

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H000818**

**MICHAEL MOSHER, EMPLOYEE**

**CLAIMANT**

**CITY OF SEARCY, EMPLOYER**

**RESPONDENT**

**ARKANSAS MUNICIPAL LEAGUE,  
WORKERS' COMPENSATION TRUST  
INSURANCE CARRIER / TPA**

**RESPONDENT**

**OPINION FILED JUNE 23, 2021**

Hearing before Administrative Law Judge, James D. Kennedy, on the 18<sup>th</sup> day of May, 2020, in Little Rock, Arkansas.

Claimant is represented by Jason Hatfield, Attorney at Law, Fayetteville, Arkansas.

Respondents are represented by Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 18th day of May, 2021, to determine the sole issue of additional medical treatment, specifically treatment by Doctor Reynolds. A copy of the Pre-hearing Order, dated March 30, 2021, was marked "Commission Exhibit 1," and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation has jurisdiction of the case and that there was an employer/employee relationship which existed on February 4, 2020, the date the claimant suffered a compensable work-related injury to his left shoulder while directing traffic. The respondents accepted the claim as compensable and have paid some medical.

The claimant's and respondents' contentions are set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without

objection. The sole witness to testify was the claimant, Michael Mosher. The claimant submitted three (3) exhibits without objection. Claimant's Exhibit One consisted of forty-eight (48) pages, Exhibit Two consisted of a video log and one (1) page, and Exhibit Three consisted of a flash drive containing video footage. The respondents submitted two (2) exhibits without objection, with Respondents' Exhibit One consisting of medical records consisting of 140 pages and Respondents' Exhibit Two consisting of three (3) pages of payment records. 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. An employer/employee relationship existed on February 4, 2020, the date that the claimant suffered a compensable injury.
3. The claimant has proved by a preponderance of the credible evidence that the medical treatment requested, which consists of additional treatment by Doctor Reynolds, is causally related to and reasonably necessary for the treatment of the compensable work-related left shoulder injury.
4. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

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

The claimant testified he was a former United States Marine, currently served in the Arkansas Air National Guard, and had served in Iraq three (3) times. He also served in Afghanistan in 2019. He graduated from high school and attended college for three (3) semesters. In 2011, he attended the police academy and, after graduation, went to work

for the Searcy Police Department in 2011 as a patrolman, which was his position at the time he was injured. (Tr. 6, 7)

He stated he currently worked in the Criminal Investigative Division (CID) as a detective. He has also worked as a School Resource Officer and is on the Special Response Team. On February 4, 2020, while directing traffic at an intersection, he was hit by a truck while he was waiting for a wrecker. His direct supervisor, Corporal Earls, was also there. (Tr. 9) At this point, a short body cam video was provided, which showed the claimant being hit by a pickup, knocking the claimant to the ground. The claimant testified that it was painful and that he initially could not breathe. It is noted that there are four (4) short videos. (Tr. 10, 11)

The claimant was then taken by ambulance to Unity Health Medical Center in Searcy, where he was hospitalized. There was a discussion about removing his spleen, but this did not occur. Surgery was not provided, and the claimant was sent home on Friday. The claimant suffered a torn rotator cuff on his left shoulder and bruising on his left arm between his elbow and shoulder. After being released from the hospital, the claimant was referred to Doctor Reynolds at OrthoArkansas, where he ultimately received an MRI, which confirmed the rotator cuff tear. Doctor Reynolds recommended physical therapy. The claimant was placed on desk duty. (Tr. 12 – 14)

The claimant testified he has continued to suffer pain and a limited range of motion and movement of his left arm. He has difficulty with overhead lifting and attempting to lift away from his body. He attempted to go back to Doctor Reynolds for a follow-up for his shoulder but was unable to obtain an appointment. He then contacted the Municipal League and asked to return to Doctor Reynolds. (Tr. 14) He was turned down by the

Municipal League, so he went to see Doctor Lance Kemper using his personal insurance, where he received a steroid shot in the front of his shoulder. He returned to Doctor Kemper two (2) weeks later and received a shot in the back of the shoulder. The claimant testified he received relief after the shots for about three (3) weeks or so. He also was having problems returning to Crossfit while attempting to stay fit for duty. (Tr. 15, 16) He was doing everything that he could so he would not have to have rotator cuff surgery. He performed the exercises and stretches and still suffered from pain, weakness, and lack of strength, and consequently was asking to return to Doctor Reynolds to see if anything could be done, which included surgery. (Tr. 17) Prior to the work-related incident, the claimant testified he did not suffer from any pain, weakness, or reduced range of motion of the left shoulder. (Tr. 18)

Under cross-examination, the claimant admitted that while he was admitted to Unity Health, also known as the White County Medical Center in Searcy, they primarily treated his spleen and his treating doctor was Doctor Laffoon. He was off work for six (6) weeks and was paid during that time. Doctor Laffoon did not treat his left shoulder. (Tr. 19, 20) The first treatment for the left shoulder, other than some imaging, was by Doctor Reynolds. Doctor Reynolds ordered physical therapy for about six (6) or seven (7) weeks, which helped the claimant's symptoms. (Tr. 21) The claimant admitted he returned to Doctor Reynolds after the physical therapy for something like a final exam and was released from his care and returned to full duty about May of 2020 as a patrolman. (Tr. 22) The claimant testified he started having problems with the left shoulder again in the summer and his initial visit where he returned to a doctor was his visit to Doctor Kemper in November of 2020. The claimant was asked if he was aware that Doctor Kemper

placed in his report that he had “full active and passive range of motion” of his left shoulder and he responded, “No.” He agreed that he had no reason to dispute the reports of Doctor Kemper. The claimant also admitted performing Crossfit prior to the work-related incident. (Tr. 23, 24) He testified that he had been unable to perform Crossfit since the injury and had been unable to lift upper extremity weights consistently since the injury. He testified, “I mostly walk on a treadmill having an incline [...] Yes, I try to stay active.” (Tr. 25)

On redirect, the claimant was questioned about the video that was pulled from Sergeant Pierson where he stated that an officer was down. Additionally, the video showed a truck with a broken mirror that was dangling, and the claimant was questioned if that was what hit him. His response was, “To the best of my understanding when I was hit, sir.” (Tr. 26 – 27) The claimant was asked if the report from Doctor Kemper provided he had a positive impingement sign of the left shoulder, and he responded that was his understanding. (Tr. 28)

Claimant’s Exhibit One provided a report by NorthStar EMS that an ambulance was dispatched to an intersection where an officer was struck by a vehicle on February 4, 2020. The report provided that the claimant’s date of birth was August 5, 1980, and that he denied loss of consciousness, but complained of difficulty breathing and that he showed guarding of the ribs on the left side. (Cl. Ex. 1, P. 1 – 3) The ambulance transferred the claimant to the White County Medical Center. A CT of the abdomen and pelvis, as well as one for the thorax, was ordered. The findings of the CT of the abdomen and pelvis provided for splenic lacerations with moderate hemorrhage. A CT of the left shoulder provided overlying soft tissue swelling adjacent to the AC (acromioclavicular)

joint. The claimant continued to suffer pain in his left side and was unable to raise his left arm higher than the level of his shoulder. An x-ray provided for soft tissue swelling overlying the joint. The claimant was then discharged on February 7, 2020. The final diagnosis was of a splenic laceration secondary to trauma, constipation due to opioid use, reactive leukocytosis, chronic degenerative changes to the left shoulder, with no acute fractures or dislocation, and with some soft tissue swelling present in the area. The claimant was advised of the possibility of possible delayed splenic rupture. (Cl. Ex. 1, P. 4 – 13)

On February 13, 2020, the claimant presented to Doctor Greg Laffoon for a follow-up. The report provided the claimant was suffering pain in the left shoulder and was being referred for an orthopedic evaluation. A CT of the upper extremity joint was ordered. (Cl. Ex. 1, P. 14 – 16) On February 17, 2020, Doctor Laffoon issued a note which provided the claimant should be placed on restricted activity and off work for the next six (6) weeks, from February 4, 2020, until March 17, 2020. (Cl. Ex. 1, P. 17)

A CT of the left shoulder dated February 19, 2020, provided for mild soft tissue swelling, degenerative changes of the AC joint with joint space narrowing with subchondral sclerosis and cystic changes with small osteophytes, and mild joint space narrowing. No acute fracture was shown. Mild degenerative changes of the glenohumeral joint space were also shown with no dislocation. (Cl, Ex. 1, P. 18, 19)

The claimant returned to Doctor Laffoon on February 27, 2020. The report provided under plan that the claimant would need to be off work for a total of six (6) weeks due to the splenic laceration. If his shoulder failed to improve, “we will consider an MRI.” (Cl. Ex. 1, P. 20, 21) A Procedure Order Form signed by Doctor Laffoon and dated March

3, 2020, referred the claimant to orthopedics regarding the shoulder injury following being hit by a motor vehicle. (Cl. Ex. 1, P. 22) On March 12, 2020, Doctor Laffoon again saw the claimant and provided there was residual left shoulder pain and the claimant should remain off of work until the left shoulder was evaluated and, further, the claimant had a release to return to work with regard to the splenic injury. (Cl. Ex. 1, P. 23, 24)

On March 18, 2020, the claimant presented to OrthoArkansas and Doctor Kirk Reynolds. Under assessment, the report provided for left shoulder pain and weakness following a traumatic injury to the shoulder. An MRI was ordered, and the claimant was allowed to return to work on modified duty with no lifting, pushing, or pulling with the left extremity. (Cl. Ex. 1, P. 25 – 27) On March 30, 2020, the claimant returned to Doctor Reynolds for a follow-up in regard to the left shoulder MRI. The MRI showed a partial thickness articular sided tear of the supraspinatus tendon. The plan was to treat the shoulder conservatively with a subacromial injection and physical therapy. (Cl. Ex. 1, P. 28 – 31)

On April 1, 2020, the claimant started physical therapy. The report provided that the claimant would benefit from physical therapy two (2) to three (3) times per week for six (6) weeks. The claimant was instructed to avoid activities that could cause shoulder impingement. (Tr. 32 - 36) On May 11, 2020, the claimant returned to OrthoArkansas and Doctor Reynolds. The report provided the claimant had reached maximum medical improvement and could return to work full duty. There was a zero percent (0%) impairment to the left upper extremity and a zero percent (0%) impairment to the person as a whole associated with the work-related injury. (Cl. Ex. 1, P. 37 – 38)

On November 16, 2020, the claimant presented to OneLife Wellness and Primary Care and was seen by Doctor Lance Kemper. The report provided the claimant was still having issues with his left shoulder and was interested in a second opinion in regard to surgery on his left shoulder. The claimant received an injection of lidocaine and triamcinolone and told to return to the clinic in two (2) weeks for a follow-up. (Cl. Ex. 1, P. 39 – 41) Later on November 30, 2020, the claimant returned to Onelife Wellness and Primary Care and Doctor Kemper for the pain in the left shoulder. Another injection to the left shoulder subacromial space was provided with a mixture of lidocaine and triamcinolone. (Cl. Ex. 1, P. 42 – 44)

The claimant also submitted a Video Log, which provided a video of the incident involving the truck and videos from three (3) police officer body cams as well as a flash drive containing the videos, and these were admitted without objection. (Cl. Ex. 2, 3)

The respondents submitted two (2) exhibits, which were admitted into the record without objection. The first exhibit consisted of 140 pages of medical records that contained a significant overlap of the medical records submitted by the claimant. A two-view x-ray of the left humerus was negative for an acute fracture or dislocation. (Resp. Ex. 1, P. 11) A progress noted dated February 5, 2020, provided that the claimant suffered left wall abdominal pain and left sided chest pain with inspiration overnight, as well as left shoulder pain. Additionally, the claimant was being transferred out of the ICU on the date of the report. (Resp. Ex. 1, P. 12 – 15) On February 6, 2020, an AP of the left shoulder provided no fracture or dislocation but showed degeneration of the AC joint with narrowing sclerosis and osteophytosis with cystic changes. (Resp. Ex. 1, P. 16)



The claimant presented for a physical therapy evaluation at Searcy Physical Therapy on April 1, 2020. The evaluation provided that the claimant had complaints of left shoulder pain, and the MRI of March 30, 2020, provided for a partial tear of an unspecified muscle of the left RTC. It was also provided that the claimant was unable to participate in normal weightlifting, wash his hair in the shower without difficulty due to pain, unable to reach up into a cabinet overhead due to pain, and unable to draw his gun easily and in a timely manner due to pain. (Resp. Ex. 1, P. 39 – 43) The claimant started physical therapy on April 3, 2020, and presented eleven (11) times between the start date and May 7, 2020. All of the physical therapy reports provided that the claimant reported he was in 0/10 pain prior to beginning physical therapy. The final report dated May 7, 2020, provided the claimant had progressed well towards all listed goals and was now able to wash his hair in the shower and to reach into a cabinet at home without pain, had improved his range of motion both passively and actively, and had also improved his strength in the left shoulder. The report provided he was still having difficulty with stability of the right shoulder and higher-level activities, such as drawing his gun and participating in his normal weightlifting routines. “Patient will continue to need physical therapy to address these impairments moving forward for the patient to achieve all functional goals.” (Resp. Ex. 1, P. 44 – 106)

The respondents admitted additional documentation in regard to the claimant’s visit to Doctor Lance Kemper on November 16, 2020. The report provided that the claimant had pain in his left shoulder and was suffering from osteoarthritis and bursitis of the left shoulder with bicipital tendinitis. (Resp. Ex. 1, P. 110 – 123) The additional information in regard to the claimant’s visit to Doctor Kemper on November 30, 2020,

provided that x-rays of the left shoulder were reviewed which showed mild degenerative changes to the AC joint and that Doctor Dugger also reviewed the x-rays and agreed with the assessment. The report also provided there was a full range of motion of the left shoulder, with no tenderness from palpation of the bicipital groove or AC joint, but with some tenderness from palpation of the anterior superior left shoulder. Additionally, the report provided that there was a positive impingement sign for the left shoulder and also full rotator cuff function. (Resp. Ex. 1, P. 124 – 137) Respondents' Exhibit Two provided a payment log. (Resp. Ex. 2, P. 1, 2)

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

In the present matter, the parties stipulated the claimant sustained a compensable injury on February 4, 2020. 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).

However, when assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze the proposed procedure and the condition that it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation filed December 13, 1989. (Claim No. D512553). The respondent is only responsible for medical services which are causally 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, 2009 Ark. App. 746, 350 S.W.2d 796 (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the

treatment is geared toward management of the compensable injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 180 S.W.3d 31 (2004).

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 260, 635 S.W.2d 543. 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 of fact for the Commission. Anaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008).

The claimant was injured by a mirror on a large pickup which struck him and knocked him to the ground while he was directing traffic in the city of Searcy on February 4, 2020. The claimant was taken by ambulance from the scene of the accident to Unity Health Medical Center in Searcy. He suffered lacerations to his spleen, a torn rotator cuff in his left shoulder, and bruising on his left arm between the elbow and shoulder. The claim was accepted as compensable. Although there was initial concern that the claimant may have suffered a ruptured spleen, after a period of days, he was released from the hospital, no longer suffering from problems with his spleen but suffering from pain and a limited range of motion to his left arm and shoulder. The claimant was referred to Doctor Reynolds at OrthoArkansas who opted to treat the claimant conservatively. The claimant, who was a believable witness, testified he did not have problems with his left shoulder prior to the accident and had tried everything to avoid rotator cuff surgery. The MRI of March 30, 2020, provided the claimant suffered a partial thickness tear of the

supraspinatus tendon of the left shoulder. The claimant received significant physical therapy, with the final physical therapy report dated May 7, 2020, providing that although the claimant had progressed well towards all listed goals, he was still having difficulties with his “right” shoulder and higher-level activities. Since there has been no evidence of record in regard to the right shoulder, the reference to the right shoulder in the report appears to be a typographical error. The claimant was released by Doctor Reynolds on May 11, 2020, who opined that the claimant had reached MMI, had a zero percent (0%) impairment rating, and could return to work full duty.

The claimant testified he continued to have difficulty with his left shoulder, so he opted to use his personal insurance and presented to Doctor Kemper on November 16 and 30, 2020. The final report by Doctor Kemper provided the claimant had a full range of motion of the left shoulder, with no tenderness from palpation of the bicipital groove or AC joint on the day of the visit but with some tenderness from palpation of the anterior superior left shoulder, along with a positive impingement sign of the left shoulder along with full rotator cuff function. It is also noted that imaging of the left shoulder provided for soft tissue swelling and degenerative changes of the AC joint with subchondral sclerosis and cystic changes with small osteophytes and mild joint space narrowing, along with mild degenerative changes of the glenohumeral joint space.

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).

In workers' compensation law, the employer takes the employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W.3d 150 (2003). The parties agreed that the claimant suffered a compensable injury to his left shoulder from a work-related injury on February 4, 2020. Various imaging modalities provided the claimant suffered from arthritic issues prior to the work-related accident, as do many people who are approximately forty (40) years of age. The testimony of the claimant is found to be believable in that he was not aware of a problem in his left shoulder prior to the work-related accident. Doctor Kemper opined that the claimant's left shoulder suffered from impingement syndrome. One of the causes of impingement syndrome of the shoulder is swelling of the tissue, which was noted early on in a CT scan dated February 19, 2020, which mentioned the swelling as well as degenerative changes. Imaging additionally provided the claimant suffered from a tear of the tendon of the AC joint. The last medical report of record from Doctor Kemper contained imaging also reviewed by Doctor Dugger, who agreed with Doctor Kemper. The report provided that the claimant showed tenderness from palpation of the anterior superior left shoulder.

After reviewing all of the evidence, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied his burden of proof

to prove by a preponderance of the credible evidence that the medical treatment he requested, specifically additional treatment by Doctor Reynolds, is causally related and reasonably necessary for the treatment of the compensable work-related left shoulder injury and is approved. 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**