

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005445

GERARDO PEREZ MUNOZ, Employee	CLAIMANT
ARK GALVANIZING, INC., Employer	RESPONDENT
AMERICAN ZURICH INS. C/O CORVEL, Carrier/TPA	RESPONDENT

OPINION FILED JUNE 28, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 26, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 27, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on June 10, 2020.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right hand, arm, and shoulder on June

10, 2020.

2. Related medical.

At the time of the hearing claimant clarified that the injury is to his right shoulder and upper arm and that the hand complaints are a symptom of that injury.

The claimant contends that he sustained a compensable injury to his right arm and shoulder and that he is entitled to medical benefits as a result thereof. Claimant reserves all other issues.

Respondents contend the claimant did not sustain a compensable injury to his right arm or shoulder that arose out of and in the course of his employment as a result of a specific incident and that is established by objective medical findings of an injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on January 27, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder and upper arm while working for respondent on June 10, 2020.

3. Respondent is liable for payment of all reasonable and necessary medical

treatment provided in connection with claimant's compensable injury.

FACTUAL BACKGROUND

Claimant is a 50-year-old man who began working for respondent on September 17, 2019. Claimant testified that his job duties included: "I would bring the cold bars out of the water and then use a grinder to cut them so they could be used."

Claimant testified that on June 10, 2020, a piece of metal got loose and as he attempted to push against that piece of metal he suffered an injury to his right shoulder.

Claimant gave the following written statement regarding his accident:

I was working with some chassis with my partner and our crane was off and I don't know how was it that the next crane was on and it pushed the other one, and so that it would not hit me, I tried to push it back and that is how my shoulder was hurt, my right shoulder.

Claimant sought medical treatment that day from Johnny Stevens, NP, at MedExpress and was diagnosed as suffering from a sprain of the right shoulder. Claimant was given medication and instructed to apply ice. Claimant was also released to return to work at modified duty. Claimant performed work for respondent on light duty for several weeks and continued to work there until he was taken off because he developed COVID. While he was off with COVID he was terminated by the respondent.

On June 17, 2020, claimant was evaluated by Rhonda Irving, NP at MedExpress. Irving noted that x-rays of claimant's right shoulder were negative for acute findings and the claimant was reporting continued pain in his right shoulder. Irving diagnosed claimant's condition as a strain of the right shoulder and ordered physical therapy as well

as medication.

Claimant's claim was subsequently denied by the respondent and he sought medical treatment from his family physician, Dr. Clinton Turner. Claimant was evaluated by Dr. Turner on December 30, 2020, and was diagnosed with acute pain of the right shoulder and subacromial bursitis of the right shoulder joint. Turner prescribed medication and physical therapy.

Based upon claimant's continued complaints, Dr. Turner eventually ordered an MRI scan of claimant's cervical spine which revealed cervical spondylosis with mild to moderate canal and foraminal narrowing.

In his report of April 7, 2021, Dr. Turner noted that physical therapy had not improved claimant's condition and as a result he ordered an MRI scan of claimant's right shoulder. The MRI scan was performed on April 14, 2021, and was read as showing the following impression:

1. Advanced infraspinatus tendinosis with moderate to severe infraspinatus muscle atrophy.
2. Mild supraspinatus tendinosis.
3. Advanced tendinosis of the long head of the biceps tendon with associated mild tenosynovitis.
4. Mild degenerative change of the acromioclavicular joint with presence of an os acromiale.

Following the MRI scan claimant was evaluated by Dr. Robert MacLeod who stated the following:

Imaging views of the right shoulder reviewed and demonstrate mild degenerative changes no acute bony abnormality. MRI of the right shoulder is reviewed and demonstrates significant

tendinosis of the supra and infraspinatus with muscle atrophy of the infraspinatus probably partial thickness tear. He [has] partial tear of the biceps tendon os acromiale.

Dr. MacLeod gave claimant an injection into his right shoulder and recommended additional physical therapy at Trinity Rehab.

Claimant has filed this claim contending that he suffered a compensable injury to his right shoulder and upper arm while working for respondent on June 10, 2020. He seeks payment of medical treatment related to that compensable injury.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his right shoulder and right upper arm when he was attempting to push back against a falling piece of metal while working for respondent on June 10, 2020. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proof.

First, I find that claimant has proven by a preponderance of the evidence that he

suffered an injury which arose out of and in the course of his employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence. It should be noted that claimant had previously sought medical treatment for bilateral right shoulder pain from Dr. DeYoung on March 23, 2020. On that date, claimant gave a history of bilateral shoulder pain existing for six months and stated that the pain radiated down his arms into his middle finger. Dr. DeYoung diagnosed claimant's condition as arthritis of the hand and prescribed medication. He also noted that a possible referral to a hand surgeon for trigger finger might be necessary. Claimant subsequently was evaluated by Dr. Clinton Turner on April 28, 2020, for midback pain radiating into his side. The medical report from that date noted that claimant also was still complaining of pain in his shoulders to his hand.

Even though claimant had previous complaints of shoulder pain, an employer takes an employee as it finds him and aggravations or pre-existing conditions are compensable provided that all elements of compensability are satisfied.

Here, as previously noted, claimant testified that on June 10, 2020 he injured his right shoulder while attempting to push back a piece of metal that was falling. The parties introduced into evidence as Joint Exhibit #1 a video of this incident. The video shows the claimant and a co-employee holding a metal frame on a pallet as another frame is also placed on that pallet by an overhead crane. The video shows the second metal frame becoming unstable and striking the metal frame which claimant and the co-employee are holding. Although the video is not totally clear, it appears that claimant is attempting to hold up the first metal frame when it is struck by the second metal frame.

What is clear from the video is that within six to seven seconds after this incident

occurs the claimant can be seen holding his right shoulder with his left hand. In my opinion, this action within mere seconds after the incident supports claimant's testimony that he injured his right shoulder as a result of this incident on June 10, 2020.

I also note that claimant has consistently gave a history of injury to his treating medical providers.

In short, based upon claimant's testimony, the evidence presented and specifically, the video which shows the claimant grabbing his right shoulder within seconds after this incident, I find that claimant has met his burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment and that it was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has offered proof by a preponderance of the evidence that the injury caused internal or external harm to his body which required medical services or resulted in disability and that he has offered medical evidence supported by objective findings establishing an injury. Claimant immediately sought medical treatment for his right shoulder complaints and those complaints were originally diagnosed as a sprain of his right shoulder. Claimant was treated conservatively with medication and modified work duty.

Respondent subsequently denied the claim and claimant sought medical treatment on his own from his family physician, Dr. Turner. Dr. Turner also initially treated claimant conservatively with physical therapy and medication. When conservative treatment did not alleviate claimant's complaints, Dr. Turner ordered an MRI scan of claimant's right shoulder and he was referred to Dr. MacLeod who noted that claimant had a partial tear of the biceps tendon as well as a rotator cuff tear. These are objective findings

establishing an injury to claimant's right shoulder and right upper arm.

Accordingly, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder and right upper arm while working for respondent on June 10, 2020.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder and right upper arm on June 10, 2020. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$405.05.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE