

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H100964

JUSTIN P. MITCHELL, EMPLOYEE	CLAIMANT
PARKER AUDI, EMPLOYER	RESPONDENT
CENTRAL ARKANSAS AUTO DEALERS, SIF, CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED NOVEMBER 12, 2024

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Pulaski County, Little Rocks, Arkansas.

Claimant represented by the Honorable Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 14, 2024, in Pulaski County, Arkansas. Following a Prehearing Telephone Conference with the parties on June 12, 2024, a Prehearing Order was entered in this case on that same day.

Stipulations

The parties submitted the following jointly proposed stipulations either pursuant to the Prehearing Order, or at the start and/or during the hearing. I hereby accept the following proposed stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

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2. The employee-employer-carrier relationship existed on January 14, 2021, when the Claimant sustained a compensable injury to his right shoulder while in the course and scope of his employment with the respondent-employer, Parker Audi.

3. The Claimant was released at maximum medical improvement/MMI by Dr. Lawerance O'Malley on October 2, 2023.

4. The Claimant was earning sufficient wages (\$1,193.27) to entitle him to the maximum compensation rates for a 2021 injury. These weekly benefit amounts are \$736.00 for temporary total disability (TTD) benefits, and \$552.00 for permanent partial disability (PPD) benefits.

5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issue

By agreement of the parties, the sole issue to be litigated at the hearing was: Whether Claimant is entitled to additional medical treatment, in the form of a peripheral nerve stimulator per the recommendation of his treating physician, Dr. Johnathan Goree.

Contentions

Claimant:

On January 14, 2021, the Claimant sustained a compensable right shoulder injury within the course and scope of his employment while pulling on a tire iron. The Respondents accepted the injury as compensable and began paying for medical treatment.

An MRI revealed a torn labrum. On March 2, 2021, the Claimant underwent surgical repair with Dr. Kirk Reynolds. Still in pain, Claimant underwent a repeat MRI on September 14, 2021, which revealed a posterior labral tear from 7- 11 o'clock. It was noted that this was a large sub-

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labral recess or tear of the superior labrum. On November 16, 2021, Dr. Reynolds performed a right shoulder arthroscopy. The Claimant underwent injections with Dr. Vargas due to his continued complaints.

On March 15, 2023, the Claimant underwent an MRI which revealed a large posterior labral tear with labral chondral defect, mild to moderate osteoarthritis grade 2/4 cartilage loss, and supraspinatus muscle atrophy. The Claimant's treatment was then switched to Dr. O'Malley, who recommended another shoulder surgery, and Dr. Goree, for his pain management. On April 27, 2023, the Claimant underwent a right shoulder scope with posterior labral repair.

Dr. O'Malley placed the Claimant at MMI on October 2, 2023, and assessed a 10% whole body impairment rating. Dr. O'Malley also referred the Claimant for continued treatment with Dr. Goree.

Claimant followed up with Dr. Goree, who noted that the Claimant suffers from Complex Regional Pain Syndrome (CRPS) and recommended a peripheral nerve stimulator for his injury. Respondents have denied the stimulator.

The Claimant contends that he is entitled to the additional medical treatment as recommended by Dr. Goree.

All other issues are reserved.

Respondents:

The Respondents contend that all appropriate benefits are being paid with regard to this matter. It is Respondents' position that the peripheral nerve stimulator recommended by Dr. Goree is not reasonable and necessary for the Claimant's compensable injury.

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Summary of Evidence

Mr. Justin Paul Mitchell (referred to herein as the “Claimant”), was the only witness to testify during the hearing.

The record consists of the hearing transcript of August 14, 2024, and the documents contained therein. Specifically, Commission’s Exhibit 1 includes the Commission’s Prehearing Order filed on June 12, 2024 and the parties’ responsive filings; Claimant Medical Exhibit consisting of one hundred forty one (141) numbered pages was marked as Claimant’s Exhibit 1; and Respondents’ Medical Exhibit consisting of three (3) pages was marked accordingly.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and 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 of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including January 14, 2021.
3. The remaining stipulations set forth above are hereby accepted.
4. The evidence preponderates that the peripheral nerve stimulator recommended by the Claimant’s treating physician, Dr. Johnathan Goree, is reasonable and necessary treatment for the Claimant’s compensable right shoulder injury of January 14, 2021.

Hearing Testimony

The Claimant, age 36, has a nursing degree and EMT training. He graduated from high school in 2006. He attended UAMS School of Health and Related Professionals. The Claimant

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also attended Baptist Health College in Little Rock. He holds an LPN (licensed practical nurse) license, which he obtained in 2015. The Claimant obtained his EMT license in 2007.

Since leaving high school and before going to work as an EMT, the Claimant performed entry level mechanic-type work. Next, the Claimant worked for eleven years as an EMT for MEMS in Little Rock. He testified that he also did ambulance work, and then in 2015 he obtained his nursing degree and started working in critical care, in an acute hospital setting. The Claimant also worked back and forth on an ambulance. According to the Claimant, he has always worked on cars on the side.

The Claimant confirmed that he worked for Metropolitan EMS until around 2019, and then he went to work at Amberwood Health and Rehab in Benton. There, the Claimant worked as an LPN in his first nursing job. Next, he went to work for St. Vincent, which is also called Cornerstone Hospital. He confirmed that he worked in critical care. The Claimant confirmed that he left Cornerstone during COVID.

Per the Claimant, he started working at Parker Audi Automotive in August or September of 2020. He confirmed that he went straight from Cornerstone over to Parker. When the Claimant left there, he went to work full-time with Parker. The Claimant testified that he left the hospital setting strictly due to “burnout.” He explained that he had been in medicine all of his life and it was time for a change. According to the Claimant, COVID threw nurses over the edge, and he had to escape that for a bit.

He confirmed that he was hired as a mechanic at Parker as a full-on technician. The Claimant testified that his job duties included basic maintenance, and in a brief time he was pulling major parts and engines from cars.

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On January 14, 2021, the Claimant was injured while at the tire mounting machine, which grips the wheel and tire on its side to change the tires out. He essentially testified that Audi uses a very tight-walled tire that makes them high tensile tight, and they have to use tire irons and the machine to break the bead off and get the tire demounted. When the Claimant pulled back the tire iron, he felt an extremely sharp pain in his right shoulder. He testified that the pain lasted for a few minutes and then it subsided. The Claimant testified that of course he did not think anything of it at the time. He took a break and then went to lunch. The next day, the Claimant realized that he had a problem, and it started flaring up when he was doing his other work.

He confirmed that he injured his shoulder on January 14, 2021, and that the Respondents accepted his injury as compensable and paid for his medical treatment. The Claimant testified that he had what they call a SLAP tear, superior labrum anterior to the posterior tear, which is a right tear in the labrum about 60% of the way around. He was sent to Dr. Reynolds for treatment of his right shoulder injury. However, the Claimant explained that the first medical person he saw was at an urgent care clinic affiliated with CHI St. Vincent, in Little Rock. There, the Claimant was diagnosed with a torn rotator cuff. As a result, the Claimant referred over to orthopedics for further treatment and evaluation by Dr. Reynolds. At that point, the Claimant found out that he had a SLAP tear. The Claimant underwent surgery on March 2, 2021, under the care of Dr. Kirk Reynolds, in the form of an arthroscopic procedure to repair the tear. Following this first surgery, Dr. Reynolds reported that the Claimant was doing well, and physical therapy was ordered.

The Claimant confirmed that he had worsening pain by August 2021. As a result, in September of 2021 another MRI was performed. This MRI showed a tear. The Claimant testified that it had reopened, which was a re-tear in the same place. He returned to Dr. Reynolds on

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November 16, 2021, and he performed another arthroscopic procedure on the Claimant's right shoulder. Next, the Claimant underwent some platelet rich plasma (PRP) injections by Dr. Vargas. The Claimant testified that Dr. Vargas also did the cortisone injections as well as the PRP's. However, the Claimant testified that unfortunately, the PRP's did not help relieve his symptoms, nor did the cortisone shots work. Per the Claimant, he underwent two PRP's with no improvement.

On May 3, 2022, the Claimant underwent an FCE with reliable results, with 52 of 52 consistency measures. He was given a medium duty work restriction. The Claimant followed up Dr. Reynolds on May 19, 2022, and he released the Claimant from his care with a 6% whole body impairment rating.

The Respondents then sent the Claimant for an Independent Medical Evaluation/IME with Dr. Carlos Roman. The Claimant confirmed that he saw Dr. Roman on June 6, 2022. At that time, the Claimant confirmed that he was diagnosed with right shoulder weakness and chronic shoulder pain.

Per the Claimant, his visit with Dr. Roman went terrible. The Claimant testified that he was downplayed from the very beginning. According to Claimant, the vibe he got from walking into that office and being offered a medical marijuana card was just off-putting to him for someone being in medicine and knowing that he was a nurse and could not do that. He specifically testified that his SLAP procedure and "whole illness was downplayed." The Claimant testified that he wants to get off the pain medicines. He confirmed that he filed a change of physician to Dr. Johnathan Goree following that office visit. The Claimant admitted that he underwent a radiofrequency ablation for his right shoulder.

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There are two types of temporary blocks that were used, some other drug and Lidocaine in the targeted area that they planned to do the ablation in. Two temporary blocks were done and 80% was successful. According to the Claimant, then the actual ablation was done. Unfortunately, the ablation targeted area did not work, so he still had the exact amount pain. As a result, Dr. Goree referred the Claimant for surgical intervention by Dr. Lawrence O'Malley. On April 27, 2023, Dr. O'Malley performed a right shoulder scope due to another posterior labral tear.

Dr. O'Malley noted on October 2, 2023, that the Claimant was at maximum medical improvement and assigned a 10% whole body rating and referred the Claimant back to Dr. Goree for pain management. The Claimant confirmed that the Respondents accepted both of his ratings. He testified that after the third surgery, Dr. Goree and Dr. O'Malley communicated and consulted about his shoulder condition. The Claimant explained that Dr. Goree has recommended the peripheral nerve stimulator to block those messages being sent from the arm to the brain. According to the Claimant, the peripheral nerve stimulation is a battery pack with low voltage frequency. He testified that this device calms the nerve pain, although it does not take it completely away.

With respect to the stimulator, the Claimant testified that the battery pack could be placed in the chest cavity or externally with an adhesive pouch to hold the actual transmitter. The Claimant testified that initially the device is placed externally on the body. If it is determined that the device is helping, then they will implant it in his chest wall. The Claimant testified that currently, Dr. Goree has him on Oxycodone 5-miulligram, PRN, which means he takes it as needed. According to the Claimant, sleep disturbance can be a big issue, so he put him on Nortriptyline to help with his sleep, and that is the only thing that has worked so far to dull the

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pain down some so that he can rest at night. However, the Claimant testified that the goal is to get him off the medications with this instrument.

Under further questioning the following exchange took place:

Q Okay. Tell me -- I want you to describe the pain that you feel.

A The pain that I feel, dependent on what I'm doing, if it's at rest it's a throbbing dull pain, almost like an arthritic pain that doesn't go away. Anything above shoulder or chest height with my arm being raised is a sharp, feels like almost tearing as soon as I raise my arm, and just being at a standstill can almost move my body and hear that joint creak, which I've brought up a few times, but it's part of the joint being fused back together so it's constant pain, either sharp or dull.

The Claimant confirmed that after his doctors released him to medium duty work, his employer tried to put him back to work. According to the Claimant, he knew that this was a tactic to get him to return to work. However, the Claimant testified that as soon as he was back at work, the next day they had him lifting 70-pound batteries from the back of vehicles. As a result, the Claimant decided not to continue his employment with Parker Audi.

He confirmed that he has a personal hobby farm. It is about two acres, and they use half of it to raise chickens. According to the Claimant, they do not really do commercial farming or anything. He stated that they have eight chickens and eight ducks. Also, they grow tomatoes, which are grown only seasonally. The Claimant's long-time girlfriend runs a flower farm, and she grows just about everything. He confirmed that he is half owner in the Front Porch Farmer's Market, which is a community cooperative market. They support Arkansas farmers. The Claimant testified that he made \$5000.00 from this business last year.

On cross-examination, the Claimant confirmed that his deposition was taken on November 9, 2023. The Claimant admitted that following his second surgery with Dr. Reynolds, he underwent some injections by Dr. Vargas. He agreed that the injections did not help, so Dr.

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Reynolds sent him to Dr. Roman for pain management. He confirmed that he did not get along with Dr. Roman due to a personality conflict, and that this is the reason he obtained a change of physician to treat with Dr. Goree. The Claimant confirmed that Dr. Goree's nurse practitioner sent him to Dr. O'Malley for his third surgery to be performed. He agreed he testified in his deposition that the third surgery did help some with stability.

The Claimant confirmed that to date, all of his medical treatment has been paid for by the workers' compensation carrier. He agreed that currently he is working sixteen hours a week at Baptist Health College. The Claimant admitted that he testified in his deposition that if full-time work became available, he would probably take it.

Under further questioning, the Claimant admitted that he is not under any restrictions from a doctor. During his deposition, the Claimant testified that he oversees the operations of the farm product at market as part of his work with the Farmer's Market. Besides his sleep medication and Oxycodone, the Claimant takes over-the-counter medications for really severe pain. The Claimant confirms that he takes Oxycodone only in the evenings because he likes to be able to function clearly.

The Claimant gave the following explanation regarding the current condition of his shoulder:

It is not good. From just a layperson's standpoint or a medical person's standpoint, I deal with a lot of pain. It has changed my personality: it has changed my sleep patterns; my relationships; and my jobs. It has affected single portion of my life.

The shoulder itself is trashed, but the only way without saying anything about what the doctors said is, you know, we've got to kick the can down the road per se before I can get a shoulder replacement, and that's in my 50's, if I'm lucky.

The Claimant testified that he would like to get off of the pills because he knows where

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that can go. He testified that he thinks it is unfair to keep going in this condition and being in this shape at the age of 36. According to the Claimant, he is unable to throw a ball with his son. His son is 10 and plays baseball. The Claimant confirmed that he is in constant pain.

Medical Evidence

A review of the medical records shows that on January 19, 2021, the Claimant sought medical treatment at CHI St. Vincent Infirmery in Little Rock due to a “right shoulder injury.” The Claimant reported that he injured his right shoulder at work while changing a tire. Progress Notes authored by Leanne Glidewell, APRN, show that the Claimant was assessed with, “1. Injury of right rotator cuff, initial encounter- S46.0001A (Primary) 2. Acute pain in my right shoulder - M25.511. 3. Accident at workplace -Y99.0.” Glidewell opined that the Claimant likely had a rotator cuff injury given his acute right shoulder pain and limited range of motion. As a result, she placed the Claimant on limited work duty and referred him to an orthopedic specialist.

The Claimant underwent an evaluation by Dr. Kirk Reynolds on January 19, 2021, due to a chief complaint of right shoulder pain. At that time, four (4) Views of the Claimant’s right shoulder were obtained.

IMAGING

4 [sic]VIEWS of the right shoulder were obtained today and personally reviewed. Glenohumeral alignment and architecture are normal. There is no AC joint or glenohumeral arthritis. The humeral head is well centered in the glenoid without evidence of posterior subluxation of superior escape. Type 1 acromion.

ASSESSMENT

Right shoulder pain, instability, and mechanical symptoms consistent with labral pathology.

PLAN

Diagnosis and treatment discussed with justin(sic) in clinic today. Given his pain, mechanical symptoms, weakness and instability I recommend an MRI arthrogram of the right shoulder to better evaluate biceps anchor, posterior labrum and other intra-

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articular/periarticular structures. I will have him return for re-evaluation once that is available for review in the interim, he will remain on modified duty at work with no lifting, pushing or pulling with the right upper extremity and no work above shoulder level. He has not reached MMI.

It is my professional medical opinion that 100% of his current complaints and pathology are not directly and causally related to his injury which occurred at work on the date stated above.

On February 4, 2021, the Claimant underwent an MRI Right Shoulder Direct Arthrogram:

IMPRESSION:

1. Suspected posterior glenoid hypoplasia with tearing of the posterior labrum. Labral tearing extends from the 11:00 position posterior superiorly to the 6:00 position inferiorly. There is no definite involvement of the biceps labral anchor or intra-articular biceps.
2. Heterogeneous signal of the central and posterior glenoid cartilage is suspicious for low-grade chondromalacia. No definite high-grade cartilage defect or subchondral cyst formation.
3. No evidence of rotator cuff tear.

Fluoroscopy Guided Right Shoulder Injection for Direct MR Arthrography was done on that same with an IMPRESSION: of “Successful fluoroscopy guided right shoulder injection for direct MR arthrography.”

The Claimant underwent right shoulder surgery on March 2, 2021, by Dr. Reynolds:

PREOPERATIVE DIAGNOSES:

1. Right shoulder posterior subluxation with posterior labral tear.
2. Right shoulder unstable, type II SLAP tear.

POSTOPERATIVE DIAGNOSES:

1. Right shoulder posterior subluxation with posterior labral tear.
2. Right shoulder unstable, type II SLAP tear.
3. Right shoulder traumatic arthroscopic chondroplasty of the glenoid.

PROCEDURES PERFORMED:

1. Right shoulder diagnostic arthroscopy with posterior stabilization/labral repair.
2. Right shoulder arthroscopic repairment of unstable, type II SLAP tear.
3. Right shoulder arthroscopic chondroplasty of the glenoid.

Dr. Reynolds saw the Claimant in follow-up care on April 8, 2021, after performing a right

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shoulder arthroscopy with posterior stabilization/labral repair, repair of an unstable type II SLAP tear and chondroplasty of the glenoid on March 2, 2021. At that time, Der. Reynolds returned the Claimant back to work on modified duty.

On May 19, 2021, the Claimant returned to Dr. Reynolds for a follow-up evaluation of his right shoulder injury. Overall, the Claimant was doing well eleven (11) weeks status post- shoulder arthroscopy. However, Dr. Reynolds noted that the Claimant still had some functional weakness and residual stiffness in his right shoulder. Therefore, Dr. Reynolds recommended that the Claimant continue with formal physical therapy. He returned the Claimant to modified duty work. Dr. Reynolds noted that the Claimant continued to be restricted to no work above shoulder level, with the right upper extremity. At that time, Dr. Reynolds also stated that the Claimant was not at MMI for his right shoulder injury.

Dr. Victor Vargas evaluated the Claimant on July 26, 2021, due to a chief complaint of right shoulder pain. He performed a “Right shoulder glenohumeral joint intra-articular steroid injection under ultrasound needle guidance.”

On August 18, 2021, the Claimant returned to Dr. Reynolds for an office visit. At that time, the Claimant had undergone the joint injection by Dr. Vargas. Per this Clinic Note, the Claimant was now five and one-half months (5½) out from right shoulder arthroscopy with posterior stabilization and SLAP repair. Dr. Reynolds noted that the Claimant’s symptoms were actually worsening, and he had more stiffness and loss of rotation at the time. The Claimant also reported fairly significant pain in his shoulder with bicep provocation maneuvers. Dr. Reynolds recommended that the Claimant undergo a repeat MRI arthrogram to get a better idea of the

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integrity of his labral repair and biceps anchor. He again opined that the Claimant had not reached MMI.

On September 14, 2021, the Claimant underwent an MRI of the right shoulder with the following impression: “Orthopedic anchors in the glenoid. Posterior labral tear from 7-11 o’clock large sub labral recess or tear of the superior labrum.”

Dr. Reynolds saw the Claimant for a follow-up visit on September 15, 2021. At that time, the Claimant was assessed with “Persistent right shoulder pain with recurrent posterior labral tear and cystic changes at the superior glenoid labrum in the region of his prior SLAP repair.” Dr. Reynolds further noted that the Claimant had underlying posttraumatic arthritis\traumatic arthropathy of the glenohumeral joint.

On November 16, 2021, Dr. Reynolds authored an Operative Report:

PREOPERATIVE DIAGNOSES:

1. Right shoulder arthrofibrosis.
2. Right shoulder recurrent posterior-superior labral tear.

POSTOPERATIVE DIAGNOSES:

1. Right shoulder arthrofibrosis.
2. Right shoulder recurrent posterior-superior labral tear.
3. Right shoulder subacromial and subdeltoid bursitis.

PROCEDURES PERFORMED:

1. Right shoulder open, subpectoral biceps tenodesis.
2. Right shoulder arthroscopic synovial biopsy for culture with removal of prior, failed sutures, debridement of the glenoid labrum, chondroplasty of the glenoid and subacromial subdeltoid bursectomy.

The Claimant returned to the office of Dr. Reynolds on December 1, 2021, for a follow-up visit of his chronic right shoulder pain. Overall, the Claimant was doing well at two weeks out post right shoulder arthroscopy. Dr. Reynolds directed the Claimant to continue physical therapy

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and returned the Claimant to modified duty along with instructions to wear a sling for two more weeks. At that time Dr. Reynolds opined that the Claimant was not at MMI for his right shoulder injury.

On February 22, 2022, the Claimant underwent “Right shoulder glenohumeral joint intra-articular PRP injection under ultrasound needle guidance,” which was performed by Dr. Vargas. This procedure was performed because the Claimant had an indication of right shoulder pain, arthrofibrosis, and a SLAP tear.

Dr. Vargas performed a second injection on the Claimant right shoulder on March 10, 2022. According to Dr. Vargas’ notes, the Claimant continued to complain of aching, dull and throbbing pain in his right shoulder. The Claimant continued to take pain medication. However, Dr. Vargas recommended that the Claimant for referral to a pain management specialist.

On April 18, 2022, the Claimant returned Dr. Reynolds for reevaluation of his right shoulder pain. The Claimant was now status post of two separate ultrasound-guided glenohumeral joint platelet rich plasma injections. Dr. Reynolds reported that unfortunately neither of these procedures provided any significant pain relief. At that time, Dr. Reynolds explained to the Claimant that he had a fairly significant injury to his right shoulder that is unlikely to completely resolve with regard to regaining full range of motion and complete pain relief. The Claimant reported to Dr. Reynolds that he had changed his line of work due to his shoulder injury. Therefore, Dr. Reynolds discussed with the Claimant a Functional Evaluation to figure out the objective functional status of his shoulder. Dr. Reynolds stated that the Claimant had not reached MMI for his shoulder injury.

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The Claimant was reevaluated on May 19, 2022, by Dr. Reynolds for his right shoulder injury. Per these medical notes, Dr. Reynolds reported he had reviewed the Claimant's Functional Capacity Evaluation, which was done May 3, 2022. Per these notes, the Claimant put forth a reliable effort with 52 of 52 consistency measure within expected limits. Dr. Reynolds opined that based on the Claimant's functional abilities he could perform work-related tasks in the "Medium," classification of work as defined by the US Department of Labor's guidelines. It was Dr. Reynolds' professional opinion that the Claimant had reached MMI on his right shoulder injury. Therefore, Dr. Reynolds returned the Claimant to work with the current restrictions as detailed on his FCE. Dr. Reynolds opined that no further surgical treatment or physical therapy was warranted. *However, Dr. Reynolds stated that the Claimant does have objective loss of function in his right shoulder associated with post-traumatic arthritis of the glenohumeral joint secondary to the traumatic chondral defect of the posterior glenoid. He went on to state that the pain associated with this objective defect is certainly an impact on his ability to perform activities of daily living as well as any work tasks.* Dr. Reynolds wrote in pertinent part: "It is outside of the scope of my practice to manage his pain long-term, so I recommend a referral to a pain management specialist. Hopefully he will be able to find alternative ways to manage his pain and posttraumatic arthritis while limiting narcotic utilization. *It is my professional medical opinion that this is directly and causally related to his injury at work despite the fact that pain is identified in the AMA Guides when calculating an impairment rating.* Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Reynolds assessed the Claimant with a 10% partial permanent impairment to the right upper extremity associated with loss of shoulder forward abduction and internal rotation. This amounted to a 6% partial permanent impairment to the whole person

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according to Table 3 on page 20. The above statements were made with a reasonable degree of medical certainty by Dr. Reynolds.

On June 6, 2022, the Claimant underwent an Independent Medical Evaluation by Dr. Carlos Roman due to his chronic right shoulder pain. Dr. Roman assessed the Claimant with “1. Chronic right shoulder pain. 2. Status post posterior labral tear. 3. Right shoulder weakness.” It appears that Dr. Roman prescribed a medication regimen for the Claimant’s right shoulder pain that included opiates. However, the Claimant discussed the long-term use of opiates with the Claimant. As an LPN Dr. Roman stated that the Claimant understood the concerns there.

The Claimant was evaluated by Dr. Johnathan Goree on September 13, 2022. At that time, the Claimant presented to Dr. Goree for an initial evaluation of his chronic post-surgical right shoulder pain. The Claimant reported that he has severe pain with extension of his arm and shoulder. He reported that his pain was improved with Hydrocodone. Dr. Goree’s assessment was “Chronic pain. Post surgical shoulder pain,” for which he discussed with the Claimant shoulder RFA (Radiofrequency Ablation) if the Claimant does not have surgical options. He continued the Claimant’s medication regimen, which included Hydrocodone.

On October 7, 2022, the Claimant was reevaluated by Dr. Reynolds. The Claimant was nineteen (19) months post arthroscopic repair of a right SLAP tear and posterior labral tear and eleven (11) months status post arthroscopic lysis and adhesives with suture anchor removal, bursectomy and open biceps tenodesis. Dr. Reynolds opined that the Claimant continued with fairly significant pain in the right shoulder girdle, which does limit his functional capacity. He specifically opined, in relevant part: “It is obvious on clinical examination that his pain behaviors are consistent with physical examination findings.” It was Dr. Reynolds’ professional opinion that

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the Claimant does not require surgical intervention. Dr. Reynolds agreed with Dr. Goree's recommendation for diagnostic analgesic injection in the periarticular sensory nerve to determine relief of pain. In the setting of a good response Dr. Reynolds recommended a radiofrequency ablation as a pain-relieving modality. His assessment was "1. Pain of right shoulder joint. 2. Mechanical complication of internal orthopedic device implant AND/OR graft. 3. Traumatic arthropathy of right shoulder."

The Claimant presented to the clinic of Dr. Goree on February 3, 2023. Per these notes, Dr. Goree performed left suprascapular, axillary and superior pectoral nerve block on November 3 and on December 8 with report of significant relief (85%) of pain temporarily. Then the Claimant had ablation on December 29, 2022, without relief. While undergoing attempts in treating Claimant's pain procedurally, Dr. Goree provided the Claimant with Hydrocodone. However, Dr. Goree recommended that the Claimant plan for Sprint peripheral nerve stimulation with Dr. Goree for his post-operative shoulder pain and decreased ROM and function.

On March 15, 2023, the Claimant underwent an MRI arthrogram of the right shoulder. The prior day, the Claimant underwent an MRI arthrogram of the right shoulder on March 14, 2023. Therefore, the Claimant presented to Dr. Lawrence O'Malley on March 27, 2023, to discuss the results. The Claimant reported that his pain was essentially the same as it was prior to his two surgeries. As a result, he presented to Dr. O'Malley for evaluation and to discuss his options. Dr. O'Malley wrote in relevant part:

IMAGING: New MRI arthrogram of the right shoulder is available for review today. He has a large posterior labral tear noted. There is also fraying of the supraspinatus and subscapularis.

IMPRESSION: continued right shoulder pain with posterior labral tear.

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PLAN: A Long discussion was had with the patient today regarding his diagnosis and treatment options. We have ruled out a subclinical injection at this time. He would like to proceed with surgical intervention...

The Claimant returned to Dr. O'Malley for further evaluation following the surgical intervention of his chronic right shoulder pain on May 11, 2023. At that time, the Claimant was two weeks out from "right shoulder arthroscopy with posterior labral repair." Overall, the Claimant was doing well. As a result, physical therapy was ordered

On October 2, 2023, Dr. O'Malley pronounced the Claimant to be at MMI. He assessed the Claimant with a 10% whole body impairment. Dr. O'Malley referred the Claimant for pain management with Dr. Goree because the Claimant was still in significant pain.

The Claimant returned to Dr. Goree for evaluation of his severe shoulder pain on March 12, 2024. Dr. Goree noted that the Claimant was doing decently with his medication, which included Hydrocodone. Although the Claimant's pain had improved with the third surgical intervention, he continued with some severe pain. Dr. Goree discussed with the Claimant specific treatment plans including alternative nonpharmacologic therapies. Specifically, Dr. Goree opined, "In my opinion the potential for opioid abuse or diversion is outweighed by the potential benefits of opioid therapy." They discussed spinal cord stimulation for the Claimant's pain, but this treatment had been denied by the workers' compensation carrier for another surgery. However, the Claimant expressed an interest in this treatment.

On May 28, 2024, Dr. Roman answered questions posed by the workers' compensation Carrier regarding the peripheral nerve stimulator. Dr. Roman opined that the stimulator is clearly not indicated. He stated that the Claimant does not have a neuropathic nerve problem, and he has osteoarthritic problems in his right shoulder, which disqualifies him for this treatment. Dr. Roman

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also stated that looking at articles in the literature going back to 2022, evidence based clinical guidelines of the American Society of Pain Neuroscience views of implantable peripheral nerve stimulation treatment of chronic pain, the main indications here for this treatment are for chronic migraine headaches, hemiplegia of the shoulder via stimulation of nerves innervating the musculature, failed back surgery, extremity neuropathy and post amputation pain, in particular for neuropathic pain processes. Dr. Roman stated that further treatments for the Claimant would include reasonably include maybe occasional steroid injections and at some point, he might be a candidate for shoulder replacement, but no further surgical intervention. He also stated that the Claimant might benefit from anti-inflammatories and possible occasional intra-articular shoulder injection with steroid to see if it will offer relief. Dr. Roman stated that the Claimant has chronic right shoulder pain, he got an osteoarthritis right shoulder as is related to the injury.

Adjudication

Reasonable and Necessary Medical Treatment:

The Respondents accepted the Claimant's January 14, 2021, right shoulder injury as compensable. They have paid for extensive medical treatment and temporary total disability compensation to and on behalf of the Claimant as a result of his right shoulder injury. The Claimant now asserts that he is entitled to additional reasonable and necessary medical treatment, for his right shoulder injury in the form of a peripheral nerve stimulator as recommended by Dr. Johnathan Goree.

An 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

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Ann. §11-9-508(a) (Repl. 2012). The Claimant must prove by a preponderance of the evidence that the medical treatment is reasonably necessary in connection with the injury received employee. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W. 2d 593 (1995). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant proved by a preponderance of the credible evidence that the medical treatment in the form of peripheral nerve stimulator, as recommended by Dr. Goree is reasonably necessary in connection with the admittedly compensable right shoulder injury received by the Claimant on January 14, 2021.

The Claimant has training and skills in mechanic type work. He also has training as a nurse. Nevertheless, it is undisputed that the Claimant sustained a compensable injury to his right shoulder on January 14, 2021, while changing out a tire. At the time of the Claimant's injury, he worked for Parker Audi as a mechanic. The Respondents accepted the injury as compensable and promptly began providing the Claimant with medical treatment in connection with the injury received by the Claimant.

An MRI was performed of the Claimant's right shoulder which revealed a torn labrum. The Claimant underwent a right shoulder arthroscopy with posterior stabilization, SLAP repair and chondroplasty of the glenoid, on March 2, 2021, by Dr. Reynolds. Following this surgical intervention, the Claimant initially did well. However, he developed worsening symptoms of shoulder pain and stiffness. The Claimant underwent a round of physical therapy. Also, Dr. Vargas performed ultrasound-guided glenohumeral joint corticosteroid injections for the

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Claimant's complaints of ongoing right shoulder pain and other related symptoms. Unfortunately, the Claimant received no significant improvement after the injections. As a result, Dr. Reynolds ordered a repeat MRI arthrogram of the shoulder.

On September 14, 2021, the Claimant underwent an MRI which revealed "a large posterior labrum tear" and other objective findings as detailed above. Dr. Reynolds performed a second right shoulder surgery in the form of an arthroscopy on November 16, 2021. The Claimant underwent another round of physical therapy, per protocol. On February 22, 2022, and March 10, 2022, the Claimant underwent right shoulder glenohumeral joint intra-articular injections under ultrasound needle guidance by Dr. Vargas. However, neither of these provided the Claimant with any significant relief from his right shoulder pain. Ultimately, following the Claimant's second right shoulder surgery, he was assessed with an impairment rating of 6% to the body as a whole by Dr. Reynolds on May 19, 2022. Despite these treatment modalities, the Claimant continued with significant right shoulder pain and other related symptoms, for which Dr. Reynolds referred him to pain management.

The Claimant came under the care of Dr. Johnathan Goree for his chronic right shoulder pain, on September 13, 2022. At that time, the Claimant continued with shoulder pain despite being on a medication regimen that included Hydrocodone for pain. Therefore, Dr. Goree performed nerve blocks for which the Claimant reported significant relief of his pain temporarily. Dr. Goree also performed an ablation on December 29, 2022, with no relief of the Claimant's chronic shoulder pain and other related symptoms.

On April 27, 2023, the Claimant underwent a third surgery on his shoulder, which was performed by Dr. O'Malley, in the form of a right shoulder scope with posterior labral repair. In

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October 2023, Dr. O'Malley pronounced the Claimant to be MMI for his shoulder surgery and assessed a 10% whole body rating. The Claimant returned to Dr. Goree for pain management, and he now recommends a peripheral nerve stimulator for relief of the Claimant's chronic shoulder pain. The Respondents have denied this treatment modality.

Despite having undergone multiple forms of conservative treatment and three surgeries to his right shoulder, the Claimant has continued with severe chronic right shoulder pain. Currently the Claimant takes Hydrocodone, a sleeping pill and other over-the-counter medications for right shoulder pain. However, the Claimant is also a Licensed Practical Nurse (LPN) and is well aware of the concerns surrounding the long-term use of opiates. The Claimant wishes to try this treatment modality, the peripheral nerve stimulator for relief of shoulder pain. Although Dr. Roman has opined that this treatment is not indicated, he has opined that the Claimant is in need of additional medical treatment for his shoulder, which includes injections and possibly a total shoulder replacement in the future. Dr. Goree has specifically opined that he is of the opinion that the potential for opioid abuse or diversion is outweighed by the benefit of opioid therapy." I find that Goree's opinion should be afforded weight concerning that he is the Claimant's treating physician and because this treatment modality will give the Claimant the opportunity to get some relief of his chronic shoulder symptoms via the implementation of a nonpharmacologic alternative.

The Claimant underwent an FCE with reliable results. His testimony was credible and convincing regarding his ongoing pain despite extensive conservative and three surgeries to his shoulder. The Claimant's testimony was also corroborated by the medical records. He expressed a genuine concern for the long-term use of Hydrocodone for relief of his symptoms. The Claimant has symptoms that are ongoing, and they have resulted directly from his compensable right

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shoulder injury of January 2021. The medical records show that the Claimant's clinical examinations and pain behaviors are consistent with his physical examination findings. The Claimant has been very compliant and aggressive in obtaining relief of his shoulder pain without the use of opiates. However, the Claimant has exhausted majority of the commonly recognized forms of conservative treatment modalities and three surgical interventions relief of his right shoulder pain with only temporary relief of his pain. Aside from heavy narcotics and opiates, the Claimant's options are extremely limited. For these reasons, I have attached minimal weight to Dr. Roman's opinion to the contrary and given significant weight to Dr. Goree expert opinion.

Accordingly I find that the Claimant proved by a preponderance of evidence that the medical treatment in the form of a peripheral spinal stimulator is reasonably necessary treatment for the injury received by the Claimant on January 14, 2021.

AWARD

Based on the forgoing findings of fact and conclusions of law, I find that the Claimant proved his entitlement to the peripheral nerve stimulator for his compensable right shoulder injury of January 14, 2021, as recommended by his treating physician, Dr. Johnathan Goree.

IT IS SO ORDERED.

**CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE**