

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007370

JEFF YOUNG, EMPLOYEE

CLAIMANT

O'REILLY AUTOMOTIVE INC, EMPLOYER

RESPONDENT

**AIG INSURANCE COMPANY, AIG CLAIMS, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED OCTOBER 27, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of September 15, 2021, in Mountain Home, Arkansas.

Claimant is represented by Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondent is represented by Curtis Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of September 2021, to determine the issues of compensability for a work-related left shoulder injury, additional medical in regard to the left shoulder injury, temporary total disability from October 13, 2020, through February 9, 2021, and attorney fees with all other issues reserved. The parties were instructed in the Prehearing Order to submit briefs seven (7) days prior to the hearing if they were unable to reach an agreement as to the TTD/PPD rate. At the time of the hearing, the parties had not submitted briefs and had not formally reached an agreement, but they agreed that it appeared that the average weekly wage was \$602.84 which resulted in a TTD/PPD rate of \$602.84/\$402, and they would contact the Commission if there was a problem. Neither party contacted the Commission and consequently this wage rate and TTD/PPD rate was accepted since no additional information was submitted. In addition, the parties agreed at the time of the hearing that the claimant did in fact draw short term disability payments and if TTD was awarded, the respondents are entitled to a short-term disability lien in regard to the disability payments, but the claimant

was still entitled to an attorney fee being calculated on the entire amount. A copy of the Pre-hearing Order was marked “Commission Exhibit 1” and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers’ Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on May 21, 2020, the date of the claimed injury in question. There was no objection to these stipulations and the Prehearing Order was admitted into the record.

The claimant’s and respondent’s contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses consisted of Jeff Young, the claimant, and Tim Massey, the store manager. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with **Ark. Code Ann. §11-9-704**.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on May 21, 2020, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$602.84 a week, sufficient for a TTD/PPD rate of \$402.00/\$301.00 per week.
3. That the claimant has proved by a preponderance of the evidence that he suffered a compensable left shoulder injury on May 21, 2020 and is entitled to

reasonable and necessary medical for the treatment which includes the surgery and related treatment of the work-related left shoulder injury.

4. That the claimant has failed to satisfy the required burden of proof that he is entitled to TTD.
5. The claimant is entitled to attorney fees pursuant to A.C.A. §11-9-715. This award shall bear interest at the legal rate pursuant to A.C.A. §11-9-809.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing Questionnaires of the parties were admitted into the record without objection. The claimant submitted two exhibits that were admitted without objection: (1) 2 pages of accident report records; and (2) Medical Records consisting of 33 pages. The respondents also submitted Medical Records consisting of 63 pages, which was also admitted without objection.

The claimant was the first witness to testify. He testified that his date of birth was June 9, 1964, making the claimant 57 years old at the time of the hearing. He obtained his GED and went to work for General Motors as a technician becoming a Master Tech for GM after going to the GMAC school off and on for four years, where he worked for 17 years. He then left and started a family business, A-1 Fence Company, where he performed the work, and his father handled the business. He then came to Arkansas and worked a manual labor type job for a year and a half, and later went to work for O'Reilly's, a little over four years ago. (Tr. 6- 9)

He eventually became the assistant manager, overseeing the day to day running of the business and working as an ISS. (Installer Service Specialist) His supervisor was Tim Massey. On May 21, 2020, the claimant testified that he had received an order for an air conditioning compressor. (Tr. 10) "I reached up to grab one and pull it down and it slipped and went behind my head. I caught it behind my head and my left shoulder popped. Well, I managed to back up against the shelves behind me and get another grip and I pulled it back over, and when I did, it popped again, and it hurt really bad, and I dropped the compressor on my shoulder." It probably weighed 25 to 30 pounds. I managed to carry the compressor up front and told the other team members what had happened. (Tr. 11) The other employees were Dwayne Welch, Brandi Collins, Michael Bentley, and Tim Massey. I did not say "I need to see a doctor right now." I told Tim Massey several times that it was hurting and was causing me problems at night with sleeping, and so I finally went to the doctor on my own, about two months later, seeing Doctor David Bright. The shoulder pain got worse. The claimant denied the occurrence of another accident during this time period. (Tr. 12, 13)

After going to see Doctor Bright, the claimant testified that he returned to work with paperwork from Doctor Bright and provided it to Tim Massey. The claimant denied being contacted by anyone in regard to the workers' compensation claim during the previous two months. Mr. Massey contacted corporate and an appointment with Med Express in Mountain Home and Doctor Moore was set up. (Tr. 14) The claimant then had an MRI of his left shoulder, which revealed a labrum and rotator cuff tear. The treatment was accepted by workers' compensation until Doctor Moore recommended surgery, so at that point, the claimant used his health insurance and underwent surgery on November 16,

2020. (Tr. 15) A total reverse surgery on the shoulder was performed. Initially, a microscopic surgery was recommended, but the total reverse surgery was performed because the muscles had been contracted for too long. (Tr. 16)

The claimant testified he then returned to work on February 9, 2021, after being off work since October 13, 2020. (Tr. 17) The claimant testified that he was still under a doctor's care and had returned to work light duty. His next appointment was coming up in a month. The claimant also admitted he had undergone physical therapy and the shoulder was better, but still had some range of motion issues. (Tr. 18)

Under cross examination, the claimant was questioned about the care of property that he owned which consisted of three acres, where his home was located. The claimant admitted he mows the three acres with his zero-turn mower but testified that there was a period of time when he was unable to. His son who lived with him, took care of the property prior to the shoulder surgery. The claimant also admitted to owning two Caterpillars, which he had obtained in mid June after the accident date of May 21, 2020. (Tr. 20) The claimant denied working the bulldozers but admitted his brother had used them. He also admitted that he started working with the small D-3, recently and that it doesn't require arms to operate. (Tr. 21) The claimant also admitted starting a woodworking business with his wife, who was laid off from Mohawk. They make picnic benches, furniture, and clocks. The claimant testified his wife did most of the work. (Tr. 22)

In regard to the date of the injury, the claimant admitted the injury happened on a Thursday after lunch. He went home early that afternoon because he was hurting but returned the following Friday. The next week, he was scheduled to return to work on a Tuesday and he returned on that day. (Tr. 24) He also admitted that no one was in the

rear of the building, when the accident occurred and that he previously had a workers' compensation claim. (Tr. 25) The claim was in Texas and resulted in back surgery with a \$40,000 settlement. He also admitted that he unfortunately lost a leg during his time at O'Reilly's in non-work-related accident. He also agreed that if the store manager wasn't present, he would be in charge of the store. He was aware of the forms that needed to be filled out in regard to a workers' compensation claim and responded he had reported the injury to his manager. (Tr. 26, 27) He also stated that he did not ask for medical treatment at that time of the accident. Once he formally reported his injury, he received medical treatment. The claimant also admitted he was aware that there was a poster in the store advising what to do in case of a workers' compensation injury. (Tr. 28) Under additional questioning, the claimant was asked about testifying in his deposition that he finished his shift, but now was stating that he went home early. The claimant testified that the correct answer was that he went home early and admitted to working his entire shift when he returned Tuesday following the injury. (Tr. 31)

The claimant also admitted he never asked for workers' compensation before going to see Doctor Bright and that he did not request workers' compensation until he determined that it was more serious than initially thought. (Tr. 33) He also admitted the respondent had paid some of his medical expenses. He denied that he had personally used his bulldozer, testifying that his brother had used it. (Tr. 34)

Under redirect, the claimant testified he did not perform any work between October 13, 2020, and February 9, 2021. In regard to not pursuing workers' compensation initially, he stated "I was just hoping it wasn't a serious injury and that it would heal up." However,

it did not. The claimant denied any complaints of shoulder pain leading up to May 21, 2021. (Tr. 35, 36)

The respondents called Tim Massey as their sole witness. He testified he was employed by the O'Reilly Store in Melbourne, where he was employed as the store manager. His job description was that he takes care of everything. I need to know all the positions and all the different types of work. If an O'Reilly employee is injured, they are to report the injury immediately. There is a lot of paperwork to fill out. (Tr. 38) Mr. Massey admitted he knew how to start the paperwork, but that he did not know all of the paperwork. He also admitted having a personal workers' compensation injury while employed in Arizona. He also admitted that he was sympathetic to the claimant. In regard to the store, if he were absent, there were two levels of management, the assistant store manager which included the claimant, and a second tier that was the retail specialists. He believed the claimant was at least familiar with these duties and responsibilities. Mr. Massey denied receiving a written report at the time of the accident and also denied the claimant telling him about the injury. He first was told about the injury when the claimant told him about the injury later and he then immediately began the paperwork. (Tr. 39, 40) He admitted that he requested that the claimant fill out the AR Form N, with the form containing the date August 21, 2020. (Tr. 41) Mr. Massey then read the following witness statement:

"In the afternoon of August 19, 2020, Jeff let me know that his left shoulder was bothering him and that his doctor needed a claim number from O'Reilly. I asked why, and he told me that he had hurt it a couple months previously, and he had told me and I shrugged and walked away."

"I have no memory of this, and though I can remember him complaining about his shoulder being sore, yesterday was the first time that I know of hearing about it." (Tr. 42)

From May 21, 2020, until at least August 19, 2020, no differences were made in regard to the claimant's physical limitations. The claimant mentioned that his shoulder was sore, and he was having trouble sleeping but Mr. Massey did not remember the claimant stating it was work related. (Tr. 43) The claimant returned to work after his surgery, and he still works for us. (Tr. 44)

Under cross examination, Mr. Massey testified the only workers' compensation claim he assisted in filing in the last two years was the one involving the claimant. He agreed the job could be very physical and that a lot of paperwork was involved in a workers' compensation claim (Tr. 45) Mr. Massey admitted that the statement dated August 20, 2020, was signed by him and second statement on the same date was signed by Mr. Welch. Corporate requested that he take the statements. Mr. Massey also admitted he had never seen the claimant fall off his motorcycle. (Tr. 47) "We had talked, and he had said that while he was trying to ride it, the button for his leg and been pressed and his leg fell off, and he was able to control it, but it had fallen over while he was on it. (Tr. 48)

The claimant's first exhibit consists of two pages of accident reports. Dwayne Welch signed a document dated August 20, 2020, which provided that the claimant "was getting a big box off of the top shelf in the back room and the box fell on his shoulder while he was on the ladder. I don't remember the date of the event." (Cl. Ex. 1, P. 1) The second document was signed by Tim Massey and also dated August 20, 2020, and it provided that the claimant on August 19, 2020, let him know his shoulder was hurting and he needed a claim number from O'Reilly. When Mr. Massey asked him why, he stated that he hurt it a couple of months previously. "I have no memory of this, and though I can

remember him complaining about his shoulder being sore, yesterday was the first time I know hearing about it.” (Cl. Ex. 1, P. 2)

The claimant’s second exhibit consisted of 33 pages of medical exhibits. The claimant presented to Doctor David Brightwell on July 30, 2020, for left shoulder pain that he experienced six to seven weeks earlier. The report provided the claimant “was getting an air compressor down and it fell, he reached down over the right side, systemic symptoms, pain.” (Cl. Ex. 2, P. 1 – 4) On July 31, 2020, the claimant was referred to Doctor Moore. (Cl. Ex. 2, P. 5, 6) The claimant presented to Med Express of Mountain Home and Doctor Kathy Lawless on August 27, 2020, for an injury to the left shoulder. (Cl. Ex. 2, P. 7 – 10) An x-ray of the left shoulder was obtained on August 27, 2020, which provided for no acute osseous abnormality radiographically, but did provide for degenerative changes and narrowing of the acromohumeral distance. The imaging report also provided that it correlates for possible symptoms of impingement/rotator cuff tendon pathology. (Cl. Ex. 2, P. 11) The claimant presented for a follow-up at Med Express on September 5, 2020, and September 17, 2020, and the notes for both visits provided for an impingement syndrome of the left shoulder. (Cl. Ex. 2, P. 12 – 16)

The claimant returned to Doctor Moore on September 25, 2020. The report provided that the claimant presented today with left shoulder pain since May 21, 2020, when he injured it at work. He was trying to catch an object over his head and the object pushed his arm backwards. He had a hyperextension injury to the shoulder and felt a pop. An MRI of the left shoulder was ordered and the report under assessment provided for an injury of the left rotator cuff and a tear of the glenoid labrum. (Cl. Ex. 2, P. 1, 18) The

MRI report dated October 9, 2020, of the left shoulder provided for severe degenerative changes of the AC joint with a full thickness rotator cuff tear and a retraction and labral tear, with degenerative changes of the glenohumeral joint. (Cl. Ex. 2, P. 19) The claimant again returned to Doctor Moore on October 13, 2020, to discuss options regarding rotator cuff repair with the worst-case scenario being a reverse total shoulder arthroplasty. (Cl. Ex. 1, P. 20 – 22) The claimant again returned to Doctor Moore on November 10, 2020, and the assessment provided for a traumatic complete tear of the left rotator cuff. (Cl. Ex. 1, P. 23 – 25) Surgery was then performed on the left shoulder on November 16, 2020, by Doctor Moore at Baxter Regional Medical Center. The surgery consisted of an arthroscopic evaluation of the left shoulder followed by a reverse total shoulder. The postoperative diagnosis was a nonrepairable rotator cuff with acromioclavicular joint arthritis and advanced glenohumeral joint arthritis. (Cl. Ex. 1, P. 26 -29) The claimant then returned to Doctor Moore on November 30, 2020, for a follow-up. The report provided the encounter was for the removal of the sutures and the claimant was returned to a shoulder immobilizer. (Cl. Ex. 1, P. 30, 31)

The respondents also submitted medical reports that consisted of sixty-three pages. Although there was an overlap in regard to the medical provided by the claimant and the respondents, the respondents packet additionally provided that the claimant was prescribed hydrocodone-acetaminophen. (Resp. Ex. 1, P. 7) The redundant medical reports will not be repeated here but were reviewed.

The claimant presented to Doctor Brightwell on August 8, 2020, and the report provided the claimant presented with right knee pain, swelling, and right knee joint stiffness from a fall that occurred two and half weeks earlier. (Resp. Ex. 1, P. 16 – 19)

The claimant received an orthopedic referral on August 8, 2020, for the knee. (Resp. Ex. 1, P. 20) The claimant then presented to Baxter Regional Bone and Joint Clinic and Doctor Moore on September 15, 2020, for an orthopedic knee assessment. The report provided that on August 23, 2020, the claimant was putting on his prosthetic leg on his right BKA when he stood up, the prosthesis was not locked, and he fell on his stump and had an immediate onset of pain in the knee. He followed up in the ER and was prescribed Hydrocodone and Flexeril. He continued to have pain and swelling of the knee and has not been able to wear his prosthesis. The assessment provided for a hematoma of the amputation stump of the lower extremity, osteopenia of the right lower leg, and primary osteoarthritis of the right knee. (Resp. Ex. 1, P. 21, 22) The claimant then returned to Doctor Moore for a follow up for the right knee on September 17, 2020, and the assessment provided for an acute meniscal injury of the right knee, osteopenia of the right lower leg, and primary osteoarthritis of the right knee. (Resp. Ex. 1, P. 23, 24) The claimant again presented to Doctor Moore in regard to his right knee on September 29, 2020. This report provided that an MRI of the right knee showed that the ACL and PCL were intact and with significant edema in the femoral condyles. There was an impacted, depressed lateral femoral condyle fracture. Under assessment, the report provided that the claimant suffered from a fall with injury. For treatment, the report provided the claimant should remain non weight bearing and allow the fracture to heal. (Resp. Ex. 1, P. 27, 28) The claimant returned to present to Cheyenne Morgan PA, who worked with Doctor Moore, for a follow-up in regard to his right knee on October 23, 2020. The report provided that the claimant reported significant improvement in pain and a full resolution of the swelling. The claimant had remained non weight bearing on crutches. The report goes on

to provide that the claimant may begin partial weight bearing and weight bearing if pain free. (Resp. Ex. 1, P. 32, 33)

The claimant presented to the Hometown Clinic in Melbourne on November 5, 2020, for a socket order for a prosthetic for the right lower extremity below the knee. (Resp. 1, P. 34) The claimant returned to the Hometown Clinic in Melbourne on December 15, 2020, for a new replacement socket for the right lower extremity below the knee and also socks. The report provided the claimant was suffering a lot of pain at his prosthesis site because his stump had shrunk. (Resp. Ex. 1, P. 31, 32)

A report from Rebecca Powers, APRN of State Emergency Telehealth, dated December 17, 2020, provided the claimant denied problems, concerns, or needing medication refills. The plan provided that the encounter was for a general adult medical exam without abnormal findings. (Resp. Ex. 1, P. 39 -,41)

The claimant presented for physical therapy on December 23, 2020. The report provided the claimant mentioned an incident where he was removing an air compressor from a shelf, and it fell on him on May 25, 2020. The claimant also mentioned that he is attempting to have his manager file a claim for workers' compensation. The report described a decreased range of motion of the left shoulder. (Resp. Ex. 1, P. 42, 43) The claimant returned for physical therapy on January 5, 2021, with the report providing that the claimant had improved left shoulder range of motion. (Resp. Ex. 1, P. 44, 45) The claimant continued to return for physical therapy on January 11, January 14, January 19, January 22, January 25, February 1, and February 3, of 2021, with continued improvement, decreased discomfort, and a range of motion that was expected for this level of healing. (Resp. Ex. 1, P. 46 – 59)

On March 9, 2021, the claimant returned to Doctor Brightwell for a preventive office visit. The report provided that the claimant was suffering no acute distress. (Resp. Ex. 1, P. 60 – 63)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injury to his left shoulder under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. **Ark. Code Ann** §11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

From the medical reports submitted by both the claimant and the respondents, there is little to no disagreement that the claimant suffered from various arthritic conditions in regard to his left shoulder and probably multiple additional locations in his fifty-five plus year old body. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 864 (1990); Conway Convalescent Center v. Murphee, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as finds him. *Murphee, supra*.

The claimant, an assistant store manager, testified that he received an order for an air conditioning compressor weighing 25 to 30 pounds on May 21, 2020, and he went into the back to grab one from an upper shelf. When he reached up to grab one, it slipped and went behind his head. As he caught it behind his head, his left shoulder popped. When he got another grip on it, his left shoulder popped again. He stated that he managed to carry the compressor up front where he told other team members about the incident. This event happened after noon on a Thursday and from the claimant's testimony, he went home early that day, but returned to work the following Friday and then after the weekend, returned to work on the following Tuesday, which was the day that he was scheduled to return to work. Although his supervisor, Tim Massey testified he did not remember the claimant telling him about the injury at the time, he did remember the claimant talking about his shoulder problem and issues with sleeping, although he was not aware that the injury was work related until later.

The medical reports provided that the claimant did not present to a doctor until he saw Doctor Brightwell on July 30, 2020, for left shoulder pain. The medical report provided a similar story to the one the claimant testified to at the hearing in that he hurt his left shoulder while removing an air compressor while at work. The claimant later went to Med Express on August 27, 2020, where his shoulder was x-rayed, and the report provided that along with degenerative changes, the imaging correlated with possible symptoms of impingement and rotator cuff tendon pathology. On September 25, 2020, the claimant was seen by Doctor Moore for his left shoulder and the report again provided he had hurt the shoulder at work while grabbing an object. An MRI was ordered, and the report dated October 9, 2020, provided that along with severe degenerative changes of the AC joint,

there was a full thickness rotator cuff tear and a retraction and labral tear. Surgery was performed on the left shoulder on November 16, 2020.

It is noted that the store manager testified that although he was not aware of the claimant's allegation of an injury on May 21, 2020, he was instructed by his superiors to take the statements. The statement of Dwayne Welch, who was one of the coworkers present when the claimant injured his left shoulder based upon the claimant's testimony, provided the claimant "was getting a big box off of the top shelf in the back room and the box fell on his shoulder while he was on the ladder. I don't remember the date of the event."

Here, although the claimant should have filled out an initial workers' compensation claim form, the credible testimony of the claimant that he was injured in the workplace, was supported by the affidavit of Dwayne Welch, along with the consistent information the claimant provided in the various medical reports. There was no evidence that the claimant was complaining of his left shoulder prior to the work-related incident. Arkansas worker's compensation law does not require that an injury be witnessed by a second individual.

A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of

employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in A.C.A. 11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Further, it is noted that a claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See Wal-mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on 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. Hail v. Pitman Construction Co. 235 Ark. 104, 357 S.W.2d 263 (1962) Here, it is found that the claimant has satisfied these requirements and has proved by a preponderance of the evidence that he suffered a left shoulder injury work related injury when he injured his shoulder while removing an air conditioning compressor while in the back room.

In regard to medical treatment, the employer shall promptly provide for an injured employee such medical treatment as may be reasonable in connection with the injury received by the employee. A.C.A. 11-9-508(a). 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 455 (2005) What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 A.W.2d 750 (1984) Here the claimant has proven by a preponderance of the evidence he suffered a compensable work-related injury to his left shoulder and consequently is entitled to the reasonable and necessary treatment regarding this injury which would include the treatment of the left shoulder from the date of the injury, the surgery, and any reasonable and necessary treatment following the surgery.

The claimant is also claiming TTD from October 13, 2020, through February 9, 2021, when he returned to work for the respondent the following day. The claimant testified he did not work anywhere during this time period and also did not work at home or run his dozers. However, he did suffer an unfortunate separate non-work-related injury during the time period from the date of the shoulder injury to the date that the claimant returned to work for the respondent, complicating the facts in regard to TTD. The claimant fell, injuring his right lower extremity, which required a trip to an emergency room. He later presented to Doctor Brightwell on August 8, 2020, in regard to his right knee pain and swelling from the fall which occurred two weeks earlier. Doctor Brightwell referred the claimant to Doctor Moore. Doctor Moore's report dated September 15, 2020, provided the claimant suffered the injury on August 23, 2020, when the claimant was pulling on his prosthetic leg on his right "BKA" and stood up with the prosthesis not locked, and fell on his stump. Again, the dates provided in the medical reports are confusing in that the claimant had apparently presented to Doctor Brightwell, approximately two weeks prior to the date that Doctor Moore reported the claimant's right lower extremity injury in his

report. In any case, the claimant had an immediate onset of pain in the knee and followed up at the ER, where he received Hydrocodone and Flexeril according to the report of Doctor Moore. The claimant continued to have pain and swelling of the knee and was unable to wear his prosthesis. The claimant returned to Doctor Moore on September 17, 2020, where he was assessed with an acute meniscal injury of the right knee. The claimant then again returned to Doctor Moore on September 29, 2020, and the report provided that the claimant should remain non weight bearing. The claimant's last day of work for the respondent was October 13, 2020, until he returned after the date of February 9, 2021. On October 23, 2020, the claimant again returned to Doctor Moore's office and presented to Cheyenne Morgan, PA, with the assessment being the claimant could begin partial weight bearing and weight bearing if pain free. The claimant then presented to the Hometown Clinic in Melbourne on November 5, 2020, for a socket order in regard to the right lower extremity. The claimant's left shoulder surgery occurred on November 16, 2020. On December 15, 2020, the claimant returned to the Hometown Clinic in Melbourne for a new replacement socket for his right lower extremity. Finally, the claimant responded to State Emergency Telehealth on December 17, 2020, in what would appear to be another unrelated health care matter and denied any problems or concerns and stated that he did not need any medication refills.

TTD is that period within the healing period in which an employee suffers a total incapacity to earn wages. Arkansas State Highway and Transportation Department v. Brashears, 272 Ark. App. 244, 613 S.W. 2d 392 (1984). The claimant bears the burden of proving both that he remains within his healing period and in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. Paalazolo v.

Nelms, 46 Ark. App. 130, 877S.W.2d 938 (1994). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The injury to the right knee is not work related or causally related to the compensable work-related shoulder injury. It is clear the claimant worked a significant period of time following the shoulder injury. The summary of the timeline for the various injuries and actions discussed above is as follows:

1. Work related left shoulder injury on May 21, 2020.
2. A non-work related right lower extremity injury on or about the first of August 2020.
3. The claimant was instructed to be non-weight bearing due to his right lower extremity injury on September 29, 2020.
4. The claimant's last day of work was October 13, 2020, before later returning.
5. The claimant was instructed to be partial to full weight bearing on the right extremity, depending on pain, on October 23, 2020.
6. The claimant attempted to replace the socket on his right lower extremity on November 5, 2020.
7. Surgery was performed on the left shoulder on November 16, 2020.
8. The claimant received a new socket for his right lower extremity on December 15, 2020.
9. The claimant denied any health problems or concerns on what would appear to be an unrelated health care survey on December 17, 2020.

Here, there are no medical reports of record providing that the claimant should remain off work due to the left shoulder injury, but there are medical reports providing the claimant should remain non weight bearing or partial weight bearing due to his issue with the right lower right extremity. Due to the confusing medical, the overlapping work and non-work related injuries, the claimant not receiving a

replacement socket for his right lower leg until after the shoulder surgery, and the fact that the claimant stated on a report dated on December 17, 2020, that he had no problems or concerns, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof that he is entitled to TTD from October 13, 2020 through February 9, 2021. TTD can not be based on speculation or conjecture.

Based upon the available evidence, it is found that the claimant has satisfied the burden of proof to show he suffered a compensable work-related injury to his left shoulder on May 21, 2020, and the treatment for the left shoulder injury, including the surgery, is reasonable and necessary.

The claimant has failed to satisfy the required burden of proof as to TTD. The claimant and his attorney are entitled to the appropriate legal fees as spelled out in A.C.A. §11-9-715.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied his burden of proof that his claim for the left shoulder injury is compensable and the treatment for the left shoulder injury, including the left shoulder surgery is both reasonable and necessary. The claimant has failed to satisfy the required burden of proof that he is entitled to TTD. The claimant is also entitled to attorney fees as spelled by the Arkansas Workers' Compensation Act. This award shall bear interest at the legal rate pursuant to A.C.A. 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge