

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H006107

CALEB K. JENKINS, EMPLOYEE

CLAIMANT

**BAXTER COUNTY JUDGE,
SELF-INSURED EMPLOYER**

RESPONDENT

**AAC RISK MANAGEMENT SERVICES,
THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED FEBRUARY 26, 2021

Hearing before Administrative Law Judge O. Milton Fine II on February 3, 2021, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 3, 2021, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on October 28, 2019. A Prehearing Order entered on that date pursuant to the conference was admitted without objection as "Commission Exhibit 1." At the hearing, the parties confirmed that the stipulations, issues, and respective contentions were properly set forth in the Order.

Stipulations

The parties discussed the stipulations set forth in "Commission Exhibit 1." They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The employee/employer/third-party administrator relationship existed at all relevant times.
3. This claim has been controverted in its entirety.

Issues

At the hearing, the parties discussed the issues set forth in “Commission Exhibit 1.” The following were litigated:

1. Whether Claimant sustained a compensable injury to his right shoulder by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that he sustained injuries to his right shoulder in the course and scope of his employment on February 8, 2020, when he was injured while restraining an inmate. Further, Claimant contends that he is under the treatment of Dr. Russ Rauls, who recommended an MRI. Respondents have denied this treatment. Claimant contends that he is entitled to continued medical care and treatment to include the MRI, payment of medical expenses, and out-of-pocket expenses. All other issues are reserved.

Respondents:

1. Respondents contend that Claimant did not suffer a compensable injury on February 8, 2020. He has no objective medical findings. He did not miss any time from work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant and to 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven, by a preponderance of the evidence, that he sustained a compensable injury to his right shoulder by specific incident.
4. Claimant has proven, by a preponderance of the evidence, that he is entitled to reasonable and necessary treatment of his compensable right shoulder injury.
5. Claimant has proven, by a preponderance of the evidence, that all of the treatment of his compensable right shoulder injury that is in evidence was reasonable and necessary.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

In addition to the Prehearing Order discussed above, admitted into evidence in this case were the following: “Claimant’s Exhibit 1”, a compilation of his medical records, consisting of one index page and 21 numbered pages thereafter; and “Claimant’s Exhibit 2”, a September 8, 2020, statement from Knox Orthopaedics, consisting of one index page and one numbered page thereafter.

Adjudication

A. **Compensability**

Introduction. Claimant, a jailer, has alleged that he suffered a compensable injury to his right shoulder in a work-related incident on February 8, 2020. Respondents dispute this.

Standards. In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show that: (1) an injury occurred that arose out of and in the course of his employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) 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). If a Claimant fails to establish, by a

preponderance of the evidence, any of the above elements, compensation must be denied. *Id.* This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A Claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agric. Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the Claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Testimony. Claimant testified that his job at the Baxter County Sheriff's Office consists of "[b]ooking inmates, making sure the welfare of the inmates is taken care of, keeping cell checks up, [and] making sure that everything in there is running smoothly."

While he was working there on February 8, 2020, the following occurred:

[W]e had an inmate that was not on his psychological medication that night. He was a little out of it. He in return started trying to I guess start a fight with me and my co-worker, so we went to go tend to him and put him the restraint chair so he wouldn't harm us or himself, and in the process of that I felt something tear in my shoulder.

Claimant specified that he felt the tear in his right shoulder, and that it happened in the very early hours of February 8. The incident was witnessed by a co-worker, Damon Morgavan, and this is reflected on the Form AR-N. Claimant reported to his direct

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supervisor, Corporal Julie Little, what had happened. In turn, Sergeant Clay Maple was notified. Little advised Claimant to go to Baxter Regional Medical Center, and he did so. Asked to describe his symptoms he was having at that point, Claimant responded: “[s]welling, clicking pains that will [sic], it was locking in and out of place, sweating pretty bad. My hand was all swollen and everything like that; just some pretty bad pain in my right shoulder.”

When Claimant went to the hospital the morning of February 8, 2020, he told treating personnel that he “had swung [his] arm and had some range-of-motion pain.” X-rays and blood work were performed there. Claimant was referred to Lincoln Paden Medical Group. From there, he was referred to Knox Orthopaedics. According to Claimant, his right shoulder problems have worsened. An MRI and an arthrogram have been recommended; and he is asking that he be awarded this diagnostic treatment.

On cross-examination, Claimant elaborated on the incident in question, recounting that the inmate had been on suicide watch and that he was being placed in a restraint chair so that he would not harm himself or someone else. Claimant told treating personnel at Baxter Regional Medical Center that the injury happened the day prior because he was on the overnight shift from February 7-8, 2020. While his x-rays were negative, his shoulder was “clicking in and out of place.”

Medical Records The records in evidence reflect that Claimant presented to the emergency room of Baxter Regional Medical Center with “[s]houlder pain-swelling,” the onset of which was the day prior. Notwithstanding the complaint of swelling, the history portion of the report contains the following statement: “The degree of swelling is none.”

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Claimant stated that his shoulder problems began when “he got into a fight with an inmate” while he was working at the Sheriff’s Department. Examination of the shoulder produced pain with both active and passive motion; and his x-rays were negative. Claimant was diagnosed as having a “[s]prain, rotator cuff injury.” In a follow-up visit with Wilton Norris, APRN, on February 13, 2020, Claimant elaborated that the struggle with the inmate lasted approximately six (6) minutes and that he immediately began having shooting pains down his right arm. On this date, he rated his pain as 7/10 and related that it included numbness, tingling, and cooling. He was assessed as having an unspecified injury of an unspecified muscle, fascia, and tendon in the right shoulder and upper arm, along with a shoulder sprain. Norris referred him to Dr. Rauls.

When Claimant saw Dr. Rauls on July 1, 2020, he stated that he was still having right shoulder pain, along with occasional numbness and tingling, as a result of the altercation with the inmate. Rauls’s examination notes contain the following:

RIGHT Shoulder: ROM: Forward elevation/Abduction/External Rotation
Pipping [sic] with external rotation.
Strength: Supraspinatus/Infraspinatus/Subscapularis strong/strong/strong
A.C. Joint provocative tests are negative. Impingement signs are negative.
Mild Tenderness to palpation No effusion.
Mild pain with ROM. No crepitus with ROM.
No laxity noted. No obvious atrophy noted.
Sulcus test is positive.

(Emphasis added) Rauls wrote that x-rays of the shoulder showed, *inter alia*, a type 2 acromion. He assessed Claimant as having “RIGHT Shoulder Pain [that] is secondary to Instability with Labral Tear,” and recommended an MRI arthrogram of the right

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shoulder. The doctor placed Claimant on light duty, with no pushing, pulling, or lifting of more than twenty (20) pounds.

Discussion. In this case, the evidence is clear that Claimant has an objective finding of an injury to his right shoulder. This finding comes from the examination that Rauls performed on July 1, 2020. He found that external rotation of the shoulder produced popping (misspelled as “pipping” in the report). That this finding does not appear in the record until nearly five (5) months after the injury is not fatal to Claimant’s case. A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). The last examination notes in evidence prior to this finding are dated February 12, 2020—just four (4) days after the altercation at issue. The popping appeared within a reasonable time after the work-related incident.

Likewise, I credit Claimant’s testimony that the mechanism of his injury was the work-related event of February 8, 2020, when he struggled to place an inmate in a restraining chair and felt a “tear” in his right shoulder in the process. The altercation, and Claimant’s feeling pain in his right shoulder immediately following it, are documented in his medical records. The incident is identifiable by time and place of occurrence. Moreover, this injury caused internal or external physical harm to his body and required medical services.

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In sum, Claimant has proven, by a preponderance of the evidence, that he sustained a compensable injury to his right shoulder by specific incident.

B. Medical Treatment

Claimant has alleged that he is entitled to reasonable and necessary medical treatment in connection with his right shoulder injury. Respondents disagree.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the Claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The Claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a Claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the

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nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

I find that Claimant has proven, by a preponderance of the evidence, that he is entitled to reasonable and necessary medical treatment of his compensable right shoulder injury, including the MRI arthrogram recommended by Dr. Paden, at Respondents' expense. In addition, I have reviewed Claimant's treatment records that are in evidence; and I find that he has proven, by a preponderance of the evidence, that all of the treatment of his compensable right shoulder injury that is in evidence was reasonable and necessary.

CONCLUSION AND AWARD

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this Award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Honorable O. Milton Fine II
Chief Administrative Law Judge