

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G803849

MICKAELL RILEY, Employee	CLAIMANT
PET SOLUTIONS HOLDINGS, LLC, Employer	RESPONDENT #1
NATIONWIDE INSURANCE CO., Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED OCTOBER 27, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

Respondent #1 represented by CHUCK GSCHWEND, Attorney, Jonesboro, Arkansas.

Respondent #2 represented by CHRISTY L. KING, Attorney, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On September 13, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 16, 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 claimant sustained a compensable injury to his eye, head and hand on

June 4, 2018.

3. The claimant was earning sufficient wages to entitle him to compensation at the maximum rates.

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

1. Compensability of injury to claimant's shoulder.
2. Medical related to the shoulder.

The claimant contends he suffered a compensable injury to his shoulder on June 4, 2018 and is entitled to recommended treatment relating to that injury.

Respondent #1 contends that claimant's shoulder injury is not related to his June 4, 1028 accident and that any proposed treatment is not reasonable and necessary.

Respondent #2 not attending hearing and deferring to the outcome of litigation.

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 witness and to observe his 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 June 16, 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 left shoulder as the result of a motor vehicle accident on June 4, 2018.

3. Respondent #1 is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's left shoulder injury. This includes surgery which has been proposed by Dr. Bradshaw.

### FACTUAL BACKGROUND

The claimant is a 32-year-old man who was employed by the respondent as a truck driver. On June 4, 2018, claimant was driving an 18-wheeler to Dardanelle on I-40 when a tire on his truck blew out. Claimant was unable to turn his steering wheel and as a result struck a bridge. Claimant testified that the last thing he remembers is waking up in the hospital some 4 or 5 days later. The parties have stipulated that claimant suffered various compensable injuries to his body including an injury to his eye, head, and hand on June 4, 2018. Claimant has been diagnosed as suffering from a traumatic brain injury as well as an injury of the left optic nerve. He has undergone various surgical procedures on his left arm and hand, and one surgical procedure on his right hand.

Claimant testified that he began noticing problems with his left shoulder about a week after he was released from the hospital. He testified that he first mentioned left shoulder complaints to Laura Pace, a nurse practitioner, who initially provided no treatment for his left shoulder, but instead treated his brain, eye, hand, and arm. In addition to Pace, claimant also complained of left upper extremity pain to his pain management doctor, Dr. Danny Silver. Dr. Silver prescribed medication for various chronic pain conditions which was not helpful. Claimant also was given a medical marijuana card by Dr. Silver which also did not provide any relief.

Pace eventually ordered physical therapy on claimant's left shoulder, but

claimant's condition did not improve. Pace eventually ordered an MRI scan of the claimant's left shoulder which was performed on November 19, 2019 and it contains the following Impression:

AC joint degenerative change. No rotator cuff tear.  
Possible mild tendinopathy distal subscapularis  
tendon.

Pace eventually referred claimant to a specialist, Dr. Bradshaw, with the evaluation occurring on January 23, 2020. Dr. Bradshaw reviewed the claimant's MRI scan and stated:

He does have some loss of his inferior axillary recess/pouch which you can see with adhesive capsulitis. He also has a lot of edema around his AC joint.

Dr. Bradshaw prescribed claimant medication and physical therapy. When the initial regimen of physical therapy was unsuccessful, Dr. Bradshaw on March 5, 2020 gave claimant a steroid injection and recommended that he continue his physical therapy. The injection and therapy did not alleviate claimant's condition and on May 14, 2020, Dr. Bradshaw recommended surgery in the form of a left shoulder arthroscopy acromial decompression and distal clavicle resection. In response to Dr. Bradshaw's recommendation, the respondent had a physician perform a Utilization Review and determined that surgery was not medically necessary and appropriate.

Claimant has filed this claim contending that he suffered a compensable injury to his left shoulder and seeking payment of the surgery recommended by Dr. Bradshaw.

## ADJUDICATION

Claimant contends that he suffered a compensable injury to his left shoulder as a result of the motor vehicle accident he suffered on June 4, 2018. 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 that his injury was caused by a specific incident identifiable by time and place of occurrence. The parties have previously stipulated that claimant suffered various injuries on June 4, 2018 when he was involved in a motor vehicle accident while driving a truck for the respondent.

I also find that claimant's injury arose out of and in the course of his employment with respondent. In support of its contention that claimant did not suffer a compensable injury to his left shoulder, respondent relies in part upon the medical report of Pace dated September 10, 2019, wherein she indicates that claimant is reporting left shoulder pain. She stated that claimant felt his left shoulder pain had been ongoing since the accident, but due to the other conditions he had not been able to focus on that particular ailment

since others took precedence. She also indicated that there was no prior imaging or treatment to this area. Respondent contends that this first notation of left shoulder complaints more than a year after the accident is evidence that claimant did not suffer a compensable injury to his left shoulder on June 4, 2018.

Although Pace may not have treated the claimant's left shoulder, I do note that claimant was also receiving medical treatment in the form of pain management from Dr. Silver. Specifically, in his report dated October 3, 2018, just four months after the claimant's accident, Dr. Silver noted that claimant was complaining of an injury to his left upper extremity. Furthermore, Dr. Silver's report indicates that his examination of the claimant's left shoulder on that date revealed a painful range of motion. Subsequent medical reports from Dr. Silver throughout 2018 and 2019 also contain similar notations regarding complaints of painful range of motion in the claimant's left shoulder. Thus, while Pace may not have treated claimant for his left shoulder complaints, the medical records indicate that Dr. Silver began treating claimant for left shoulder complaints as early as October 3, 2018.

Respondent also contends that there is no medical opinion within a reasonable degree of medical certainty establishing a compensable injury to claimant's left shoulder and the accident of June 4, 2018. However, it is not essential that a causal relationship between the accident and disability be established by medical evidence. Instead, a claimant only has to prove a causal relationship. I find that the claimant in this case has proven a causal relationship.

As previously noted, claimant suffered multiple injuries, including a traumatic brain injury, as a result of a motor vehicle accident on June 4, 2018. The medical records

indicate that by October 3, 2018, claimant was making complaints of left shoulder pain to Dr. Silver. Dr. Silver's medical report contained numerous notations regarding left shoulder pain with range of motion. Eventually, Pace also noted claimant's left shoulder complaints, ordered an MRI scan, and referred claimant to Dr. Bradshaw. Dr. Bradshaw's medical reports indicate that claimant was injured in an accident in June of 2018 and that he had no left shoulder problems prior to that accident. Indeed, there is no evidence indicating that claimant had any left shoulder complaints prior to June 4, 2018.

Based on the foregoing, I find that claimant has proven by a preponderance of the evidence that his injury arose out of and in the course of his employment with respondent.

I also find that claimant's left shoulder injury caused internal harm to his body which required medical services and that he has offered medical evidence supported by objective findings establishing an injury. Here, claimant has been treated for his left shoulder complaints and surgery has now been recommended. Pace's report of October 22, 2019 indicates that an x-ray was taken of the claimant's shoulder which revealed the widening of his left acromial clavicle joint with a joint body "possibly related to post-surgical changes or remote trauma." There is no evidence that claimant had ever undergone any surgical procedure on his left shoulder or had any prior shoulder complaints. Furthermore, Dr. Bradshaw in his report of January 23, 2020 noted that claimant had some loss of his inferior axillary recess/pouch and swelling around his AC joint according to the MRI scan. This would qualify as an objective finding.

I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left shoulder as a result of the accident on June 4, 2018.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Respondent contends that even if the claimant did suffer a compensable injury, surgery as recommended by Dr. Bradshaw is not reasonable and necessary.

Claimant 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

I find that claimant has met his burden of proof. While respondent had claimant's medical records reviewed by a physician for the purpose of a Utilization Review, and that physician determined that surgery was not reasonably necessary, I find that the opinion of Dr. Bradshaw is credible and entitled to greater weight. First, Dr. Bradshaw has physically evaluated the claimant on three separate occasions whereas the Utilization Review physician has never physically examined the claimant. Dr. Bradshaw explained his recommendation for surgery in his report of May 14, 2020, noting that claimant had exhausted conservative care. This conservative care had included medication, physical therapy, and a steroid injection. Accordingly, I find that claimant has met his burden of proving by a preponderance of the evidence that the surgery recommended by Dr. Bradshaw is reasonable and necessary medical treatment for his compensable left shoulder injury.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that



he suffered a compensable injury to his left shoulder on June 4, 2018. Respondent #1 is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's left shoulder injury. This includes the proposed surgery by Dr. Bradshaw.

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 #1 is responsible for paying the court reporter's charges for preparation of the hearing transcript in the amount of \$478.80.

IT IS SO ORDERED.

---

GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE