

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G907099**

**JEFFREY LOVELIS, EMPLOYEE**

**CLAIMANT**

**ARKANSAS STATE POLICE,  
EMPLOYER**

**RESPONDENT**

**ARKANSAS INSURANCE DEPARTMENT/  
PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 14, 2025**

Hearing before Administrative Law Judge, James D. Kennedy, on the 19<sup>th</sup> day of June 2024, in Little Rock, Arkansas.

Claimant is represented by Steven R. McNeely, Attorney at Law, Jacksonville, Arkansas.

Respondents are represented by Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 19<sup>th</sup> day of November 2024, to determine the sole issue of additional reasonable and necessary medical treatment. A copy of the Pre-hearing Order dated August 13, 2024, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer-employee relationship existed on or about September 19, 2019.
3. An injury to the neck was accepted as compensable.

The claimant's and respondent's contentions are set out in their respective responses to the Pre-hearing questionnaire and made a part of the record without objection. The claimant contends that he is entitled to additional reasonable and necessary medical treatment, specifically being a return visit to Dr. James Suen to address the diagnosis claimant received from the VA doctor in Florida finding a crack in his Hyoid Bone, or alternatively an IME with a doctor in Florida. The respondents contend that the claimant reported on September 29, 2019, that he had injured his neck on September 19, 2019, while training, which was accepted as compensable by Respondents with the Claimant having been provided reasonable and necessary medical treatment for the compensable injury, which including treatment by Dr. Steven Shorts, otolaryngologist, who opined that there was no long lasting disability for this type of injury. Dr. Shorts released the claimant to full duty on October 28, 2019. Dr. Scott Carle saw the claimant for an Independent Medical Examination on November 14, 2019, and ordered an MRI of the claimant's neck and throat and opined that the claimant was at Maximum Medical Improvement and had no permanent impairment.

The claimant returned to Dr. Shorts, who did not treat the claimant but referred the claimant to Dr. James Suen, otolaryngologist, on November 16, 2020. Dr. Suen ordered a barium swallow study which was normal and a CT scan which was unremarkable. He performed an exploratory surgery on July 14, 2021, and found no major abnormalities but did remove part of a lymph node and upper lateral thyroid cartilage just below the hyoid bone on the left side. The claimant was then later seen by Dr. Wayne Bruffett who ordered an MRI of the cervical spine and opined on October 21, 2021, that the claimant had no

injury to the spine that would result in a permanent impairment and placed no restrictions on the claimant. Dr. Suen released the claimant at MMI on January 3, 2022, indicating that he had nothing else to offer but non-narcotic pain management might be useful, and the claimant presented to Dr. Carlos Roman who ultimately released the claimant with a 0% impairment rating. The claimant moved out of state and sought further treatment which the respondents were aware of, and they then filed a Motion to Dismiss for Want of Prosecution on June 4, 2024. The claimant objected to the dismissal and contended that he should be allowed to return to Dr. Suen after the diagnosis of a crack in his hyoid bone as determined by a VA doctor or in the alternative, an IME.

The sole witness to testify was the claimant, Jeffrey Lovelis. Both parties submitted exhibits without objection. 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. That an employer/employee relationship existed on September 19, 2019, when the claimant sustained a compensable injury to his neck which was accepted as compensable by the respondent.
3. That the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that he is entitled to the additional medical

treatment requested, specifically a return to the treating physician, Dr. James Suen or another IME in Florida, with said requested treatment being found to not be reasonable and necessary.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The claimant, Jefferey A. Lovelis, 35 years old at the time of the hearing, was the sole witness to testify. He admitted to VA-related disabilities after serving in the Marines and being deployed to Afghanistan. These conditions did not involve his neck or throat, however but did involve PTSD, his hearing, and his knees. He returned to Arkansas and after some intermediate employment after the military and became employed by the Arkansas State Police in 2018 as a Trooper in Lincoln County. He stated he had no problem performing his job duties until September 19, 2019. On that date he was at a training facility for his yearly training, and they were working on neck restraints that could possibly protect them while working on the side of the highway. 12 Troopers were instructed to get on their knees and then the individual Troopers were instructed to go between each remaining Trooper to become aware of different neck sizes that they might encounter. He injured his neck when a Trooper came up behind him and picked him up off of his knees very slightly and he felt something tighten up. A week later, he could tell something was going on and he felt a popping sensation in his throat while attempting to swallow. (Tr. 6 – 11)

He initially saw Dr. Stephen Shorts and then saw Dr. James Suen, who could tell something was wrong but didn't know what, based on CT scans and MRI's. Dr. Suen then performed exploratory surgery on July 14, 2021, "where he grinded my esophagus down, my voice box down, and removed some lymph node and removed that calcified styloid

tendon.” He went on to testify that after the surgery, his throat popped every time he attempted to swallow. He denied being involved in any additional accidents, since the November 2019 date. (Tr. 13, 14) The claimant felt that he was unable to be a State Trooper due to lacking a full range of motion in his neck and issues with the swallowing and grinding in his throat. He also stated that he lost the full range of motion in left arm. (Tr. 15, 16)

Under cross examination, the claimant admitted reporting the training injury to his respondent employer within six or seven days. He went on to provide that he did not report it earlier because in the past, he had been through numerous chokeholds, and he didn't think anything was wrong. “So as the week progressed, I could tell that something was going on because my neck, as it - - it got harder and harder to swallow and eat foods during the week.” “I mean we - - That wasn't the only neck restraint that we worked on that day, so there was a lot of force on our necks that day for everybody, so I just thought it was maybe sore initially.” (Tr. 19, 20)

In regard to medical treatment, the claimant went initially to Med Express, and was then referred to Dr. Shorts, an ear, nose, and throat doctor, where he eventually received an MRI after a couple of months. He also admitted seeing Dr. Carly, due to the fact his throat was still swollen, and which affected his job. He was later referred to Dr. Suen, who ordered a CT. It was the claimant's understanding that Dr. Suen knew that something was wrong, and the exploratory surgery was to determine what. After the surgery, the claimant admitted to receiving physical therapy for his left arm which helped 100 percent, but the throat problems became worse. The claimant admitted that he was told the left arm problem had nothing to do with the exploratory surgery. (Tr. 21 - 26)

The claimant also admitted treatment by Dr. Bruffett, who ordered a MRI of the cervical spine but who did not order surgery. In regard to his treatment by Dr. Suen, claimant testified that “He exhausted everything he had. Based off what he found after exploratory - - didn’t find anything - - I don’t think there was anything he could probably do.” (Tr. 27) The claimant also admitted to performing a Functional Capacity Evaluation (FCE) and admitted that at the time of the examination, he was on medications from the VA and that he may not have understood what was expected of him. (Tr. 29) He also admitted that after the surgery he lost a lot of strength in his left arm, and that was where the physical therapy assisted him in getting his left arm strength back. (Tr. 30) He further provided that the abilities in regard to his left arm have improved, but he still has problems with his throat. (Tr. 31)

The claimant admitted he had moved to Florida. (Tr. 32) He also admitted that a letter dated June 7, 2022, provided he was entitled to disability from the Arkansas State Police. He also admitted seeing doctors in Florida which were part of the VA system and remembered performing a “swallow study” and additionally receiving another MRI regarding his neck. (Tr. 33) The claimant felt the swallowing problem with his neck had not improved but he had become more tolerant of it. He also admitted currently being employed by UF Health Hospital in St. Augustine for a little over a year. (Tr. 35, 36) In regard to his throat, he testified that he had received acupuncture and had visited a chiropractor. The claimant also testified that the surgery on his neck was performed on the left side. (Tr. 39)

In regard to exhibits, claimant submitted 37 pages of medical exhibits without objection. The records provide that he presented to Mainline Health on April 22, 2022, in

regard to his injury and the report provided the claimant was unable to participate full capacity in regard to the job duties for the highway patrol and state trooper patrol. He was unable to perform a full range of motion in regard to his neck and also his bilateral upper extremities at the time. (Cl. Ex. 1, P. 1) On April 6, 2023, he was seen by Dr. Neil Chhedra at the University of Florida who saw the claimant through the VA. A CT of the neck was ordered along with a barium swallow study. (Cl. Ex. 1, P. 2 – 13)

The claimant returned to Dr. Chhedra on May 16, 2023, and the report provided that the claimant presented with odynophagia and throat clicking and had a history of trauma to the neck due to a choke hold to the neck during police training four years earlier. (Cl. Ex. 1, P. 14 – 20) He again returned to Dr. Chhedra on June 22, 2023, and an MRI was discussed. The report provided that the MRI procedure was selected by the claimant, but the report showed “(Discontinued)” by the term “MR Neck” with a diagnosis of Odynophagia. (Cl. Ex. 1, P. 21 – 28) He then returned again to Dr. Chhedra on September 28, 2023, and was diagnosed with a fracture of the hyoid bone and odynophagia. (Cl. Ex. 1, P. 29 – 36)

Claimant’s exhibit two was also admitted without objection and consisted of Merriam-Websters definition of Dysphagia and Odynophagia as well as Chapter 9 which covered the Ear, Nose, Throat, and related Structure in the MA Guides 4th Edition.

The respondents submitted 99 pages of medical records that were admitted without objection. The records provide that the claimant presented to MedExpress on September 29, 2019, with a referral to an ENT. The report further provided that the claimant came in with neck pain due to hurting his neck 10 days earlier during training. (Resp. Ex. 1, P. 1 – 9) The claimant was then referred to Dr. Stephen Shorts and he first

saw him on October 8, 2019, with a diagnosis of a stretch of his left stylohyoid ligament. It further provided that the claimant could return to work as long as he avoided heavy lifting and strenuous bending of the neck for two weeks. A letter reiterating this point was dated October 15, 2019, as well as a note on a prescription pad, dated October 21, 2019. (Resp. Ex. 1, P. 10 – 17) An MRI of the face and neck was obtained on November 22, 2019, and it provided for no pathologic or post-traumatic findings of the cervical soft tissues of the neck. (Resp. Ex. 1, P. 18)

A note titled “Fitness for Duty Status” dated November 26, 2019, and signed by Dr. Carle, provided it appeared the claimant appeared to be able to perform the essential functions of his job. (Resp. Ex. 1, P. 19, 20) An Independent Medical Exam Report dated November 26, 2019, provided that no impairment of the swallowing mechanism was identified and provided for a 0% impairment rating. (Resp. Ex. 1, P. 21 - 32) The claimant was then referred to Dr. Suen by Dr. Shorts on November 16, 2020. (Resp. Ex. 1, P. 35, 36) The CT report of the soft tissue of the neck dated November 19, 2019, provided for an unremarkable postcontrast CT of the neck, with no acute findings, abnormal mucosal enhancement, or cervical adenopathy. (Resp. Ex. 1, P. 37 - 39) Follow up progress notes by Dr. Suen dated April 19, 2021, provided that there was no significant abnormal finding in regard to the neck.

On May 24, 2021, Dr. Suen scheduled exploratory surgery due to the fact that the claimant was having so many problems and that the claimant wanted the surgery. (Resp. Ex. 1, P. 41 - 44) Exploratory surgery of the left neck by Dr. Suen occurred on July 14, 2021, the report provided the claimant wished to return to work and due to the fact that chronic pain was reported, it was felt that it be worthwhile to explore the neck to be sure



there was nothing obvious that could be corrected. The hyoid bone was retracted, and the medial cornu of the hyoid was felt where the stylohyoid ligament attached and Dr. Suen could “feel a slight thickening above that which I felt was a small calcification.” (Resp. Ex. 1, P. 45 – 47) The claimant returned to Dr. Suen for a follow up on September 7, 2021. From that report, it appeared neck pain was still present. (Resp. Ex. 1, P 48, 49)

The claimant was then seen by Dr. Wayne Bruffett on October 6, 2021, and an MRI of the cervical spine was recommended. Dr. Bruffett also provided for no change in the claimant’s work status. (Resp. Ex. 1, P 50 – 55) The MRI of the cervical spine dated October 18, 2021, provided only for mild degenerative changes at C1 – C2. (Resp. Ex. 1, P. 55, 56) The claimant then returned to Dr. Bruffett for a follow-up and Dr. Bruffett provided he did not see any structural damage, but he suspected that the claimant would be left with some residual symptoms. (Resp. Ex. 1, P. 57 – 62)

The claimant then returned to Dr. Suen on November 30, 2021, who opined in his report that the claimant suffered from an unusual neck problem secondary to trauma, which was most likely from muscle injury due to the trauma. On December 20, 2021, Dr. Suen opined that he had exhausted all possible diagnoses for the claimant’s problems and that he was unable to resolve it. He did not think that narcotic pain management was required but some of the anti-seizure meds used for pain could possibly be useful. (Resp. Ex. 1, P. 63 - 65)

The claimant was then seen by Dr. Carlos Roman on February 15, 2022, who felt that a FCE (Functional Capacity Exam) was warranted. It was found that the claimant was at MMI with an impairment rating of zero. The final diagnosis was neck pain post neck strain. (Resp. Ex. 1, P. 66 – 68) A Functional Capacity Impairment Rating Report

provided that there were no objective findings to support impairment and therefore the claimant was given a 0% impairment rating. The report provided that an unreliable effort was given. (Resp. Ex. 1, P. 69 - 70) The FCE provided that the claimant performed unreliably with 36 of 53 consistency measures within expected limits. (Resp. Ex. 1, P 71 – 90)

On March 9, 2022, Dr. Roman reviewed the FCE Exam and wrote that he had already released the claimant at MMI with a 0% impairment rating. (Resp. Ex. 1, P. 91) On March 10, 2022, Dr. Suen provided in an email chain that he agreed with the findings of the FCE and that the claimant's symptoms and complaints were not consistent with his exam. He had examined the claimant multiple times, and he felt he was considered an expert in regard to neck and throat problems. He could not find anything abnormal on the exam and had even surgically explored the claimant's neck and checked every structure that could cause his symptoms and found nothing significant. (Resp. Ex. 1, P. 92, 93) A Barium Swallow Study report from the University of Florida dated April 24, 2023, provided that the claimant was a 34-year-old male with a previous fracture of the Hyoid bone. The report provided for a normal examination or findings that are inconsequential. (Resp. Ex. 1, P. 94 – 95) Finally, an MRI of the neck dated August 17, 2023, provided that there were no findings to explain odynophagia and there were no abnormalities on either this study or the prior laryngeal CT to suggest abnormalities of the hyoid bone or the remainder of the laryngeal skeleton. (Resp. Ex. 1, P. 96)

The respondents also submitted 27 pages of nonmedical evidence without objection. An AR – N Form filled out by the claimant provided that he was injured on September 19, 2019, when he was “having a practice with different exercises when

someone squeezed his head too hard and felt tightness on his neck.” This document was received on September 30, 2019, by the Public Employee Claims Division. (Resp. Ex. 2, P. 1-3) The Employee’s Report of Accident also provided that the date of the injury was September 19, 2019, and involved the soft tissue of the neck. (Resp. Ex. 2, P. 4) The Workers’ Compensation Incident Report provided that the claimant was involved with in-service training on the dates of September 17 -19, 2019, when he hurt his neck while training. (Resp. Ex. 2, P. 5)

A letter from APERS dated June 7, 2022, in regard to the claimant’s application for disability retirement, provided that the disability benefits would be effective June 1, 2022. (Resp. Ex. 2, P. 6 – 8) In addition, the minutes of the Arkansas State Police Commission meeting dated July 14, 2022, provided that the claimant retired from the department on May 31, 2022. (Resp. Ex. 2, P. 9 -13) A report provided that the claimant ran in the Bridge of Lions 5K and came in 10<sup>th</sup> out of 27<sup>th</sup> in his age group. (Resp. Ex. 2, P. 21, 22)

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

In the present matter, the parties stipulated that the claimant sustained a compensable injury to his neck on September 19, 2019. The claimant is therefore not required to establish “objective medical findings” in order to prove that he is entitled to additional benefits. Chamber Door Indus., Inc. v Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997) Once it is settled that a claimant has a compensable injury, the question of medical service must be determined by looking at the facts in question and determining if the medical services are reasonably necessary for the treatment of the claimant’s injury

In determining whether the claimant sustained his required 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. Cavananugh'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).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. Dalton v. Allen Engineering Co., 66 Ark. App. 201, 635 S.W. 2d 823 (1982). 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. 263, 101 S.W.3d 252 (2003). Further, pursuant to Ark. Code Ann. 11-9-509 (a), medical benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. A.C.A. 11-9-508 (a). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Owens Plating Co. v. Graham, 102 Ark. App. 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question for the Commission. Anaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W. 3d 269 (2008). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, both the proposed procedure and the condition it is sought to remedy must be analyzed. See Wright Construction Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750

(1984). Also, the respondent is only responsible for medical services which are casually related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. Foster v. Kann Enterprises, 2019 Ark. App. 746, 350 S.W.2d 796 (2009).

In the present matter, the initial MRI of the face and neck dated November 22, 2019, provided no pathological or post traumatic findings regarding the cervical soft tissues of the neck. An IME dated November 26, 2019, provided no impairment involving swallowing and provided for a 0% impairment rating. Dr. Suen ordered a CT of the neck and there were no acute findings as stated in the follow-up by Dr. Suen on April 19, 2021. Exploratory surgery was performed by Dr. Suen on July 14, 2021, and the report provided he retracted the hyoid bone and could feel the medial cornu of the hyoid where the stylohyoid attached and could feel a slight thickening above the location which he felt was a calcification. The claimant was also seen by Dr. Bruffett, who recommended another MRI, and no structural damage was observed, although Dr. Bruffett felt the claimant did suffer from some residual symptoms. The claimant returned to Dr. Suen on November 30, 2021, and Dr. Suen opined that the claimant suffered from some unusual neck problems which were most likely caused by muscle injury due to the trauma. Later on, December 20, 2021, Dr. Suen stated that he had exhausted all possible diagnoses and was unable to resolve the problem. On February 15, 2022, Dr. Roman found the claimant at MMI and provided a 0% impairment rating with no objective findings. On March 9, 2022, Dr. Suen opined that the claimant's symptoms and complaints were not consistent

with his physical exam and stated that he could not find anything abnormal in the claimant's exam and could not find anything in his surgical examination of the claimant while exploring his neck which would cause the claimant's symptoms.

Later on, April 24, 2023, a Barium Swallow Study was performed at the University of Florida which provided for a normal exam with inconsequential findings. Additionally, a MRI report from the University of Florida dated August 17, 2023, found no findings that explained odynophagia and found no abnormalities in the study or in a prior laryngeal CT to suggest abnormalities of the hyoid bone or the remainder of the laryngeal skeleton. The one report that differs from all of these previous findings was the one by Dr. Chhedra, dated September 28, 2022, and which diagnosed the claimant with a fracture of the hyoid bone and odynophagia.

All medical reports and various imaging studies, except the opinion issued by Dr. Chhedra, found no consequential findings in regard to the claimant's issues involving swallowing. Dr. Suen, a well-respected surgeon in regard to neck and throat issues, even stated that the claimant's symptoms and complaints were not consistent with his exam, and went on to state that he could not find anything abnormal in the claimant's exam and could not find anything in his surgical examination of the claimant while exploring his neck which would cause the claimant's symptoms.

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. Powers v. City of Fayetteville, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Where there are contradictions in the evidence, it is within the Commissions' province to reconcile conflicting evidence and to determine the true facts. Cedar Chem. Co. v. Knight, 99 Ark. App. 162, 258 S.W.3d

394 (2007). The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. Oak Grove Lumber Co. v. Highfill, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, the Commission may not arbitrarily disregard the testimony of any witness. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, the medical treatment requested is found to not be reasonably necessary for the treatment of the compensable injury and there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence, that the return visit to Dr. Suen for medical treatment, or in the alternative the request for an additional IME is reasonable and necessary treatment. 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