

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H003209

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| LUIS TREJO, Employee | CLAIMANT |
| CARGILL MEAT SOLUTIONS, INC., Employer | RESPONDENT |
| SEDGWICK CLAIMS MANAGEMENT, Carrier/TPA | RESPONDENT |

OPINION FILED AUGUST 12, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

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

Respondents represented by LAURA J. PEARN, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On May 18, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 3, 2021, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. On all relevant dates the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury on September 17, 2019 in a specific incident to his left shoulder.
4. The claimant's weekly compensation rates are \$490.00 for temporary total disability and \$353.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical in the form of surgery to claimant's left shoulder as recommended by Dr. Arnold.

Claimant's contentions are:

"Claimant contends he is entitled to surgery as recommended by Dr. Chris Arnold. The claimant reserves all other issues."

Respondents' contentions are:

"Respondents contend that the claimant's left shoulder injury does not meet the definition of a compensable injury. Further respondents contend claimant's voluntary resignation from employment with Cargill in October of 2019 results in claimant not being entitled to TTD benefits."

The claimant in this matter is a 41-year-old male who sustained a compensable left shoulder injury on September 17, 2019. The claimant gave direct examination testimony about his September 17, 2019 compensable injury, his reporting, and his initial treatment as follows:

Q And what happened that day?

A Yes. Well, that day everything started out normal. I did my first rotation and then an hour after I did my second rotation, but then after a while the work that was coming in started coming - - it wasn't well done, so I had to make an extra effort to compensate for the work that wasn't done, so I was doing a lot of effort with my left arm.

Q And what happened while you were doing that effort?

A Well, after a while, after I had been doing that, I felt like something kind of stretched out inside of my arm and I felt like a very warm sensation inside of my arm.

Q And did you continue working?

A Yes, I continued. Yes, I continued working, but I did tell my lead that I had pain; that I was in pain.

Q And what did your lead do?

A What he did is he got my information because I was the one requiring to go to the nurses office, so I did go to the nurses office.

On September 19 of 2019, the claimant was seen by a nurse employed with the respondent in the Springdale facility. Following is a portion of the Nursing Comment section of the Daily Visit Log regarding the claimant:

S: "MY PAIN IS A LITTLE MORE BETTER TODAY." PAIN 3/10. HAS NOT EATEN TODAY. HAS NOT TAKEN MEDICINE THIS MORNING, BUT ACCEPTED WHEN OFFERED. EE ACKNOWLEDGED HE HAS PUT IN HIS NOTICE AND HIS LAST DAY IS ON THE 4TH OF OCTOBER. HE IS GOING HOME TO TAKE CARE OF HIS MOM IN MEXICO AS SHE HAD A STROKE.

O: FULL ROM. POSTERIOR LEFT SHOULDER TENDER. NO SWELLING OR CREPITUS.

A: LEFT UPPER ARM PAIN RESOLVED: LEFT SHOULDER PAIN IMPROVING.

P: ICE TREATMENT X 15 MINUTES. GIVEN NON-ASPIRIN 650 MG TO TAKE PO. F/U TUESDAY. MAY ICE DAILY AND AT HOME. CONTINUE REGULAR WORK.

The claimant was thereafter seen by the respondent's nursing staff on multiple dates. Following are portions of the daily logs from those visits:

09-24-19

S: EE RATES PAIN CURRENTLY AT 8/10. HE SAYS HE IS HAVING MORE PAIN. HE WAS OFF WORK FRIDAY, SATURDAY, SUNDAY, AND MONDAY AND SAYS AT HOME HE DOES NOTHING AND JUST RELAXES. HE HAS NOT TAKEN ANYTHING FOR PAIN, ALTHOUGH, WHEN OFFERED IBUPROFEN HE ACCEPTED. NKDA. C/O INCREASED PAIN WHEN HE PUTS HIS STEEL OR KNIFE IN THE HOLSTER OR SHARPENS HIS KNIFE.

O: NO SWELLING, CREPITUS, OR WARMTH PRESENT. LEFT POSTERIOR SHOULDER IS TENDER TO PALPATION.

A. LEFT SHOULDER PAIN.

P: EE GIVEN IBUPROFEN 400 MG TO TAKE PO WITH FOOD. ADVISED TO TAKE IBUPROFEN 400 MG TID WITH FOOD PO. ICE TREATMENT X 15 MINUTES. RETURN TO WORK REGULAR DUTY. FOLLOW UP 9/26/19.

10-02-19

SEE BY A. BELL, APRN

EXAM: POSITIVE FOR ENDERNESS TO PALPATION LEFT TRAP, INTERMITTENT PAIN TO LEFT LATERAL UPPER ARM IS REPORTED. PT DENIES PAIN TO LEFT SHOULDER WITH HEAD MOTIONS. NO OBVIOUS SPASM TODAY. FROM WITH NECK AND LEFT SHOULDER. INCREASE PAIN WITH SHOULDER ABDUCTION AND INTERNAL ROTATION. GOOD GRIP BILATERALLY. NEG. EMPTY CAN, NEG TOS, NEG HAWKINS, NEG NEERS, GOOD EQUAL PULSES RADIAL BILATERALLY. GOOD STRENGTH IN BILATERALLY UE.

PLAN CONT. 50% UNTIL F/U WITH NURSE ON FRIDAY. MAY ALTERNATE ICE/HEAT 2XSHIFT. CONT.BACKQUELL 3 TIMES DAILY. F/U PRN.

10-04-19

S: EE C/O PAIN AT 3/10. HE IS STILL HAVING PAIN

O: FULL ROM.

A: LUE PAIN UNCHANGED

P: CONTINUE 50% OF REGULAR DUTY. WILL F/U NEXT WEEK WITH EMPLOYEE VIA PHONE AS HE REPORTS TODAY IS HIS LAST DAY. GIVEN ALEVE 220 MG TO TAKE BID WITH FOOD PO. ICE TREATMENT X 15 MINUTES.

As it was noted in the September 19, 2019 Nursing Comment, the claimant left his employment with the respondent on October 4, 2019 to go to Mexico to help care for his mother. The claimant's testimony also supports the reason for leaving the employment of the respondent in that it was to care for his mother who had had a stroke and that his departure decision was prior to his injury. The claimant testified that he had returned from Mexico in January of 2020, but was still unable to work due to his compensable left shoulder injury. He further testified that he was unable to afford medical treatment until June of 2020. He specifically testified that he used governmental aid money he received to pay for medical treatment.

On June 4, 2020 the claimant was seen by Dr. Cody Smith. Following is a portion of that medical record:

HPI:

Constitutional:

Patient presents today with complaints of left shoulder pain since 10/19. He states he cannot recall doing anything to it at that time. The pain is sharp and dull, wakes him up at night, is worse with movement. He denies any swelling.

Assessment:

Assessment:

1. Pain in left shoulder – M25.512 (Primary)
2. Other chronic pain – G89.29

Plan:

1. Pain in left shoulder

Imaging: MRI JOINT UP EXT W/WO CONTRAST

Clinical Notes: concern for rotator cuff pathology with weakness so will go ahead with MRI of left shoulder start on naproxen bid

On June 8, 2020 the claimant underwent an MRI of the left shoulder. Following is a portion of that diagnostic report:

IMPRESSION:

1. Partial thickness bursal surface tear involving the distal third fibers of the supraspinatus.
2. Tenosynovitis of the long head biceps tendon.

The claimant was seen at UAMS Orthopaedics and Sports Medicine by Dr. Ramon Ylanan on June 18, 2020. After evaluation of the claimant and reviewing the claimant's prior diagnostic tests, Dr. Ylanan indicated the following plan for the claimant:

PLAN:

Luis Trejo is a 40 y.o. year old male who is here today with left shoulder pain secondary to partial rotator cuff tear with associated adhesive capsulitis new. Their exam today is consistent with a

partial cuff tear and impingement signs but working on rotator cuff, but passively he has limited range of motion and worry about early frozen shoulder. To date, they have tried relative rest, activity modification, and naproxen. After discussing treatment options with the patient today Which included icing, relative rest, activity modification, PO or topical NSAIDs, HEP vs. PT, vs CSI vs. operative intervention, at tis point, we have opted for starting formal physical therapy with Trinity rehab in Springdale, changing his naproxen to meloxicam, and having aggressive range of motion program.

On December 1, 2020, the claimant was seen at Advanced Orthopaedic Specialists by Dr. Chris

Arnold. Following is a portion of that medical record:

HPI: This is a 40 year old male who is right hand dominant and is being seen for left shoulder pain. Onset or Duration: 1 year ago. Symptoms began after an injury at work (Repetitive movements while at work). He describes the symptoms as constant, sharp, throbbing, and interfering with every day activity and associated with pain, instability, loss of motion, weakness, locking, and popping. Symptoms are provoked by bringing arm across body, getting dressed and undressed, moving the shoulder, reaching behind the back, reaching into the back seat of car, reaching overhead, repetitive activity, and sleeping on the symptomatic side. Treatment has consisted of rest. He has had the following diagnostic studies: MRI.

Note:

He had a left shoulder injury at Cargill approximately a year ago. He has had debilitating left shoulder pain since. He has had 2 MRIs. He is diagnosed with a partial cuff tear biceps tendinitis. He is failed therapy anti-inflammatories. He was referred to us by Worker's Compensation.

Physical exam on his EMR

MRI on EMR

Assessment plan:

Left shoulder partial cuff tear biceps tendinitis. He likely is going to come to surgery. I recommend a subacromial injection. If no better shoulder arthroplasty no left-handed duty follow-up 1 month if no better shoulder arthroscopy

On January 5, 2021, the claimant was again seen by Dr. Arnold. Following is a portion of that medical record:

HPI: This is a 40 year old male who is right hand dominant and is being seen for his left shoulder pain. Onset or Duration: 1 year ago. Symptoms began repeat I've moment at work. He describes the symptoms as constant, sharp, throbbing, and interfering with every day activity and associated with pain and stiffness. Symptoms are provoked by reaching behind the back, reaching into the back seat of car, and repetitive activity. Treatment has consisted of rest and steroid injection, which helped temporarily and 12/01/2020. He has had the following diagnostic studies: plain radiographs.

Impression/Plan:

Left shoulder pain and weakness secondary to partial rotator cuff tear and bicep tendinitis. He had a work injury approximately one year ago which started his pain. He has had an MRI done. CSI given at last visit did not help.

1. **Rotator Cuff Tear, Complete, Left** (New Dx)
Complete rotator cuff tear or rupture of left shoulder, not specified as traumatic (M75.122)

Plan: Counseling – Rotator Cuff Tear.

A rotator cuff tear may increase in size with time and therefore it may be necessary to modify activities to prevent re-injury or worsening of the condition. Not every patient with a rotator cuff tear needs surgery. There are individuals with rotator cuff tears that have good function and little shoulder pain....

Surgical Options and Alternatives

Arthroscopic rotator cuff repair: Treatment options discussed with him to include continued observation versus surgical intervention. Cortizone Injection given at last visit did not help. He has tried and failed observation, rest, ice, home exercises, anti-inflammatories. Cortizone injection. He continues to have left shoulder pain and weakness which is bothersome with daily activities. He opts for surgical intervention of left shoulder scope, rotator cuff repair, possible bicep tenodesis and indicated procedures. Pt elects to undergo exam under anesthesia, arthroscopy, acromioplasty, distal clavicle excision and possible arthroscopic vs mini-open rotator cuff repair. Pt understands risks & benefits of the procedure including but not limited to infection, damage to nerves, vessels, tendons, persistent symptoms, stiffness, weakness, blood clot, heart/lung problems, need for surgery/manipulation, loss of limb, loss of life, compartment syndrome, fracture, dislocation,

worsening pain/symptoms, heart attack, stroke, even death. Referred pain from the neck, neurological etiology and/or pain from arthrosis would persist. A rotator cuff tear of 50% or less will be debrided; 50% or more, will be completed and repaired; a full thickness tear will be repaired. In regard to the biceps tendon, a tear of 50% or less will be debrided, a tear of 50% or more, would require a tenodesis or tenotomy. Pt understands rotator cuff surgery could be career ending for overhead activity and is willing to accept this....

After counseling the patient, we decided on the following plan for the LEFT shoulder: Arthroscopic rotator cuff repair, Arthroscopic subacromial decompression, Biceps Tenodesis, and Mumford Procedure

The claimant has asked the Commission to determine whether he is entitled to additional medical treatment in the form of surgical intervention to his left shoulder as recommended by Dr. Arnold. Arkansas Code Annotated §11-9-508(a) requires that “the employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.” What constitutes reasonable and necessary treatment under Arkansas Code Annotated §11-9-508(a) is a fact question for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

The claimant suffered an admittedly compensable left shoulder injury on September 17, 2019. The claimant reported his injury and was provided medical treatment through the respondent’s nursing staff until he left employment with the respondent to care for his ill mother in Mexico. Upon the claimant’s return and after obtaining the ability to pay, the claimant sought medical treatment for his left shoulder in June of 2020. The claimant’s symptoms appear to have worsened over time; however, they are similar in nature. The claimant also testified that he had done no work during this time period and that no other injury had occurred to his left shoulder. The claimant’s treatment included conservative care, but that course of treatment appears to have failed. Given the tear identified in the claimant’s left shoulder during his June 8, 2020 MRI and the attempts that have been made with conservative treatment,

I find the claimant is entitled to the surgery recommended by Dr. Arnold and its natural aftercare as it is reasonable necessary treatment for the claimant's compensable left shoulder injury.

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 the pre-hearing conference conducted on March 3, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant is entitled to additional medical treatment in the form of surgery for his left shoulder as recommended by Dr. Arnold and its natural aftercare.

ORDER

The respondents shall pay the costs associated with the claimant's left shoulder surgery that has been recommended by Dr. Arnold for his compensable left shoulder injury and its natural aftercare.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE