

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005445

GERARDO PEREZ MUNOZ, CLAIMANT
EMPLOYEE

AZZ GALVANIZING, INC., RESPONDENT
EMPLOYER

AMERICAN ZURICH INSURANCE CO., RESPONDENT
INSURANCE CARRIER/TPA

OPINION FILED SEPTEMBER 29, 2025

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed April 7, 2025. The administrative law judge found that *res judicata* barred compensability of an injury to the claimant's cervical spine. The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine.

I. HISTORY

Gerardo Perez Munoz, now age 54, testified that he became employed as a production worker for the respondents in about September

2019. The parties stipulated that the employment relationship existed on June 10, 2020. The claimant testified on direct examination:

Q. What happened on June 10th of 2020?

A. Well, the department in which I hurt my shoulder happened.

Q. Can you describe how it happened?

A. The accident was the person behind us was working with a machine and he did not turn off the machine, so it was loose and it hit me and that is when I hurt my shoulder. Well, it wasn't that it hit me. It was that – it's my – the person who was working with me yelled at me and so I pushed it. That's how I hurt my shoulder.

The respondents' attorney examined Cathy Copeland, the respondent-employer's safety coordinator:

Q. And were you the safety coordinator at the time Mr. Perez reported his injury?

A. Yes.

Q. Can you tell us what you recall about what he told you regarding his injury.

A. He came into my office that morning just a little bit after 6 o'clock and told me that – he called them the frames fell (sic). The crane had hit one and they fell and hit him.

Q. Okay. And did he tell you where it hit him?

A. He was holding his shoulder.

Q. Did he say he was hit in the shoulder?

A. He said it hit him. Specifically the shoulder, not necessarily, but he was holding his shoulder....

Q. And after that was reported, what did you do?

A. They gave us a claim number and they told us to go to the walk-in clinic in Fayetteville, which didn't open until 8:00....

Q. So did you drive him there?

A. I did.

According to the record, the claimant treated at MedExpress Fayetteville on June 10, 2020: "Patient comes in today for a Pain,

Shoulder. Hurt right shoulder this morning when trying to push a heavy piece of metal, painful to raise arm, hand feels 'asleep' at times....this am while at work a heavy piece of metal was falling towards pt put hands up to stop metal and developed pain to right shoulder[.]” A physician assessed “Unspecified sprain of right shoulder joint[.]” It was reported at MedExpress on June 17, 2020, “Patient comes in today for [an] injury to shoulder. Hurt right shoulder at work on June 10th at 6:00 am.”

Dr. Clinton C. Turner noted on December 30, 2020, “Pt comes in with right shoulder pain that started 3-4 months ago at work.” Dr. Turner’s assessment included “Acute pain of right shoulder” and “Subacromial bursitis of right shoulder joint.”

The claimant was provided physical therapy visits beginning January 20, 2021, at which time it was noted, “Pt c/o right shoulder pain since June '20, after pushing a big piece of metal away from his shoulder while working. States he is having trouble reaching and lifting with RUE now; he is having trouble sleeping, and he feels numbness in his right hand/fingers when waking up in the mornings. He also c/o right side neck pain and tightness.” The physical therapist noted that the claimant was experiencing “intermittent numbness in his right hand, consistent with cervical derangement.”

A pre-hearing order was filed on January 27, 2021. The claimant contended, "The claimant contends he sustained a compensable injury to his right hand, arm, and shoulder and that he is entitled to medical benefits as a result thereof. Claimant reserves all other issues."

The respondents contended, "The respondents contend the claimant did not sustain a compensable injury to his right hand, 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."

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.

The physical therapist noted on February 4, 2021, "Pt reports he felt fine after previous PT session, and has less neck pain now. States his left upper arm continues to hurt, with 3-10 pain rating. He also reports having mild numbness in his right hand."

Dr. Turner's assessment on February 19, 2021 included "Acute pain of right shoulder," "Cervical radiculopathy," and "Right arm numbness."

An MRI of the claimant's cervical spine was taken on February 26, 2021 with the following impression:

1. Motion artifact limits image quality and interpretation.
2. Cervical spondylosis, worst at the C5-6 and C6-7 levels where there is mild to moderate canal and foraminal narrowing.

The physical therapist noted on February 26, 2021, "No neck pain."

The claimant was discharged from physical therapy on March 5, 2021.

An MRI of the claimant's right shoulder was taken on April 14, 2021:

HISTORY: Acute right shoulder pain....

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.

Dr. Robert Macleod reported on April 23, 2021:

50-year-old male comes in for evaluation of right shoulder pain that began probably a year ago when he was working he was lifting up overhead and felt a soreness in his right shoulder. He filed a workers comp claim but apparently there is no causality and he continued to have pain in his right shoulder worse with overhead lifting and sleeping at night. Is better with rest and anti-inflammatories because the persistent the symptoms he had x-rays and MRI which demonstrated possible rotator cuff tear is referred here for further evaluation and treatment....

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....

After discussion of the risks and benefits, the patient elected to proceed with a Depro-Medrol injection into the right shoulder....

A hearing was held on May 26, 2021. The claimant's attorney stated at that time, "We are contending that the injury – and I think the

respondents know this – is to the shoulder and that the arm and hand – the shoulder and the upper arm, but the hand is a symptom, so that is not a separate injury.”

An administrative law judge filed an opinion on June 28, 2021. The administrative law judge found, in pertinent part:

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.

The parties thereafter stipulated that the administrative law judge’s June 28, 2021 opinion was “final.”

Dr. James Boyle’s assessment on February 10, 2022 was “1. Partial thickness rotator cuff tear.” Dr. Boyle performed surgery on April 25, 2022: “1. Right shoulder arthroscopic rotator cuff repair. 2. Right shoulder arthroscopic biceps tenodesis for biceps tendon tear. 3. Right shoulder arthroscopic subacromial decompression.” The pre- and post-operative diagnosis was “Right shoulder rotator cuff tear, right shoulder biceps tendon tear, and right shoulder subacromial impingement.”

Dr. Christopher Dougherty performed surgery on October 17, 2023: “1. Removal of deep orthopedic hardware. 2. Subacromial decompression with distal clavicle resection.” The pre- and post-operative diagnosis was

“1. Painful retained orthopedic hardware, right shoulder. 2. Impingement syndrome and acromioclavicular joint arthritis.”

On June 26, 2024, Dr. Dougherty appeared to indicate that the claimant had reached maximum medical improvement effective June 5, 2024. Dr. Dougherty assigned the claimant a 10% permanent impairment rating.

A pre-hearing order was filed on January 15, 2025. The claimant contended, “The claimant contends his neck was injured at the same time his shoulder was injured and he is entitled to medical treatment for his neck. Claimant reserves all other issues.”

The respondents contended, “The respondents acknowledge that the claimant sustained a 10% impairment rating for his right shoulder injury for which he is entitled to permanent partial disability benefits. Respondents have initiated PPD benefits and are paying a controverted attorney’s fee on said benefits. With regard to the alleged cervical injury, respondents contend the claimant was the subject of a full hearing on May 26, 2021 wherein claimant alleged a compensable injury. Following the taking of testimony and review of the medical records, the ALJ found that the claimant proved he sustained a compensable injury to his right shoulder and upper arm. *Res judicata* applies where there has been a final adjudication on the merits of an issue by a court of competent jurisdiction

on all matters litigated and those matters necessarily within the issue which might have been litigated. See *Castleberry v. Elite Lamp Company*, 69 Ark. App. 359, 13 S.W.3d 211 (2000); *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996); *Perry v. Leisure Lodges, Inc.*, 19 Ark. App. 143, 718 S.W.2d 114 (1986). *Res judicata* applies to decisions of the Workers' Compensation Commission if the merits of the issue have already been subject to a full and fair hearing. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 980 S.W.2d 270 (1998); *Perry, supra*. The rationale underlying the doctrine of *res judicata* is to end litigation by preventing a party who has had one fair trial of a question of fact from again drawing it into controversy. *Cox v. Keahey*, 84 Ark. App. 121, 133 S.W.3d 430 (2003); *Mohawk Tire & Rubber Co. v. Bridger*, 259 Ark. 728, 536 S.W.2d 126 (1976)."

The parties agreed to litigate the following issues:

1. Compensability of injury to claimant's cervical spine on June 10, 2020.
2. Related medical.
3. *Res judicata*.
4. Law of case.
5. Claim proclusion. I (sic).

A hearing was held on March 12, 2025. The claimant testified on direct examination:

Q. Can you briefly describe what happened to you on June 10th of 2020.

A. That is when the accident that I had with the company happened. A piece of metal – a piece of metal was coming towards me and so that it wouldn't hit me directly, I tried to

push it with my hands and like tried to move aside so that it wouldn't hurt me. So that is where I injured my right arm.

Q. And did you say you tried to push away with your hands or did you say your right hand?

A. I tried to push it with my hand, but what really felt the impact was my shoulder....

Q. And just after your accident, what were your symptoms?

A. It was lots of pain. It was a very acute pain, very severe pain, and I cannot really tell you if it was here on the shoulder or here on my neck.

Q. Had the symptoms from the time of your injury up to the time you had your first shoulder surgery, did they change?

A. From the shoulder, yes, but with the neck, no. Up until today currently I still hurt from – I am still hurting from my neck....

Q. So are you describing pain from behind your right ear down your neck and to your right shoulder?

A. Yes.

Q. And that has been present since right after your accident?

A. Yes.

An administrative law judge filed an opinion on April 7, 2025. The administrative law judge found that the claimant proved he was "entitled to payment of permanent partial disability benefits in an amount equal to 10% to the body as a whole for his compensable right shoulder injury." The administrative law judge found that the respondents had controverted the claimant's entitlement to permanent anatomical impairment, and that the respondents were liable for payment of an attorney's fee. The respondents do not appeal the administrative law judge's findings with regard to anatomical impairment and fees for legal services.

The administrative law judge found, "2. Claimant's claim for compensability of an injury to his cervical spine on June 10, 2020, is barred

by the doctrine of *res judicata*.” The claimant appeals to the Full Commission.

II. ADJUDICATION

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

- (A) “Compensable injury” means
 - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

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

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “2. Claimant’s claim for compensability of an injury to his cervical spine on June 10, 2020, is barred by the doctrine of *res judicata*.” The Full

Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine.

The claimant testified that he had formerly been employed as a production worker for the respondents. The parties stipulated that the employment relationship existed on June 10, 2020. The claimant testified that he injured his shoulder on that date as the result of a work-related accident. The claimant did not initially contend that he injured any other body part but expressly testified, "I hurt my shoulder." The respondent-employer's safety coordinator testified that the claimant was "holding his shoulder" following the accidental injury. According to the record, the claimant was treated at MedExpress on June 10, 2020 for "Pain, Shoulder....Hurt right shoulder this morning when trying to push a heavy piece of metal[.]" A physician's assessment on June 10, 2020 was "sprain of right shoulder joint." The treating physician did not report an injury to the claimant's neck or cervical spine.

Dr. Turner examined the claimant on December 30, 2020 and noted, "Pt comes in with right shoulder pain that started 3-4 months ago at work." Dr. Turner assessed "Acute pain of right shoulder" and "Subacromial bursitis of right shoulder joint." Dr. Turner did not report that the claimant had injured his neck or cervical spine. A physical therapist reported on

January 20, 2021 that the claimant was suffering from “right side neck pain and tightness.” The therapist noted that the claimant’s symptoms were consistent with “cervical derangement.” The evidence does not demonstrate that the notation of “cervical derangement” on January 20, 2021 was causally related to the right shoulder injury which occurred on June 10, 2020. Nor does the evidence demonstrate that Dr. Turner’s assessment of “Cervical radiculopathy” on February 19, 2021 was causally related to the right shoulder injury which occurred on June 10, 2020. A physical therapist noted on February 26, 2021 that there was “No neck pain,” and the claimant was discharged from physical therapy on March 5, 2021.

A hearing was held on May 26, 2021. The claimant’s attorney stated at that time, “We are contending that the injury – and I think the respondents know this – is to the shoulder and that the arm and hand – the shoulder and the upper arm, but the hand is a symptom, so that is not a separate injury.” The claimant did not contend that at that time that he had sustained a compensable neck or cervical injury. An administrative law judge filed an opinion on June 28, 2021 and found that the claimant proved he sustained “a compensable injury to his right shoulder and upper arm while working for respondent on June 10, 2020.” The parties have stipulated that the administrative law judge’s June 28, 2021 decision was

final. The claimant underwent surgeries to his right shoulder on April 25, 2022 and October 17, 2023. Dr. Dougherty assigned the claimant a 10% permanent impairment rating on or about June 26, 2024. The respondents do not appeal the administrative law judge's finding that the claimant sustained a 10% whole-body impairment related to the compensable right shoulder injury, and that the respondents had controverted the claimant's entitlement to permanent anatomical impairment.

A pre-hearing order was filed on January 15, 2025. The claimant contended that he injured his neck at the same time he injured his right shoulder. The parties expressly agreed to litigate the issue, "1. Compensability of injury to claimant's cervical spine on June 10, 2020."

In accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012), the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine. The claimant did not prove that he sustained an accidental injury causing internal or external physical harm to his neck or cervical spine. The claimant did not prove that he sustained an injury to his neck or cervical spine which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that he sustained a compensable injury to his neck or cervical spine which was caused by a specific incident or was identifiable by time and

place of occurrence on June 10, 2020 or any other date. In addition, the claimant did not establish a compensable injury to his neck or cervical spine which was established by medical evidence supported by objective findings. The evidence does not demonstrate that the findings of “Cervical radiculopathy” or “Cervical spondylosis” can be interpreted as objective medical evidence establishing a compensable injury to the claimant’s neck or cervical spine.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine. Therefore, we need not adjudicate whether *res judicata* bars the claim for an alleged neck or cervical injury. The Full Commission denies the claimant’s request to remand to the administrative law judge for additional proceedings. See Ark. Code Ann. §11-9-704(b)(7)(Repl. 2012). The claim for an alleged injury to the claimant’s neck or cervical spine is respectfully dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner