

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000196

BILLY W. KEELING, EMPLOYEE	CLAIMANT
THOMPSON CONSTRUCTION GROUP, INC., EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 3, 2022

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

Claimant represented by the HONORABLE BILL E. BRACEY, JR., Attorney at Law, Blytheville, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 13, 2022. The administrative law judge found that the statute of limitations barred the claim. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved he sustained a compensable injury, for which he is entitled to reasonably necessary medical treatment and a period of temporary total disability benefits. We find that the statute of limitations does not bar the claim.

I. HISTORY

The record indicates that Billy Keeling, now age 50, became employed as a pipefitter for the respondents, Thompson Construction Group, on February 12, 2018. The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times. The claimant testified on direct examination:

Q. What was the date of that?

A. Of the burn?

Q. Of the burn.

A. It was, I want to say, February. It wasn't very long after I got hired on.

Q. And what were you doing that day?

A. I was putting up pipe supports for the drainage line at the JMS site.

Q. Okay. And who was on your crew with you?

A. Me and Mark Crocker. He was a welder....

Q. And what was your function?

A. I was the fitter.

Q. Okay. And so the – the fitter does what with pipes?

A. Well, we fit pipe and structural, but the goal that day was to hold the pipe supports up to help hold the big 16-inch pipe in the air....

Q. So you had to hoist it with chain?

A. Correct. Chain – chain fall is how we got it up there.

Q. Okay. But where does that put you physically relative to the welder?

A. Right there up underneath him.

Q. Right underneath him. And what is the problem with that?

A. The problem is that the welding arcs coming off burns you pretty good.

Q. So not – not just the flux, not just the molten metal but the – the arc itself?

A. Correct.

Q. In other words, it's an electro arc?

A. It's – yes.

Q. Okay. So it – it can zap you?

A. Oh, yeah. It'll zap you, yeah.

Q. Okay. Did it, in fact, zap you and cause burns to your neck?

A. Yes, it did. In my neck, the back of my head, and my shoulders....We was in a man basket. Everything had to be done out of baskets.

Q. Okay.

A. I told Mark Crocker to step back away from the rail and I went down, and on the way down I explained to Mark what was, you know, going on because I was getting eat up. And I went and found Robert McBride and explained to him, and he said, "Well, it looks like you're already burnt, so go ahead and go back to work."

Q. Um-hmn.

A. And he said, "Well, you're already burnt, so either do it or go home. I'll get somebody else to do it."

Q. Okay. So did you continue to try to hold your job and climb the ladder or whatever?

A. Yes. Got back in the basket....

Q. How many days did you work under those conditions?

A. About a week. I'm going to say five to seven days.

Q. And did you suffer repeated burns?

A. Constant.

Robert McBride testified that he had formerly been employed with the respondents as a job superintendent. The respondents' attorney examined Robert McBride at a deposition of record:

Q. Did you have a crew working for you at Nucor?

A. Yes, several....

Q. Was one of those individuals Billy Keeling?

A. Yes, sir.

Q. Okay. And what were Mr. Keeling's duties on that project?

A. Welder fitter....

Q. Now we're here to question you about Mr. Keeling's claim regarding some welding burns. I want to ask you, do you have welders such as Mr. Keeling on the job site or did you?

A. Yes, sir. I had several welders.

Q. All right, sir. Do you recall Mr. Keeling ever specifically reporting to you that he had welding burns?

A. No, sir.

Q. Okay. Now, just so we're clear, it does happen occasionally?

A. It happens every day. You know, it's weld splatter. You weld in green jackets and stuff, but it still happens. Everybody knows it happens.

Q. It's common in the welding business?

A. Yes, sir. It happens every day....

Q. If Mr. Keeling or any other employee had come to you and said they needed medical treatment or requested medical treatment for a welding burn, what would you have done or what did you do?

A. I would take a – get the safety guy and go to the office to check it out and see what all was going on. The safety man, if he thinks it's real bad, we would call Nucor, because we've got to do an incident or accident report. When you get burned or whatever, Nucor has – you've got to file with Nucor and get them involved in it, and then they will take you to the doctor....

Q. And did Thompson have a policy in place to wear protective equipment to lessen the chance of getting the burns?

A. Nucor and Thompson does too. It's a requirement. Green jackets, gloves, you know.

Q. But even with protective equipment, sometimes an individual can be burned?

A. You will get burned.

Q. Okay.

A. It's just the job....

Q. And did Mr. Keeling ever request medical treatment? Did he ever request to file a workers' compensation claim?

A. No, sir.

Q. Did he ever tell you specifically that he had a number of burns on his neck that you can remember?

A. Not that I remember.

The claimant's attorney cross-examined Robert McBride:

Q. Mr. McBride, is it true that you were not present at the accident?

A. I don't know what accident you're talking about.

Q. Well, where he was burned with the welding –

A. Like I said, everybody – I don't know what you're talking about. Everybody gets burned. When you're welding and cutting, any welder or any fitter will get burned....

Q. Do you recall the day when Mr. Keeling was burned?

A. No, sir, I don't....

Q. Do you agree with Dennis Robinson that Mr. Keeling was working under a welding torch and received some pretty bad burns on his head, neck, and face?

A. No, sir. I never seen nothing.

Dennis Robinson testified that he had been employed with the respondents at the same time as the claimant. The claimant's attorney examined Dennis Robinson:

Q. And what job was [the claimant] working on?

A. He was working at JMS – JMS Materials, I think it was called, and they were over there welding some pipe – overhead piping in....They lifted pieces of pipe with chain falls, one at a time, and butted them together and had a welder up there welding them and he was on the ground beneath it – well, he was actually fitting it for him, holding them together.

Q. Okay. Who was the welder?

A. Mark – was Mark – Mark Crocker....

Q. And so I would take it that welding is kind of a hot job?

A. Yes.

Q. Tell the Court exactly what we're talking about when you're welding pipes together.

A. You – it's – you know, glide – you're melting – melting steel, melting the two pieces of steel together.

Q. And joining them together?

A. Joining them together, yes.

Q. Does it all stay perfectly affixed to the pipes or do we have splatter –

A. It splatters – it falls everywhere –

Q. Okay.

A. – yes, sir.

Q. In fact, did it fall on the neck of Mr. Keeling?

A. Yes, it did.

Q. And do you see the – the sores, 34 different holes in his neck?

A. Yes, sir.

Q. And was he – was he saying, “Oh, that hurt,” or was he – was he shouting in pain?

A. Yeah, he – he’s pretty well shouting, yeah. It was burning him up pretty bad....

Q. And did he have to take off because of that?

A. He tried to. I believe that day he tried to go home, but this manner – manager wouldn’t let him go.

Q. Is that with the Thompson Group? And that was a Mr. McBride?

A. Robert McBride, yes, sir.

The respondents’ attorney cross-examined Dennis Robinson:

Q. Now it’s not unusual on welding jobs for someone to get some hot sparks or some hot embers on them, is it?

A. No. Yes, sir.

Q. All right. And people generally, for the most part, just keep working or try to get some first aid and –

A. Correct. Correct.

Q. Okay. And you’re aware that Billy Keeling did the same thing. He just kept working?

A. Yeah. He was made to....

Q. And you don’t even know what date this happened or even – you – you can’t tell us with any specificity?

A. No.

The administrative law judge examined Dennis Robinson:

Q. Did I understand your testimony correctly that there was an occasion that you saw Mr. Keeling suffer some welding burns?

A. Yes, sir.

Q. Did you see it happen or did you see the aftermath?

A. I seen the aftermath.

Q. Okay. Can you tell us in a little more detail what you saw?

A. It was raw. It was raw because his collars and clothing had – had just rubbed it raw. Blisters. It was – it was pretty bad.

Q. Okay. Do you have any idea how long he had had these burns before you saw them?

A. Probably the following day....

Q. So were you – you weren't present when it happened?

A. No.

According to the record, Dr. Kirby Lee Smith, an oncologist, examined the claimant on May 8, 2018:

He is a 45-year-old white male referred for evaluation of a right posterior cervical mass. He has been aware of this mass for the last 6-7 months a 2nd small mass in the same region appeared [a] month or so later. Two months ago he sustained a burn to the right posterior neck. During this interval his energy level has been low. He is finding that he is having to take extra breaks at work but has continued to work full-time....He has a long history of low back pain after [an] accident at work resulted in [two] crushed vertebra....
Lymphadenopathy: He has no cervical adenopathy.
1-1.5 cm node palpable in right posterior cervical region....

There is area of hyperemia of skin on posterior neck with 34 shallow, small ulcerations secondary to burn.

Dr. Smith planned, "The only adenopathy I was able to detect was the single node in the right posterior neck. We are going to obtain CT scans to evaluate for internal adenopathy. Most likely explanation is viral in etiology however if the studies are otherwise nonrevealing we will consider biopsy of this node on his next visit."

Dr. Smith reported on May 22, 2018, "He returns in follow-up after studies were initiated 2 weeks ago for the presence of a right posterior cervical mass. Results obtained include [an] EBV antibody panel which showed a significant elevation capsid antibody to a titer of 750 and anti nuclear antibody of 478. Both [are] markedly elevated and the profile is

compatible with a remote past infection of EBV.” Dr. Smith also noted, “A CT scan of neck done 05/17/2018 demonstrated an enlarged lymph node in the right posterior lateral neck measuring 1.14 cm.” Dr. Smith diagnosed “1. Lymphadenopathy.” Dr. Smith stated on June 23, 2018, “The right posterior cervical node remains palpable and I have recommended biopsy to confirm the nature of adenopathy. He is currently scheduled to see Dr. David Lewis 07/03/2018 for consultation.”

The assessment of Dr. David M. Lewis on July 3, 2018 was “Neck mass” and “Lymphadenitis.” Dr. Lewis performed an “excision” procedure on July 20, 2018.

Dr. Smith noted on August 21, 2018, “Recent biopsy of a right posterior cervical lymph node which was the largest palpable peripheral node was benign. He continues to undergo evaluation for headaches and has an appointment to be seen tomorrow. At present we are going to continue monitoring for other adenopathy and will on next visit we will plan to repeat CT scans.”

Dr. Daniel Alan Hoit performed a surgical procedure on October 26, 2018: “1. Right frontotemporal craniotomy and surgical clipping of middle cerebral artery aneurysm. Complex requiring temporary clipping.” The pre- and post-operative diagnosis was “Unruptured right middle cerebral artery aneurysm.”

Dr. Hoit noted on April 9, 2019, "The patient is recovering well from his previous right-sided craniotomy for his right middle cerebral artery aneurysm. The patient has lost his insurance at this point. His corporate insurance, specifically. He states he has another alternative insurance. He wishes to proceed with the surgery. It was scheduled for January 9....It is our recommendation that he establishes new insurance and then once that is secured, we will proceed with the WEB-based embolization of the left middle cerebral artery aneurysm."

Laura Beth York, Attorney at Law, corresponded with the Clerk of the Commission on January 13, 2020:

Please be advised that I have been retained by the claimant in the above referenced matter. Therefore, please list me as the claimant's attorney of record. Attached please is a form AR-C requesting benefits. I respectfully request that the Commission ask the Respondents to state their position within fifteen (15) days....

The Commission received a Form AR-C, CLAIM FOR COMPENSATION, on January 13, 2020. The ACCIDENT INFORMATION section of the Form AR-C indicated that the Date of Accident was May 1, 2018: "Claimant was exposed to chemicals sprayed on grass and steel on job site. Claimant experienced brain injuries and other whole body injuries." The CLAIM INFORMATION section of the Form AR-C indicated that the claim was for "initial" benefits to include Temporary Total Disability, Temporary Partial Disability, Permanent Partial Disability, Permanent Total

Disability, Rehabilitation, Attorney Fees, and Medical Expenses. The CLAIM INFORMATION section of the Form AR-C also indicated that the claim was for “additional” benefits to include Additional Temporary Total, Additional Temporary Partial Disability, Additional Permanent Partial, Additional Medical Expenses, Rehabilitation, and Attorney Fees.

The respondents’ attorney cross-examined the claimant:

Q. And we have, on the record, what’s called a Form AR-C, which is a claim for Workers’ Compensation benefits that was filed by the former attorney, and she did file a claim for you, didn’t she?

A. Yes.

Q. And you’re aware that the nature of that claim was an allegation that there was chemical exposure, that you were exposed to chemicals at work?

A. Well, actually, I was exposed to chemicals at work. I got it all in my burn and – but with – I mean, I know what y’all are talking about because she had called and asked me why – oh, I can’t say that, can I? My bad....

Q. And you had a former attorney who made a claim for benefits. We established that?

A. Yes.

Q. And the nature of that claim – it’s in writing and the Commission has that in front of them – was that you were exposed to chemicals sprayed on grass and steel on the job site. Were you aware of that claim?

A. Actually, I – I wasn’t aware of that until I got Mr. Bracey.

Q. All right. We – we have a Form AR-C filed by an attorney

–

A. Yes, sir.

Q. – and you had retained an attorney in Little Rock?

A. Correct.

Q. She was acting on your behalf?

A. Yes, sir, as my attorney.

Q. And the AR-C says, quote, “Claimant was exposed to chemicals sprayed on grass and steel on job site. Claimant

experienced brain injuries and other whole body injuries,” closed quote. That was your initial claim, wasn't it?

A. My initial claim was burns....My memory ain't that great, so I'm trying to remember everything....

Q. We've got the information from the former attorney that's been filed with the Workers' Compensation Commission by your former attorney. There was absolutely zero evidence of any allegation of a welding-burn injury. Are you aware of that?

A. No, I'm not.

Q. Okay. You – were you aware that there was a claim filed for chemical exposure from chemicals sprayed on grass and steel on job site?

A. Yes. When I got Mr. Bracey, yes.

Q. Okay. You weren't aware of it before then?

A. I had a lawyer. I'm not really for sure exactly because everything's foggy at certain time. You know what I mean?

Q. Let me just ask you this. The date of injury on the Form AR-C regarding the chemical exposure from chemicals sprayed on grass, there's a date of accident of May 1 of 2018. Do you know anything about what happened on that date?

A. I'm thinking May is when I went to the cancer doctor.

Q. Okay. All right. Let me – let me back up and ask you this. Your testimony today is that this welding incident happened sometimes (sic) in February 2018?

A. I believe so, yes.

Q. You – do you know for sure what month it happened?

A. I'm not – I've had three brain – I'm not 100 percent sure it's – I mean, I don't want to lie and I don't want to –

Q. Okay. Do you know – do you know what day? You don't know what day or month?

A. I want to say February.

Q. Okay. All right. Do you know when you sought medical treatment the first time for these welding burns?

A. March, probably, or April –

Q. You can't remember dates?

A. No, I don't.

Q. All right.

A. I'm not good with numbers now.

Q. When your current attorney filed a claim or wrote a letter to the Commission that he was appearing on your behalf. There was an alleged date of injury on or about May 2018 – or

do you remember anything happening in the form of welding burns in 2018?

A. Oh, yes, sir.

Q. Okay. In May of 2018?

A. I know I still had burns. I mean, I don't know the exact date.

Q. Okay. But let's – let's – let me ask you this. Whatever the day was and whatever happened on that date, you can't remember specifically the month or the day, you kept working like you told me in your deposition. You worked right through it?

A. Yes. I had to.

A WORKERS COMPENSATION – FIRST REPORT OF INJURY OR ILLNESS was prepared on January 16, 2020. The OCCURRENCE/TREATMENT section of the FIRST REPORT OF INJURY OR ILLNESS indicated that the DATE OF INJURY/ILLNESS was May 1, 2018, and that the employer was notified of same on January 14, 2020. The alleged injury was described: “EE was exposed to chemicals sprayed on grass and steel on job site.”

The claimant followed up with Dr. Smith on March 5, 2020: “He was initially referred to this clinic for lymphadenopathy which on biopsy was benign. On 10/26/18 he had a surgical clipping of an unruptured right middle artery aneurysm. On 05/16/2019 a 2nd surgery was performed for surgical clipping of a none ruptured (sic) left middle cerebral artery aneurysm. Since those surgeries he has continued to complain of severe headaches which [he] states [are] occurring almost daily....He is now

scheduled to be seen by pain management center of Arkansas on 04/01/2020.”

Bill Bracey, Jr. entered an appearance as the claimant’s attorney on or about December 11, 2020. Mr. Bracey corresponded with the administrative law judge on February 12, 2021: “I have finally contacted Mr. Keeling again this week and due to his memory problem suffice to say that his case was in a fruit basket turnover. Mr. Keeling had earlier alleged that his problem were (sic) due to walking in chemical covered grass, when in fact the surgical procedures were treating for molten, welding solder on his neck caused a serious condition resulting in bilateral stroke.”

Dr. Smith provided a *Worker’s Compensation Claim Letter Request* on October 19, 2021:

Billy Keeling is a 49 year old male referred to my office in April 2018 for evaluation of cervical lymphadenopathy following burns to posterior scalp and upper back from a welding incident while at work. After consultation with my office, it was determined that patient would need an excisional biopsy. An excision biopsy to right cervical lymph node was preformed (sic) on 7/20/2018 by Dr. [David] Lewis with diagnosis of no morphologic evidence of lymphoma. Follow up at my office was on 7/27/2018 to discuss results from biopsy, which determined from my standpoint that lymphadenopathy was reactive in nature due to superficial burns sustained. During the follow up appointment, Mr. Keeling stated that he had recently began to have posterior headaches occurring almost daily. A CT scan was ordered and preformed (sic) showing probable bilateral cerebral aneurysms with the right being larger than the left. Mr. Keeling was then referred to Semmes-Murphy Clinic for further evaluation. Mr. Keeling underwent right cerebral aneurysm clipping on 10/26/2018

and left cerebral aneurysm clipping on 5/16/2019. Mr. Keeling has not followed us in clinic from 3/5/2020 until 10/4/2021. From [an] oncologic and hematologic standpoint, I do not see any connection between reactive lymphadenopathy and cerebral aneurysms. A more definitive response could be obtained by neurosurgery.

Dr. Henry F. Simmons, Jr. wrote to the respondents' attorney on January 17, 2022:

At your request I reviewed a collection of medical records pertaining to Mr. Billy Keeling. My purpose in so doing was to advise you of any medical connection between a welding burn he reportedly received at work, an enlarged lymph node in his neck, and two aneurysms later found incidentally in his right and left middle cerebral arteries after he complained of headache. [Significant disease was also found in his left carotid artery at the time.] In brief, based upon his medical records, the literature, and my training, the burn, the node and the vascular diseases are not connected within a reasonable degree of medical probability....

At the time of the events at issue occurred, Mr. Keeling was 46. His past medical history already included in part hypertension, tobacco abuse, chronic obstructive pulmonary disease, chronic back pain, opioid dependence, anxiety and depression.

Mr. Keeling complained of a mass on the right side of his neck after burning his scalp and neck in 2018. On examination in April, the mass appeared to be a 1 – 1.5 cm palpable lymph node surrounded by reddened skin and 34 small, shallow ulcerations due to a burn. A superficial excisional biopsy was performed to ensure that the mass was not due to a cancer or another serious illness. Based upon the result, his physician decided that the enlargement of the lymph node was just a benign reaction to the superficial burns. This history does not suggest any connection to me between the superficial burns to his neck and scalp and his arterial abnormalities.

However, after this procedure in July 2018, Mr. Keeling complained of headaches necessitating imaging studies that revealed an aneurysm in each of his left and right middle cerebral arteries with the right larger than the left. Carotid

artery disease also detected at that time mandated a carotid endarterectomy [9/7/2018] to reduce his risk of ischemic stroke. The aneurysms were then clipped later on separate occasions to prevent spontaneous ruptures which might have yielded disastrous hemorrhagic strokes. [Right on 10/26/2018 and left on 5/16/2019]

Intracranial aneurysms are dilated areas in vessels with weakened walls. Their baseline incidence is uncertain but thought to be about 3 to 5% in the United States population, although they do not always enlarge or burst. About 20% of patients found with such aneurysms report having relatives either known to have aneurysms or to have bled inside their heads. Quite significantly, Mr. Keeling's sister evidently died from a ruptured intracranial aneurysm about 10 years before. This revelation was of such concern to the neurosurgeons that they advised that his close family members undergo screening to exclude the same problem in themselves. In addition, those who smoke and have hypertension like Mr. Keeling are also at increased risk of developing aneurysms that may potentially rupture. For that reason, Mr. Keeling's physicians encouraged him to reduce or stop his smoking. Finally, patients with problematic intracranial aneurysms are most often 30 to 60 years old, a range including Mr. Keeling.

In summary at the time of his burn, Mr. Keeling had pre-existing risk factors for developing intracranial aneurysms and carotid disease. They included his family history, chronic smoking, long standing hypertension and age. I cannot find literature to support the conclusion that an enlarged lymph node possibly related to a superficial burn causes these diseases. I believe that they antedate the injury. For these reasons, it is my opinion within a reasonable degree of medical probability that the burn, the enlarged lymph node and the vascular diseases are unrelated. Furthermore, Mr. Keeling may immeasurably have benefitted or may benefit from the physician attention to this burn in that it led to the incidental discovery and treatment of his aneurysms and carotid stenosis potentially saving him from strokes.

A pre-hearing order was filed on January 24, 2022. According to the text of the pre-hearing, the claimant contended, "1. Claimant contends that

he was permanently and totally injured arising in and out of employment when welding solder caused burns to his neck resulting in bilateral brain aneurysms. 2. Claimant is not related by blood to his sister. Therefore, her propensity to have aneurysms, cited in the medical causation opinion, is irrelevant in this proceeding. 3. All other issues are reserved.”

The parties stipulated that the claim “has been controverted in its entirety.” The respondents contended, “1. Respondents contend that the claimant did not sustain an injury during the course and scope of his employment. 2. Respondents further contend that claimant’s claim is barred by the statute of limitations.”

The parties agreed to litigate the following issues:

1. Whether this claim is barred by the statute of limitations.
2. Whether Claimant sustained injuries by specific incident in the form of welding burns to his neck/back and scalp.
3. Whether Claimant sustained injuries in the forms of removal of lymph node(s) and aneurysms as a compensable consequence of his alleged compensable welding burn injuries.
4. Whether Claimant is entitled to reasonable and necessary medical treatment.
5. Whether Claimant is entitled to temporary total and/or temporary partial disability benefits.
6. Whether Claimant is entitled to a controverted attorney’s fee. All other issues have been reserved.

Dr. Simmons further advised the respondents’ attorney on January 31, 2022:

I understand from your letter to me of January 28, 2022 that Mr. Keeling’s attorney has advised you that Mr. Keeling was

adopted and that therefore the history of hemorrhagic strokes in a sister as reflected in the medical record is irrelevant. That view is logical. Mr. Keeling's family history is of course whatever it really is. However, it does not change the conclusions that stated in my report of January 17, 2022. Had the medical record not included the reference to hemorrhagic stroke in one of Mr. Keeling's relatives, I would not have included any reference to it....

After a hearing, an administrative law judge filed an opinion on June 13, 2022. The administrative law judge found, among other things, that the statute of limitations barred the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(A) "Compensable injury" means:

- (i) An accidental injury causing internal or external 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. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving 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).

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).

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant became employed as a pipefitter for the respondents on or about February 12, 2018. The claimant contended that he sustained work-related welding "burns" to his neck, head, and shoulders in approximately February 2018 after he became employed with the respondents. The claimant testified that a welder was working above him and "the welding arcs coming off burns you pretty good." The claimant testified that he reported the work-related burns to his supervisor, Robert

McBride. Robert McBride denied that the claimant reported a work-related welding burn injury to him. However, Mr. McBride testified with regard to welding burns, "It happens every day. You know, it's weld splatter. You weld in green jackets and stuff, but it still happens. Everybody knows it happens." Mr. McBride testified that even if an employee was wearing protective equipment, "You will get burned....Everybody gets burned." Dennis Robinson, a co-worker, corroborated the claimant's testimony. Although he did not personally witness the burns when they occurred, Mr. Robinson testified, "I seen the aftermath....It was raw. It was raw because his collars and clothing had – had just rubbed it raw. Blisters."

Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012) does not require, as a prerequisite to compensability, that the claimant identify the precise time and numerical date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). Instead, the statute only requires that the claimant prove that the occurrence of the injury is capable of being identified. *Id.* The Commission may not arbitrarily disregard the testimony of any witness nor may the Commission arbitrarily disregard other evidence submitted in support of a claim. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). 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. *Patterson v. Ark. Dept. of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). In the present matter, the Full Commission finds that the claimant was a credible witness with regard to the welding burns he sustained while employed with the respondents. We find that the claimant proved by a preponderance of the evidence that he sustained a specific incident workplace injury in approximately February or March 2018. See *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008).

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained an accidental injury causing physical harm to his body, *i.e.*, his posterior neck as reported by Dr. Smith. *Cedar Chem. Co., supra*. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence in approximately February/March 2018, according to the claimant's credible testimony and corroborating evidence of record. The Commission is not free to arbitrarily ignore objective medical findings. *Edens, supra*. The Full Commission finds that the claimant established a compensable injury with objective medical findings, namely, Dr. Smith's May 8, 2018 report, "There is area of hyperemia of skin on posterior neck with 34 shallow, small ulcerations

secondary to burn.” We find that these objective medical findings were causally related to the workplace welding burn injury sustained by the claimant in February/March 2018. The claimant proved by a preponderance of the evidence that he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012).

B. Filing of claim

Ark. Code Ann. §11-9-702(Repl. 2012) provides, in pertinent part:

(a) TIME FOR FILING

- (1) A claim for compensation for disability on account of injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers’ Compensation Commission within two (2) years from the date of the compensable injury. If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4).

An administrative law judge found in the present matter, “3. The evidence preponderates that Claimant’s claim for initial benefits in connection with the alleged welding burns to his neck/back and scalp is barred by the statute of limitations set out in Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012).” The Full Commission does not affirm this finding.

The Full Commission has found that the claimant proved he sustained a compensable injury in February/March 2018. The

compensable injury was in the form of a welding burn to the claimant's posterior neck as described by Dr. Smith. The running of the statute of limitations is a question of fact. *Cromwell v. University of Arkansas*, 76 Ark. App. 5, 61 S.W.3d 864 (2001). Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012), *supra*, provides that a claim for compensation for disability on account of injury shall be barred unless filed within two (2) years from the date of the compensable injury. The Workers' Compensation Commission must strictly construe the statute. *White Cty. Judge v. Menser*, 2020 Ark. App. 140, 597 S.W.3d 640; Ark. Code Ann. §11-9-704(c)(3)(Repl. 2012). However, construction of the Workers' Compensation Act must be done in light of the express purpose of that legislation, which is "to pay timely temporary and permanent disability benefits to all legitimately injured workers who suffer an injury or disease arising out of and in the course of their employment, to pay reasonable and necessary medical expenses resulting therefrom, and then to return the worker to the work force." Ark. Code Ann. §11-9-101(b)(Repl. 2012); *Farmers Cooperative v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). For purposes of Ark. Code Ann. §11-9-702(Repl. 2012), the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). *Cromwell, supra*.

In the present matter, the claimant sustained a compensable accidental injury in approximately February or March 2018. The claimant was required to file a claim within two (2) years from the date of the compensable injury, viz, February/March 2020. See Ark. Code Ann. §11-9-702(a)(1)(Repl. 2012). Initial claims must be filed within two years from the date of injury. *Dillard v. Benton Cty. Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004). The claimant filed a Form AR-C, CLAIM FOR COMPENSATION, on January 13, 2020 before expiration of the two-year statute of limitations. The fact that the ACCIDENT INFORMATION section of the Form AR-C mistakenly characterized the accidental injury as exposure to chemicals in the workplace rather than a welding burn does not negate the claimant's timely filing of a claim for benefits. The purpose of the statute of limitations in workers' compensation cases is to permit prompt investigation and treatment of injuries. *Cook v. Southwestern Bell Telephone Co.*, 21 Ark. App. 29, 727 S.W.2d 862 (1987). The Full Commission finds in the present matter that the Form AR-C, CLAIM FOR COMPENSATION filed by the claimant on January 13, 2020 met all of the requirements of a timely-filed claim for benefits. See *Ark. Dept. of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924. We therefore reverse the administrative law judge's finding that the statute of limitations bars the claim.

C. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his neck in February/March 2018. The claimant filed a timely claim for benefits in accordance with the statute of limitations. The Full Commission finds that the medical treatment of record beginning May 8, 2018 was reasonably necessary in connection with the compensable welding burn to the claimant's posterior neck, as reported by Dr. Smith. Dr. Smith also noted on May 22, 2018 that diagnostic testing showed "an enlarged lymph node in the right posterior neck measuring 1.14 cm." Dr. Smith diagnosed "1. Lymphadenopathy." Dr. Smith referred the claimant to Dr. Lewis, who performed an "excision" procedure on July 20, 2018.

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. The basic test is whether there is a causal connection between the injury and the consequences of such. *Id.* The burden is on the employee to establish the necessary causal connection. *Id.* 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). Whether there is a causal connection is a question of fact for the Commission. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

In the present matter, the Full Commission finds that the medical treatment of record beginning May 8, 2018 was reasonably necessary in connection with the compensable burn injury to the claimant's neck. We find that the "excision" procedure performed by Dr. Lewis on July 20, 2018 was also reasonably necessary. The Full Commission finds that this procedure was a natural consequence of the compensable injury. Dr. Smith opined on October 19, 2021 that "lymphadenopathy was reactive in nature due to superficial burns sustained." The Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v.*

Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, the Full Commission finds that Dr. Smith's causation opinion is supported by the record and is entitled to significant evidentiary weight. The evidence demonstrates that Dr. Lewis performed an "excision" procedure as a result of reactive lymphadenopathy, which was causally related to the burns sustained by the claimant in February/March 2018.

However, the evidence does not demonstrate that the subsequent "aneurysms" sustained by the claimant were causally related to the compensable burn injury of February/March 2018. The record does not show that the surgical procedures performed by Dr. Hoit on October 26, 2018 or May 16, 2019 were reasonably necessary in connection with the compensable injury. The Full Commission notes Dr. Smith's October 19, 2021 opinion, "From [an] oncologic and hematologic standpoint, I do not see any connection between reactive lymphadenopathy and cerebral aneurysms." It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds based that Dr. Smith's opinion is corroborated by the record and is entitled to significant evidentiary weight. The evidence does not demonstrate that the aneurysms for which Dr. Hoit treated the claimant were reasonably necessary in connection with the

compensable injury. We note that Dr. Smith's opinion was corroborated by the opinion of Dr. Simmons. The claimant did not prove that the respondents were liable for surgical treatment provided by Dr. Hoit.

D. Temporary Disability

Finally, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

"Healing period" means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). Whether or not the claimant's healing period has ended is a question of fact for the Commission. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

In the present matter, the claimant sustained a compensable welding burn injury in approximately February 2018. The claimant testified that he continued to work following the compensable injury. The claimant's testimony indicated that he was taken off work on or about July 20, 2018, the date of the reasonably necessary excision procedure performed by Dr. Lewis. The Full Commission therefore finds that the claimant proved he remained within a healing period and was totally incapacitated to earn

wages beginning July 20, 2018. Dr. Smith reported on August 21, 2018 that he would “continue monitoring” the claimant, but Dr. Smith’s notes do not indicate that the claimant remained within a healing period for his reactive lymphadenopathy after that date. We find that the claimant reached the end of the healing period for his compensable injury and reactive lymphadenopathy as of August 21, 2018. Temporary disability cannot be awarded after a claimant’s healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). The Full Commission finds that the claimant proved he was entitled to temporary total disability benefits from July 20, 2018 through August 21, 2018.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. We find that the statute of limitations does not bar the claim. The Full Commission finds that the medical treatment of record provided through August 21, 2018 was reasonably necessary in connection with the compensable injury. We find that the claimant proved he was entitled to temporary total disability benefits from July 20, 2018 through August 21, 2018. The claimant’s attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant’s attorney is entitled to an

additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

The facts here are well suited to discuss the reasons why Arkansas Code Annotated §11-9-102 requires strict interpretation. This is no mere case of marking the wrong boxes on form AR-C, which would require that we prioritize the function of Form C over its presentation or even simply providing incorrect employer information. *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287, 2004 Ark. App. LEXIS 638; *Farris v. Express Servs., Inc.*, 2019 Ark. 141, 572 S.W.3d 863, 2019 Ark. LEXIS 150 (Ark. May 9, 2019). In fact, this does not appear to be an issue of mistake at all. Here, the claimant provided accident information irrelevant to and entirely excluding the relief sought, a fact which was not remedied until nearly two years later in November of 2021. At no point

were allegations of chemical exposure brought before the Administrative Law Judge, nor were they presented to the Full Commission on appeal.

Form AR-C takes special care to highlight the importance of providing complete and correct information and it is well settled that the purpose of this is to allow respondent carriers to fully investigate and act upon a claimant's allegations. In the matter at hand, the claimant failed to provide the information that could reasonably be considered as relating to his claim until pre-hearing filings were submitted in late 2021. It goes well beyond the purpose of our rules to construe §11-9-102 as stating that any AR-C filing for any reason, relevant or irrelevant to an alleged injury, can possibly toll the statute of limitations, as doing so would ultimately deny respondents the right to timely notice of allegations against them.

Allowing claimants to file a Form C with incomplete or irrelevant information regarding an injury goes far beyond the purpose and intent of Arkansas Code Annotated §11-9-102 and as a matter of course cannot stand for the purposes of upholding state law.

For these reasons, I respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner