BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM №s H406771 & H500714

CALVIN WALTON, EMPLOYEE	**CLAIMANT**
CITY OF STUTTGART, SELF- INSURED EMPLOYER	**RESPONDENT**
ARKANSAS MUNICIPAL LEAGUE, TPA	**RESPONDENT**

OPINION & ORDER FILED 29 AUGUST 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 5 June 2025 in Pine Bluff, Arkansas.

The claimant was represented by Mr. Steven R. McNeely.

The respondents were represented by Ms. Mary K. Edwards.

STATEMENT OF THE CASE

A Prehearing Order was filed on 31 March 2025 and admitted to the hearing record without objection as Commission's Exhibit № 1. Consistent with that Order, the parties agreed to the following:

STIPULATIONS

1. The Commission has jurisdiction over this claim.

2. The self-insured employer/employee/TPA relationship existed at all relevant times relevant to both claims.

3. On 26 January 2024, the claimant fell and claimed injuries to his right shoulder and neck. The right shoulder injury was accepted as compensable. The neck injury was denied. (Claim № H406771)

4. On 12 December 2024, the claimant injured his lower back. Some benefits have been provided on that claim. (H500714)

ISSUES

1. Whether the claimant suffered a compensable neck injury on 26 January 2024. (Claim № H406771)

2. The correct average weekly wage that applies to benefits associated with the compensable injury (or alleged compensable injuries) on Claim № H406771.

3. Whether the claimant is entitled to additional temporary total disability (TTD) benefits from 13 January 2025 to 9 May 2025 on Claim № H406771.[1]

4. Whether the claimant was underpaid on past TTD benefits on Claim № H406771.

5. Whether the claimant is entitled to additional medical treatment on Claim № H500714.

6. Whether the claimant is entitled to an independent medical evaluation (IME) related to his accepted compensable right shoulder injury on Claim № H406771.[2]

7. Whether the claimant is entitled to attorney's fees associated with the indemnity benefits sought.

All other issues have been reserved.

CONTENTIONS

The Prehearing Order incorporated the following contentions from the parties' respective prehearing questionnaire responses:

The claimant contends:

> (H406771) The claimant contends that he suffered compensable injuries on [26 January 2024] to both his right shoulder and neck. Respondents have accepted the shoulder but are denying the neck. Claimant contends that he made $18.25 an hour and worked 40 to 50 hours a week, at 50 hours his gross wages $ 1,003.75 with TTD rates $670/$502 TTD/PPD. Claimant contends he is entitled to the referral for his neck from Dr. Hussey. Claimant contends he is entitled to TTD from January 13, 2025, to a date to be determined when he took off because of a flare up of his work related injuries and was terminated. Claimant contends the above benefits have been denied and Claimant's attorney is entitled to a fee under Ark. Code Ann. 11-9-715. Claimant reserves all issues not raised herein including and any permanent impairment rating and vocation rehab.

[1] The Prehearing Order indicated that benefits were being sought to a date yet to be determined. The claimant was released from care without restrictions on 9 May 2025, and the parties agreed at the beginning of the hearing that the release would end any potential entitlement to TTD benefits after that date.

[2] This issue was not indicated in the Prehearing Order. It was included in this litigation by agreement of the parties at the beginning of the hearing.

(H500714) The claimant contends that he suffered a compensable injury on 12/12/24 to his lower back, when the truck he was operating experienced a brake malfunction, causing it to roll back and strike him. He is entitled to a return visit to Dr. Seth Kleinbeck.

The respondents contend[3]:

(H406771) The respondents contend that claimant cannot prove by a preponderance of the evidence that he sustained a compensable neck injury. Claimant cannot prove he has objective findings of a neck injury. On or about January 26, 2024, claimant injured his right shoulder while working for the City of Stuttgart. Respondents have paid and are continuing to pay for all related medical treatment to claimant's right shoulder. Respondents contend that claimant cannot prove he is entitled to additional TTD for his right shoulder injury.

(H500714) The respondents contend that the claimant cannot prove he is entitled to additional medical treatment for his lower back injury dated December 12, 2024. The respondents sent him to see Dr. Seth Kleinbeck for his lower back complaints. Dr. Kleinbeck referred the claimant for an MRI. The MRI showed degenerative changes that were preexisting. Respondents are denying further medical treatment of the claimant's lower back.

Respondents reserve the right to file an Amended Response to the Prehearing Questionnaire or other appropriate pleading and to allege any further affirmative defense that might be available upon further discovery.

FINDING OF FACTS AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over these claims.

2. The stipulations as set forth above are reasonable and are hereby accepted.

3. The claimant failed to prove by a preponderance of the evidence that he suffered a compensable neck injury on 26 January 2024 (Claim № H406771).

4. The preponderance of the evidence establishes that the claimant earned an average weekly wage of $806.12 at the time of his accepted right shoulder

[3] As indicated in their prehearing responses and the Prehearing Order. An amended prehearing response was admitted to the record without objection as Resp. Ex. № 3.

injury on Claim № H406771, which entitled him to a weekly TTD benefit of $538.

5. The claimant failed to prove by a preponderance of the evidence that he was entitled to additional TTD benefits from 13 January 2025 to 9 May 2025, or any period therein, on Claim № H406771.

6. The preponderance of the evidence does not establish that the respondents underpaid the claimant on TTD benefits on Claim № H406771.

7. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his lower back injury on Claim № H500714.

8. The claimant failed to prove by a preponderance of the evidence that he is entitled to an IME related to his stipulated compensable right shoulder injury on Claim № H406771.

9. The claimant has failed to prove by a preponderance of the evidence that he is entitled to an attorney's fee.

ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

SUMMARY OF THE EVIDENCE

The claimant testified on his own behalf. The respondents called Mr. Roger Robinson (the claimant's supervisor) and Ms. Carol Ables (the respondent-employer's personnel director). The record consists of the hearing transcript and the following exhibits: Commission's Exhibit № 1 (the 31 March 2025 Prehearing Order); Claimant's Exhibit № 1 (three index pages and 89 pages of medical records related to Claim № H406771); Claimant's Exhibit № 2 (one index page and eight pages of non-medical records related to Claim № H406771); Claimant's Exhibit № 3 (one index page and nine pages of medical records related to Claim № H500714); Claimant's Exhibit № 4 (one index page and 32 pages of non-medical records related to Claim № 406771); Respondents' Exhibit № 1 (one index page and 19 pages of medical records); Respondents' Exhibit № 2 (two index pages and 58 pages of non-medical records); and Respondents' Exhibit № 3 (their amended prehearing questionnaire responses, dated 21 May 2025).

Additionally, the parties filed post-hearing briefs. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, those filings have been blue-backed to the record and are being served on the parties in conjunction with this Opinion.

Hearing Testimony

The claimant recently turned 60 years old. He has a high school diploma and a commercial driver's license. He has driven a truck for a living since he was 23 years old. The claimant began working for the Respondent-employer City of Stuttgart ("the City") in September of 2023. He worked for the Sanitation Department and primarily drove "roll-back" trucks that carried large garbage containers that could be left at a site and then pulled up onto the truck's trailer for hauling away. He would pick up the garbage containers and drive them to the City's landfill.

On 26 January 2024 the claimant was at the landfill and climbing down from a truck cab when a step broke, causing him to fall against the truck's floorboards. He reported the injury to his supervisor Mr. Roger Robinson (whom he referred to as "RD") and completed some paperwork that day that indicated a right shoulder injury.[4] The claimant denied any prior injuries or problems with his right shoulder or neck.

The claimant testified that he received some treatment with Dr. Seth Kleinbeck. The claimant was terminated in May of 2024 for missing work. He described some confusion about his off-work status at that time:

> And so they called me when Roger got me to come back to work and I—what you call them—I came back and they, Ms. Carol [Abels], asked me for a rehire. And I told her, "Why would you want to rehire me when I been out on injury?" I mean—I mean, I been, you know—but I love my job. I mean, it wasn't that I was, you know, pulling a prank or anything. I got—like I said, I got a lot of responsibility to be pulling child games so. But anyway, she insist that—I said, "Well, you know I still was off on workers' comp." I said, "You know, I mean, I'm still, you know going for an MRI right now." And she was like, "Well, still we want to—you stayed gone too long. Stayed off too long." But I got injured on this job.

[TR at 29-30.]

He was rehired and continued seeking treatment. On 17 October 2024, Dr. Michael Hussey operated on the claimant's right shoulder. The claimant testified that he had earlier reported pain in his neck and left arm.

> Q: Now, comparatively, between your right shoulder injury, and we're still in the January-to-the-surgery time frame.
> A: Yes.
> Q: From the right shoulder and the neck, tell the Judge which one of them was the most severe, the neck or the right shoulder?
> A: Well, I would get each of them, I would get a 10 out 10. …

[TR at 32.]

[4] One form indicates a right shoulder injury. Another form incorrectly indicates a left shoulder injury. The parties agree that the claim relates to an accepted *right* shoulder injury.

The claimant stated that he was off work for a short time following shoulder surgery:

> Q: Okay. So, you were off work for a little period of time after the surgery?
> A: Yes, sir.
> Q: And you were work comp? They paid you that?
> A: Yeah, I got one check off of them. I told them I didn't want to—I didn't want—I didn't want to fool with no workers' comp.
> Q: Okay. Then, after that, you had a second injury, correct?
> A: Yes, sir.
> Q: And does December the 12th of 2024 sound about right?
> A: I think. Yes, sir.

[TR at 34.]

The claimant testified that on 12 December 2024, a leaking air brake system caused a truck to roll while he was outside of it. He stated that the truck's door hit his left side and back. He reported to the respondents that the incident caused an injury to his low back. Dr. Kleinbeck saw him and ordered an MRI scan. According to the claimant, he underwent an injection for his back (that was covered by private health insurance) a few days before the hearing. The claimant testified that twenty or twenty-five years ago, he sustained an injury to his low back while working for the Highway Department.

The claimant recalled a significant snowstorm in Central Arkansas around 9 January 2025 and testified about his absence from work in the weeks that followed. That absence resulted in his second and final termination.

> Claimant: Well, January the 9th, I worked it, and it started snowing. Before we get off work, it started snowing. It was a real bad day January the 9th. And January the 10th [I] called in, and RD said we ain't got to come in, 'cause it's too bad for us to come; so—and I told them on the 10th, I said, "Hey, Doc," I said, "I can't—I can't come in." I said, "My shoulder is—is—is—I mean, it's wearing me out, neck and all." And he was like, "Okay." So, I was off all—I called in every day and clean up 'til the 20th—he told me on the 22nd, and I know it was the 22nd […] He told me that—that "Hold up, Calvin." He told—now this is during where he told me, he said, "Hold up. Let me get back with you, because they saying that you have abandoned your job." I said, "Why would I be—abandoned my job when I'm on the restriction and it's brutally cold." We had temperatures below zero. And I—you know, and I mean, I was in chronic pain. You know, I mean, I hadn't even healed up good. I just had

> had surgery the end of October, and—but all the same time, you know, I—I just couldn't believe it, but just still they discharged me. Hey.
>
> Judge: And was that pain from the shoulder?
>
> Claimant: Shoulder, yes, sir. And back.

[TR at 38-39.]

The claimant went on to say again that he called into work every day until 22 January 2025, when he claimed that he was notified of his termination for not coming into work the day before. Around that time the claimant stated that his right shoulder was in "some real pain." [TR at 43.] He was treating with topical pain relievers and ibuprofen. He stated that he also experienced back and neck pain and numbness from his lower back down his left leg.

The claimant denied working between his termination and his 9 May 2025 release from care for his right shoulder by Dr. Hussey. He believed that he was unable to find work because of the restrictions relating to his shoulder during that time. At the time of his release, Dr. Hussey returned him to work without restrictions and with a zero percent (0%) impairment rating. The claimant testified that he still has trouble performing his truck driving work because of his right shoulder and that he compensates by relying on his left arm. "[B]ut I thank God that I'm sitting here able to tell it and not, you know, and you know, having that numbness running down my leg, pain in my neck." [TR at 52.]

On cross-examination, the claimant acknowledged receipt of the City's employee handbook when he was hired in September of 2023. He also acknowledged that the respondents had paid for all of the treatment he received related to his accepted right shoulder injury. He acknowledged, too, that Dr. Kleinbeck's records do not reflect reports of a neck injury associated with his 26 January 2024 incident. Reviewing his workplace

accident report and the Form AR-N that he signed, he confirmed that neither indicated a neck injury.

The claimant affirmed that he returned to regular duty after the accident and that after his termination and rehire, he went back to working his regular job duties. After his eventual right shoulder surgery and return to work with light-duty restrictions, the respondents provided him with a ride-along employee to perform any labor that was beyond his restrictions.

Regarding the 12 December 2024 incident, the claimant acknowledged that he was seen by a physician and returned to work without any restrictions the following day.

Turning to his termination, the claimant agreed that he did not provide any note for his absence between 9 January 2025 and his termination; but he said again that he called his supervisor Mr. Robinson every day during that time.

On redirect examination, the claimant stated that Mr. Robinson explained that he "begged them not to let you go, Calvin, but it's nothing—it's out of my hands." [TR at 72.] The claimant also denied that Mr. Robinson ever asked him for a doctor's note related to his absenteeism.

Mr. Roger Robinson

Mr. Robinson testified that he had worked with the City for 48 years and that he had served as the Sanitation Department's supervisor for 14 years. He recalled the claimant returning to work without restrictions after the 26 January 2024 and then returning to work with restrictions after right shoulder surgery in October of 2024. Mr. Robinson denied that the claimant made any reports of a neck injury. He stated that the claimant was not taken off work for a back injury or given any work restrictions for a back injury after the 12 December 2024 incident. He further stated that the claimant was alone

on that day because he denied needing any more help about a month or so after his post-surgery return. "And I left it like that," Mr. Robinson said. [TR at 78-79.]

Discussing the claimant's termination on 22 January 2025, Mr. Robinson testified that he made the decision to terminate the claimant's employment "[f]or not calling in, no doctor excuse." [TR at 80.] He denied that the claimant called in between 9 January 2025 and his termination. But Mr. Robinson did call the claimant during that time.

> Well, I called him January the 9th, because the workman comp lady had called me. Well, she texted me and told me that he had missed a doctor's appointment and they was trying to get ahold of him, and then, I tried to call him and I didn't get no answer. Then, I heard from him, I called him again on—I think, it was around the 11th of January and I talked with him. He say he would be in that—I think, that was a Wednesday, that Thursday he said he would be in. I said, "Okay," but he never showed up and I didn't—I didn't call him back no more. And then, later on, I called him during the—I think around the 21st […] 'cause I hadn't heard from him no more and I gonna let him know that the was no more—employee here no more. I had his paperwork that I had to terminate him, you know.

[TR at 81.] He went on to confirm again that the claimant did not call him during the time he was not reporting for work. Mr. Robinson testified that had the claimant not been terminated for unexcused absenteeism, his employment with the City would have continued.

Mr. Robinson also testified about the claimant's first termination from City employment. He recalled making that decision to terminate for the claimant's failure to report to work or call in. He described the decision to rehire the claimant as a "second chance." [TR at 84.]

On cross-examination, Mr. Robinson stated that the City's policy provided for an employee's termination after three days of not calling or not showing. He described his decision to terminate the claimant's employment for the second and final time as going "by the book." [TR at 92.] He also stated again that by 12 December 2024, the claimant had

declined the ride-along help that had been assigned to him. "Larry was only with him on the—after surgery with his shoulder," he said. *Id.*

Ms. Carol Ables

Ms. Ables testified that she had worked for the City for about 47 years, and she had served as the City's personnel director since 2003. She explained that she processed the paperwork associated with the claimant's termination but that the decision to terminate was Mr. Robinson's to make. She verified that the claimant had not provided a doctor's note for any absence on or after 9 January 2025. She also confirmed that the claimant's first termination in the summer of 2024 was for unexcused absenteeism.

Ms. Ables also stated that she completed the wage forms associated with the claimant's TTD benefit calculations. She testified that he started with the City in September of 2023 at $16 per hour. In January of 2024, he received a raise that brought his pay rate to $17.50 per hour. Then, in January of 2025, his rate increased to $18.25 per hour.

She verified that the claimant immediately returned to full-duty work after reporting his accident in January of 2024; and she denied any awareness of a report of a neck injury associated with that accident. Ms. Ables confirmed that the claimant had light-duty restrictions after his shoulder surgery and that light-duty accommodations would have continued to be available until those restrictions were released by a physician, but not for his termination.

Medical Evidence

The respondents accepted the claimant's right shoulder injury as compensable and began providing for treatment accordingly. Dr. Kleinbeck's first visit record notes a complaint of right shoulder pain and an assessment of the same. [Cl. Ex. № 1 at 1.] A follow-up visit on 6 March 2024 indicated the same complaint and assessment. [*Id.* at 6.]

On 19 March 2024, the claimant completed a hand-written patient history form for a physical therapy program. He indicated "Right Shoulder" as the present problem. [*Id*. at 11.]

On 8 May 2024, the claimant saw Dr. Kleinbeck again for ongoing right shoulder pain. No improvement with physical therapy was noted, and an MRI was ordered. [*Id*. at 13.] An MRI report from 19 August 2024 revealed a rotator cuff tear. [*Id*. at 19]

The claimant was referred to Dr. Hussey on 4 September 2024, and they discussed the treatment options for his right shoulder. Surgery was recommended, and the claimant chose to proceed with that recommendation. The notes from that visit include:

> ASSESSMENT/PLAN
> . . .
> 3. We discussed he also appears to have some cervical issues going on which could be contributing to his right upper extremity pain and he states this did not occur until after his work injury. I have recommended he discuss this with his work comp case manager to see about a possible spine referral for this.

[*Id*. at 23.] This is the first reference to complaints of a neck injury in the medical records.

The rotator cuff repair was performed without issue on 17 October 2024, and the claimant was to follow up in clinic on 28 October 2024. The claimant was returned to work with restrictions after that follow-up visit. "No pushing, pulling, lifting right upper extremity. Must wear brace at all times." [*Id*. at 32.]

The claimant was seen for another follow-up visit on 25 November 2024. The notes from that visit include:

> ASSESSMENT/PLAN
> 59-year-old male with occupation related injury, 6 weeks post right shoulder arthroscopic rotator cuff repair, decompression, and debridement. DOS 10/17/2024.
> Also with cervical and upper extremity pain and dysfunction possibly secondary to cervical spine derangement/radiculopathy.

He was referred to physical therapy for his right shoulder, and work restrictions were continued as "no lifting, pushing, pulling greater than 3lbs with the right upper extremity. No overhead motion." [*Id*. at 35-36.]

A physical therapy note from 2 January 2025 states, "Patient feeling good with pain only 3/10." [*Id*. at 41.] Another physical therapy note from 8 January 2025 states, "pain is around 3-4/10, not as severe, more like an ache." [*Id*. at 47.]

The claimant saw Dr. Hussey again on 31 January 2025. The visit notes include:

> PHYSICAL EXAM
> Exam right shoulder demonstrates improved active motion all planes without crepitation.
> Positive Spurling maneuver.
> 2 view x-ray cervical spine demonstrates relatively normal joint alignment. Arthritic changes present from the C5-7 levels.
>
> ASSESSMENT/PLAN
> Begin phase 3 rotator cuff protocol with therapy. He still complains of significant cervical and trapezial upper shoulder pain that I believe is separate from his shoulder. He could have cervical derangement, he has some early arthritic changes on x-ray today. I would recommend that he be evaluated by cervical spine specialist to see if possibly his cervical complaint is related to his occupation related injury. I cannot comment on spine injury relatedness, since I am not a spine specialist. Restrictions are no pushing pulling lifting greater than 5 pounds no repetitive overhead shoulder motion. Follow-up 2 months at which time he may be at MMI for the shoulder.

[*Id*. at 53.] His restrictions were changed to, "No pushing, pulling, lifting greater than 5 pounds with right upper extremity. No repetitive overhead motions." [*Id*. at 54.]

At a follow-up appointment on 28 March 2025, Dr. Hussey noted improvement with motion and strength in the claimant's right shoulder. An additional month of physical therapy was ordered, and the claimant was scheduled to return in six weeks for a final visit with Dr. Hussey's APRN Kala Hart. A release at MMI was anticipated at that time. [*Id*. at 82.]

The last physical therapy note provided by the claimant is for an appointment on 1 April 2025. That note indicates that, "Strength and ROM of his right shoulder are

improving steadily, and pain is reduce[d] overall." The assessment concluded with, "Therapy will now transition to more strength related activities within Mr. Calvin's tolerance." [*Id*. at 79.]

The claimant returned to Dr. Hussey's clinic as scheduled on 9 May 2025 and was seen by Ms. Hart. He stated that he was doing "much better from last visit." [*Id.* at 86.] The notes from that visit also provide:

> PHYSICAL EXAM
> Exam right shoulder demonstrates full range of motion in all planes without crepitation. 5/5 rotator cuff strength testing.
>
> ASSESSMENT/PLAN
> …
> 1. I am pleased with his improvement since last visit and outcome from the surgery. I am going to release him back to work full duty without restrictions to the right upper extremity and he is now at MMI. No further follow-up.
>
> Discussion Notes:
> Dr. Hussey was present in clinic and consulted if need in regard to the patient's assessment and appropriate course of medical treatment.

[*Id*. at 87.] Dr. Hussey then authored a letter on 12 May 2025 that stated:

> 1. Patient may return back to work without restrictions to the right upper extremity.
> 2. Patient is now at MMI as of date 5/9/2025 with a 0% impairment rating to the right upper extremity, which corresponds to a 0% whole person impairment rating according to the 4th Edition AMA Guides to the Evaluation of Permanent Impairment.
> 3. No further follow-up necessary.
> All statements given above are within a reasonable degree of medical certainty.

[*Id*. at 89.]

With regard to his alleged back injury (Claim № H500714), the claimant was seen by Dr. Kleinbeck on 13 December 2024. The notes from that visit include:

> REASON FOR VISIT
> Back Pain (Left Side)
> Patient is here today for lower back pain on the left side. Patient was picking something up out of his truck when the truck started rolling away.

> Back Pain
> This is a new problem. The current episode started yesterday. The problem occurs constantly. The problem has been gradually worsening since onset. The pain is present in the lumbar spine. The quality of the pain is described as aching. The pain is at severity 4/10. The pain is moderate. The pain is the same all the time. The symptoms are aggravated by bending and position. Stiffness is present all day. Pertinent negatives include no abdominal pain, chest pain, fever or headaches. He has tried nothing for the symptoms.
> . . .
>
> ASSESSMENT/PLAN
> Calvin was seen today for back pain.

[Cl. Ex. № 3 at 1-3.]

The claimant was diagnosed with a lumbar strain and received injections of Toradol and Depo-Medrol. Ibuprofen and methocarbamol were prescribed for his complaints of pain. He was to return in three months. According to the visit notes, no other orders were placed that day. *Id.* A return-to-work note is dated 12 December 2024. The claimant was returned to work that day without restrictions. [Resp. Ex. № 1 at 1.]

The claimant returned to the clinic on 24 February 2025. The notes from that visit include:

> ASSESSMENT/PLAN
> Calvin was seen today for back pain.
> Diagnosis and all other orders for this visit:
> Lumbar radiculopathy
>
> > Comments: left leg, now with weakness, MRI L spine
> > . . .
> > left sided arm pain

[Resp. Ex. № 1 at 7.]

Lumbar X-rays were also conducted that day. That study included the following:

> FINDINGS: There is mild degenerative narrowing of the L2-3 disc space. There is minimal degenerative narrowing of the L4-5 disc space. There is mild chronic facet joint arthropathy at L4-5 and L5-S1 with grade 1 anterolisthesis of L4 on L5. No compression deformity is evident. No lytic or blastic defect is seen. The pedicles are normal in appearance and normally spaced.

> IMPRESSION:
> 1. There is chronic degenerative narrowing of the L2-3 and L4-5 disc spaces.
> 2. There is a grade 1 anterolisthesis of L4 on L5 with associated disc space narrowing and facet joint arthropathy.

[Resp. Ex. № 1 at 5-6.]

The lumbar MRI scan ordered by Dr. Kleinbeck was performed on 6 March 2025. The report from that scan included:

> IMPRESSION:
> 1. Multilevel degenerative disc disease and facet arthrosis with canal and foraminal compromise as detailed above at each level.
> 2. Canal narrowing is most significant across the L4-5 level with moderate to severe canal and recess narrowing from listhesia/moderate to severe facet arthrosis.
> 3. There is moderate to severe left canal and recess narrowing at the L5-S1 level from bulging and extrusion as above. There is also associated foraminal narrowing as above.

[Cl. Ex. № 3 at 8.]

Documentary Evidence

Both parties submitted a number of wage-related records. The respondents provided several records related to the claimant's employment and claims, including the claimant's signed receipt of the City's employee handbook. [Resp. Ex. № 2 at 1.]

A Report of Accident form completed by the claimant indicates a right shoulder injury occurring when a "step on truck gave away and I lost my step. I was getting out of my truck." [*Id*. at 20.] That form does not indicate a neck injury. A Form AR-N associated with that incident reflects only a shoulder injury; it does not indicate a neck injury. [*Id*. at 21.]

An Employment Termination Notice form is dated 3 June 2024 and signed by Roger Robinson. It states:

> Mr. Walton called in sick on Tuesday, May 28, the day after the Memorial Day holiday. Mr. Robinson, SWMS Supervisor, told him that he would have to bring a doctor's excuse to be paid for the holiday. He has not called in or reported to work since 5/28/24 so he has apparently quit.

[*Id*. at 33.]

Another Report of Accident form is dated 13 December 2024 (after the claimant's re-hiring and return to work). It indicates an injury to the claimant's "lower left side of back into butt" when "ready to unload truck when parking brake release[d]." [*Id*. at 38.] A Form AR-N completed on the same day indicated the same incident and alleged the same injury.

The claimant's attendance records show that he was absent from work leading up to his second and final termination. "Reason for Absence Explained: 01/13/25 & 01/14/25, no pay for 16 hrs. off, failed to call in or report to work!!!" [Cl. Ex. № 4 at 30.] "Reason for absence explained: 01/15/25-01/21/25, no pay for 40 hrs. off (waiting to see if he brings in a doctor's excuse)!!!" [*Id*. at 31.]

On 21 January 2025, a claims examiner for the respondents wrote a letter to the claimant about several recently missed treatment appointments:

> As you are aware, I am the adjuster assigned to your above claim for your shoulder. I have been made aware that you have not attended several of your scheduled physical therapy appointments and did not keep your follow-up appointment with Dr. Hussey. Your doctor prescribed therapy to aid in the healing of the above work injury therefore you must attend. Failure to attend your recommended appointments, physical therapy and doctor, places you in non-compliant status and subject to discontinuation of your workers' compensation benefits.
>
> I urge you to keep your therapy appointment scheduled for 1/22/2025 and your doctor's appointment that has been rescheduled for 1/31/2025.

[Resp. Ex. № 2 at 54.]

Another Employment Termination Notice is dated 22 January 2025. It is also signed by Roger Robinson and states, "Mr. Walton is being terminated due to failing to report to work since 01/09/25 and failing to provide a doctor's excuse for the days he has been off work. [Cl. Ex. № 4 32; Resp. Ex. № 2 at 35.]

DISCUSSION

I. THE CLAIMANT HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUFFERED A COMPENSABLE NECK INJURY ON CLAIM № H406771.

The respondents accepted this claim for initial benefits associated with a right shoulder injury. They began paying for reasonable and necessary medical benefits and, after a covered surgical procedure, provided indemnity benefits. They have denied liability for an alleged neck injury on this claim.

Under Arkansas' Workers' Compensation laws, a worker has the burden of proving by a preponderance of the evidence that he sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

The claimant alleges that his injury occurred by specific incident.[5] The claimant must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) an injury occurred that arose out of and in the course of his employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126,

[5] The compensability issue as framed by the parties in the Prehearing Order was not limited to a specific-incident theory. But the claimant made clear in his testimony that his alleged neck injury arose out of the same specific incident that the parties have stipulated resulted in his sustaining his compensable right shoulder injury. Moreover, nothing in his testimony alluded to his alleged neck injury being gradual-onset in origin.

938 S.W.2d 876 (1997). If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Id.*

The claimant cannot support his claim for a compensable neck injury because the evidentiary record is devoid of objective findings of such an injury.

Also, the accident report form nor the Form AR-N signed by the claimant indicate that he sustained a neck injury that day. The medical records from the claimant's after-accident visits do not indicate any complaints of a neck injury. And the physical therapy intake forms completed by the claimant similarly do not make any mention of a neck injury. The first reference to a complaint about the claimant's neck does not appear until the claimant's 4 September 2024 surgical consult with Dr. Hussey. That complaint is later noted as "possibly secondary to cervical spine derangement/radiculopathy." [Cl. Ex. № 1 at 35.] A 31 January 2025 X-ray of the claimant's cervical spine revealed "relatively normal joint alignment" and "[a]rthritic changes present from the C5-7 levels." [Cl. Ex. № 1 at 53.] Dr. Hussey noted that he recommended the claimant see a spine specialist "to see if possibly his cervical complaint is related to his occupation related injury." He then clearly rejects offering an opinion on causality, stating, "I cannot comment on spine injury relatedness, since I am not a spine specialist." [*Id.*] A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the 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. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). This, though, did not occur here.

The claimant has failed to meet his burden on objective findings supporting a claim for a compensable neck injury, and he has failed to meet his burden on proving that any eventual complaints of a possible neck injury arose out of and in the course of his

employment with the City. His claim for compensability on an alleged neck injury under Claim № H406771 must, therefore, fail.

II. THE AVERAGE WEEKLY WAGE ON CLAIM № H406771.

Arkansas Code Annotated § 11-9-705(a)(3) provides that "[c]ompensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment." The wage records evidence that the claimant was paid weekly between his 5 September 2023 date of hire and his 26 January 2024 injury.[6] [Cl. Ex. № 2; Resp. Ex. № 2.] His first full-time check was paid on 15 September 2023. The claimant's full-time work continued until the date of his injury, excepting the week preceding his 5 January 2024 check, when he worked only 18 hours and the following week, when he only worked 38 hours.

The wage records reflect 20 pay periods and 18 full-time weeks of pay between the claimant's date of hire and his accepted right shoulder injury. He earned a total of $12,184.50 in regular wages during those 18 weeks.[7] The average weekly wage calculation for his regular pay is $676.92.

Under Ark. Code Ann. § 11-9-518(b):

> Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earning by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.

[6] The respondents provided a Form W for the claimant, but that form shows weeks of payment exceeding the period of time between the claimant's date of hire and date of injury on Claim № H406771. For calculating the claimant's average weekly wage, I have relied instead on the weekly wage records provided by both parties.

[7] The wage records include an unexplained bonus of $83.36 paid for the week of 15 December 2023. I have not included this amount in the claimant's regular weekly wage calculation.

The wage records also reflect the claimant's overtime pay earned during those 20 pay periods. That amount totals $2,584.06. The overtime earned over those 20 weeks averages to a weekly sum of $129.20. Combining the regular and overtime wage amounts results in an average weekly wage of $806.12. This corresponds to a temporary total disability rate of $538. When this rate is compared against the indemnity payout history in the record, the evidence does not preponderate in favor of finding that the respondents underpaid the claimant for his TTD benefits provided after his right shoulder surgery.

III. THE CLAIMANT HAS FAILED TO PROVE THAT HE IS ENTITLED TO ADDITIONAL TTD BENEFITS.

The respondents provided TTD benefits to the claimant in connection with Claim № H406771 for a period of time following his right shoulder surgery in early October of 2024. Those benefits ended around his release to return to work with restrictions on 28 October 2024. He now seeks an award of additional TTD benefits for the period between 13 January 2025 and 9 May 2025. The beginning of this period relates to the time that the claimant was still employed by the City but had stopped showing up for work. He could not provide a doctor's note to authorize his absenteeism; and his continued unauthorized nonattendance was the basis for his termination on 22 January 2025.

The compensable injury to the claimant's right shoulder is unscheduled. *See* Ark. Code Ann. § 11-9-521. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period that is within the healing period *and* in which he has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). A claimant must demonstrate that the

disability lasted more than seven days. Ark. Code Ann. § 11-9-501(a)(1). He must prove his entitlement to benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3). The records here show that the claimant remained in a healing period until his release at MMI without restrictions on 9 May 2025. The dispute is to whether the claimant was totally incapacitated from earning wages during the period of time that he seeks these additional benefits.

As an initial matter, I do not find the claimant to be entitled to additional TTD benefits for any period between 15 January 2025 and his termination on 22 January 2025. He was employed during that time with job duties that were within his restrictions. The record reflects that despite his choosing not to show up for work during this time, he remained employed with job duties within his restrictions. He was plainly not suffering a total incapacity to earn wages during this time. And there was no evidence that the claimant would not have continued his employment (and associated capacity to earn wages) with the City but for his termination for violating the attendance policy.

The next question is whether the respondent's obligations for providing TTD benefits carried beyond the end of his employment with the City because he was totally incapacitated to earn any wages during the time between his termination and the 9 May 2025 end of his healing period. In his post-hearing brief, the claimant argues that the facts in this case align with those in *Tyson Poultry v. Narvaiz*, 2012 Ark. 118, 388 S.W.3d 16. He states that his light-duty restrictions "rendered him completely incapacitated" after his termination. The facts here, however, are distinct from those in *Narvaiz*. In that case, an employee was in a healing period and suspended for misconduct. After returning to work from his suspension, he was terminated. The Arkansas Supreme Court affirmed the Commission's finding that under those circumstances the claimant's "termination for misconduct was not a sufficient basis for finding that he refused suitable employment"

under Ark. Code Ann. § 11-9-526. *Id*. In analyzing *Narvaiz*, the Court declined to apply its holding in *Roark v. Pocahontas Nursing & Rehabilitation*, 95 Ark. App. 176, 235 S.W.3d 527 (2006). In so doing, it stated that *Roark*, unlike *Narvaiz*, "involved a claimant whose employment was terminated for violation of her employer's *attendance* policy rather than a violation of a *conduct* policy." (Emphasis in original.) The claimant here, notably, was terminated for violating an *attendance* policy.

The respondents point to *Rogers v. Aramark*, 2022 Ark. App. 507, 657 S.W.3d 196, for guidance instead. In that case, the claimant was fired from his "sales-route representative" position (a pick-up and delivery driver) while he was still in a healing period for a low-back injury. He had been working light-duty at the time of his termination.

> Rogers also argues that he was totally incapacitated from earning wages. He contends that, while Aramark accommodated his restrictions, he clearly had no options for work once Aramark fired him. He asserts that the type of light-duty job that he was performing at Aramark would be "rare to find" and that his restrictions prevent him from being able to work within his field or in any competitive work environment.
>
> There is no indication in the record that Rogers was fired by Aramark because he could not perform the light-duty job that had been created for him. In fact, Rogers testified that he would still be working at Aramark if he had not been terminated.

Id. The Court noted that there was no medical evidence suggesting that the claimant could not work within his restrictions. *See also, Turcios v. Tyson Foods, Inc.* 2016 Ark. App. 471, 504 S.W.3d 622 (citing *Tyson Chicken, Inc. v. Witherspoon*, 2012 Ark. App. 99; and *Watts v. Sears Roebuck & Co.*, 2011 Ark. App. 529, 386 S.W.3d 19).

The facts here are more akin to those in *Rogers and Roark*. While the claimant argues that his restrictions rendered him incapable of earning *any* wages, he had been performing his assigned work apparently without issue since his return to work in October

of 2024. Shortly after his termination, his restrictions were eased, with no indication that that he had been experiencing any work-related difficulties performing any assigned duties.

Also, the claimant was not credible with regard to his testimony around the time of his termination. He stated that he stopped showing up for work because he needed to see a doctor. Yet he presented no evidence of any unplanned or as-needed doctor's visits around that time. To the contrary, Mr. Robinson credibly testified that he contacted the claimant at the beginning of his absenteeism after being prompted by a claims manager who reported that the claimant had missed a doctor's appointment. A case manager's letter dated just before the claimant's termination corroborated that the respondents were attempting to contact the claimant about recently missed treatment appointments. Mr. Robinson also testified that the claimant was to return to work and provide any doctor's notes for his unscheduled absences, as indicated on his attendance records; but the claimant never returned to work. Nor did he present any medical evidence at the hearing authorizing his absences or relating his absences to his compensable injury.

The claimant was also not credible in his testimony that he called into work every day that he was absent or that Mr. Robinson supposedly reported begging the City to let the claimant stay on despite his unexcused absences. Mr. Robinson credibly testified that the decision to terminate for violation of the attendance policy was his. And he credibly testified that the claimant was not making daily calls to report his intended absences. The contemporaneous attendance records corroborate Mr. Robinson's testimony.

Similarly, the claimant was not credible with his recollection of the removal of his light-duty restrictions and his release to full duty. He testified that he was unable to find work after his termination because of his restrictions and that he told APRN Hart he needed his restrictions lifted. She responded, he testified, "Well, Mr. Walton, I'm going to take you off your restrictions." [TR at 44.] The claimant said that he then returned to the

company that couldn't hire him with restrictions and secured a job. The medical evidence, however, clearly shows that the claimant's release was not the result of a plea to Hart at his appointment on 9 May 2025. His full-duty release had been anticipated by Dr. Hussey back on 28 March 2025 when he scheduled the claimant for that final (9 May 2025) visit with Hart.

In short, I do not find the claimant to be credible in any of his testimony around the time of his unexcused absences, his termination, his release from care, or his efforts to find work after his termination. His sudden period of unexcused absences in January of 2025 not inconsistent with the same behavior that resulted in his termination for unexcused absences in June of 2024. Both terminations were for violations of the respondent-employer's attendance policy; and neither was related to his compensable right shoulder injury. The evidence preponderates against finding that the claimant's restrictions rendered him totally incapable of earning wages. His claim for additional TTD benefits must, therefore, fail.

IV. THE CLAIMANT HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITELD TO ADDITIONAL MEDICAL TREATMENT ON CLAIM № H500714.

The claimant also seeks additional treatment for his accepted back injury in connection with Claim № H500714. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. § 11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

Dr. Kleinbeck diagnosed the claimant with a lumbar strain on 13 December 2024 and returned him to work without restrictions. Some medications were prescribed; but no other studies, interventions, or time-sensitive follow-ups were ordered. The claimant presented to clinic again with the same complaints of back pain on 24 February 2025. X-rays conducted that day showed chronic degenerative changes. A subsequent MRI study revealed "multilevel degenerative disc disease." Upon reviewing that study, Dr. Kleinbeck noted, "He does have a few areas where it looks like he may have some nerve compression: would refer him over to Ortho Arkansas spine clinic, since he is already seeing Dr. Hussey at Ortho Arkansas." [Cl. Ex. № 3 at 9.] Afterwards, the respondents denied further treatment.

The imaging studies of the claimant's back that are in evidence only reveal degenerative changes. While the claimant testified that he recently underwent an injection for back pain, he did not provide any records that purport to relate that or any other treatment to his workplace injury. The claimant must prove that any treatment he is seeking is causally related to this compensable injury. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. The claimant has therefore failed to prove by a preponderance of the evidence that he is entitled to any additional reasonable or necessary medical treatment for his back.

V. THE CLAIMANT HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO AN INDEPENDENT MEDICAL EXAMINATION FOR HIS RIGHT SHOULDER.

At the beginning of the hearing, the claimant sought to add as an issue whether the he was entitled to an independent medical examination (IME) for his right shoulder. "We believe that Dr. [Hussey] didn't pay attention when he did that zero rating following

surgery."[8] [TR at 11.] The respondents did not object to the addition of the issue, so it is being addressed here. As for their objection as to his entitlement to the same, they noted (1) that the claimant had not sought a second opinion on his shoulder and any potential permanent impairment via a Change of Physician and (2) that the claimant "incorrectly presumes that because a surgery was performed, he is automatically entitled to a rating." [TR at 18.]

In their post-hearing briefing, the parties essentially assert the same arguments. Both cite Ark. Code Ann. § 11-9-511, which provides:

> (a) An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the commission may require from time to time if reasonable and necessary.

See generally Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997) (Arey, J. Concurring).

I agree with the respondents that the claimant has not provided a preponderance of evidence to support a finding that such an examination is reasonable or necessary. The claimant testified that he still has some pain in his right shoulder and that his strength is not the same. Yet he presented no credible evidence to contradict Dr. Hussey's assignment of a zero percent (0%) impairment rating without restrictions. Dr. Hussey maintained a physician-patient relationship with the claimant that began with his initial surgical consult on 4 September 2024 and continued through the claimant's release on 9 May 2025. Dr. Hussey referred the claimant to a physical therapy program and was able to review those exam and progress notes throughout the claimant's recovery. The records from the claimant's last clinic visit state, "Exam right shoulder demonstrates full range of motion in

[8] The claimant did not ask that the Commission assign him a permanent impairment rating in this litigation. In his prehearing filing, he specifically reserved the same.

all planes without crepitation. 5/5 rotator cuff strength." [Cl. Ex. № 1 at 87.] The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). I find Dr. Hussey's assessment to be sound based on the record evidence; and in the absence of persuasive proof as to any error in that assessment, I find that the evidence preponderates against finding an independent medical examination to be reasonable or necessary.

VI. ATTORNEY'S FEE

The claimant has failed to prove by a preponderance of the evidence that he is entitled to an attorney's fee.

CONCLUSION AND AWARD

The claimant has failed to prove by a preponderance of the evidence that he is entitled to any of the benefits sought in this litigation. His claims are hereby DENIED and DISMISSED, accordingly.

SO ORDERED.

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JayO. Howe
Administrative Law Judge