BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G508657

TERRY WYNNE, EMPLOYEE	CLAIMANT
LIBERTY TRAILER, EMPLOYER	RESPONDENT NO. 1
CONTINENTAL WESTERN INSURANCE COMPANY, CARRIER/UNION STANDARD INSURANCE COMPANY,TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 6, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The Supreme Court of Arkansas has reversed the Full Commission's decision in the above-styled matter and has remanded for further proceedings. *Wynne v. Liberty Trailer*, No. CV-20-699 (March 31, 2022). After reviewing the entire record *de novo*, and pursuant to the remand from the Supreme Court, the Full Commission finds that treatment provided the

claimant at Advanced Spine And Pain Centers was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

I. HISTORY

Terry Lee Wynne, now age 61, testified that he had been employed as a trailer technician and welder for the respondents, Liberty Trailer. The parties stipulated that the employer-employee relationship existed at all pertinent times, including November 11, 2015. The parties stipulated that the claimant "sustained a compensable injury to his right shoulder" on November 11, 2015. The claimant testified that he injured his right shoulder as the result of falling from a ladder. According to the record, the claimant received medical treatment for his right shoulder beginning November 13, 2015. A physician noted among other things that the claimant was suffering from right shoulder pain after a work-related injury.

An MRI of the claimant's right shoulder was taken on December 12, 2015 with the following impression: "1. ACUTE COMPLETE TEAR OF SUPRASPINATUS TENDON WITH INVOLVEMENT OF THE CONJOINED TENDON FIBERS WITH APPROXIMATELY 2.5 CM RETRACTION OF TENDON FIBERS. EDEMA EXTENDS ALONG THE SUPRASPINATUS AND INFRASPINATUS MUSCLES. NO MUSCLE ATROPHY IS EVIDENT."

The claimant testified that Dr. Kirk Reynolds performed right shoulder surgery on or about February 2, 2016. The claimant testified that his condition worsened following surgery and physical therapy. A right shoulder arthrogram was taken on July 26, 2016 with the impression, "Status post rotator cuff repair. A large recurrent rotator cuff tear is present with a 3 cm retraction of the supraspinatus tendon. Postop AC and subacromial change."

Dr. David Collins evaluated the claimant on October 14, 2016:

> 56 year old right handed gentleman who previously had an asymptomatic right shoulder is seen for second opinion for sequela to occupation related injury that occurred on November 11, 2015. He apparently lost his footing while working in a trailer and grabbed overhead as he was going down sustaining a traction injury to the right shoulder. Instability event did not occur. Acute pain was noted without ecchymosis. He did not respond favorably to initial conservative measures and MRI indicated rotator cuff tear and he was referred and treated by Dr. Reynolds on February 2, 2016. No apparent complications although he suggests that perhaps he may have experienced "premature therapy." Having failed to respond appropriately he underwent MRI arthrogram which was positive for recurrent tearing. He saw Dr. Hussey for additional treatment considerations and was advised regarding the use of cadaver tissue. His pain is moderate to severe with nocturnal elements. It is mostly around the shoulder girdle….
> Radiographs reveal postsurgical changes….

Dr. Collins assessed: "#1 occupation related injury right shoulder. #2 failed arthroscopic rotator cuff repair. #3 persistent right shoulder pain and dysfunction syndrome multifactorial including rotator cuff tear and

acromioclavicular internal derangement/arthrosis. #4 doubt indolent infection." Dr. Collins recommended additional diagnostic testing.

A bone scan of both shoulders was taken on October 31, 2016 with the following impression:

> 1. Increased uptake consistent with DJD within the right sternoclavicular joint.
> 2. Although there is DJD prominent within both AC joints, the findings are actually more prominent within the left AC joint.
> 3. Degenerative changes within the cervical spine and thoracic spine. These findings involve primarily anterior endplate osteophyte formation.

Dr. Collins' assessment on October 31, 2016 was "Full-thickness rotator cuff tear right status post arthroscopic attempted repair-failed with residual pain syndrome. Bone scan not suggestive of isolated process of significance….I do not think there is much to be offered other than an attempted repair versus partial repair versus debridement."

The record indicates that Dr. Chase D. Smith performed right shoulder surgery on February 17, 2017. The claimant testified that he did not benefit from surgery performed by Dr. Smith or additional physical therapy. Dr. Smith reported on June 12, 2017:

> Terry is here for followup of his right shoulder. He is status post right shoulder superior capsular reconstruction, SAD, and biceps tenodesis on February 17, 2017. Before that he had, had a previous attempted repair of an intrasubstance supraspinatus tear by an outside physician over a year ago. Since the last time I have seen him, he has made improvement in regards to range of motion; however, he is still having some significant weakness. He is complaining of

> numbness over the posterior arm and a shooting pain that starts over the thenar eminence and radiates up the radial aspect of the proximal forearm, especially with internal rotation of his shoulder. He still has difficulty with active forward flexion and abduction of the shoulder.

Dr. Smith assessed "Four months status post right shoulder superior capsular reconstruction with SAD and biceps tenodesis." Dr. Smith recommended additional conservative treatment and diagnostic testing.

The claimant participated in a Functional Capacity Evaluation on October 27, 2017: "The results of this evaluation indicate that an unreliable effort was put forth, with 28 of 55 consistency measures within expected limits….Mr. Wynne completed functional testing on this date with **unreliable** results. Overall, Mr. Wynne demonstrated the ability to perform work in at least the **SEDENTARY** classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal workday with limitations as noted above."

Dr. Charles E. Pearce reported on October 30, 2017:

> Patient returns for follow-up of his right shoulder. He had a functional capacity evaluation done on October 27, 2017. Unfortunately, he gave an unreliable effort meeting only 28 of 55 consistency measures. He was placed in the sedentary category of work according to the Department of Labor. Complaints are the same. Patient was formerly employed as a mechanic….
> **PLAN:** 1. The patient has reached maximal medical improvement.
> 2. There is no indication for further diagnostic testing and/or surgery.

> 3. The patient can return to light duty work only. This is a permanent restriction.
> 4. The patient has sustained 12 percent permanent partial impairment as it pertains to the upper extremity. This is 7 percent of the person as a whole. This is according to the guides to the evaluation of permanent impairment set forth by the American Medical Association, 4th edition.
> 5. Recheck as needed.

The parties stipulated that the claimant “was deemed to have reached maximum medical improvement on October 30, 2017, and assigned a 7% rating which has been paid in full by Respondent No. 1."

The claimant testified, however, that he continued to suffer with throbbing, burning, and stabbing pain in his right shoulder. The claimant began treating at Advanced Spine And Pain Centers on or about May 15, 2018. Dr. Iden M. Cowan’s assessment included “Pain in right shoulder.” Dr. Cowan recommended a series of injections. The claimant testified that he refused a cervical injection recommended by Dr. Cowan.

The claimant treated with Dr. Majid Saleem at Advanced Spine And Pain Centers beginning June 25, 2018. Dr. Saleem noted, “The patient complains of pain in the right Shoulder….Pain medication improves quality of life.” Dr. Saleem assessed “Right shoulder pain,” “Chronic pain syndrome,” and “Encounter for long-term current use of medication.” Dr. Saleem planned, “I agree to provide pain treatment as long as patient is compliant to pain clinic’s rules, policies and pain management programs. Several pain management options including alternatives were discussed

with the patient. These were use of long term opioid and non-opioid medication therapy, periodic utilization of intervention pain management techniques, and multimodal pain management therapy." Dr. Saleem prescribed Gabapentin, Arthrotec, and Hydrocodone.

Dr. Collins again evaluated the claimant on June 22, 2018 and planned, "Obtain records from Chase Smith M.D. Undergo ESR, CRP and aspiration arthrogram with fluid to be held for 3 weeks aerobic and anaerobic cultures as well as cell count. His best option is likely one that returns him to a surgeon who performed his surgery previously."

An MRI of the claimant's right shoulder was taken on July 12, 2018:

> History: Prior cuff repair. Suspected reinjury….
> IMPRESSION: 1. There is a greater than 3 cm full-thickness tear of the supraspinatus with partial laminar morphology to the tear in the residual tendon. There is retraction of the myotendinous junction with mild volume loss of the muscle belly.
> 2. There is moderate to severe tendinosis of the infraspinatus with small partial-thickness insertional tear. There is no gross retraction of the myotendinous junction however.
> 3. Nonvisualized proximal long head biceps tendon likely from previous injury or tear. Reimplantation in the proximal humerus is suspected.
> 4. There is irregularity of the posterior inferior glenoid labrum which may be seen with partial tearing. There is no displaced or detached labral tear.
> 5. Active osteoarthritis of the AC joint.

Dr. Collins assessed the following on August 3, 2018: "Recurrent rotator cuff tear right. Nothing to suggest infection." Dr. Collins planned, "As I recommended previously he should return to one of the surgeons who

performed his surgery. Perhaps they can offer him something to improve his status. In my opinion, based upon his age and current clinical and imaging evidence, I do not think he is a candidate for reverse total shoulder arthroplasty and therefore I have nothing further to offer him at this time."

The claimant continued to follow up with Dr. Saleem and Dr. Joseph Jansen at Advanced Spine And Pain Centers. Dr. Jansen noted on February 1, 2019, "Has seen Dr. Collins and Dr. Pearce for shoulder, he decided against 3rd shoulder surgery."

The claimant treated at Arkansas Chiropractic Group on September 17, 2019: "Terry Wynne consulted me on 9/17/2019. His condition is related to a motor vehicle collision. The accident occurred on 9/13/2018." The claimant was treated for "sprain of right shoulder joint," as well as "sprain" of the cervical, thoracic, and lumbar spine. The claimant was released from chiropractic treatment on or about October 21, 2019.

A pre-hearing order was filed on November 18, 2019. The claimant contended, "On November 11, 2015 the Claimant sustained a compensable injury to his right shoulder. He underwent surgery on his right shoulder on February 2, 2016 with Dr. Kirk Reynolds. Later, he had a second opinion with Dr. David Collins who recommended a rotator cuff revision surgery. Claimant underwent a second right shoulder surgery on February 17, 2017 with Dr. Smith. The Claimant then saw Dr. Charles Pearce who assigned

him a 7% PPI on October 30, 2017 and also gave him permanent light duty work restrictions. An MRI on July 12, 2018 revealed that the Claimant had a three centimeter tear in his supraspinatus. He returned to Dr. Collins on August 3, 2018 and was told that surgery may or may not help. He therefore opted to pursue pain management at the expense of the Respondents, but was refused. Claimant requests ongoing pain management at the expense of the Respondents."

The respondents contended, "Respondents assert that Claimant's claim for benefits is barred by the statute of limitations pursuant to Section 11-9-702 of the Arkansas Code Annotated and the decisions of the Arkansas Supreme Court and the Arkansas Court of Appeals. Alternatively, Respondents contend that all appropriate benefits have been paid with regard to this matter. Claimant is not entitled to wage loss disability benefits. Respondents assert a credit for a PPD overpayment. Claimant's 7% rating was worth $13,009.50. However, he received PPD totaling $29,700.00 resulting in an overpayment of $16,690.50."

An administrative law judge scheduled a hearing on the issue of the claimant's entitlement to "additional medical benefits." A hearing was held on January 8, 2020. At that time, an administrative law judge read into the record the respondents' contention that "the tear discovered in July of 2018 was a new injury, and not related to the original injury."

An administrative law judge filed an opinion on May 18, 2020. The administrative law judge found, in pertinent part, "5. The statute of limitations has run in this matter regarding additional medical treatment." The administrative law judge therefore determined, "I have no alternative but to deny this claim in its entirety and this claim for additional benefits must be, and is hereby respectfully dismissed in its entirety."

The Full Commission affirmed and adopted the administrative law judge's decision in an opinion filed November 13, 2020. The claimant appealed to the Arkansas Court of Appeals. The Court of Appeals reversed the Full Commission's denial of additional medical benefits and remanded for additional proceedings. *See Wynne v. Liberty Trailer*, 2021 Ark. App. 374, 636 S.W.3d 348. The Arkansas Supreme Court granted a petition for review filed by the respondents. The Supreme Court has vacated the Court of Appeals' opinion. The Supreme Court has reversed the Full Commission's opinion denying the claim and has remanded for further proceedings.

II. ADJUDICATION

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the

evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission finds that the treatment of record provided the claimant from Advanced Spine and Pain Centers was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The parties stipulated that the claimant sustained a compensable injury to his right shoulder on November 11, 2015. The claimant testified that he injured his right shoulder as the result of falling from a ladder. An MRI of the right shoulder following the compensable injury showed an "acute complete tear of supraspinatus tendon." Dr. Reynolds performed right shoulder surgery on February 2, 2016, but the claimant testified that he did not benefit from Dr. Reynolds' treatment. A right shoulder arthrogram taken July 26, 2016 showed "a large recurrent

rotator cuff tear." Dr. Collins' assessment on October 14, 2016 included "Occupation related injury right shoulder" and "Failed arthroscopic rotator cuff repair." Dr. Collins subsequently reported that the claimant continued to suffer from a "Full-thickness rotator cuff tear right status post arthroscopic attempted repair – failed with residual pain syndrome."

Dr. Chase performed a second right shoulder surgery on February 17, 2017, but the claimant testified that he did not benefit from treatment provided by Dr. Chase. A Functional Capacity Evaluation on October 17, 2017 indicated that the results were "unreliable," and the claimant was returned to sedentary work. Dr. Pearce reported on October 30, 2017 that the claimant had reached "maximum medical improvement." Dr. Pearce assigned the claimant a 7% whole-person impairment rating which the respondents accepted and paid.

Nevertheless, a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). Such services can include diagnosing the nature and extent of the compensable injury, reducing or alleviating symptoms resulting from the compensable injury, maintaining the level of healing achieved, or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson*

Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). A claimant is also not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

In the present matter, the Full Commission finds that the treatment of record from Advanced Spine And Pain Centers was reasonably necessary in connection with the compensable injury. The claimant testified that treatment provided from Dr. Saleem at Advanced Spine And Pain Centers provided relief and alleviation of pain following the compensable injury. Dr. Saleem noted on June 25, 2018, "I agree to provide pain treatment as long as patient is compliant to pain clinic's rules, polices and pain management programs." The record does not show that the claimant was abusing or misusing medication prescribed from Dr. Saleem or Dr. Jansen. We note that an MRI taken July 12, 2018 demonstrated that the claimant continued to suffer with a 3 cm full-thickness tear in the interior of his right shoulder. A claimant is not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry, supra*. However, the Full Commission finds that the full-thickness tear of the right shoulder was causally related to the November 11, 2015 compensable injury rather than a prior injury or pre-existing condition. Nor did the chiropractic treatment the claimant received in September 2019 following a motor vehicle collision

equate to an "independent intervening cause" in accordance with Ark. Code Ann. §11-9-102(4)(F)(iii)(Repl. 2012). The evidence does not demonstrate that the motor vehicle collision in 2019 affected the right rotator cuff tear, which tear was causally related to the November 11, 2015 compensable injury.

After reviewing the entire record *de novo*, and pursuant to the remand from the Arkansas Supreme Court, the Full Commission finds that the treatment of record provided the claimant from Advanced Spine And Pain Centers was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The administrative law judge's decision denying the claim is reversed. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

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M. SCOTT WILLHITE, Commissioner