

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007198

DANIEL PAVLIK, Employee	CLAIMANT
BALLARD TRANSPORT, INC., Employer	RESPONDENT
EMPLOYERS PREFERRED INSURANCE CO., Carrier	RESPONDENT

OPINION FILED MAY 11, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On April 27, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 23, 2022 and a pre-hearing order was filed on February 24, 2022. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer/carrier relationship existed among the parties on September 12, 2020.
3. The claimant sustained a compensable injury to his left shoulder on September 12, 2020.

4. The claimant was earning an average weekly wage of \$1,047.75 which would entitle him to compensation at the weekly rates of \$699.00 for total disability benefits and \$524.00 for permanent partial disability benefits.

5. Respondent paid medical through the initial visit with Dr. Dougherty.

At the pre-hearing conference the parties agreed to litigate the following issue:

1. Claimant's entitlement to additional medical treatment for his compensable left shoulder injury as recommended by Dr. Dougherty.

The claimant contends he is entitled to additional medical treatment for his compensable left shoulder injury as recommended by Dr. Dougherty. The claimant reserves all other issues.

The respondents contend they have provided all appropriate medical evaluation and treatment including the initial office visit with the Change of Physician doctor.

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 witness and to observe his 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 a pre-hearing conference conducted on February 23, 2022 and contained in a pre-hearing order filed February 24, 2022 are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment recommended by Dr. Dougherty.

## FACTUAL BACKGROUND

The claimant is a 46-year-old man who began working for respondent as a truck driver in 2019. The parties have stipulated that claimant suffered a compensable injury to his left shoulder on September 12, 2020. Claimant testified that on that date he was cranking landing gear on a trailer at a FedEx terminal in Kansas City when he felt pain in his left shoulder. Claimant testified that he reported the injury to Roger, the owner of respondent, and was instructed to drive back to Springdale.

After receiving treatment at the emergency room, claimant came under the care of Dr. Robert Benafield, an orthopedic surgeon, who initially treated claimant with an injection and physical therapy. Dr. Benafield ordered two MRI scans which revealed a partial thickness rotator cuff tear and a large SLAP tear of the superior labrum. When conservative treatment did not alleviate claimant's complaints, Dr. Benafield performed surgery on December 2, 2020.

After the surgical procedure, claimant underwent extensive physical therapy until he was discharged on June 24, 2021. On August 17, 2021, Dr. Benafield stated that claimant had reached maximum medical improvement and that he had a 0% impairment rating.

Despite the physical therapist's report indicating that claimant had no complaints with his shoulder and Dr. Benafield's release at maximum medical improvement, claimant testified that his shoulder was better; however, it was still not 100%. Claimant eventually requested a change of physician to Dr. Christopher Dougherty, an orthopedic surgeon who had previously treated claimant for right shoulder complaints. Dr. Dougherty initially evaluated the claimant on January 10, 2022, and indicated that an x-ray showed a

possible loose body and he also indicated that his examination of the claimant was consistent with bicep tendonitis. Dr. Dougherty ordered an MRI scan and in his report of March 9, 2022, indicated that the MRI scan revealed a split tear of the biceps tendon with a possible loose body. Dr. Dougherty recommended surgery as treatment for those conditions.

Respondent has denied liability for the surgery recommended by Dr. Dougherty, and as a result, claimant has filed this claim contending that he is entitled to additional medical treatment as recommended by Dr. Dougherty.

#### ADJUDICATION

Claimant is requesting additional medical treatment for his compensable left shoulder injury as recommended by Dr. Dougherty. This treatment primarily consists of surgery which Dr. Dougherty recommended in his report of March 9, 2022.

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. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W. 3d 1 (2000); *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a

preponderance of the evidence that he is entitled to additional medical treatment as recommended by Dr. Dougherty.

As previously noted, claimant was discharged from physical therapy on June 24, 2021. The physical therapy note of that date indicates that claimant was comfortable with his discharge and had no complaints. In his report of August 17, 2021, Dr. Benafield indicated that claimant had reached maximum medical improvement and he assigned claimant a 0% impairment rating. Claimant testified that although his shoulder was better after the surgery and physical therapy, it was not 100%. In fact, claimant testified that his shoulder continued to gradually worsen and he filed for and received a change of physician to Dr. Dougherty.

Dr. Dougherty ordered an MRI scan which revealed a split tear of the biceps tendon with a possible loose body. It was the opinion of Dr. Dougherty that claimant's condition was directly related to his prior work injury:

His MRI shows a split tear of the biceps tendon with possible loose body that are directly related to his previous injury. He needs to be set up for a biceps tenodesis with possible loose body removal. \*\*\*  
This is directly related to the work related injury that [he] had suffered in the past.

I find that the opinion of Dr. Dougherty is credible and entitled to great weight. Based upon Dr. Dougherty's opinion as well as the remaining evidence presented, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left shoulder injury. This includes the surgery recommended by Dr. Dougherty.

Although I do note that shortly after claimant was released by Dr. Benafield he

terminated his employment with the respondent and began working for another employer, there is insufficient evidence that claimant suffered any additional injury to his left shoulder as a result of that employment. I also note that documentary evidence includes a notation from Dr. Benafield's office dated June 1, 2020 indicating that claimant had missed an appointment scheduled for pain in his left shoulder. This was before claimant's compensable injury, but there is no indication in subsequent notes of Dr. Benafield that claimant had prior left shoulder complaints or any evidence that he was receiving treatment for left shoulder problems from any other physician prior to the stipulated compensable injury on September 12, 2020.

In short, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury as recommended by Dr. Dougherty.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left shoulder injury as recommended by Dr. Dougherty. This includes the proposed surgery.

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. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondent is liable for payment of the court reporter's charges for preparation of

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the hearing transcript in the amount of \$335.15.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE