

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H305841**

**PATRICK M. JACKSON, EMPLOYEE**

**CLAIMANT**

**CENTRAL PACKAGING OF ARKANSAS, INC.,  
d/b/a/ CENTRAL PACKING, INC., EMPLOYER**

**RESPONDENT**

**STATE AUTO INSURANCE COMPANIES,  
CARRIER/ TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 29, 2024**

Hearing before Administrative Law Judge, James D. Kennedy, on the 18<sup>TH</sup> day of September 2024, in Mountain Home, Arkansas.

Claimant is represented by Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by David C. Jones, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 18<sup>th</sup> day of September 2024, to determine the issues of compensability for a work-related injury to the claimant's right shoulder and arm, medical in regard to the injury, temporary total disability from the date of injury to a date to be determined less the period from May 6, 2022, through August 29, 2022, and attorney fees. The respondents contend the claim for all benefits should be barred based on the Shippers defense, contending the claimant did not disclose the extent of pre-existing conditions and whether he was physically capable of performing the job duties required. The respondents also contend that the claimed incident did not occur as alleged. At the time of the hearing, the parties stipulated that the claimant earned an average weekly wage of \$713.18 for a TTD/PPD rate of \$475.00/\$357.00. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of the within claim and that an employer/employee relationship existed on or about March 22, 2022, the date of the claimed injury in question. The claimant's and respondent's contentions were set out in their responses to the Pre-hearing Questionnaire and made a part of the record without objection. Four witnesses testified at the time of the hearing. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant earned an average weekly wage of \$713.18, sufficient for a TTD/PPD rate of \$475.00/\$375.00
3. An employer/employee relationship existed on or about March 22, 2022, the date of the claimed injury in question.
4. The claimant has failed to satisfy the required burden of proof to show that he suffered a compensable work-related injury.
5. That consequently all other issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

## **REVIEW OF TESTIMONY AND EVIDENCE**

The initial witness to testify was James Benedict, who also goes by the name of Jacob. He had worked for Central Packing in shipping or receiving for around 12 years, and was working there back in March of 2022, the date the claimant alleges he was injured. Mr. Benedict remembered throwing something like a piece of paper at the start of the workday, and when the claimant attempted to throw it back stated that his shoulder was hurting. He then explained that “he had injured himself from one of the strap blocks that we used to -- not to – so it prevents the straps from cutting like on a piece of a pallet. You know the straps go over, like, a stack of pallets? Well, there’s a corner piece right there that prevents the straps from cutting as you’re going down the highway. So anyways he said that one of those had come down and hit him on the shoulder.” (Tr. 9 – 12)

Under cross examination, Mr. Benedict, testified that he was “acquaintances” with the claimant but that he did not really consider him a friend. He admitted riding bikes together once up to Caulfield where he would purchase cigarettes and went on to state that the claimant was all over the road, and consequently after that, they never road together. He admitted to rarely hanging out with the claimant outside of work but admitted that they would chat on occasion. He did not remember the claimant stating he needed to file a workers’ compensation claim. He also admitted that he later quit the company after harsh words which involved name calling and cussing, with Holt Dye. (Tr. 13 – 18)

The claimant, Patrick Jackson, was then called. He stated that he had started working for the respondent in 2017 or 2018, and that he was driving a truck and making deliveries, which amounted to a one-day trip over a fairly large geographical area. On the day of the claimed injury, he pulled into Manila at Southworth Company and unstrapped

the pallets he was hauling. (Tr. 19, 20) “I rolled up all the straps. I’m standing there by the back door of the semi. The forklift driver comes out, starts taking them off, and then a board come down, and smacked me in the shoulder, and I didn’t think nothing of it. I just thought I was bruised, but the next morning I couldn’t move my arm.” He stated he then drove the truck back to the shop and told them the next morning that he was injured. (Tr. 21) “I just said, I got hurt yesterday at - - at Southworth.” The claimant stated that Mr. Benedict was in the room when he stated that he had hurt his shoulder. Mr. Benedict then left the room, and he did not talk about it any further with Mr. Holt. He was then handed paperwork for his next trip, and he continued to work. There was never any additional discussion with Mr. Holt. The claimant stated that he worked about two more weeks and was then laid off because they hired a cheaper driver. No medical care was ever offered. (Tr. 22, 23)

He then went to work for TNI driving a semi, where he worked until May 6<sup>th</sup>. He stated he had trouble opening and closing doors but that was it. He had an MRI in April, then another in September, before surgery in October of 2022. He worked for TNI for approximately three months. He stated he was let go because of the surgery and that he was unable to lift his arm up to break the doors free. (Tr. 24, 25) He thought he obtained a release to return to work from Dr. Knox but was told that he wasn’t working for them anymore. He also admitted that he had purchased a motorcycle after his injury. He stated that he had only made one trip on his motorcycle, when he went to Caulfield with Jake and another gentleman. (Tr. 26)

The claimant additionally testified that he had not worked anywhere since he left TNI, and that he had not hurt his shoulder anywhere else since March of 2022, when he hurt his shoulder on the job working for Central Packing. (Tr. 27, 28)

Under cross examination, the claimant admitted he had bought a motorcycle after the alleged shoulder injury, but stated it was actually a gift from his wife to replace a motorcycle he owned that was stolen. He also added that he was the one that paid for it. (Tr. 29) He admitted the claimed injury occurred at Southworth in Manila and he did not call anyone at the respondent when the corner piece up on top of the pallets came off and hit him. He testified that he was certain the incident occurred in Manila. He was then questioned about the invoices from Southworth. An invoice dated March 22<sup>nd</sup>, provided he dropped off a load in Manila. Another invoice showed an additional load to Manila on the 25<sup>th</sup>. (Tr. 30, 31) He again claimed that the corner piece in question was on top of the pallets and that it came off and hit him. (Tr. 32) The claimant was also questioned about page 23 of his deposition where he stated that he bent over to pick up a corner piece from the ground. The following questioning then occurred:

Q: Okay. So, what you told us a minute ago is inconsistent with your deposition; is that fair to say.

A: Okay. No, it's not. I mean, I did my job. I mean, that's all there is too it.

Q: Well, there's a factual dispute here. You're claiming now that you were just standing there, and this fell off the truck. Is that what you're telling us now?

A: That's - - no. I'm telling you I was stand - - well, yeah, I was there when it hit me. I mean, I don't even remember if I was picking up something or what, but I did get hit.

Q: Okay. But in your deposition, you said you were bent down picking this up?

A: Yeah.

Q: Okay. All right. So, it wasn't a - -

A: I mean, that's what I had to do that day.

Q: - - so physically we don't know how it hit you, how you were bent down or anything because you're - - you don't recall exactly what happened?

A: No, I don't. I mean, that was - -

Q: Okay.

A: - - quite a while back.

Q: And it's this corner piece that goes on top of a small pine pallets; is that correct?

A: It's corner pieces that go on top of the loads, yes - -

Q: Okay.

A. - - to hold them from the straps breaking the pallets.

Q: Correct. Okay. And you're claiming this forklift driver knocked it off and you were right there next to this when this happened; is that correct?

A: No, I'm not blaming the forklift driver knocked it off. I'm just telling you that it fell off the truck.

Q: Okay

(Tr. 33, 34)

The claimant admitted that he didn't load the trucks he drove. When he was hired, he was told the trucks would be loaded and strapped for him, due to his prior back surgery, but he would be responsible to unstrap them. (Tr. 35) The claimant was asked about the corner piece not being used on loads to Southworth, and he responded that if anyone stated they were not used, they would be lying. He was also questioned about the MRI which showed that his rotator cuff tear was degenerative in nature, and he responded he was not aware of it. (Tr. 37, 38) He also admitted the truck which he drove back from the accident for the two-hour return trip, was equipped with a manual transmission with a stick shift, and the roads were two lane roads with some inclines and declines. (Tr. 37, 38) The claimant also admitted he did not tell Mr. Holt Dye the next day about the injury. (Tr. 39) The claimant was also questioned about filing a workers' compensation claim, and he stated that there

was never anything there about reporting the injuries. (Tr. 41) He admitted that he worked about a month after the alleged injury, continuing to drive the truck with the manual transmission. (Tr. 42) He also admitted he drove a truck for TNI for 25 to 30 days working 10 to 11 hours a day driving. (Tr. 44) He drove from Loredo Texas, up to Wisconsin or Michigan. He worked for TMI until he was told that he needed surgery. (Tr. 45)

The claimant was then questioned about the statement in his deposition where he had stated he never had shoulder problems. He was also questioned about seeing Dr. Chaney, his family physician in May of 2019, where the report provided that the claimant stated his shoulders hurt all the time. The claimant responded that he did not remember, so he didn't have to agree in regard to his shoulders hurting three years before the accident. (Tr. 47) The claimant admitted that he was taking pain medication back then but contended it was due to his back surgery. The claimant was also questioned about telling Dr. Knox that the injury occurred on March 28<sup>th</sup> and he responded "Well, like I said, in March, yes." (Tr. 48)

The claimant was also questioned about seeing Dr. Cheney on March 20 or the 21 of 2022 and telling her there was no recent trauma and the claimant responded, "I was always fine when I went in and seen Dr. Chaney." "I mean dates get mixed up with everybody." (Tr. 50,51)

On redirect, claimant was questioned about respondent's medical exhibit, page one, which provided he suffered from chronic pain, referring to his shoulders. The claimant responded that he was not referring to the right shoulder rotator cuff. He went on to state that he had no problem with his right rotator cuff prior to his on-the-job injury. He also wasn't sure, as to the exact date of his injury. (Tr. 53, 54)

The claimant rested at this point and the respondents called Mr. Justin Anderson, who worked for the respondents roughly between 2016 until 2023, as the respondent's forklift operator, loading and unloading trucks, and strapping loads. He no longer worked for the respondent. (Tr. 55, 56) He stated that when he first met the claimant, they walked around the semi, and he was told that that the claimant had pre-existing conditions with his back and shoulder. Consequently, he threw the straps for the claimant with the claimant being the only driver that needed this assistance due to his shoulder problems. Mr. Anderson went on to testify that they had different types of pallets and the loads that were sent to Southworth were hardwood pallets, and the hardwood pallets did not require the corner piece that goes on top of the loads to keep the deck board from breaking. Pine pallets are a lot easier to break and that is when the top piece on the corner is used to keep them from breaking. Looking at the invoice, there would have been no protector pieces since the pallets going to Southworth were all hardwood pallets that week (Tr. 57 - 59).

The respondents then called Kelli Dye, who is part owner of the respondent employer along with her husband of the respondent employer. She testified that there was a standard poster on the wall stating how a workers' compensation claim was to be reported and even listed the insurance carrier for a claim. She further testified that she was present in the backside of the tiny office when the claimant was interviewed for a part-time driver position and the claimant admitted that he was on disability with back and shoulder problems. Consequently, he would not be able to strap his own loads. The loads were strapped by Mr. Anderson. She did not recall the claimant coming into the office and talking to her or Holt regarding an injury. (Tr. 62 - 65) She first heard about the injury when she received a letter somewhere around September of 23, a year and a half after the date of



the injury. She also stated that the loads going to Southworth, were hardwood and would not have had a corner piece or some type of protector on top. Small pallets that were soft wood (pine) were going to Searcy. The claimant made no runs to Searcy during the two-week period in question. (Tr. 66, 67)

Holt Dye was then called by the respondent. He testified that he was one of the owners of company and was employed by the respondent. He denied that the claimant ever came into his office and told him that he was hurt or that a corner piece had fallen and hit him on the shoulder. (Tr. 69, 70) He went on to testify that they were looking for a part time driver when the claimant came in and stated he would like to drive a couple of days a week. He had been driving for years and had a disability. Consequently, he needed to limit his income. A part-time driver position would be great for him but “he had back issues, shoulder issues, he had pre-issues.” The claimant told him that he would not be able to do any loading or strapping. He did not tell us he had been on social security back in the 80’s or 90’s but did tell us that he was on disability. He specifically told us that he had shoulder and back problems. Consequently, Mr. Dye stated that was why they had Justin out there strapping the claimant’s loads. In regard to the claimed injury, he was never aware of an issue until the formal claim was filed with the Commission on September 12, 2023. (Tr. 71 - 73) He went on to testify that an in-house investigation was performed, reviewing the paystubs for the claimant, and they determined that the claim was not feasible. Further in regard to the corner pieces or protectors, he stated that they would not have gone to Manila where the claimant claimed that he was injured, due to the fact that hard wood is three quarters inch thick and will bend. Pine is 9/16<sup>th</sup>’s inch thick and is brittle. Southworth did not do pine, hardwood only. Protectors weren’t used with the hardwood. The invoices

for the period between the 22<sup>nd</sup> and the 25<sup>th</sup>, provided that the pine during that period was going to Searcy to the Danfoss plant. (Tr. 74 - 76) He also testified that he did not receive a phone call in March of 2022 telling him that a driver was injured. The claimant worked for them until April 20<sup>th</sup> of 2022, and he then went to work for someone else. (Tr. 77)

Under cross examination, Mr. Dye testified that he had been in business since 2007, had approximately 13 employees, and had two workers' compensation claims during that period. He never told an employee that they did not have workers' compensation coverage. "The companies that were - - that hire us required us to have workman's compensation." (Tr. 78)

Claimant's non-medical exhibit consisted of 16 pages and was admitted without objection. The records showed that the claimant was paid \$7845 per his 1099 in 2022, and the notes appeared to list the specific trips that the claimant made as well as a picture of the odometer reading of the vehicle. (Cl. Ex. 1)

The claimant also submitted 2022 pages of medical records that were admitted into the record without objection. An MRI dated May 19, 2022, provided there were prominent degenerative changes in the acromioclavicular joint with inferior spurring and impingement on the musculotendinous junction of the superior rotator cuff. The report also provided a larger complete superior rotator cuff tear with a retraction medial to the midpoint of the humerus which appeared to involve essentially all of the supraspinatus and probably some of the anterior infraspinatus. (Cl. Ex. 2, P. 1)

The claimant was seen by Dr. Knox on July 28, 2022, and the report provided that the chief complaint of shoulder pain involving the right shoulder occurred in the context of

an injury at work on March 28, 2022. The report referred to an MRI showing a RTC partial tear and also referred to a large heavy object falling on his right shoulder while at work. (Cl. Ex. 2, P. 2,3)

A second MRI of the right shoulder dated August 31, 2022, provided there was a poorly defined sclerotic lesion with a moderately severe osteoarthritic hypertrophy of the right AC joint with a hypertrophic AC joint resulting in impingement upon the supraspinatus muscle and tendon below. A right massive full thickness full width tear of the right rotator cuff was also noted. (Cl. Ex. 2, P 4 – 6) A right shoulder arthrogram was also performed on August 31, 2023. The findings in regard to the right humerus were consistent with a probable bone infarct or enchondroma. (Cl. Ex. 2, P. 7, 8) A report dated September 8, 2022, stated under impression that there was a right rotator cuff tear and that most tears arise in the setting of an acute event like falling or lifting a heavy object, or from the chronic irritation from overuse or bone spurs. (Cl. Ex. 2, P. 10 - 12)

A medical report by Dr. Knox for an evaluation on October 20, 2022, provided it was a follow up for a right rotator cuff tear and a complete-right shoulder joint and right shoulder repair, presenting for a post-op check after surgery on October 17. (Cl. Ex. 2, 14 – 16) The claimant returned to Dr. Knox and was again evaluated on December 1, 2022, in regard to the post-op shoulder rotator cuff repair on the right shoulder. It provided that the claimant was much better, that his strength was recovering, and that he was not having much pain at all. (Cl. Ex. 2, P. 17 – 19) The claimant returned again on February 14, 2023, for reevaluation of his right shoulder by Dr. Knox, due to a reinjury of the right shoulder. (Cl. Ex. 2, P. 20 – 22)

The respondents submitted twenty-six pages of documentary evidence without objection. A Work Activity Report dated January 1, 2021, and other documentation, provided that the claimant had earned \$16, 024.00 in net income in 2020, with no net income in 2019, and only \$2280.00 net income in 2018. The report provided that the claimant had to start taking fewer jobs because he was hurting too much. (Resp. Ex. 1, P. 1 – 6)

Correspondence from Central Packaging of Arkansas, Inc., to Carroll Fulmer Logistics and Transco Lines, Inc. provided that the claimant was a fill-in driver who worked as needed. (Resp. 1, P. 7 – 15) An odometer disclosure statement in regard to the motorcycle purchase was dated September 9, 2022. One year later, an AR-C form was filed on September 9, 2023, claiming an injured shoulder. (Resp. Ex. 1, P. 17, 18)

A Witness Reporting Form signed by Justin Anderson, stated that the incident never happened and when the claimant was hired, he had a bad shoulder. It also provided that the claimant quit and went to work for another company for higher wages and never said anything about the supposed injury. This document was dated September 19, 2023. (Resp. Ex. 1, P. 20) Additionally, a photo of that showed the procedure to file a workers' compensation claim at the respondent's location was introduced. (Resp. Ex. 1, P. 21) Finally, an email from Holt Dye of Central Packaging of Arkansas, concerning deliveries to Southworth in Manila was also entered into the record. (Resp. Ex. 1, P. 22 – 26)

The respondents also submitted medical records into the record without objection. A report from Dr. Lori Cheney dated from May 10, 2019, through February 13, 2020, provided that the claimant was taking hydrocodone and acetaminophen for chronic back pain. (Resp. Ex. 2, P. 1 – 10) The claimant had presented to MedExpress on April 24, 2020,

for a DOT physical. At the time of the exam, the claimant denied taking any medications three times during the exam. An AR PMP revealed patient fills for Hydrocodone. The report provided that the claimant would be required to be off narcotics for at least three months with a MD statement that the claimant is medically safe to commercially drive a vehicle. (Resp. Ex. 2, P. 11 – 19)

A report from Dr. Cheney dated November 9, 2020, provided that the claimant was currently on Hydrocodone – acetaminophen. (Resp. Ex. 2, P. 20 – 27) Office notes and reports from the Baptist Regional Medical Center family clinic dated April 30, 2021, through September 6, 2023, provided for refills of Hydrocodone-Acetaminophen. (Resp. Ex. 2, P. 28 – 43) A Chart Noted from Twin Lakes Chiropractic dated Dec1, 2023, provided that the claimant suffered from moderate to severe muscle spasms in the left lumbar, lumbar, right lumbar, left sacroiliac and right sacroiliac. The report also mentioned osteoarthritis and interval disc degeneration of the lumbosacral region. (Resp. Ex. 2, P. 44 – 46)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injury to his right shoulder under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

To prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in A.C.A. 11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 s.W.2d 876 (1997).

In the present matter, the claimant contends that he delivered a load of pallets for the respondent employer to Manila Arkansas, delivering them to a company called Southworth, on March 22, 2022. The claimed injury occurred when the person who unstrapped the load, tossed the strap and a corner piece on the strap came off and hit the claimant. The claimant was sure that the injury occurred in Manila but wasn't sure of the exact date but thought that the injury occurred during the latter part of March in 2022. Witnesses explained that the corner pieces on the straps were not required on hardwood pallets due to the pallet's flexibility and strength, but were required for pine or soft wood pallets, due to the fact the straps would break a soft wood pallet.

The claimant testified that after the incident, he then drove the truck with a manual transmission home, but never notified his employer that evening or the next day. The employer testified that they were not aware of the injury until about one and a half years later.

Convincing testimony provided that no softwood pallets were delivered to Manila and the company of Southworth during this time period. The delivered softwood pallets were going to Searcy. This was also confirmed by documentary evidence.

Additionally, it was commonly known that the claimant suffered from various health issues regarding his back and was unable to toss the straps over the load at the start of a trip, and consequently was the only driver when hired, required another individual to strap his load. Medical records from Dr. Lori Cheney provided that the claimant was taking hydrocodone and acetaminophen as far back as May 10, 2019, for a back injury, and that these scripts continued as late as September 6, 2023. Additionally, a DOT physical provided that the claimant denied three times that he was taking any medications, but that an AR PMP revealed patient files for Hydrocodone at the time. Finally, it is noted that an MRI of August 21, 2022, did in fact show a poorly defined sclerotic lesion and a moderately severe osteoarthritic hypertrophy of the right AC joint. A report dated September 8, 2022, provided under impression, that there was a right rotator cuff tear and that most tears arose in the setting of an acute event like falling or lifting a heavy object, or from the chronic irritation from overuse or bone spurs. In the present matter, although no weight was ever provided, the piece that came off the strap could not have been heavy, or otherwise it could never have been tossed over a load of pallets.

Based upon the available evidence, it is found that the claimant has failed to satisfy the first requirement of Mickel, supra, that the injury was work related. It is also found that the claimant has also failed to satisfy the second and third requirements of Mickel, supra. Additionally, the medical evidence is insufficient to support objective findings which are those findings that cannot come under the voluntary control of the patient. A.C.A. 11-9-

102 (16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985).

A workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. A.C.A. 11-9-102 (4) (E) (i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that it grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ar. App 21, 732 S.W.2d 496 (1987)

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show that the claimed right shoulder injury is in fact work related and compensable under the Arkansas Workers' Compensation Act. Consequently, all other issues are moot.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge