

NOT DESIGNATED FOR PUBLICATION

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/TPA RESPONDENT

OPINION FILED FEBRUARY 28, 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 JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed September 3, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

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

4. All other issues have been rendered moot and not discussed herein this Opinion.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the September 3, 2021 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that Claimant failed to prove by a preponderance of the credible evidence that he sustained a split tear in the biceps tendon while working for the respondent-employer on October 14, 2019.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence preponderates that the claimant's biceps tendon injury satisfies the requirements of compensability. The claimant sustained an injury while performing employment services on October 14, 2019.

There were objective findings of the injury in the form of distal clavicle osteolysis and partial intratendinous split tear of the long head biceps tendon as shown on an MRI taken on November 14, 2019. In addition, this injury required medical treatment in the form of prescription medication and steroid injections.

The issue in this matter is two-fold: (1) whether the claimant suffered a biceps tendon split tear at all and, if so, (2) whether the claimant's injury was caused by his workplace accident. I note that there are conflicting medical opinions offered in this matter. When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

The claimant initially received treatment for right shoulder pain from Dr. Scott Carle at Concentra. Dr. Carle released the claimant at maximum medical improvement on December 12, 2019. The claimant's symptoms persisted, causing him to seek further treatment at Concentra on March 16, 2020. Merritt Finney, PA-C, who saw the claimant during that visit, referred the claimant to OrthoArkansas for further assessment.

Dr. Victor Vargas saw the claimant on May 15, 2020 and performed a right biceps long head tendon sheath steroid injection.

At a follow-up visit on July 31, 2020, the claimant was seen by Dr. Kirk Reynolds, an orthopedic surgeon. Dr. Reynolds assessed the claimant's condition as follows:

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, intratendinous split tear of the long head biceps tendon.

Based on this assessment, Dr. Reynolds opined:

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 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 that the recommended surgical treatment is secondary to the work injury and not the chronic underlying condition.

I assess great weight to Dr. Reynolds' opinion. Dr. Reynolds examined the claimant and noted that he personally reviewed the MRI scan taken on November 14, 2019. Based on his examination and review of the MRI scan, Dr. Reynolds not only determined that the claimant suffered a split tear of the long head biceps tendon, but he also determined that the tear was caused by his work-related accident.

Dr. Long offered the following opinion:

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 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 is 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.

I assess little weight to the opinion of Dr. Long. Dr. Long was not the claimant's treating physician; he was hired by the respondent to perform a review of the claimant's radiographs. Dr. Long, who is a radiologist, only reviewed the claimant's radiologic images in forming his

opinion. As expert opinions are solicited for the purpose of limiting the respondent's liability, these opinions must be viewed for what they are, i.e., a money-saving tool, and weighed accordingly.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained a compensable biceps tendon injury.

For the foregoing reason, I dissent from the majority opinion.

M. Scott Willhite, Commissioner