

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G802305/G803808/G805051

WILLIAM L. SHARP, Employee	CLAIMANT
RHEEM MANUFACTURING, Employer	RESPONDENT #1
ESIS, INC., Carrier/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED MAY 20, 2021

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

Claimant represented by MARK L. MARTIN, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

On April 5, 2021, the above captioned claim came on for hearing at Fort Smith, 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 claims.
2. The employee/employer/carrier relationship existed between claimant and

respondent #1 at all relevant times.

3. The claimant sustained a compensable injury to his right shoulder on April 16, 2016 (G802305).

4. The claimant sustained a compensable injury to his right upper extremity (including his right shoulder) on February 15, 2018 (G803808).

5. Respondent #1 has controverted in its entirety an injury to claimant's right knee on June 15, 2018 (G805051).

6. Claimant reached maximum medical improvement for his right shoulder on December 20, 2018.

7. Claimant reached maximum medical improvement for his right elbow injury on January 10, 2019.

At the time of the hearing the parties agreed to stipulate to compensation rates for various injury dates. The dates and respective rates for total disability and permanent partial disability are as follows:

April 16, 2016 - \$541/\$406

February 15, 2018 - \$608/\$456.00

June 15, 2018 - \$599/ \$449

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

1. Compensability of an injury to claimant's right knee on June 15, 2018.
2. Claimant's entitlement to temporary total disability benefits from July 30, 2018 through January 10, 2019 as a result of his right elbow injury.
3. Medical related to claimant's right elbow injury and continuing medical for the other compensable injuries.

4. Claimant's entitlement to permanent benefits based on a 19% rating to the body as a whole for his right shoulder injury.

5. Claimant's entitlement to permanent benefits based on a 5% rating to the right elbow.

6. Claimant's entitlement to permanent benefits for wage loss resulting from his compensable injuries.

7. Attorney's fee.

The claimant's contentions are set forth in his pre-hearing questionnaire which is attached to Commission's Exhibit #1 as Exhibit 1.

Respondent #1 contends that all appropriate benefits have been paid. To the extent that claimant is alleging that he sustained a compensable injury on June 15, 2018, respondent #1 contends that he did not sustain an injury as that term is defined by the Act.

Respondent #2 deferred to the outcome of litigation and waived its right to attend the hearing.

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. The parties' stipulation with regard to the respective compensation rates is also hereby accepted as fact. These compensation rates include:

April 16, 2016 - \$541/\$406

February 15, 2018 - \$608/\$456.00

June 15, 2018 - \$599/ \$449

3. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right knee on June 15, 2018.

4. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right knee injury.

5. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to an additional evaluation by Dr. Frazier for his compensable right elbow injury and by Dr. Pearce for his right shoulder injury.

6. As a result of his compensable right elbow injury, claimant is entitled to temporary total disability benefits beginning July 31, 2018 and continuing through January 10, 2019.

7. Claimant has failed to prove by a preponderance of the evidence that he has suffered any permanent impairment as a result of his compensable right shoulder injury.

8. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits based upon a 5% impairment rating to the right upper arm.

9. Claimant is not entitled to any benefits for wage loss as a result of his compensable injury.

10. Respondent #1 has controverted claimant's entitlement to all unpaid indemnity benefits.

### FACTUAL BACKGROUND

The claimant is a 67-year-old man who graduated from high school. He studied drafting at Tulsa Junior College for a year and a half and he also received an associate's degree in theology from Midwest Theology School in Branson.

Claimant was hired by respondent in 2000 as a forklift driver and performed that job for approximately six to seven years. Respondent is a union shop with a collective bargaining agreement and there were times while claimant performed his job as a forklift driver that he would perform jobs in other departments until he was bumped under the seniority system and he would return to the forklift. Claimant eventually worked for respondent as a press operator, using a press machine to turn flat pieces of metal into various parts for air conditioners. Most recently, claimant worked for respondent as a production worker, working on the assembly line and performing various duties depending on the particular station at which he was working. This might include wiring parts or shooting screws to hold parts together.

Claimant suffered his first admittedly compensable injury on April 16, 2016 when he felt pain in his right shoulder while putting a coil in a unit. Claimant received some initial treatment from Dr. Loyd before coming under the care of Dr. Pearce, an orthopedic surgeon in Little Rock. In his report of August 16, 2016, Dr. Pearce reviewed claimant's MRI scan and noted that a rotator cuff tear was not present. He diagnosed claimant's condition as right shoulder adhesive capsulitis. Dr. Pearce gave claimant an injection in

his shoulder, recommended physical therapy, and placed work restrictions on the claimant.

Medical records from Dr. Pearce dated September 13, 2016, October 11, 2016, and November 10, 2016, indicate that claimant was making some progress but he continued to have issues with his right shoulder.

Apparently, there was a period of time when Dr. Pearce was not going to be present in his clinic and as a result claimant was evaluated by Dr. Kirk Reynolds, orthopedic surgeon. Dr. Reynolds initially evaluated claimant on December 9, 2016, and recommended that claimant undergo a glenohumeral injection from Dr. Vargas. He also recommended that claimant stop his physical therapy and continued work restrictions. The injection was given by Dr. Vargas on January 5, 2017.

Thereafter, claimant returned to Dr. Reynolds on February 1, 2017, and he noted that claimant had no significant improvement after the injection. Dr. Reynolds indicated that he would not recommend any additional treatment and he did not believe that any injections, medication, or physical therapy would be beneficial at that point. Instead, he recommended a functional capacities evaluation. There is no indication that claimant ever underwent this functional capacities evaluation.

Claimant suffered a second admittedly compensable injury on February 15, 2018, just a little over a year after he was last seen by Dr. Reynolds. Claimant testified that he injured his right arm including his biceps, elbow, and his shoulder when his foot hit the bottom of the base of a railing and he fell. Claimant testified that as he fell he attempted to grab the railing to break his fall and developed pain in his right arm. Following this compensable injury, claimant initially received some medical treatment from Dalana Rice,

APN with Dr. Gary Moffitt, at respondent's facility. Rice eventually ordered an MRI scan of claimant's right elbow and shoulder which was performed on April 9, 2018.

Since that time, claimant has received treatment from Dr. Pearce, orthopedic surgeon at UAMS, for his right shoulder and from Dr. G. Thomas Frazier, orthopedic surgeon at UAMS, for his right elbow pain.

In Dr. Pearce's report of May 10, 2018, he noted that claimant's MRI scan of his right shoulder revealed that the rotator cuff was intact with some AC joint arthritis consistent with his age. He indicated that he saw no abnormality of his anterior labrum and stated that it was hard to discern an exact pathology of claimant's shoulder by examination. Dr. Pearce indicated that claimant could return to work at light duty with restrictions of no lifting over five pounds and no use of his shoulder.

With respect to claimant's right elbow, claimant was initially evaluated by Dr. Frazier on May 17, 2018. Dr. Frazier indicated that it was difficult to tell from claimant's right elbow MRI scan whether there was a partial or complete tear of his biceps tendon. Dr. Frazier discussed treatment options which included an injection or surgical treatment to include a biceps tendon repair.

Claimant eventually chose to undergo surgery on his biceps tendon repair by Dr. Frazier. However, prior to undergoing that surgery, claimant had a third incident while working for the respondent. Claimant testified that on Friday, June 15, 2018, he was walking over some steps crossing a line and as he stepped down his feet tripped and he fell to the floor, striking his knee on the concrete. A photo of this location is contained on Page 163 of the claimant's exhibit. Claimant testified that he had immediate throbbing and pain in his right knee, but he did not report the incident because it occurred as he

was on his way to clock out on Friday afternoon:

The reason I didn't do it that evening was because when I fell down, it was like a kid falling and you jump up, oh, I am going to be all right. I got a good weekend ahead of me. It was Father's Day weekend and I was hyped up ready to enjoy my weekend and I end up after getting home and the next thing I know my knee started swelling, so that killed my Father's Day weekend.

Claimant testified that he reported the incident when he returned to work on Monday and was sent to the nurse's station. Claimant was seen by Rice on June 20, 2018, and was diagnosed as suffering from a knee contusion. Rice noted that claimant's knee was bruised and there was swelling present.

With respect to his right knee, claimant continued to be evaluated by Rice and Kelly Haughton, PA-C with Dr. Moffitt. Claimant underwent an x-ray of his right knee on July 6, 2018, which revealed some effusion and finally, on July 27, 2018, Haughton indicated that claimant should undergo an MRI scan to rule out a meniscal injury. Claimant did not undergo the MRI scan and has not received any additional medical treatment for his right knee injury.

Claimant underwent surgery to repair his biceps tendon by Dr. Frazier on June 22, 2018. Following surgery, Dr. Frazier ordered physical therapy and on January 10, 2019, opined that claimant had reached maximum medical improvement for his biceps tendon repair. He also indicated that claimant had suffered a 5% impairment rating to his right upper extremity as a result of that injury.

Prior to that date, Dr. Pearce had examined the claimant on December 20, 2018 and noted that claimant continued to complain of right shoulder pain. In an addendum



dated January 10, 2019, Dr. Pearce noted that claimant had undergone a functional capacities evaluation which determined that claimant was capable of performing work in the light category of work. Dr. Pearce also indicated that claimant had no impairment as a result of his compensable shoulder injury.

On May 15, 2020, claimant underwent an evaluation by Dr. Aaron McGuire at Rehabilitation Medicine of Oklahoma. Dr. McGuire assigned claimant a 31% impairment rating to the right shoulder which converted to a 19% rating to the body as a whole.

Claimant has filed this claim contending that he suffered a compensable injury to his right knee on June 15, 2018. Claimant also contends that he is entitled to temporary total disability benefits from July 30, 2018 through January 10, 2019 as a result of his right elbow injury. He also requests additional medical treatment for his right elbow injury and continuing medical for his other compensable injuries. Finally, claimant requests payment of a 19% impairment rating to the body as a whole for his right shoulder injury, a 5% impairment rating to the right elbow, and wage loss resulting from his compensable injuries.

### ADJUDICATION

The first issue for consideration involves claimant's contention that he suffered a compensable injury to his right knee on June 15, 2018. Claimant contends that this injury occurred when he tripped and fell while walking over steps while crossing a line and struck his right knee on the concrete. 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 proving by a preponderance of the evidence that he suffered a compensable injury to his right knee on June 15, 2018. First, I find that claimant has established 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. Here, claimant testified that he was walking on steps over an assembly line on his way to clock out for the day when he tripped and fell, striking his right knee on the concrete floor. I find that this incident occurred while claimant was performing employment services and therefore it was an injury which arose out of and in the course of his employment with respondent and it is identifiable by time and place of occurrence.

I also find that the injury caused internal physical harm to claimant's body which required medical services and that claimant has offered medical evidence supported by objective findings establishing an injury. As previously noted, claimant testified that he did not initially report the injury after it occurred because it occurred at closing time on Friday, before Father's Day weekend. Claimant did testify that he reported the injury

when he returned to work on Monday and on June 20 he was evaluated at the nurse's station by Dalana Rice. Rice noted that claimant's knee was bruised and mild swelling was present. As a result, she diagnosed claimant as suffering from a knee contusion. Rice eventually ordered an x-ray of claimant's right knee which was taken on July 6, 2018, and again revealed small knee effusion.

Claimant was eventually evaluated by Kelly Haughton, PA-C with Dr. Moffitt, and she recommended an MRI scan to rule out a meniscal injury.

I find based upon the evidence presented that claimant's injury caused internal physical harm to his body which required medical services and that he has offered medical evidence supported by objective findings in the form of swelling and bruising.

In short, based upon claimant's testimony which I find to be credible, as well as the medical evidence presented, 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 knee on June 15, 2018.

I also find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right knee injury. As previously noted, Haughton indicated that claimant should undergo an MRI scan to rule out a meniscal injury. To date, that test has not been performed and it was claimant's testimony that he continues to suffer from pain in his right knee. Accordingly, based upon the credible evidence presented, I find that claimant is entitled to additional medical treatment for his compensable right knee injury.

The next issue for consideration involves claimant's contention that he is entitled to additional medical treatment for his right elbow and continuing medical for his other

compensable injuries. Claimant testified at the hearing that he continues to have problems with his right elbow and right shoulder area. Claimant has not received any medical treatment for those compensable injuries since he was released by Dr. Pearce on December 20, 2018, and by Dr. Frazier on January 10, 2019. Specifically, Dr. Frazier stated in his report that claimant should return to see him if he had additional problems or concerns. I find based upon claimant's testimony that he is entitled to additional evaluation for his right shoulder from Dr. Pearce and an evaluation by Dr. Frazier for his compensable right elbow injury.

Claimant contends that he is entitled to temporary total disability benefits beginning July 30, 2018 and continuing through January 10, 2019 as a result of his compensable right elbow injury. The injury to claimant's right elbow in the form of a torn biceps tendon is a scheduled injury. A claimant who suffers a scheduled injury is entitled to temporary total disability benefits until he reaches the end of his healing period or until he returns to work, whichever occurs first. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Here, claimant underwent surgery by Dr. Frazier to repair the torn biceps tendon on June 22, 2018. Dr. Frazier indicated that claimant could return to work for respondent immediately without the use of his right hand. Claimant did return to work for respondent for a short period of time on light duty until respondent terminated him on July 30, 2018. At that time, claimant was still in his healing period for his compensable right elbow injury. Claimant did not reach the end of his healing period for his right elbow injury until he was released by Dr. Frazier on January 10, 2019.

Based upon this evidence, I find that claimant was not at the end of his healing period and had not returned to work from July 31, 2018, the date after he was terminated

by respondent, and continuing until January 10, 2019, when he was released at maximum medical improvement by Dr. Frazier. Accordingly, claimant is entitled to temporary total disability benefits from July 31, 2018 through January 10, 2019.

Claimant contends that he is entitled to permanent partial disability benefits based upon a 19% impairment rating to his right shoulder assigned by Dr. McGuire on May 15, 2020. Dr. McGuire opined that claimant had a 31% impairment rating to the right shoulder which converted to a 19% impairment rating to the body as a whole pursuant to the *Fourth Edition of the AMA Guides*. Notably, Dr. McGuire's rating is based in part upon subjective findings such as weakness and range of motion.

Furthermore, and more importantly, I note that Dr. McGuire's opinion is contradicted by the opinion of Dr. Pearce. In his report of December 20, 2018, Dr. Pearce indicated that claimant had no impairment associated with his right shoulder injury. Dr. Pearce is an orthopedic surgeon who began treating claimant for his first right shoulder injury in August 2016. Thereafter, Dr. Pearce also treated claimant for his second right shoulder injury before releasing him with no impairment on December 20, 2018.

I find that the opinion of Dr. Pearce is entitled to greater weight than the opinion of Dr. McGuire. Dr. Pearce has treated claimant for his right shoulder injury on a number of occasions whereas Dr. McGuire evaluated the claimant only one time for the purpose of assigning an impairment rating. Furthermore, it appears that at least a portion of Dr. McGuire's impairment rating is based upon subjective findings. Based upon the opinion of Dr. Pearce which I find to be credible and entitled to great weight, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he has suffered any permanent impairment as a result of his compensable right shoulder injury.

Claimant also contends that he is entitled to permanent disability benefits based upon a 5% rating to the right upper arm as assigned by Dr. Frazier. In his report of January 10, 2019, Dr. Frazier indicated that based upon the *Fourth Edition of the AMA Guides*, it was his opinion that claimant had suffered a 5% permanent impairment rating to his right upper extremity with respect to the torn biceps tendon. I find that Dr. Frazier's opinion is credible and entitled to great weight. Accordingly, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits in an amount equal to 5% to the right upper extremity.

The final issue for consideration involves claimant's request for permanent benefits associated with wage loss as a result of his compensable injuries. For reasons previously discussed, I have found that claimant has failed to prove that he suffered any permanent impairment as a result of his compensable right shoulder injury. I have determined that claimant suffered a 5% impairment to his right upper arm as a result of the torn biceps tendon. Again, the torn biceps tendon is a scheduled injury. An employee who suffers a scheduled injury is not entitled to permanent partial disability benefits in excess of the permanent physical impairment unless there is a finding of permanent total disability. A.C.A. §11-9-521. I do not find based upon the evidence presented that claimant is permanently totally disabled. No treating physician has opined that claimant is permanently totally disabled. In addition, the functional capacities evaluation determined that claimant was capable of performing work in the light classification of work. In fact, claimant testified that the union has filed a grievance on his behalf with regard to his termination and if he were to be reinstated he would consider returning to work for the respondent. Based upon this evidence as well as the remaining evidence presented, I

do not find that claimant is permanently totally disabled.

Since claimant's only injury entitling him to permanent benefits is a scheduled injury, claimant is limited to the scheduled amount.

### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right knee on June 15, 2018. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his right knee and that he is entitled to an additional evaluation by Dr. Frazier for his compensable right elbow injury and by Dr. Pearce for his compensable right shoulder injury. Claimant is entitled to temporary total disability benefits from July 31, 2018 through January 10, 2019. Claimant has failed to prove that he is entitled to any permanent impairment as a result of his compensable right shoulder injury. Claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits based upon a 5% rating to the right upper arm. Claimant is not entitled to any benefits for wage loss.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$610.85.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE