

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H207258

ANTWAUN J. PERKINS, EMPLOYEE	CLAIMANT
CENTRAL MOLONEY, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 19, 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 GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed August 6, 2024. The administrative law judge found that the claimant failed to prove he was entitled to additional medical benefits. The administrative law judge found that the claimant did not prove he was entitled to temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved the medical treatment of record following the compensable injury, including surgery performed by Dr. Birk, was reasonably necessary in accordance with Ark. Code Ann. §11-9-

508(a)(Repl. 2012). We find that the claimant proved he was entitled to temporary total disability benefits beginning September 18, 2023 and continuing through January 14, 2024.

I. HISTORY

Antwaun J. Perkins, now age 48, testified that he became employed with the respondents, Central Moloney, Inc., in December 2019. Mr. Perkins testified that he was hired to be a Coil Winder for the respondent-employer. The parties stipulated that the employment relationship existed on or about September 27, 2022. The claimant testified on direct examination:

Q. Now, what happened back in September 27th of 2022?

A. Okay. I was working that night. They had one that was bad and the coil was already made and I had to redo it. I had to put it up on the mandrel....and as I attempted to put it on the mandrel, it slipped off and I caught it and that's when I felt the pain in my right shoulder.

The parties stipulated that the claimant "sustained a compensable right shoulder injury" on or about September 27, 2022. According to the record, the claimant treated at Jefferson Regional Medical Center on September 28, 2022: "Reports that yesterday while at work he was loading a coil onto a raised surface and the coil slipped. To avoid letting the coil fall he reports he used his arm to push it back up and heard a popping sensation with immediate pain in the right shoulder....Describes pain as 7/10 and aching, was throbbing last night but now is an ache."

An x-ray of the claimant's right shoulder was taken on September 28, 2022 with the impression, "Normal exam." An APRN diagnosed "1. Shoulder strain, right, initial encounter" and "2. Work related injury." The claimant was treated conservatively and was assigned work restrictions.

An MRI of the claimant's right upper extremity was taken on October 24, 2022 with the following conclusion:

1. Moderate degenerative changes of the acromioclavicular joint. There is also capsular edema, which could be reactive/degenerative in nature or indicative of a superimposed low-grade capsular injury. AC alignment is maintained.
2. Mild tendinopathy of the supraspinatus and infraspinatus tendons without discrete tear.

Dr. Charles E. Pearce examined the claimant on October 31, 2022:

46-year-old male who presents as a new patient for evaluation of R shoulder pain. He was lifting a large metal coil on the above-noted date when it slipped and he caught it primarily with his R arm with the arm at his waist. He felt a pop in the R shoulder and experienced immediate pain. He has had continued pain since that time....He has completed a course of physical therapy although it was of minimal benefit. He has been on light duty at work due to his continued shoulder pain....His pain is primarily over the AC joint.

IMAGING: Radiographs of the R shoulder demonstrate no acute osseous abnormalities. No degenerative changes noted. Glenohumeral joint is reduced.

Outside MRI of the R shoulder reviewed. Rotator cuff tendons are intact. Biceps is located within the groove. There is significant edema in the distal clavicle and AC joint capsule.

Dr. Pearce's impression was "46-year-old male with acute R AC joint arthrosis caused by on the job injury as described above." Dr. Pearce

planned conservative treatment and he continued the claimant's work restrictions.

Dr. Pearce reported on December 5, 2022:

The patient returns for follow-up. Therapy has been very helpful. He is having some mild symptoms still about his shoulder but seems to be functional. I think he needs to continue with home stretching and strengthening program. We will provide him with Thera-Bands today....

IMPRESSION: Essentially resolved right shoulder pain possible underlying mild AC joint arthrosis.

PLAN: 1. The patient has reached maximal medical improvement as of today's date December 5, 2022.

2. The patient can return to regular work duties without restriction.

3. We will provide the patient with Thera-Bands for home use.

4. Continue home stretching daily.

5. The patient has sustained a 0% permanent partial impairment as it pertains to the upper extremity. This is according to the guides to evaluation of permanent impairment set forth by the American Medical Association, 4th edition.

6. Recheck as needed.

The claimant testified that he felt renewed shoulder pain in September 2023, after using a hammer at work. Dr. Pearce reported on September 18, 2023:

The patient was last seen by me on December 5, 2022 and released from care. He had essentially resolved symptoms. He tells me that he has had some continued intermittent trouble and points to his trapezius as the area of concern. No new injury. He does do a lot of lifting at work. He works at Central Maloney. He does not have referred pain. He has been taking some ibuprofen as needed for pain....

X-rays of his right shoulder ordered and interpreted by me show no bony abnormality. X-rays of his cervical spine do show some narrowing at C5-C6.

IMPRESSION: Right shoulder girdle pain possibly cervical in nature.

PLAN: 1. The patient is not at maximal medical improvement.
2. Either MRI scan cervical spine or referral to 1 of our spine surgeons for further evaluation and care.
3. Continue regular work duties.
4. Recheck with me as needed.
5. No change in impairment rating as it pertains to the shoulder.

An MRI of the claimant's right shoulder was taken on October 3, 2023 with the following findings:

AC joint: There is mild degenerative spurring. Moderate soft tissue thickening and mild reactive marrow edema. No joint effusion. No fluid seen within subacromial/subdeltoid bursa. The biceps tendon is intact. No joint distension. Degenerative signal superior labrum is suspicious for SLAP tear. Consider further workup with arthrogram as clinically warranted. No paralabral cyst. The rotator cuff is intact. Mild tendinosis infraspinatus. No muscle edema or atrophy. No marrow abnormality. **IMPRESSION:** Degenerative change AC joint. Degenerative signal superior labrum. This is suspicious for SLAP tear. Lack of joint distension on this evaluation. No paralabral cyst. Mild tendinosis infraspinatus.

Dr. Roy Burrell's impression on October 10, 2023 was "1. Labral tear of shoulder, right[.]...At this time, will refer patient to my partner for possible labral repair." Dr. Burrell also diagnosed "2. Work related injury" and "3. Right shoulder pain."

Dr. Gordon Birk began treating the claimant on October 16, 2023. Dr. Birk planned a right shoulder arthroscopy. Dr. Birk performed surgery on November 9, 2023: "Right shoulder arthroscopic debridement with

subacromial decompression and distal clavicle excision.” The pre- and post-operative diagnosis was “Right shoulder pain with impingement and acromioclavicular joint pain.”

The claimant testified that he returned to work on January 15, 2024. Dr. Birk signed a note on January 18, 2024 which indicated, “Return to work with NO restrictions on 01/16/2024.”

A pre-hearing order was filed on March 5, 2024. According to the pre-hearing order, the claimant contended, “Whether the claimant is entitled to surgery for his right shoulder and temporary total disability benefits.” The respondents contended, “The claimant was treated and released at MMI, full-duty with no restrictions, for his compensable right shoulder injury on December 5, 2022. The claimant sought subsequent treatment that was not authorized or related to the work injury and was instead the result of a degenerative condition that did not exist at the time of the initial treatment or testing following the work injury. Respondents are, therefore, not responsible for the additional claimed treatment or indemnity benefits.”

The parties agreed to litigate the following issues:

1. Claimant’s entitlement to surgery for his right shoulder injury and coverage for past medical treatment.
2. Temporary total disability benefits from the date last worked to the claimant’s return to work on January 15, 2024.
3. All other issues reserved.

A hearing was held on May 9, 2024. The claimant testified that his physical condition improved as a result of surgery performed by Dr. Birk.

An administrative law judge filed an opinion on August 6, 2024. The administrative law judge found that the claimant failed to prove he was entitled to additional medical benefits, and that the claimant did not prove he was entitled to temporary total disability benefits. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

The 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 Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 70 (1984).

An administrative law judge found in the present matter, “3. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits related to his right shoulder surgery.” The Full Commission finds that the treatment of record provided to the claimant following the compensable injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

The parties stipulated that the claimant sustained a compensable right shoulder injury on September 27, 2022. The claimant testified that he injured his right shoulder while attempting to prevent a heavy industrial coil from falling. The claimant was diagnosed as having a work-related right shoulder strain. A subsequent MRI of the claimant’s right shoulder showed “capsular edema.” This objective finding was not present prior to the stipulated compensable injury. Dr. Pearce noted on October 31, 2022, “There is significant edema in the distal clavicle and AC joint capsule.” However, Dr. Pearce opined on December 5, 2022 that the claimant had reached maximum medical improvement. Dr. Pearce returned the claimant to regular work duty. The claimant returned to work for the respondents, but he continued to suffer from post-injury pain in his right shoulder.

Following an MRI of the claimant’s right shoulder on October 3, 2023, Dr. Burrell examined the claimant on October 10, 2023 and reported a “labral tear.” Dr. Burrell diagnosed “work-related injury” and “Right

shoulder pain.” The administrative law judge described Dr. Burrell’s treatment as “unauthorized care.” Nevertheless, it is well-settled that unless there is a signed and delivered Form AR-N in the record, the claimant is not bound by change of physician rules. *Tempworks Mgmt. Services v. Jaynes*, 2023 Ark. App. 147. Because there was not a signed Form AR-N in the record, the claimant was free to seek reasonably necessary medical treatment from any physician of record. *Id.*

It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support an administrative law judge’s findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). In workers’ compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2022). An administrative law judge’s credibility determination is not binding on the Full Commission. *Roberts, supra*

The Full Commission finds in the present matter that the claimant was a credible witness. The evidence demonstrates that the claimant’s continued right shoulder complaints, which continued after Dr. Pearce’s

release, were causally related to the stipulated compensable injury rather than to a pre-existing degenerative condition. The Commission also has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). We find in the present matter that the opinions of Dr. Burrell and Dr. Birk are credible and are entitled to significant evidentiary weight. The evidence demonstrates that surgery performed by Dr. Birk on November 9, 2023 was reasonably necessary in connection with the stipulated compensable injury. As we have noted, the claimant testified that his physical condition improved as a result of surgery performed by Dr. Birk. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

After reviewing the entire record *de novo*, the Full Commission finds that the treatment of record provided to the claimant following the stipulated compensable injury, including surgery performed by Dr. Birk on November 9, 2023, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). Said reasonably necessary medical treatment shall

be the responsibility of the respondents in the present matter. The evidence demonstrates that the claimant re-entered a healing period and was totally incapacitated from earning wages beginning September 18, 2023 and continuing through January 14, 2024. The claimant testified that he returned to work for the respondents on January 15, 2024. The claimant therefore proved that he was entitled to temporary total disability benefits beginning September 18, 2023 and continuing through January 14, 2024. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding the claimant proved the medical treatment of record following the compensable injury including the surgery performed by Dr. Birk was reasonably necessary, the claimant was entitled to temporary total disability benefits beginning September 18, 2023, and continuing through January 14, 2024, and the claimant's attorney is entitled to fees for legal services.

The claimant sustained a compensable injury to his right shoulder on September 27, 2022, while employed by the respondent employer. The claimant who initially reported his injury was treated at Jefferson Regional Medical Center on September 28, 2022.

On December 5, 2022, Dr. Charles Pearce, an orthopedic surgeon, released the claimant to return to work at regular duties without restrictions. He also advised the claimant had reached maximum medical improvement and had sustained a 0% permanent partial impairment rating.

In September 2023, a year after the incident in question, the claimant alleged he felt shoulder pain, which he reported to his employer. The claimant was again treated by Dr. Pearce who examined the claimant and found no evidence of a new injury. Dr. Pearce noted the claimant could continue regular work duties with no change in his impairment rating. The respondent carrier then terminated authorization of medical treatment.

It was not until an October 3, 2023 MRI that Dr. Roy Burrell, with whom the claimant treated without authorization of the respondent carrier, noted “[d]egenerative signal superior labrum. This is suspicious for SLAP tear,” and referred the claimant to his partner, Dr. Gordon Birk, for possible labral tear.

The claimant underwent a right shoulder arthroscopy on November 9, 2023, and surgical notes revealed there was no tear, only some fraying around the labrum. The claimant returned to work on January 14, 2024.

The claimant has filed an appeal from the administrative law judge’s opinion finding he has not met his burden of proving he is entitled to additional benefits related to his right shoulder surgery and has not met his burden of proving he is entitled to temporary total disability benefits.

Ark. Code Ann. § 11-9-508(a) requires an employer to provide an employee with medical and surgical treatment “as may be reasonably necessary in connection with the injury received by the employee.” The claimant has the burden of proving by a preponderance of the evidence the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is

reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

In workers' compensation cases, a decision often rests solely on the credibility of the claimant as a witness. A determination of the weight and credibility of a witness' testimony is exclusively within the province of the Commission. *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989). The Commission has the right to believe or disbelieve the testimony of any witness, and the Commission's decision is entitled to the weight we give a jury verdict. *Tyson Foods, Inc. v. Disheroon*, 26 Ark. App. 145, 761 S.W.2d 617 (1988).

An October 24, 2022 MRI revealed:

1. Moderate degenerative changes of the acromioclavicular joint. There is also capsular edema, which could be reactive/degenerative in nature or indicative of a superimposed low-grade capsular injury. AC alignment is maintained.
2. Mild tendinopathy of the supraspinatus and infraspinatus tendon without discrete tear.

Dr. Pearce opined the MRI reflected “[m]oderate AC Joint degeneration”. However, by December 5, 2022, the claimant’s shoulder injury had “essentially resolved” when Dr. Pearce opined:

1. The patient has reached maximal medical improvement as of today's date December 5, 2022.
2. The patient can return to regular work duties without restriction.
3. We will provide the patient with Thera-Bands for home use.
4. Continue with home stretching daily.
5. The patient has sustained a 0% permanent impairment set forth by the American Medical Association, 4th Edition.
6. Recheck as needed.

The claimant did not seek additional medical treatment or report any further pain to the respondent employer until approximately one year after the initial injury.

On September 18, 2023, Dr. Pearce once again examined the claimant finding no new injury and no abnormalities or instability in his right shoulder. X-rays revealed "some narrowing at C5-C6" but no bony abnormality. *Id.* The respondents then denied any further medical treatment and the claimant began seeking unauthorized treatment.

An October 3, 2023 MRI revealed:

AC Joint: There is mild degenerative spurring. Moderate soft tissue thickening and mild reactive marrow edema. No joint effusion. No fluid seen within subacromial/subdeltoid bursa.

The biceps tendon is intact. No joint distention. Degenerative signal superior labrum is suspicious for SLAP tear. Consider further workup with arthrogram as clinically warranted. No paralabral cyst.

The rotator cuff is intact. Mild tendinosis infraspinatus. No muscle edema or atrophy. No marrow abnormality.

IMPRESSION: Degenerative change AC joint. Degenerative signal superior labrum. This is suspicious for SLAP tear. Lack of joint distention on this evaluation. No paralabral cyst. Mild tendinosis infraspinatus.

At an October 16, 2023 visit, Dr. Timmothy Reece recommended a right shoulder arthroscopy, which the claimant underwent on November 9, 2023. While conducting surgery, Dr. Gordon Birk observed some fraying around the labrum, but no tears.

The claimant was released at maximum medical improvement in December 2022, and was not examined again until September 2023, a year after the injury in question. Dr Pearce advised in his note dated September 18, 2023, the claimant's right shoulder appeared normal with full motion, good strength, and no instability. The X-ray of the shoulder showed no bony abnormalities. There was no change in his 0% anatomical rating, and he was released to continue regular work duties.

The unnecessary surgery performed on November 9, 2023, by Dr. Gordon Birk confirmed the findings of Dr. Pearce that there were no tears, no significant lesions and no significant loss in any of the areas inspected. The only findings as a result of the surgery were some minor degenerative changes for which the respondents are not responsible.

The gap in time between the claimant's initial injury and his reports of ongoing pain a year later is significant. Dr. Pearce did not discuss or recommend any treatment or surgery following his September 2023 examination of the claimant, nor did he observe any abnormalities.

The surgery performed by Dr. Birk confirmed the findings of Dr. Pearce. The claimant had an unnecessary surgery which proved he had no tears, only underlying and pre-existing degenerative problems which are not compensable.

Accordingly, for the reasons set forth above based on my review of the testimony and the medical records, I must dissent.

MICHAEL R. MAYTON, Commissioner