

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H207790**

JOHN E. O'MALLEY, EMPLOYEE	CLAIMANT
BAYWOOD COLONY HORIZONTAL PROPERTY, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
MARKEL SERVICE, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED MARCH 26, 2024**

A hearing was held before Administrative Law Judge Chandra L. Black, Garland County, Hot Spring, Arkansas.

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

Respondents represented by the Honorable Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on October 27, 2023, in Hot Springs, Arkansas. A prehearing telephone conference was held in this matter on September 13, 2023. A prehearing order was entered on that same day. This prehearing order set forth the stipulations proposed by the parties, their contentions, and the issues to be litigated.

**STIPULATIONS**

The parties submitted the following stipulations, either pursuant to the prehearing order, or at the hearing. I hereby accepted the following proposed stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee-employer-carrier relationship existed at all relevant times including on or about October 1, 2022, when the Claimant allegedly sustained a compensable injury to his right shoulder in the course and scope of his employment with the respondent-employer/Baywood Colony Horizontal Property.
3. The Claimant's average weekly wage on October 1, 2022, was \$1,019.23. His weekly rate for temporary total disability (TTD) benefits is \$679.00; and his rate for permanent partial disability (PPD) compensation is \$509.00.
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

#### Issues

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the Claimant sustained a compensable right shoulder injury in the course and scope of his employment with the respondent-employer on October 1, 2022.
2. Whether the Claimant failed to give timely notice of his shoulder injury to his employer until October 13, 2022.
3. Whether the Claimant is entitled to both current and future reasonable and necessary medical benefits for his shoulder condition pursuant to Ark. Code Ann. §11-9-508 (a).
4. Whether the Claimant is entitled to temporary total disability benefits for his right shoulder condition in the event surgery is awarded for his injury.
5. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

#### Contentions

The respective contentions of the parties are as follows:

#### Claimant:

The Claimant contends that on October 1, 2022, he fell while in the scope and course of employment, injuring his right shoulder. He was sore but tried to ignore it, and he continued to

get worse. A week later, the Claimant was pulling a cord in the scope and course of employment, when he experienced excruciating pain in his right shoulder. The Respondents denied the case in its entirety. An MRI revealed a tear in his right shoulder and surgery was recommended.

The Claimant contends that he sustained a compensable right shoulder injury in the course and scope of his employment and that he is entitled to TTD, medical benefits, and that his attorney is entitled to an attorney fee.

All other issues are reserved.

Respondents:

Respondents contend that Claimant did sustain any injury within the course and scope of his employment. The Respondents further contend that the Claimant did not timely report the alleged on the job injury. The Respondents had the Claimant's medical records reviewed by Dr. Owen L. Kelly who opined that Claimant suffers from pre-existing degenerative condition of the right shoulder. (See attached). The Respondents contend that Claimant's right shoulder complaints are related to a pre-existing degenerative condition.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of both witnesses and observe their respective demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.

3. The Claimant proved by a preponderance of the credible evidence that he sustained a compensable right shoulder injury October 1, 2022, while in the course and scope of his employment with the Respondent-employer.
4. The Claimant did not give his employer notice of his right shoulder injury until October 14, 2022. Therefore, the Respondents are not liable for any benefits that accrued prior to this time.
5. The Claimant proved by a preponderance of the evidence that all of the medical treatment of record was reasonable and necessary medical treatment for his right shoulder injury of October 1, 2022, as well as the rotator cuff repair surgery recommended by Dr. Micheal Hubbard.
6. The Claimant is entitled to temporary total disability during a reasonable recovery period after his surgery, for which his attorney will be entitled to a controverted attorney's fee.

### Summary of Evidence

Mr. John E. O'Malley (referred to herein as the "Claimant"), and his wife, Mrs. Rita O'Malley both testified on behalf of the Claimant during the hearing.

The record consists of the October 27, 2023 hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 comprises the Commission's Prehearing Order filed on September 13, 2023 and the parties' responsive filings; Claimant's Exhibit 1 includes a Medical Summary Report and medical records consisting of nine pages, which were marked accordingly; and the Respondents' Medical Exhibit comprises a letter authored on November 1, 2022 by Dr. Owen L. Kelly, consisting of two pages has been marked Respondents' Exhibit 1.

### Procedural History

The Claimant confirmed that he is sixty-nine years of age. He completed high school. According to the Claimant, he has worked in the trades most of his life. Specifically, the Claimant testified that he has done carpentry work and slowly gotten into making cabinets and various other items. The Claimant agreed that he has been solidly employed for his entire life.

He testified that he started working for Baywood Colony about three weeks before he was supposed to start, which was sometime in May or June of 2022. The Claimant testified that his job there included a lot of maintenance-type work. His employment duties included electrical work, rebuilding the pumps on the pool, landscaping, mowing, and everything to keep the property running properly. He testified that Baywood Colony is a pretty big complex. It includes twenty-eight townhouses and a house. The Claimant testified that there are a lot of hills on the property. As part of the Claimant's package deal with Baywood Colony, he was allowed to live in the house.

Regarding his alleged injury on October 1, 2022, the Claimant explained:

A I was in the back behind Jim and Lesley's and there's a hill there, and I was Weed whacking on the hill, and I lost my footing and came down. Like I explained to Randy the last time I met him, I actually got up, that I can remember, and I went to pull the rope ..... I went up on the sidewalk to pull the rope on the weed whacker to get it started again, and I went, oh, geez, I couldn't do it, so I called my wife and I said why don't you come back here, so I didn't do any more weed whacking after that, but I thought I just got a stinger when I fell. You know what I mean, it's a bruised shoulder, that's all. I mean, people who have played football know what stingers are, you know, when you come down on your shoulder and that's all I thought it was. Am I carrying on too much?

The Claimant denied ever having a prior problem with his right shoulder. He went on to explain that prior to his injury, he hung seventy-two sheets of drywall with his wife on the ceiling. According to the Claimant, they flipped a house right before that and they did all the work on it, and he never had any issue with his right shoulder.

He admitted that when he fell, he injured his right shoulder. The Claimant confirmed he is right-handed. The Claimant admitted that when he called his wife, she came over to help him. The Claimant testified that when he slipped and fell, he slid down the hill, injuring his right shoulder. He denied injuring any other body part. The Claimant admitted that he continued working for the rest of the day, but he just rode the lawnmower. According to the Claimant, he did not really think much of his shoulder until his daughter came over and suggested he have it looked

at because it could be something that would not resolve on its own. At that time, the Claimant, his daughter, Meghan O'Malley, worked for an orthopedic surgeon, Dr. Hubbard. However, his daughter no longer works for Dr. Hubbard. Currently, she works in the labor and delivery area at that hospital. The Claimant confirmed that his daughter holds a Bachelor of Science degree in nursing (BSN). According to the Claimant, his daughter suggested he have his shoulder checked out because he told her that he had limited range of motion, and that it was "real sore." He testified that if his daughter had not said something, he would have given it a long time to heal because as far as he was concerned, it was a bruise.

The Claimant first sought medical treatment for his right shoulder on October 13, 2022. At that time, he saw Dr. Michael Hubbard. He reported to Dr. Hubbard that he had fallen on his right shoulder about two weeks ago. At that time, the Claimant complained of right shoulder pain. X-rays were taken of the Claimant's right shoulder. The radiographic findings were: "No fracture and no dislocation, small bone fragment noted in the subacromial space." The Claimant reported to Dr. Hubbard that the quality of his pain was throbbing, sharp, constant, and worsening. Dr. Hubbard opined that the Claimant's right shoulder had signs and symptoms for "a full thickness rotator cuff tear." Therefore, Dr. Hubbard recommended an MRI of the Claimant's right shoulder and after that he directed the Claimant to see him back in clinic.

An MRI was performed of the Claimant's right shoulder. The Claimant agreed that the MRI revealed a full thickness tear of the rotator cuff. Also, the Claimant testified that that Dr. Hubbard mentioned something about tendons retracting, which is not good when they retract. He confirmed that once the results of the MRI were confirmed, they recommended that he get it taken care of right away because it was not going to get much better and he would be extremely limited. As a result, Dr. Hubbard scheduled the Claimant for right shoulder rotator cuff repair surgery.

Specifically, my review of the medical evidence demonstrates that the Claimant underwent an MRI of the right shoulder on October 20, 2022. The radiologist reading the MRI was Dr. Steven Weiner. His impression was: “1. Complete full-thickness tear with tear of the supraspinatus tendon with retraction of the tendon. 2. Partial intrasubstance tear of the infraspinatus tendon, with mild tendinosis of the subscapularis tendon. 3. Indistinct extra-articular long head of the biceps tendon, possibly torn and/or displaced. 4. probable degeneration of the glenoid labrum. 5. Small glenohumeral joint effusion. 6. Moderate to severe arthritic disease of the AC joint.”

The Claimant testified that he discussed his shoulder injury with his employer the next day after seeing Dr. Hubbard on October 13, 2022. He testified that he called Cindy Feltus on October 14, 2022, and she was not sure if they had workers' compensation insurance. According to the Claimant, this went on and on, and he kept calling Cindy, so finally he called a person by the name of Gene Adams, who is a lawyer, and he happens to live in a condominium on the property. The Claimant testified that once Mr. Adams got involved then things were done. According to the Claimant, he found out from the bookkeeper, Joy Gray, that they had insurance. At that point, he called the insurance company himself after receiving the information from Ms. Gray. He confirmed that Mr. Adams is also a member of the board. The Claimant testified that there are three board members, and they hired him.

According to the Claimant, he was scheduled for surgery, a couple of weeks after the MRI but the workers' compensation carrier denied the surgery. The Claimant admitted that he was able to raise his arm prior to his injury. Now, he testified that it is very painful when he raises his arm. Per the Claimant, he hung drywall from the ceiling, and screwed in all the sheets. The Claimant testified that previously he used a hammer and pounded nails in the ceiling. He is now unable to do that. The Claimant denied ever seeing Dr. Owen Kelly or speaking with anyone from his office.

He specifically denied that Dr. Kelly ever examined him. The Claimant admitted that a few ago years, Dr. Farbstein, a physician in the Chicago area, told him he had arthritis, but he never gave it any thought because he never had an issue, ever. He denied that he had a general complaint of pain in his shoulder when he saw the doctor in Chicago. Instead, at that time, the Claimant testified that he sought treatment from him because he has diabetes. He admitted that he had some tests done, and then the doctor asked if he knew he had arthritis. The Claimant admitted that he feels stiff every now and then but that is part of growing old.

He specifically denied that he ever had any prior complaints with his right shoulder or having seen a surgeon for right shoulder complaints. The Claimant denied that he sought prior treatment for right shoulder pain before his work-related accident. He also denied ever having any trouble hanging drywall before his work-related accident.

The Claimant admitted that Cindy terminated him right before (a couple of days or so) his surgery was supposed to take place. According to the Claimant, his surgery was supposed to be around November 1, 2022, on a Friday. As a result, the Claimant and his wife moved back into the house that they had been working on for several years. The Claimant testified that he was shocked that Cindy was terminating him. He further testified that he thought she would have more compassion. However, she gave him two weeks to get out of the house. He confirmed that he was working at St. Mary's Church at the time of his termination. The Claimant explained he was able to work at Baywood because they started real early in the morning and his wife helped him to do a lot of the work. He confirmed that he worked at St. Mary's only one day of the week, depending on what needed to be done. The Claimant stopped working there because he realized his shoulder was hurt. He was unable to climb a ladder and he could only watch to make sure things were being done correctly. The Claimant testified that he donated a lot of time to St. Mary's. According to



the Claimant, about 50% of the work he did there was as a volunteer. He could not recall when St. Mary's started paying him again following his injury. The Claimant testified that he had been off work for a couple of months before he returned to work at St. Mary's because it was a couple of months before he could lift his arm. He confirmed that he did his own home therapy. The Claimant agreed that it could have been in January 2023 when he returned to work for St. Mary's. The Claimant currently works for St. Mary's and St. John's.

The Claimant confirmed that he would like to have the surgery done. He has plans to continue working until the day he dies. The Claimant stated that he wants to have the surgery done because he could lose about fifteen percent of the use of his shoulder, and he does not want to have a problem with that being an issue. He testified that he has constant pain when he is trying to do something. According to the Claimant, there are certain things that he has to do with his left hand now. The Claimant confirmed that he is asking for the Commission to approve the recommended surgery.

On October 27, 2022, the Claimant saw Jennifer Jones, APRN, in clinic for follow-up of his right shoulder MRI. At that time, both conservative and surgical intervention were discussed. The Claimant opted to proceed with surgery. Therefore, Jones planned "a right shoulder arthroscopy with subacromial decompression, distal clavicle excision, rotator cuff repair biceps tenodesis."

Basically, on cross-examination the Claimant testified that he could not affirm or deny he began working for Baywood Colony on August 15, 2022. He testified that the incident occurred a couple of weeks prior to his first doctor's visit, which would put it around October 3 because he was on vacation, and they had to wait for him. The Claimant confirmed that he renegotiated his agreement on October 3, with Cindy. According to the Claimant, Cindy is the President of the

Board, and she was the only person he ever spoke to about that. However, the Claimant admitted that he did not mention anything to her during their renegotiation process. Per the Claimant, he did not mention his shoulder to Cindy because he was sure he was going to get better. He confirmed he did not realize he was injured to the extent that he was until he had the x-rays, and the MRI that Dr. Hubbard had ordered and read.

The Claimant was asked about a report authored by Dr. Hubbard on October 13, 2022. At that time, the Claimant gave a history of having fallen about three years ago, which would have rendered an injury date around the latter part of September. He explained that he was never sure of the exact time date of his injury.

Once both diagnostic tests had been performed, the Claimant testified that he told Cindy Feltus he had fallen at work and needed surgery. He confirmed that there are no human resource people, they are property owners who are part of the Board of Director. The Claimant confirmed that he was scheduled for surgery on November 15, 2022. He admitted that he had not been taken off work by Dr. Hubbard. The Claimant also admitted that Dr. Hubbard has not placed any restrictions or limitations on his work.

The Claimant testified that after he reported his injury to Cindy Feltus, she spoke with some individuals with workers' compensation knowledge, including the attorney and they gave him the contact information. He admitted that he took it upon himself to call the bookkeeper, Joy Gray because he figured she would know since she pays all the bills. He admitted that Dr. Hubbard suggested he attempt to have his surgery performed and covered by Medicare. His response, "Why should Medicare pay when they have insurance? That's not their responsibility. It's not Medicare's responsibility." He confirmed that he had seen Dr. Hubbard twice, and then he dealt with the nurse practitioner.

Mrs. Rita O'Malley, the Claimant's wife of forty-six years testified on behalf of her husband. She confirmed that her husband called her after his fall. Mrs. O'Malley testified that when she got there, the Claimant was over by the pool. He was sitting on the landscape blocks, and he had dirt all over his head and down his right side. Mrs. O'Malley testified that the Claimant "was shaken up" a little bit. She testified that the Claimant tried to start the weed whacker again, but he could not pull the cord at all with his right arm. Mrs. O'Malley did not recall the date of her husband's accident. However, she agreed that October 1 was a reasonable date for when this injury occurred.

She denied that the Claimant ever complained of right shoulder pain prior to his injury. Mrs. O'Malley further denied that she had observed her husband experiencing any right shoulder pain prior to that date. However, she testified that after the Claimant's injury, he did not do very much. He tried mowing the lawn on the day of his injury, but the lawnmower jarred his arm because it is hilly around that area. She also testified that he did not do anything the rest of the day, because he was sore. According to Mrs. O'Malley, the Claimant kind of sat and held his arm a few days and he did not really say anything because he does not complain. She confirmed that their daughter came over and suggested he have it looked at. Mrs. O'Malley did not recall when they moved out of the condominium at Colony, but she recalled it being after Thanksgiving.

On November 1, 2022, Dr. Owen Kelly opined, in relevant part, after reviewing the Claimant's medical records and imaging:

Mr. O'Malley has finding consistent with chronic degenerative tear of the rotator cuff. The tendon is retracted to the mild portion of the humeral head which confers and is consistent with chronicity. This finding is not typically seen in an acute injury.

The acromioclavicular joint arthritis is definitely chronic. The subscapularis pathology along with the associated biceps findings are nearly always found to be chronic/degenerative.

Mr. O'Malley's treating physician has coded the rotator cuff tear as ICD10 code M75.121 which is nontraumatic.

Although the fall cannot be ruled out as the source of completing an already diseased/torn rotator cuff, the other findings are definitely degenerative. It is unlikely the fall caused these findings. This is confirmed by the objective imaging.

### ADJUDICATION

#### A. Compensability

Arkansas Code Annotated §11-9-102(4)(A)(i) defines compensable injury as “[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence.”

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2019). “Objective findings” are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Complaints of pain are not considered objective medical findings. Ark. Code Ann. § 11-9-102(16)(A)(ii)(a).

If the Claimant does not establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Id.* This standard means the evidence that has greater weight or convincing force. *Metropolitan Nat 'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003) (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the

incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962).

A review of the evidence demonstrates that the Claimant proved by a preponderance of the evidence that he sustained a compensable specific incident injury to his right shoulder during and in the course of his employment with the respondent-employer on October 1, 2022 and that the injury has caused external physical harm to his body which required medical services and resulted in disability.

The Claimant credibly testified he sustained an accidental injury to his right shoulder on October 1, 2022, while working on landscaping at Baywood Colony. He credibly testified that he was pulling on the rope of a weed whacker when he slipped on a hill and fell on his right shoulder. The Claimant testified that he thought he had sustained a stinger/bruise to his right shoulder, and it would heal in time.

Immediately after his fall, the Claimant called his wife, and she came over and assisted him. The Claimant's account of the incident is credible and corroborated by the medical evidence of record and his wife's testimony. There was no evidence presented by the Respondents to the contrary concerning the Claimant's account of the mechanism of his accidental injury of October 1, 2022. Of note, the Claimant was not sure of the exact date of injury. However, it is well established under Arkansas workers' compensation law that the Claimant does not have to provide the precise date of an injury.

Nevertheless, the Claimant testified that he thought he had a stinger, which would resolve on its own. His testimony demonstrates that he continued with problems involving his right shoulder. A few days later, the Claimant told his daughter, who is a nurse, about his shoulder, and she suggested he have it checked out. On October 13, the Claimant sought treatment from Dr.

Hubbard, and he performed x-rays of the Claimant's right shoulder, which revealed "a possible rotator cuff tear." The Claimant essentially testified that he reported the incident to his employer the next day. His testimony demonstrates that he reported his injury to Cindy Feltus.

The Claimant provided a history to Dr. Hubbard of having injured himself at work as previously described. Since his work-related injury, the Claimant has consistently complained of right shoulder pain and limited range of motion in his upper extremity. However, prior to his work-related injury, the Claimant had not complained of any type of symptoms to his right shoulder. In fact, his testimony shows that although the Claimant is almost 70 years old, he was able to hang drywall and perform other laborious activities without any type of problems with his right shoulder. Moreover, the Claimant testified that he had not ever sustained a prior injury to his right shoulder. Nor had the Claimant ever previously sought any medical treatment for his right shoulder. On the other hand, since his work-related fall, the Claimant has consistently complained of right shoulder pain and other related symptoms, which has resulted in limited use of his left arm.

Under these circumstances, although the Claimant suffered pre-existing degenerative disease, this condition was asymptomatic. Thus, I am persuaded that the majority of the medically objective measurable physical findings demonstrated on the October 20, 2022, MRI resulted from the Claimant's work-related fall of October 1, 2022. As such, the Claimant's right shoulder injury is established by medical evidence supported by objective findings revealed on the MRI of his right shoulder, which was taken on October 20, 2022. Specifically, the MRI of the Claimant's left shoulder included objective and measurable findings of "a complete full-thickness tear with tear of the supraspinatus tendon with retraction of the tendon."

It is noteworthy that even Dr. Kelly opined that the Claimant's work-related fall cannot be ruled out as the source of completing an already diseased/torn rotator cuff. However, he went on

to opine that it is unlikely the fall caused these findings. Hence, due to all of the above reasons, I have attached minimal weight to Dr. Kelly's opinion.

Therefore, due to all of the foregoing reasons, I find that the Claimant has established by a preponderance of the evidence all of the elements necessary to establish a compensable right shoulder injury on October 1, 2022.

B. Notice of injury

Notice of injury or death per Ark. Code Ann. §11-9-701 reads:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury....

(b)(1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death.

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

The Respondents contend that they did not receive timely notice of the Claimant's injury. The Claimant readily admitted that he did not notify Cindy Feltus, Property Owner's Association Board, of his injury until the following day after his medical appointment with Dr. Hubbard, after discovering he had a more severe injury than he thought he had sustained. Medical records demonstrate that the Claimant first underwent evaluation by Dr. Hubbard on October 13, 2022. That is based on the testimony of the Claimant and the date of service on the medical documentation of the Claimant's first evaluation by Dr. Hubbard. The evidence before me shows that the Claimant provided Baywood Colony notice of his injury on October 14, 2022.

The record fails to establish the existence of any statutory grounds for excusing notice to the employer prior to that date. Therefore, the Respondents are not liable for any indemnity or medical benefits on this claim prior to October 14, 2022. Since the Claimant reported his injury after his medical appointment of October 13, the Respondents are not liable for the medical services received by the Claimant on this date, which occurred with Dr. Hubbard.

C. Reasonable and Necessary Medical Treatment

An 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).

On the basis of the record as a whole, and after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that all of the medical evidence of record is causally related to the Claimant's right shoulder compensable injury of October 1, 2022. Dr. Hubbard has recommended that the Claimant undergo surgical intervention for repair of his rotator cuff. This modality of treatment is reasonable and necessary to repair the Claimant's right shoulder rotator cuff tear injury.

In this regard, prior to the Claimant's accidental work-related injury of October 1, 2022, the Claimant had not had any problems or treatment for his right shoulder injury. It was not until after the Claimant's compensable injury that surgery was recommended for his shoulder. Although the Claimant suffered pre-existing degenerative disease, this condition was asymptomatic. In fact, the Claimant was able to engage in various laborious activities, including but not limited to hanging sheetrock. I therefore further find that the Claimant has sustained his burden of proving by a preponderance of the evidence that all the medical treatment of record is reasonably necessary



in connection with the compensable injury he received on October 1, 2022, namely, to his right shoulder.

The Respondents are therefore liable for this medical treatment of record. However, based on the above finding concerning notice, the respondents are not liable for the medical care that the Claimant received on October 1, 2022. (See above discussion regarding Notice).

D. Temporary Total Disability Benefits

With respect to the Claimant's shoulder injury, this is an unscheduled injury. An injured employee who suffers an unscheduled injury is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W. 2d 582 (1982).

The Claimant will be entitled to temporary total disability compensation following his surgery with Dr. Hubbard. In this regard, the Claimant is entitled to these benefits for a reasonable recovery period of time as established by Dr. Hubbard following his right shoulder rotator cuff repair surgery.

- **AWARD**

In accordance with the findings of fact and conclusions of the law set forth above, the

Respondents are directed to pay the award on this claim for a right shoulder injury of October 1, 2022.

**IT IS SO ORDERED.**

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**HON. CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**