

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G908000**

**NORRIS L. RUSSELL, EMPLOYEE**

**CLAIMANT**

**CARELINK, EMPLOYER**

**RESPONDENT**

**AGING SERVICES FUND/RISK MANAGEMENT  
RESOURCES, INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 14, 2021**

Hearing before Administrative Law Judge James D. Kennedy on the 13<sup>h</sup> day of April, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Daniel Webb, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 13<sup>th</sup> day of April, 2021, to determine the issues of compensability, medical, and attorney's fees, with all other issues reserved. The respondents initially accepted the claimant's neck and shoulder injuries as compensable, provided some treatment, and paid some medical bills. However, the claim was denied in its entirety as of December 20, 2019, because the respondents contended that there was no injury in the course and scope of employment and no objective findings of an acute injury. The claimant's need for treatment, if any, was due to a pre-existing condition.

The claimant contended that he suffered compensable injuries to his right and left shoulders, neck, and back. He further contended that that he is entitled to additional treatment and that additional surgeries may be necessary and related to his compensable injuries.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim; that an employer-employee relationship existed on June 13, 2019, the date of the claimed injuries; and that the claimant earned an average weekly wage sufficient for a temporary total disability (TTD) / permanent partial disability (PPD) rate of \$346.00/\$260.00. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection.

The claimant's and respondents' responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The sole witness consisted of Norris Russell, the claimant. 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 June 13, 2019, and also on August 11, 2020, the dates of the claimed injuries to the claimant's neck, shoulders, and back.
3. At the time of the claimed injuries, the claimant earned an average weekly wage sufficient for a TTD/PPD rate of \$346.00/\$260.00.
4. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that he sustained a compensable work-related injury to his neck, back, and left shoulder on June 13, 2019, and also on August 11, 2020.
5. The claimant has satisfied the required burden of proof to show by a preponderance of the evidence that the right shoulder injury of June 13,

2019, was a work-related compensable injury, and the claimant is entitled to reasonable and necessary medical and attorney's fees.

6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

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

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted one (1) exhibit, which consisted of forty-one (41) pages of medical records, that was admitted into evidence without objection. The respondents submitted two (2) exhibits that were admitted without objection: (1) Respondents' Exhibit One, which consisted of forty-seven (47) pages of medical records; (2) Respondents' Exhibit Two, which consisted of twenty-nine (29) pages of non-medical documents and included two (2) recorded statements.

The claimant testified that he is currently employed by Carelink and had worked there since July 2016. He drives for the Meals-On-Wheels Program, in which meals are delivered to seniors' homes, and also takes seniors to doctors' appointments and adult day care. In regard to the Meals-On-Wheels Program, food, milk, and juice are delivered in ice chests, which he picks up and which weigh at least fifty (50) pounds. (Tr. 6) He stated that, "If we transport non ambulatory people, we have to push them in a wheel chair." He had attended college for two (2) years but had not obtained a degree.

On July 13, 2019, he stated that he injured both of his shoulders, neck, and lower back. He was taking a passenger, who was in a wheelchair, home and while in the process of unloading the passenger, the claimant had locked the wheels on the wheelchair while it was on the ramp of the vehicle. The wheels became unlocked, and the claimant "reached out and grabbed her wheels to keep her from tipping over onto the

ground.” When he did this, he immediately felt pain in his neck, back, and both shoulders. He reported the incident as soon as he returned. (Tr. 7, 8) He filled out a report and gave it to his supervisor, and the following day he was sent to Concentra. He testified that upon presenting to Concentra, he was having more severe pain in his right shoulder than the left shoulder at the time, his neck was kind of stiff, and his back felt like he had a “pull”. The claimant admitted that he had problems with his right shoulder prior to June 13, 2019. In 2011, he fell off of a six-foot ladder. (Tr. 9, 10) He had surgery a year or two (2) later; he then reinjured the shoulder in 2016 or 2017 and had another surgery on the right shoulder. He testified that prior to the June 13, 2019, incident, the right shoulder was not preventing him from doing his job. He had not had any trouble with his left shoulder prior to the incident on June 13, 2019. (Tr. 11) During his visits to Concentra, the right shoulder was hurting the worst, and it received most of the attention. He received an MRI of the right shoulder in August and the injuries sort of resolved themselves. He had not worried much about his neck and back at the time. (Tr. 12)

The claimant testified he presented to Doctor O’Malley because he was still having problems with both shoulders, with the right shoulder being worse. He was having a lot of pain in the right shoulder at the time, probably a “ten.” He admitted that there was not much mention of the left shoulder because he was “more concerned with his right shoulder” because he had two (2) prior surgeries and it was hurting worse. “I just dealt with the pain in the left because the right shoulder was getting more severe at the time.” (Tr. 13) The claimant went on to state he was having pain in the left shoulder and was planning on having surgery on the right shoulder, but the surgery had never occurred. He was later sent to Doctor Collins and was having trouble with both shoulders at the time.

(Tr. 14) Due to the problems with his shoulders, the claimant continued working for the respondent but was unable to lift the ice chests and was not allowed to transfer any wheelchair patients. Eventually, Doctor Collins ordered MRIs of both shoulders. (Tr. 15) The claimant testified surgery was recommended for the left shoulder rotator cuff repair. The claimant stated that at that time, the left shoulder was hurting more. (Tr. 16) Surgery for the left shoulder never occurred. The claimant stated he returned to Doctor O'Malley in January 2020, with his left shoulder hurting more. (Tr. 17) The claimant testified his left shoulder hurts more than the right shoulder, and that anytime he attempts to work overhead or lift, there is pain. (Tr. 18) The claimant is hoping to have surgery on the left shoulder and probably obtain another opinion on the right shoulder, and is definitely seeking treatment for both shoulders. (Tr. 19) The claimant also testified that Doctor O'Malley spent about ten (10) minutes with him and physically touched him, but Doctor Collins only spent about five (5) minutes with him. (Tr. 20)

Under cross examination, the claimant agreed that he initially hurt his right shoulder after falling off a ladder in 2011 and that Doctor Bowen performed surgery on the right shoulder. The surgery helped somewhat but he continued to have pain in the right shoulder when he overextended it. At that time, another surgery was discussed. The claimant admitted he had another fall from a ladder in 2016 or 2017 and again had surgery on the right shoulder performed by Doctor Schock, which helped a little. (Tr. 22) He also admitted he never physically lifted patients and his job consisted of eighty percent (80%) driving.

The claimant also admitted there was a second incident while employed by the respondent, on or about August 11, 2020. (Tr. 2020) He injured himself while attempting

to pull an amputee client, who was missing his right leg, into the van. The claimant testified he was inside the van pulling the client, while two (2) caregivers were outside trying to get the client up and into the van. This caused more pain in the left shoulder. (Tr. 24) The claimant also admitted he had applied for Social Security Disability after the 2011 incident, but he was not approved. He also admitted discussing the possibility of a shoulder replacement prior to the 2019 incident, but was told he was too young. Additionally, the claimant admitted that he had two (2) to three (3) motor vehicle accidents where he suffered injuries, but he could not remember the details. He also admitted he had given recorded statements after both the 2019 and 2020 incidents. (Tr. 25)

In regard to his medical records, the claimant admitted remembering that Doctor Schock had provided he was best suited for a position that avoided awkward or heavy lifting and overhead work with his right upper extremity. The claimant disputed a report from Concentra on June 17 that he had no pain on that day. He did admit he had told the doctor he had painted cabinets that weekend and was ready to be released to go back to his regular job duties. The claimant also admitted that a report from Concentra dated July 23, 2019, which provided the left shoulder pain had resolved but the right one was worse, was in fact correct. The claimant did not dispute a report about a motor vehicle accident which occurred on November 14, 2015, and that provided that the claimant had claimed injuries to his chest, right shoulder, and headaches. (Tr. 26, 27) The claimant also admitted he had filled out a “Post-Offer Medical Questionnaire with Carelink” and had checked “no” in regard to a prior painful elbow or shoulder. (Tr. 28)

Claimant’s Exhibit One was admitted into the record without objection and consisted of forty-one (41) pages. The initial Incident Report dated June 13, 2019,

provided that the claimant was unloading a client at her home and the wheelchair the client was seated in was on the wheelchair ramp, where it started to move after the lock on the wheelchair became disengaged. The claimant grabbed the wheelchair to prevent injuries to the client and, in the process, injured both of his shoulders and neck. (Cl. Ex. 1, P. 1) The following day, the claimant presented to Concentra. Under assessment, the report provided that the claimant was suffering from acute bilateral low back pain and both left and right shoulder pain. (Cl. Ex. 1, P. 2 – 4) The claimant returned to Concentra on June 17, 2019. The report provided that the claimant stated his low back pain and bilateral shoulder pain were a lot better and he had no pain today. The report also provided that the claimant stated he had painted cabinets over the weekend and that he felt fine while performing the task but had pain in his shoulders by the end of the day. The report further provided that the claimant felt ready to be released and consequently, the claimant was released with no restrictions at maximum medical improvement. (Cl. Ex. 1, P. 6 – 8)

On August 19, 2019, the claimant presented to the UAMS Orthopedic Clinic and Doctor Lawrence O'Malley. X-rays and an MRI of the right shoulder were reviewed. The report provided there was notable AC joint arthritis and a full thickness supraspinatus-infraspinatus tear. The surgical options included a right shoulder arthroplasty or a replacement and mentioned the two (2) prior rotator cuff tears. The report mentioned that the claimant suffered immediate pain when he grabbed a wheelchair that had started rolling down a ramp with a patient seated in the wheelchair. (Cl. Ex 1. P. 9 – 22) The claimant returned to the UAMS Orthopedic Clinic on January 9, 2020. The report referred to the review of an MRI of the left shoulder that showed a larger supraspinatus-

infraspinatus tear. Doctor O'Malley was present for the evaluation and formulated the assessment and plan of care. The report provided that the last MRI of the left shoulder was over a year old and that a new left MRI of the left should be ordered and obtained before considering surgical options. (Cl. Ex. 1, P. 23 – 33)

The claimant presented to Ortho Arkansas and Doctor David Collins for a second opinion on September 23, 2019. The report referred to right shoulder pain and later also mentioned left shoulder pain. Doctor Collins opined that pain, not the injury, was related to a chronic rotator cuff tear and secondary clinical changes. Further treatment under workers' compensation was not warranted in regard to the right shoulder. Doctor Collins attributed eighty percent (80%) of the problem of the right shoulder to arthritis and degenerative conditions and twenty percent (20%) to the workers' compensation injury. On October 7, 2019, the claimant returned in regard to his left shoulder. The report referred to the MRI of the left shoulder and evidence of a full thickness rotator cuff repair. On December 20, 2019, Doctor Collins opined that the left shoulder injury was not a workers' compensation injury, the claimant was at maximum medical improvement, and there was no permanent partial impairment. (Cl. Ex. 1. P. 34 - 38)

Claimant's Exhibit One also included an MRI report dated October 2, 2019, of the left shoulder obtained from Radiology Associates. The report provided there were full thickness tears of the supraspinatus tendon and degenerative hypertrophic callus formation of acromioclavicular joint. (Cl. Ex. 1, P. 39, 40)

Respondents' Exhibit One was admitted into the record without objection and consisted of forty-seven (47) pages of medical records. The medical reports provided that the claimant originally presented for an MRI of the right shoulder on July 26, 2011,



with the report providing that the claimant was suffering from a full thickness tear of the distal supraspinatus tendon of the right shoulder rotator cuff. (Resp. Ex. 1, P.1) A report from Doctor Larry Nguyen dated August 10, 2011, provided under impression that the claimant suffered from a right rotator cuff tear and the plan was for outpatient surgery. (Resp. Ex. 1, P. 2) Later, on March 3, 2012, the claimant presented to Doctor Scott Bowen, who also diagnosed a full thickness right rotator cuff tear with a recommendation for surgery. (Resp. Ex. 1, P. 3, 4) Later, after surgery and about six (6) weeks post-op, a report dated July 19, 2012, provided that the claimant should be placed in “more of a supervisory role where he is not at risk of having to struggle with a student that could damage his shoulder.” (Resp. Ex. 1, P. 5, 6)

The claimant returned to Doctor Bowen on May 19, 2014. The report referred to the earlier surgery and provided claimant was working security for the Little Rock School District, where he had some altercations with students, and his right shoulder was causing pain during the day and night. Doctor Bowen opined that even if the claimant had a large, retracted tear, it was doubtful that an additional arthroscopic surgery would provide a long-term benefit. “Even though he is fairly young, I think he may be a candidate for a reverse total shoulder replacement, particularly if he is looking for retirement.” (Resp. Ex. 1, P. 7, 8) On June 16, 2014, the claimant presented for an MRI of the right shoulder, which showed a full thickness tear of the posterior supraspinatus tendon. (Resp. Ex. 1, P. 9) Shortly thereafter on July 10, 2014, the claimant again returned to Doctor Bowen, whose report provided that the claimant was going to pursue surgery for repair of the posterior aspect of the supraspinatus of the right shoulder. (Resp. Ex. 1, P. 10)

On April 18, 2017, the claimant obtained another MRI due to right shoulder pain, and the report provided under impression that there were large full thickness tears of the supraspinatus and the infraspinatus tendons with atrophy of these muscles. (Resp. Ex. 1, P. 11) On July 6, 2017, the claimant presented to UAMS, with the report providing that the claimant was attempting to establish with a new primary care clinic. (Resp. Ex. 1, P. 12 – 17) On July 18, 2017, the claimant presented to the Arkansas Specialty Surgery Center for a right shoulder arthroscopy by Doctor Ethan Schock. (Resp. Ex. 1, P. 18, 19) The claimant then returned to Doctor Schock for a follow-up on October 12, 2017. The report provided that the claimant was three (3) months post-op and was making appropriate progress. (Resp. Ex. 1, P. 20) The claimant again returned to Doctor Schock on November 9, 2017, and the report provided that the rotator cuff had healed and that the claimant was best suited “to a position that avoids awkward or heavy lifting and any overhead work.” (Resp. Ex. 1, P. 21)

On June 17, 2019, the claimant presented to Concentra as described previously. The claimant again returned to Concentra on July 23, 2019, with the report providing that the left shoulder pain had resolved but that the right shoulder pain was worse, with radiation to the neck. Under assessment, the report provided that the claimant was suffering from right shoulder pain. The claimant was placed on restrictions of not lifting over five (5) pounds and no pushing over twenty (20) pounds that involved the right arm. (Resp. Ex. 1, P. 31 – 33)

On September 23, 2019, the claimant presented to Doctor David Collins of Ortho Arkansas, and this report was also produced by the claimant and mentioned above. Further treatment under workers’ compensation was not warranted in regard to the right

shoulder. Doctor Collins attributed eighty percent (80%) of the problem of the right shoulder to arthritis and degenerative conditions, and twenty percent (20%) to the workers' compensation injury. (Resp. Ex. 1, P. 34 – 38) In regard to the left shoulder, Doctor Collins attributed the major contributing factor of the left shoulder as one-hundred percent (100%) degeneration and not to a work-related incident on the claimant's visit of November 11, 2019. (Resp. Ex. 1, P. 39 - 40) On December 20, 2019, Doctor Collins opined that the left shoulder injury was not a workers' compensation injury, that the claimant was at maximum medical improvement, and that there was no permanent partial impairment. (Resp. Ex. 1, P. 41) The final report from Doctor Collins was dated September 28, 2020, and provided that the claimant was suffering from a left shoulder strain without evidence of new tearing or extension of a previous tear. The claimant was returned to work with no change in his work status. (Resp. Ex. 1, P. 42 - 46)

Respondents' Exhibit Two, which consisted of twenty-nine (29) pages, was also admitted without objection. An ISO report provided that the claimant was involved in a motor vehicle accident on or about November 4, 2015, and the claimant suffered from a chest and right shoulder injury along with headache. (Resp. Ex. 2, P. 1 – 3) A "Carelink Post-Offer Medical Questionnaire" was signed by the claimant and dated July 7, 2016, and the claimant checked "no" when he was asked about previous arthritis and joint swelling or pain, as well as previous workers' compensation claims. (Resp. Ex. 2, P. 4) Respondents' Exhibit Two also included an incident report dated July 18, 2019, where the claimant stated he had aggravated his shoulders while pushing a client up the ramp at her residence. (Resp. Ex. 2, P. 5)

Respondents' Exhibit Two also included a transcript of a recorded statement which was obtained by Risk Management Resources and dated August 14, 2019. In the interview, the claimant denied ever being involved in a previous motor vehicle accident. He admitted he had surgery on his right shoulder by Doctor Bowen in 2012 and by Doctor Schock in 2017. The claimant also described the incident where the wheelchair lock disconnected and he grabbed the client and the wheelchair and immediately felt pain in both shoulders, neck, and lower back. The claimant denied having any trouble with his right shoulder since the 2017 surgery until the work-related incident involving the wheelchair. (Resp. Ex. 2, P. 6 - 15) Exhibit Two also contained a document signed by the claimant and dated August 13, 2020, which provided the claimant had been informed of his rights under the Arkansas Workers' Compensation Act and had chosen not to seek the medical treatment from his employer's designated hospital/physician at the time. (Resp. Ex. 2, P. 15)

A second recording and transcribed statement by Risk Management Resources was taken on August 19, 2020. The claimant admitted he had some prior "work comp claims" on both shoulders. The claimant again denied any previous motor vehicle accidents or any other type of accidental injuries but admitted the shoulder surgery in 2017. In regard to the work-related incident, the claimant stated that he was injured while at an assisted living center on Stagecoach Road on August 11, 2020, while picking up a client. This incident involved loading a client into the van where the claimant injured his left shoulder, which caused him to feel pain immediately. The claimant also stated that the shoulder started hurting the past Monday, which would have been August 17. The claimant agreed that the respondent had accommodated his light-duty restrictions and he

had continued to work. He also admitted that he had hurt the left shoulder last year. (Resp. Ex. 2, P. 16 – 28)

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

In regard to the primary issue of the compensability of injuries to the back, neck, and right and left shoulders, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injuries under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The uncontroverted testimony provided that the claimant had work-related incidents, with the first one occurring on June 13, 2019, and a second incident primarily involving the left shoulder on August 11, 2020. Both incidents occurred while moving clients from and to a van as described by the claimant. The evidence clearly provided that the claimant had numerous previous issues that involved his right shoulder over the years prior to the work-related incidents. An MRI of the right shoulder on July 26, 2011, provided the claimant was suffering from a full thickness tear of the supraspinatus tendon, and surgery was later performed by Doctor Bowen. Later, on June 16, 2014, an MRI was performed on the right shoulder which also showed a tear of the supraspinatus tendon. It was also uncontroverted that the claimant was in an automobile accident on July 26, 2015, where he injured his right shoulder, chest, and suffered headaches. On April 18,

2017, another MRI of the right shoulder provided that the claimant was suffering from a full thickness tear of the supraspinatus and infraspinatus tendons, and Doctor Schock performed a right shoulder arthroscopy on July 18, 2017. Later, on November 9, 2017, the claimant returned to Doctor Schock, who opined that the right rotator cuff had healed.

After the work-related incident on June 13, 2019, the claimant presented to Concentra on June 17, 2019, and the report provided he was suffering from low back pain and bilateral shoulder pain. The report also provided the claimant had no pain on the day of the visit, was doing a lot better, and spent the weekend painting cabinets, although he developed pain in his shoulders by the end of the day. The claimant was released with no restrictions. No MRI was ordered at the time. The claimant's testimony denied the provision in the report about no pain.

On August 19, 2019, another MRI of the right shoulder provided there was notable AC Joint arthritis and a full thickness supraspinatus-infraspinatus tear, with the claimant suffering from immediate pain when he grabbed a runaway wheelchair with patient seated on it. The claimant was then seen about a month later, on September 23, 2019, by Doctor Collins of Ortho Arkansas. This report provided in regard to the right shoulder that eighty percent (80%) of the problem was due to arthritis and degeneration and twenty percent (20%) of the problem was due to a workers' compensation injury.

On October 7, 2019, the claimant obtained an MRI of the left shoulder, and Doctor Collins opined on December 20, 2019, that the left shoulder injury was not a workers' compensation claim, that the claimant was at maximum medical improvement, and that there was no permanent impairment. The claimant then returned to Doctor O'Malley on January 9, 2020. The report referred to the review of an MRI of the left shoulder that

showed a larger supraspinatus infraspinatus tear. The report provided that the last MRI of the left shoulder was over a year old and that a new MRI should be ordered and obtained before considering surgical options. This report did not refer to the MRI of the left shoulder on October 7, 2019.

Another work-related incident occurred August 11, 2020, which involved the loading of a patient where the claimant contended that he injured his left shoulder. The claimant was again seen by Doctor Collins, who opined on September 28, 2020, that the claimant was suffering from a left shoulder strain, there was no evidence of new tearing or the extension of a previous tear involving the shoulder, and the claimant's left shoulder problems were not work-related and were the result of one hundred percent (100%) degeneration.

Under Arkansas law, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. § 11-9-102(16) establishing the injury and; (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the

requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985). Here, it is also recognized that the claimant was less than forthcoming in regard to responses involving the "Carelink Post-Offer Medical Questionnaire."

A claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical opinion. See Wal-mart Stores, Inc. v. VanWagoner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hail v. Pitman Construction Co., 235 Ark. 104, 357 A.W.2d 263 (1962).

In the present matter, there are no medical reports of record mentioning back and neck injuries, with exception of the claimant's allegations of pain during the initial Concentra visits. In the last report from Doctor Collins dated September 28, 2020, he opined that the issues with the left shoulder were not connected to a work-related injury. Doctor Collins attributed the major contributing factor of the left shoulder was one hundred percent (100%) degeneration and not a work-related incident. The MRI of the left shoulder on October 7, 2019, and Doctor Collins' opinion issued on December 20, 2019,



provided that the left shoulder injury was not a workers' compensation claim. Although Doctor O'Malley saw the claimant on January 9, 2020, and stated that there was a tear of the left shoulder, he wanted another MRI of the left shoulder and was apparently not aware of the October 7, 2019, MRI. Additionally, Doctor O'Malley did not opine as to the cause of the left shoulder injury. Consequently, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show a compensable work-related injury to his left shoulder, neck, and lower back by a preponderance of evidence, as required by Arkansas law.

In regard to the right shoulder, the opinion of November 9, 2017, by Doctor Schock, who performed the last surgery on the right shoulder, provided that the right rotator cuff had healed. The MRI of the right shoulder on August 19, 2019, after the first work-related incident, provided there was notable AC Joint arthritis and a full thickness supraspinatus-infraspinatus tear, with the claimant suffering from immediate pain when he grabbed a runaway wheelchair with a client seated on it. This evidence of a tear of the supraspinatus of the right shoulder after it had been found to be healed by Doctor Schock and the medical report by Doctor Collins that opined that twenty percent (20%) of the shoulder injury was work-related are sufficient to provide objective findings of a work-related injury of the right shoulder. An employer takes the employee as it 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 treatment of the right shoulder is reasonable and necessary in regard the work-related injury that occurred when the claimant grabbed the runaway wheelchair. There is a clear causal connection between the incident and the resulting injury based upon the above-mentioned opinion of

Doctor Collins after comparing it to the earlier opinion of Doctor Schock and the most recent MRI in regard to the right shoulder. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). A workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ar. App 21, 732 S.W.2d 496 (1987)

After reviewing all of the testimony and evidence that is before the Commission, and weighing the evidence impartially without giving the benefit of the doubt to either party, there is no alternative but to find the following:

1. That the claimant has satisfied the required burden of proof to show by a preponderance of the evidence that the injury to his right shoulder was a work-related compensable injury, and the claimant is entitled to reasonable and necessary medical and attorney's fees.
2. That the claimant has failed to satisfy the required burden of proof to show that the injuries to the left shoulder, neck, and back, were work-related injuries and compensable.

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**