms are chronic and related to acromioclavicular joint osteoarthritis. I am persuaded that Dr. Long’s opinion comports with the medical evidence, particularly the MRI findings of November 2019, which revealed the presence of moderate to severe acromioclavicular

osteoarthritis and other progressive degenerative findings in the Claimant's right shoulder. As a result, I have given significant weight to his expert opinion.

To summarize, in light of the evidence that the Claimant sustained a minor strain in October 2019, which he was pronounced to be at maximum medical improvement, with no permanent impairment in December 2020; the lack of any objective findings on physical examination in December 2020; the fact that the Claimant returned work performing manual labor for three months without any medically documented complaints of any shoulder problem; the Claimant's own testimony concerning a subsequent lifting incident, which resulted in the immediate onset of significantly different symptoms, the Claimant's inconsistent testimony as noted above, and all of the reasons discussed herein, I am persuaded that it would require conjecture and speculation to causally link the Claimant's current right shoulder condition to his work-incident of October 14, 2019. Conjecture and speculation cannot supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979).

Accordingly, I find that the Claimant failed to prove by a preponderance of the evidence that his current right shoulder condition resulted from his admittedly compensable right shoulder injury of October 14, 2019. As such, the Claimant has failed to prove by a preponderance of the evidence all the necessary elements for establishing a compensable right shoulder injury, in the form of split tear in the biceps tendon. All other issues have been rendered moot and not discussed herein this Opinion.

Of note, I realize that in workers' compensation law, an employer takes employees as it finds them, and employment circumstances that aggravate preexisting conditions are compensable. However, that is not the case here.

ORDER

The Claimant failed to prove by a preponderance of the that he suffered a compensable right shoulder injury (a split tear in the biceps tendon) on October 14, 2019. Therefore, his claim for a compensable shoulder injury is hereby respectfully denied and dismissed in its entirety. All other issues associated with this claim have been rendered moot and not discussed herein this Opinion.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge

