

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H000030

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| JOHNNY H. WARE, Employee | CLAIMANT |
| MALONE'S MECHANICAL, INC., Employer | RESPONDENT |
| ACCIDENT FUND INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED OCTOBER 6, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

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

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

STATEMENT OF THE CASE

On July 8, 2021, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on March 17, 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 among the parties.
3. The claimant is entitled to a weekly compensation rate of \$736.00 for temporary total disability benefits and \$552.00 for permanent partial disability benefits.

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

1. Whether claimant sustained a compensable injury on January 2, 2019 to his neck, head, arms, knees and shoulders.

2. Whether claimant is entitled to past and future medical treatment.
3. Whether claimant is entitled to temporary total disability benefits.
4. Attorney's fee.

Claimant's contentions are:

"The claimant was injured on January 2, 2019, when involved in an automobile accident where he struck a concrete wall twice."

Respondents' contentions are:

"Respondents contend that the claimant's claimed conditions do not meet the definition of a compensable injury. Consequently, claimant is not entitled to further medical treatment or additional benefits."

The claimant in this matter is a 53-year-old male who was employed by the respondent as a journeyman plumber on January 2, 2019. On that day the claimant was driving a vehicle owned by the respondent when he and his passenger, Jason Barnes, a fellow employee, were involved in a single vehicle motor vehicle accident in the Bobby Hopper Tunnel. The claimant described the accident in direct testimony as follows:

Q Okay. Do you remember the incident itself in the Bobby Hopper Tunnel?

A Yes.

Q Take us through that. What happened?

A We was about - - I don't know how far. It was a little bit of a mist rain and anytime I go through that tunnel I always let off on the gas, you know. And we was about 100 feet in and I was in the right lane and I can't explain what happened. Something - - something violently - - I mean it was violent. Slammed up against the left wall and then all of a sudden the steering wheel just spun completely around in a circle and we hit - - it slung us across. I mean it slung us and hit the right wall and all of a sudden just stopped.

Q Okay.

A It slung me around. And then it was just kind of like I was

dazed, you know, shocked. I thought - - it was crazy. I've never been - - I have drove all around the world and I don't know what happened. I mean the truck had issues with the front end. I don't know if something broke. I don't know. All I know is I've never seen a vehicle do that. It was crazy. Strange.

Q Were there any vehicles around you? Do you recall any vehicles in front.

A There was a semi behind us, but I don't remember too much. I remember us getting out of the vehicle and just knowing if we get - - if we stayed in that tunnel we would be dead.

Q Do you know about how fast you were traveling at that time - -

A I don't know. Sixty - -

Q Let me finish.

A Okay.

Q Do you recall about how fast you were traveling when you entered the tunnel?

A No, not really. Probably, I don't know, 65, 75. I don't know. I don't know the speed.

Q You indicated you slowed down when you went in the tunnel. Is that your normal routine going through the tunnel?

A Yes, anytime. I usually just let off the gas a little bit.

Q Okay. Do you recall how fast you were going when the truck veered to the left?

A At the max I probably was going maybe 70, 75, at the max. I think I was going - - I don't know. I don't remember how fast I was going.

Q Okay.

A I don't drive like in the 80s or 90s, but I don't remember.

Q When the truck went from the right lane into the left wall, what part of the truck collided with the tunnel?

A The whole front left and the side and then it - - yeah.

Q Okay. And then from there, you indicated that the truck - -

A Shot straight across the lane.

Q Okay. And what part of the truck made impact with the inner wall of the right side of the tunnel?

A It pretty much almost hit square.

Q Okay.

A I can't remember. You know, there was only one picture of the truck. I can't remember exactly.

Q Okay.

A I know it was whacked-up.

Q Did it come to rest perpendicular to the way of traffic?

A No, across the lane. It came head-on into the wall (indicating).

Q Right. Right. So you were aiming one way and traffic was going - -

A Yes, sir.

THE COURT: I will note for the record that the Claimant used his hands to make a perpendicular figure.

MR. KETCHAM: Okay.

Q [BY MR. KETCHAM]: What do you remember immediately after the accident, after you came to rest?

A Looking at Jason and saying that God I am alive, we are alive.

Q Okay. And was Jason okay?

A Yes.

Q Okay. You all checked on each other?

A Of course, yes.

Q Okay. Did you have your seat belt on?

A Yes.

Q Do you recall if Jason had his seat belt on?

A I don't remember. I am sure he did.

Q Okay. Do you recall if any of the airbags in the vehicle went off?

A Yes, they went off.

Q Okay.

A I don't know if mine went off. For some reason I don't remember mine going off on my steering wheel. I don't remember that.

Q Okay.

A I know Jason's went off because the smoke was in there, but I don't think the steering wheel went off. After you brought that up, I don't recall that. I don't know because I slung around so much, it would have stopped me from swinging around, but I don't remember the airbag. I don't remember.

Both the claimant and his passenger, Mr. Barnes, exited the truck and walked out of the tunnel under their own power. They were met by Mr. Marc Malone who is a project manager for the respondent. He was called as a witness by the respondent in this matter. Following is a portion of his direct examination testimony about meeting the claimant and Mr. Barnes shortly after the accident:

Q And where was your vehicle located with respect to Mr. Ware's?

A I was ahead of him because I received a call and I had already passed through the tunnel when I received a call that there was an accident involving Johnny and Jason in the tunnel.

Q So what did you do?

A I turned around and headed back north. I think I turned down at Winslow to get back on I-49 south to where I could come into the tunnel where they were. And I pulled in behind him. My son was with me. I put him in the driver's seat and told him to take my truck out of the tunnel and I stayed in the

tunnel and caught up with Johnny and Jason.

Q So you met them actually at the site where the vehicle was sitting?

A Yes. When I pulled up, Johnny and Jason were on the opposite side of the tunnel. I guess there was an emergency access or kind of a hole that they were staying away from the accident, but up against the wall.

Q And what was their condition when you got there that you can recall?

A Well, at that point being inside that tunnel, everybody was pretty on high alert and everything, but I didn't notice any of the individuals incoherent or incapacitated to maneuver.

Q Anybody bleeding?

A I did not notice any blood.

Q Complaints of broken bones or concerns, medical concerns at that time?

A Not at that time.

Q And then how did you get out of the tunnel?

A The state trooper pulled in behind us and he was - - he instructed us to get what we needed to out of the vehicle and get out of the tunnel as soon as we possibly could, so the three of us progressed to walk on foot out of the tunnel to the south.

Q Okay. To the south. So do you know about how long you waited for the trooper to do his job?

A Ten, 15 minutes. It wasn't too long.

Q Then did you have to wait for a tow truck to arrive?

A Yes, we did.

Q So in all, how long would you say you waited around the accident scene even though it was outside of the tunnel after the accident?

A Thirty-five, 40 minutes.

Q And then where did you go after that?

A The truck was being loaded, the vehicle. They were headed back to West Fork. Me, my son Miles, Johnny and Jason, we all got in my truck and we headed south for home.

Q When you say home, does everyone live in the Van Buren area?

A Yes, towards Van Buren.

Q So do you recall if you dropped of Jason or Johnny first?

A Jason had his vehicle parked - - I don't know what exit. It's the Rudy exit there off of I-49 and I dropped him off there and he drove to his home in Fort Smith. And then Miles and I took Johnny to his residence in Van Buren.

Q And during the time that you were in the vehicle, to the best of your recollection, was there discussion that was had that caused you concern for either Jason or Mr. Ware's physical condition?

A No, I just know that, you know, I kept everybody talking, just coherent and just, you know, see how everything was. Everybody was still pretty shook up after hitting the wall and Everything, so . . .

Q Were you concerned about your employees?

A I was. You know, I received a phone call from Johnny - - yes, and they told me they were all right, but I wanted to go get to them inside of the tunnel and just basically get them out of there. That was a very nerve-racking situation being inside the tunnel.

Q Okay. So when you dropped Jason and Mr. Ware off, at that point in time, did you have any knowledge of any particular injuries that either of them claimed to have suffered?

A No. I mean I don't recall anyone stating anything. I figured and assumed that they would be sore the next morning. Everyone, you know - - there wasn't any request or need to have immediate medical attention on-site, but driving home, you know, I just instructed them again not to show up for work the next day, that we need to fill out a First Report of Injury at the shop and to seek medical attention just to make Sure that there isn't anything that developed over the night

or whatever.

The respondent also called Mr. Jason Barnes, the claimant's passenger, as a witness. Following is a portion of his direct examination testimony about the accident and the events directly after the accident as follows:

Q Okay. So were you awake at the time that the accident had occurred?

A Yes.

Q And to your knowledge - - I know you weren't driving the vehicle, but to your knowledge, did it seem like there was any cause of the accident?

A My opinion, weather.

Q You didn't hear anything from the vehicle or apparent mechanical issues or anything?

A No.

Q So the accident has been described that the vehicle hit the left wall and then slung across the road and hit the right wall. Is that accurate?

A Yes.

Q And during that time, were you wearing your seat belt?

A Yes.

Q And to the best of your knowledge, was Mr. Ware wearing his seat belt?

A I believe so, yes.

Q Was that a requirement when using a work vehicle or truck?

A I don't know if it was a requirement, but it is pretty common that everybody - -

Q Okay. So when the vehicle came to a reset, what was the first thing that you remember?

A I was kind of in shock and I looked down and the airbags were out. And I looked at him and we got out. I asked him if he was okay

and he said yeah. Are you okay? And I said, yeah, I think so. And we were just kind of in shock and just kind of standing there after we exited the vehicle and we were just kind of in shock.

Q Okay. Do you recall if Mr. Ware's airbag went off?

A I don't really know. I know mine did for sure.

Q That's fair. And you indicated and you motioned when you said you got out of the truck, you put your hands out to both sides. To the best of your recollection, did you exit through your door and did he exit from his door?

A Yes.

Q So to your recollection, both doors were functional?

A Yes.

Q And what did you do after you got out of the vehicle after You checked to make sure you were all there?

A Well, people weren't slowing down coming through the tunnel, so we were kind of nervous and we actually went across the street and there is a little doorway in the middle of the tunnel and we kind of stayed in there just to kind of get out of the - - in case anybody else slid. Kind of get out of the way.

Q And were you still in that location when the trooper showed up on the scene?

A Yes.

Q And did anyone else show up?

A There was one vehicle that stopped. I don't recall. I think they stopped to make sure we were okay and left.

Q How about anybody else from Malone's?

A Yes, there was a couple of other people. We had some co-workers coming through and they stopped to make sure we were okay.

Q So then did you remain in the tunnel?

A No. I can't remember when, but we ended up walking out of the south end of the tunnel.

Q And you and Mr. Ware were both able to walk on your own?

A Yes.

Q And to your recollection, was there any medical treatment that was provided at the scene?

A No.

Q Did you request any medical treatment?

A No.

Q And when you got to the end of the south tunnel, what did you do there?

A We got in Marc Malone's vehicle.

Q And who else was there?

A Marc and I want to say - - I want to say there was somebody in the vehicle. It may have been Eli, his son. I can't remember.

Q Does he have a son that works with him?

A Occasionally, yes. I can't remember who it was.

Q That's okay. So when you guys all got in the truck, where did you go next?

A Went to Rudy where my truck was parked, the Rudy exit.

Q So from the time that you left the tunnel until the time that you got to Rudy, was there conversation in the vehicle?

A I am sure there was. Just kind of a - - I don't recall what it was, though.

Q Was there a concern that anyone was injured?

A No.

Q And as far as physical injuries, did you suffer any outward injuries? Did you have any blood, cuts or anything like that?

A No.

Q How about Mr. Ware?

A Not that I saw.

Q And afterward, did you suffer any physical injuries that weren't readily apparent?

A No.

Q So no bumps, bruises, broken bones, sprains?

A Not really. I think, if I remember right, my arm was a little bit sore, but that was about it.

Q Okay. So when you went home that evening, what did you do?

A Talked to my wife and calmed her down and went to bed.

The claimant also gave testimony on direct examination about how he physically felt after the motor vehicle accident as follows:

Q Okay. Do you recall at that time immediately on impact or there at the wreck site, do you recall - - what do you recall physically about how you were feeling at that time?

A My shoulder - - I was all shook up. I didn't know. I was - - I had a bruise across my deal (indicating) and my knees was hurting. I was sore. I was real sore. I was really in shock and just happy to be alive, to be honest. I mean I was real sore all over. My whole body was sore. I mean it was shocking. I can't describe - - I guess adrenaline. After something like that happens, I guess adrenaline is true.

Q Did you request any medical attention at that time?

A No.

Q Okay. At the time did you feel that you were hurt enough that you needed an ambulance?

A No.

Q Okay. Did you tell Marc or anybody else there what your intent was - -

A I don't remember.

Q Okay. All right.

A I don't even remember a conversation.

Q How did you get home?

A Marc took me home.

Q Okay. Was anybody else in the vehicle except you and Marc?

A Jason.

Q that was the passenger in your vehicle; correct?

A Yes.

Q Okay. Any conversation on the way back about the wreck or anybody's pain or injuries that you recall?

A I remember me bringing up trying to figure out if that front end of that truck broke.

Q Okay.

A It didn't get fixed. I was just in shock that I had a wreck. I mean I don't even remember the conversation. I don't know.

Q Was there any talk, to your recollection, about going immediately to seek medical attention - -

A Yes.

Q Hold on. - - either to an emergency room or a walk-in clinic or anything like that?

A Yes. To go - - by the time we ended getting home, it was late and to go to the doctor - - we got up the next morning to go to the doctors the next day.

Q But that evening, was that your decision to go home?

A. Yes, sir. Well, yes, that's where I was taken, yes.

Q Had you notified Jill that you had been in an accident?

A Yes, sir.

Q How did you do that?

A I don't know who called her. I don't know.

Q Okay. So somebody called Jill?

A Somebody called her.

Q Okay. Did Mr. Malone take you directly to your house?

A Yes, sir.

Q Okay. Talk about that evening once you got home. Do you recall about what time you got home?

A No. No, I don't recall. I know it was late. I don't recall.

Q Okay. Tell me what you did when you got home. Did you have a conversation with Jill? Did you go right to bed? Did you shower? What happened when you got home that evening?

A I remember laying down. I was hurting.

Q Okay. By the time you got home, where were you hurting?

A My shoulders and my knees was hurting and my back - - I was just hurting. My hips was hurting. You know, my shoulders, and I had a headache.

Q Okay. Did you take anything when you got home?

A I took some aspirin or some ibuprofen or something. I don't remember.

Q Okay. So you went to bed that night?

A Yes, sir.

The morning after the accident both the claimant and Mr. Barnes reported to the respondent's place of business in Van Buren and completed a first report of injury form. Both men then sought medical treatment which they received at the Baptist Health Emergency Department in Van Buren. Following is a portion of the claimant's medical record from his January 3, 2019 visit:

Presentation:
01/03

10:40 Presenting complaint: Patient states: MVC last night, did not see a doctor. today pain in right shoulder, knee, and left shin. Transition of care: patient was not received from another setting of care. Care prior to arrival: None. Mechanism of Injury: MVC Patient was driver, restrained with lap and shoulder harness. Vehicle was impacted on front end. Force of impact was severe. Vehicle was traveling approximately 65 mph. Front air bags were deployed. Did not impact windshield. Vehicle did not roll over. Trauma event details: The patient did not lose consciousness. Injury occurred in the county of Washington Injury occurred on a street or highway. Injury occurred January 2, 2019. Injury occurred at 18:00.

The claimant was diagnosed at that time with “contusions to the right shoulder, right knee, left lower leg.” In an injury description portion of that same medical record found at Claimant’s Exhibit 1, Page 2, it states, “Bruise sustained to left shoulder area is red, was sustained one day ago.” The History and Present Illness portion of that same medical record states:

HPI:

01/03

10:47 This 50 yrs old Caucasian Male presents to ER via walk-in with complaints of Motor Vehicle Collision (MVC).

01/03

10:47 The patient was a driver of a pick-up. The patient was restrained by a lap belt, with a shoulder harness, driver’s side and passenger’s side, and was traveling approximately 65 miles per hour. The vehicle did not rollover, the patient was not ejected from the vehicle, extrication of the patient from vehicle was not required, the patient was ambulatory at the scene, the force of impact was moderate, indirect.

Onset: The symptoms/episode began/occurred yesterday.

Associated injuries: The patient sustained right shoulder, painful injury, right knee, painful injury, left tib/fib, painful injury. Associated signs and symptoms: Loss of consciousness: the patient experienced no loss of consciousness.

01/03

10:47 Patient was driving a truck that suddenly slid into the wall of a tunnel on I-49 (Bobby Hopper Tunnel). The truck hit on both tunnel walls and eventually came to a rest.

The claimant underwent a series of x-rays at the emergency department including an x-ray of the claimant's left tibia and fibula which showed a normal alignment, showed no fracture or dislocation, and noted that the soft tissue was unremarkable. The claimant also received an x-ray of his left shoulder which showed normal alignment, no fracture or dislocation, and also noted that the claimant's soft tissue was unremarkable. The claimant also underwent an x-ray of his right knee. At that time the right knee was shown to have normal alignment, no fracture or dislocation, and also noted that the soft tissue was unremarkable. The claimant was discharged. Following is a portion of the medical record that reflects the claimant's discharge condition:

11:39 01/03 11:38 01/03/2019 11:30 Discharged to Home/
Self care. MSE Completed. Impression: Contusions to
right shoulder, right knee, left lower leg. Condition is
stable. Discharge Instructions: Medication Reconciliation
form. Follow up: Private Physician; when: As needed;
Reason: Recheck today's complaints. Problem is new.
Symptoms are unchanged.

The claimant's accident occurred on January 2, 2019, which was a Wednesday. The claimant's visit to the emergency department occurred on Thursday, January 3, 2019. At that time the project the claimant was working on for the respondent involved working four 10-hour days, which provided them Friday, Saturday, and Sunday off of work. The claimant returned to work the following Monday, January 6, 2019. The claimant continued to work for the respondent in his regular job duties through March of 2019. At that time the claimant's portion of the project was complete and the respondent had a reduction in work force that included the claimant. The claimant testified to difficulties he alleged he had after returning to work for the respondent on direct examination as follows:

Q [BY MR. KETCHAM]: In the weeks following the accident, were there any changes that you noticed, either physically and/or mentally or psychologically, that you attribute to this accident?

A Well, this is what - - well, I am going to say this: Men have pride and all of my life I am a worker and things started happening. Little things. I have always been able to do things.

I would go out and I would try to do something and I couldn't remember. I couldn't do it. And my hands and stuff, it was just crazy. I was fighting this and I was making mistakes at work. I couldn't think right.

And usually I am a leader and, you know, and all of the young guys would say, all right, leg's go up the stairs instead of taking the elevator and I couldn't even go up. I would have to take the elevator up. I couldn't do what I usually do. It was crazy and I fought it and I fought it and I fought it.

You know, I thought for a while I was losing my mind. I couldn't do what I usually do and something was different. And my wife noticed it and other people noticed it and I was just thinking maybe, you know, it's not - - you know, this ain't me. I could add numbers and I could do this and it was just changing and I couldn't figure it out.

And then I fought it and fought it and I would catch myself and I would tell my wife, wow, I don't know what it is. I couldn't - - I have done a lot in my life and seen a lot and I just couldn't - -

Q What specific difficulties were you having?

A It was hard for me to even change a light bulb to be honest. I mean just little things. You know, I mean I could do anything and then I couldn't think. My focus wasn't - - then my hand I would start - - it was just crazy. It has been a wild ride.

Q How many days did you actually miss from the accident?

A I think we missed - - I think we had a three-day weekend, but, you know, I am a team player and go back to work. I mean we was building the hospital. I was fighting it, you know. I was fighting. It's hard to explain.

Both Mr. Malone and Mr. Barnes gave testimony that indicated they did not notice problems with the claimant's work performance or health condition following the accident. Mr. Barnes continued to ride with the claimant after the accident and could not recall any complaints from the claimant about his physical condition. This testimony is consistent with the medical records in this matter in that the

claimant did not receive medical treatment for his neck, head, arms bilaterally, knees bilaterally, or shoulders bilaterally until April 3, 2019, shortly after he was laid off work. The claimant was seen at the VA and a progress note from that visit shows multiple complaints including “pain in multiple joints,” “chronic low back pain,” “bilateral hip pain,” “bilateral shoulder pain,” and “stiff and locked up hands.” The claimant has a history of medical issues with all of these body parts well predating the January 2, 2019 accident. However, the medical records from the VA are absent any mention of the motor vehicle accident until December 10, 2019, at which time the claimant was seen by Dr. Kyle. The claimant also stated in that visit, “I just may need disability.”

The claimant was seen at the VA and other medical providers after the January 2, 2019 accident and before it is mentioned to Dr. Kyle in December of 2019; however, at those visits he complained of chronic conditions and his belief that he had Rocky Mountain Tick Fever. The claimant was tested for that condition but could not remember the results and the voluminous medical records are not clear on the outcome.

Much of the claimant’s post-accident medical treatment also revolves around mental deficits he claims to be experiencing. The claimant does have some history of head trauma in the years prior to the motor vehicle accident and a history of some mental health issues. A CT scan and MRI of the claimant’s brain were performed in September 2019. It appears that a cyst or mass was discovered in the CT scan, but the follow-up MRI of the brain gave the following Impression:

Impression:

1. Posterior fossa meja cisterna magna, normal variant. No subarachnoid cyst or masses identified. No evidence of mass effect. No ventriculomegaly.
2. Minimal microvascular ischemic changes. 3. No evidence of abnormal enhancement after contrast infusion.

The claimant may be experiencing some difficulties due to this area in his brain, but there is no evidence that this is trauma related and certainly not related to his January 2019 motor vehicle accident.

In fact, the claimant did not even complain of any head issue or trauma to the emergency department on his January 3, 2019 visit to the Baptist Health Emergency Department. That medical report did not identify any evidence of derangement to the claimant's head or even complaints given by the claimant.

The claimant has asked the Commission to determine whether he suffered compensable injuries to his neck, head, arms bilaterally, knees bilaterally, and shoulders bilaterally. The claimant's emergency department visit of January 3, 2019 indicated a normal neck examination. The claimant made no complaint about neck pain that is present in that medical record. The medical record from the claimant's April 30, 2020 visit with Dr. Kate Foxx in part indicated:

He also complains of significant neck pain, which has also been going on for over 10 years.... The pain in his neck causes significant headaches.... As far as his neck pain is concerned, although he has some numbness and tingling in his hands, his symptoms seem quite vague, and on examination, he does not have evidence of myelopathy or radiculopathy to my exam. I suspect a lot of his neck pain may be coming from just a few degenerative changes most pronounced at C6-C7, and this may also benefit from injections.

The claimant is unable to prove the existence of objective medical findings in his neck or cervical spine related to his January 2, 2019 motor vehicle accident as he has alleged. The claimant may have degenerative issues in his neck/cervical spine, but he is unable to prove a causal connection between those complaints and his January 2, 2019 motor vehicle accident. The claimant has failed to prove that he suffered a compensable neck/cervical spine injury on January 2, 2019.

The claimant is also unable to prove the existence of objective medical evidence of derangement to his head/brain. While the claimant has had a CT scan and an MRI of the brain that showed evidence of a cyst or mass, there is no evidence that it is related to the January 2, 2019 motor vehicle accident. In fact, the claimant did not even have a complaint or bruise on or about his head mentioned in his January 3, 2019 medical report from the emergency department. Instead, the claimant has a history of prior trauma and some indication of mental health disability. A medical report titled Psychological Evaluation done at DSM Associates Psychology Group by Dr. Suzanne McKenna, Ph.D., a licensed psychologist,

states the claimant “meets the criteria for major neurocognitive disorder, most likely due to traumatic brain injury and major depressive disorder, recurrent, moderate, with anxious distress.” However, that report was misdated January 21, 2019 and should have been dated January 21, 2020. While the misdating of the report has little consequence other than making certain the chronological order of the claimant’s medical treatment is fully understood, it is significant in and of itself because it relies on false information apparently supplied by the claimant. The report in part states:

Mr. Ware is currently being treated for ruptures in the C5, C6, and C7 discs in his neck. On 1/3/2019, he had a car accident in which his work vehicle hit the wall of a tunnel. He does remember exactly what happened in this accident. He cannot recall if he passed out. His doctor suggested that his pituitary gland was affected by this accident and speculated that his pituitary gland was damaged previously during his time in the military. Mr. Ware stated that he was beaten severely when in the Army and suffered brain trauma and loss of consciousness. He stated that he had other head injuries while in the military. Since the car accident last year, Mr. Ware’s blood pressure reportedly has been quite high. Additionally, a brain cyst was identified on a brain scan about eight months ago. It has since disappeared from future scans. Mr. Ware has had significant pain in his neck and back, and the Veterans Administration (VA) is treating him for these issues. He reported that he has significant pain all of the time, and feels as though he is losing his mind. He has frequent headaches. He has not had any history of seizures. However, he had carbon monoxide poisoning about 2 years, and he was in the hospital for six hours receiving 100% oxygen.

I note that in the medical records there is no evidence of ruptures in the claimant’s cervical discs at C5, C6, and C7. The claimant was clear in his January 3, 2019 medical record that he did not lose consciousness or pass out. The claimant’s pituitary gland was not at all affected by the accident, at least as of noted in any medical records submitted to the Commission in this matter. The claimant has, including in this incident, been untruthful to medical providers and I believe is currently being untruthful with the Commission. The claimant’s credibility is very low. The claimant is unable to prove objective medical findings relating to his January 2, 2019 motor vehicle accident as they relate to his head/brain.

Any objective medical findings present certainly cannot be found to have a causal connection to his current complaints of head/brain difficulties. The claimant has failed to prove that he suffered a compensable head/brain injury on January 2, 2019.

The claimant is also unable to prove the existence of objective medical findings related to his arms bilaterally due to his January 2, 2019 motor vehicle accident. The claimant had complained of left hand cramps to the VA in May of 2004 that he stated had been ongoing for six to twelve months. In June of 2005 the claimant complained to a medical provider of right hand cramping. In June of 2016 the claimant reported right hand pain and stated his “hand will lock up.” The claimant made no reports of difficulties with his hands or arms at his January 3, 2019 emergency department visit. While the claimant did later complain of many symptoms involving his entire body, including his arms bilaterally, he did not even mention the motor vehicle accident again until December of 2019. The claimant is unable to prove the existence of objective medical findings regarding his arms bilaterally as a result of his January 2, 2019 motor vehicle accident. The claimant is also unable to prove a causal connection between his current complaints and that motor vehicle accident.

The claimant has also asked the Commission to determine whether he suffered compensable injuries to his knees bilaterally. The claimant was diagnosed with a right knee contusion on January 3, 2019 during his visit to the emergency department. The claimant rated his pain at that time at 4 out of 10 on the pain scale. The claimant reported right leg and right knee pain in September of 2011 when he was stomped on by a cow as reported to the Mercy Fort Smith emergency room. In May of 2012 the claimant reported a contusion and injury to his right knee while going over a fence to a medical provider. On January 1, 2020 the claimant called the VA to report “trouble with/both knees, they kind of give out on me when walking, they are throbbing, makes it difficult to walk.” Then on January 2, 2020 the claimant underwent bilateral knee x-rays at Baptist Health in Fort Smith. The impression from that diagnostic report states, “No significant radiographic abnormalities.” The claimant also made claims in medical records prior and post his January 2, 2019 motor vehicle accident that he had pain in all of his body joints,

which would necessarily include his knees bilaterally. The claimant is unable to prove the existence of objective medical findings regarding his left knee as it relates to his January 2, 2019 motor vehicle accident; nor is he able to prove a causal connection between his current complaints of left knee difficulties and the motor vehicle accident. The claimant is, however, able to prove objective medical evidence of a right knee injury in the form of a contusion that was reported in his January 3, 2019 emergency department medical records. The claimant is also able to prove a causal connection between the right knee contusion present on January 3, 2019 and his January 2, 2019 motor vehicle accident. The claimant has proven by a preponderance of the evidence that he suffered a compensable right knee injury on January 2, 2019 in the form of a right knee contusion.

Finally, the claimant has asked the Commission to determine whether he suffered compensable bilateral shoulder injuries on January 2, 2019. Medical records predating the claimant's motor vehicle accident reflect bilateral shoulder pain, including a record from the VA in 2015 in which the claimant states, "Every joint in his body was hurting including shoulder is hurting....". "... having consistent aching in his BIL joints, but worse on the left side the last five days. Shoulders hurt so bad that he cannot lift anything." At the claimant's January 3, 2019 emergency department visit he was diagnosed with a right shoulder contusion. It was also noted that the claimant had a bruised left shoulder as the area was red in color. X-rays of the shoulder were negative. The claimant is able to prove objective medical findings of a contusion to his right shoulder and a bruise to his left shoulder. He is also able to prove a causal connection between the right shoulder contusion and the left shoulder bruise and his January 2, 2019 motor vehicle accident. The claimant is able to prove by a preponderance of the evidence a compensable right and left shoulder injury in the form of a contusion and bruise respectively.

All of the claimant's testimony in this matter has been lessened by his demeanor in Court, his inability to remember information when it did not suit his request for benefits and his ability to remember information when it did suit his purpose. That, along with the untrue statements he has made throughout

his medical records to medical providers, does extreme damage to the credibility of the claimant's testimony.

The claimant has asked the Commission to determine his entitlement to past and future medical treatment. The claimant has proven that on January 2, 2019 he suffered compensable injuries to his right knee in the form of a contusion, his right shoulder in the form of a contusion and his left shoulder in the form of a bruise. The claimant's entitlement to medical treatment was fulfilled in the January 3, 2019 emergency department visit at which time he was examined thoroughly, diagnosed, and released. The claimant, given his compensable contusions and bruise, is entitled to that visit and the payment of that visit shall be the responsibility of the respondent. However, that is the extent of the claimant's entitlement to medical treatment. The other difficulties the claimant currently complains of are pre-existing or degenerative in nature and not related to his compensable contusions and bruise that occurred on January 2, 2019.

The claimant has asked the Commission to determine his entitlement to temporary total disability benefits. The claimant returned to work on January 6, 2019, the Monday after his Thursday, January 2, 2019 accident. The claimant was not scheduled to work on Friday, Saturday, or Sunday. The claimant continued to work without issue until the end of March of 2019 when he was laid off in a work force reduction. The claimant's compensable contusions and bruise were most certainly healed by that point in time. The claimant has failed to prove his entitlement to temporary total disability benefits.

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 the pre-hearing conference conducted on March 17, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he suffered compensable injuries on January 2, 2019 to his neck/cervical spine, head/brain, his arms bilaterally, and his left knee.

3. The claimant has proven by a preponderance of the evidence that he sustained compensable injuries on January 2, 2019 to his right knee in the form of a contusion, to his right shoulder in the form of a contusion, and to his left shoulder in the form of a bruise.

4. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment which is limited to the medical treatment provided in his January 3, 2019 emergency department visit to Baptist Health Van Buren. The claimant has failed to prove by a preponderance of the evidence that he is entitled to any medical treatment that extends further than his January 3, 2019 emergency department visit.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.

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

ORDER

The respondents shall be responsible for the payment of the emergency department visit to Baptist Health Van Buren on January 3, 2019, at which time the claimant was diagnosed with a contusion to his right knee, a contusion to his right shoulder, and a bruise to his left shoulder. The respondents shall not be responsible for any additional or future medical treatment.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded.

Respondents are responsible for payment to the court reporter for preparation of the hearing transcript in the amount of \$1,454.90.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**