BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G900047

DANNY M. COMPTON,
EMPLOYEE **CLAIMANT**

FIRESTONE BLD'G PDTS., LTD
EMPLOYER **RESPONDENT**

OLD REPUBLIC INS. CO./
SEDGWICK CLAIMS MG'T SERVICES, INC.
NSURANCE CARRIER/TPA **RESPONDENT**

OPINION FILED MAY 27, 2026

Hearing conducted Thursday, February 26, 2026, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, LLP, Texarkana, Millar County, Arkansas.

The respondents were represented by the Honorable Jason M. Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

Pursuant to the parties' mutual agreement, an amended prehearing order was filed March 4, 2026, (after the hearing date), in order to amend and clarify the original prehearing order filed January 14, 2026. This amended prehearing order was necessary based on both the claimant's and respondents' amended and updated prehearing questionnaire responses, as well as their statements on the record at the hearing. In the amended prehearing order filed March 4, 2026, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times

including December 26, 2018, when the claimant sustained admittedly "compensable" injuries to his right wrist and right shoulder for which the respondents paid both medical and indemnity benefits.

3. The claimant's average weekly wage (AWW) of $1,305.77 is sufficient to entitle him to the 2018 maximum weekly compensation rates of $673.00 for temporary total disability (TTD), and $505.00 for permanent partial disability (PPD) benefits

4. The claimant's treating physician opined he reached maximum medical improvement (MMI) for the subject right wrist injury on June 12, 2019, and assigned him a permanent anatomical impairment rating of 14% to the right upper extremity which the respondents accepted and paid.

5. The claimant's treating physician opined after his first right shoulder surgery that he reached MMI on October 10, 2019, and assigned him a permanent anatomical impairment rating of 18% to the body-as-a-whole (BAW) which the respondents accepted and paid, after which time the claimant returned to work until he retired in June of 2021 at age 67.

6. After the claimant retired in June 2021, he underwent three (3) additional surgeries on his right shoulder, and he reached MMI after the second right shoulder surgery on November 21, 2022; he reached MMI for his second and third right shoulder surgeries on December 31, 2024.

7. The respondents controvert the claimant's compensable consequence/infection/sepsis contention and the payment of any and all additional medical or indemnity benefits associated therewith, as well as any and all medical and indemnity benefits after he retired in June 2021.

8. The parties specifically reserve any and all other issues for future determination and/or litigation, including but not limited to the whether the claimant is entitled to additional PPD benefits for wage loss disability.

(Commission Exhibit 1 at 2-3; Reporter's Hearing Transcript at 4-10; Claimant's Exhibit 1; Respondents' Exhibit 1). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant's infection/septic condition in his right shoulder that

manifested itself on or about June 3, 2023, constitutes a "compensable consequence" of his admittedly compensable right shoulder and/or right wrist injury(ies) of December 26, 2018, or, alternatively, whether the infection/septic condition was the result of an "independent intervening cause" within the meaning of the Arkansas Workers' Compensation Act (the Act).

2. *If* his June 2023 right shoulder infection/septic condition is deemed to be a "compensable consequence" of his December 26, 2018, compensable right shoulder and/or right wrist injury(ies), whether and to what extent, if any, the claimant is entitled to additional medical benefits.

3. *If* his June 2023 right shoulder infection/septic condition is deemed to be a "compensable consequence" of his right shoulder and/or right wrist injury(ies), whether and to what extent, if any, the claimant is entitled to additional TTD benefits after the date he retired in June 2021.

4. Whether the claimant is entitled to additional PPD benefits based on Texas Chiropractor Hugghins's additional permanent anatomical impairment rating to the claimant's right shoulder of two percent (2%) BAW related to his right shoulder infection/septic condition.

5. Whether and to what extent, if any, the claimant's attorney is entitled to a controverted fee on these facts.

(Comms'n Ex. 1 at 3; T. 4-10; 16-17; CX1; RX1).

The claimant contends the infection/septic condition with which he was diagnosed during and as a result of his June 3, 2023, hospitalization was a continuation and/or a "compensable consequence" of his admittedly compensable right shoulder and/or right wrist injury(ies) of December 26, 2018, and that his medical treatment for the right shoulder infection/septic condition was related to and reasonably necessary for treatment of his December 26, 2018, compensable right shoulder and/or right wrist injury(ies). The claimant contends further he is entitled to additional TTD benefits for the time period of June 3, 2023, through December 31, 2024, when he was required to be off work due to the septic condition. The claimant specifically reserves all other

issues *including but not limited to* the issues of the extent of his permanent anatomical impairment, if any, and the percentage of his wage loss, if any, for future determination and/or litigation. Finally, the claimant contends his attorney is entitled to the maximum statutory attorney's fee. (Comms'n Ex. 1 at 3-5; T. 4-10; CX1 at 2-3)

The respondents contend they have paid the claimant any and all medical and indemnity – both TTD and PPD – benefits to which he is entitled by law for his December 26, 2018, compensable right shoulder and right wrist injuries. In addition, the respondents contend the claimant's treating physician released him to return to work when he reached MMI and the respondent-employer, Firestone Building Products, Inc. (Firestone) accommodated the claimant and provided him appropriate work until the date he voluntarily retired in June 2021. They contend the clamant was working full duty when he voluntarily retired in June 2021, and that even after he voluntarily retired in June 2021, the claimant's treating physician opined he reached MMI on or before November 21, 2022, and released him to full duty work. The respondents contend further that after the date the claimant voluntarily retired he fell at home on or about June 2, 2023, and on other occasions and these falls were totally unrelated to his compensable injury(ies) of December 26, 2018. The respondents contend the claimant's infection/sepsis was not related to his December 26, 2018, compensable injuries. They contend the claimant's nonwork-related falls at home on or about June 2, 2023, and thereafter constitute "independent intervening causes" and, therefore, they may not legally be deemed responsible for any resulting injury(ies), infection(s)/sepsis, and/or any and all other condition(s) related to the June 2, 2023, and any other nonwork-related falls, as such may not reasonably be deemed to be a natural consequence of the claimant's December 26, 2018 compensable injury(ies). Finally, the respondents contend that pursuant to ***Ark. Code Ann***. Section

11-9-411 (2025 Lexis Replacement) they are entitled to a dollar-for-dollar credit/offset for the claimant's preexisting, nonwork-related rotator cuff repair. (Comms'n Ex. 1 at 3-5; T. 4-10; RX1 at 1).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Mr. Danny M. Compton (the claimant), is 71 years old. On December 26, 2018, the claimant was 64 years old when he sustained admittedly compensable injuries to his right shoulder and right wrist. (Comms'n Ex. 1 at 2). The subject of the current litigation is, of course, the claimant's right shoulder problems from the original injury date of December 26, 2018, and thereafter. After his compensable right shoulder injury of December 26, 2018, the claimant has an extensive, rather involved medical history related to his right shoulder as summarized below.

Based on X-rays of his right shoulder on February 15, 2019, Dr. John W. Bracey, an orthopedic surgeon at the University of Arkansas for Medical Sciences (UAMS), noted his initial impression of the claimant's right shoulder condition was that he had sustained a, "massive rotator cuff tear with proximal migration of the humeral head" as a result of the December 26, 2018, admittedly compensable injury. (CX3 at 3; 1-7). Other diagnostic tests confirmed this initial impression and, after a period of ineffective conservative treatment, on May 7, 2019, Dr. John O'Malley – another UAMS orthopedic surgeon – performed an arthroplasty on the claimant's right shoulder, the first of a number of surgeries and procedures the claimant has undergone on his right shoulder. (CX3 at 8-22; 19-20; 23-347). After this first surgery, Dr. O'Malley opined the

claimant reached MMI on October 10, 2019, and he assigned the claimant an 18% BAW permanent anatomical impairment rating which the respondents accepted and paid. Thereafter, the claimant returned to light duty work for a period of time until he retired in June 2021 at the age of 67. (Stipulation 4, *supra*; CX3 at 26-27).

The claimant explained that his light duty job required him to handle and move heavy 55-gallon drums of chemicals. He estimated the barrels weighed approximately 300 pounds and it was his understanding he was not supposed to be lifting more than 25-30 pounds at that time. (T. 23-24). He testified that after performing his job duties for a period of time he began to experience some symptoms in his right shoulder, such as the feeling his shoulder was coming out of place. He testified that in part out of concerns of about possibly reinjuring his right shoulder as well as the difficulty he was having performing his job duties he made the decision to retire in June of 2021 at the age of 67. (T. 24-26).

After he retired in 2021 June, from May 29, 2022, the claimant was treated at UAMS for what he reported to Dr. O'Malley as, "multiple episodes of [right] shoulder dislocations" and lower back pain, and at the Arkansas Heart Hospital for some heart problems. (CX3 at 33-43; 44-46) (Bracketed material added). Also, both before and after his retirement the claimant had a number of unrelated health conditions including heart problems. (CX3 at 33). Somewhere around January or February of 2022 the claimant required a heart valve replacement resulting in a work restriction of his not being able to work on anything that had a live electrical current. (T. 27; 54-55). Within a week of his 2022 heart valve replacement the claimant underwent a procedure to implant a pacemaker. (T. 27). The claimant also suffers from Alpha-Gal Syndrome, diabetes, hyperlipidemia, and kidney issues. (Tchristus. 60).

Apparently due to his age, various health conditions and memory problems, the claimant

admittedly was a rather poor historian. (T. 61-64). On cross-examination he admitted he fell on three (3) separate occasions after his initial work injury of December 26, 2018. He testified he believed the first fall occurred while he was still working; the second after he retired he when a chair of some sort collapsed at his home and he fell in the yard; the third in the January-February timeframe when he was in the hospital after having his heart valve replacement surgery/pacemaker implantation. (T. 61-62). The claimant also fell while in the hospital after having heart surgery and then had another fall on his back porch in June of 2023. (R. 62).

As already mentioned above, in a UAMS clinic note dated June 20, 2022, Dr. O'Malley stated the claimant reported to him that he felt like his shoulder was coming in and out of place. (CX3 at 33-43; 44-46; T. 28). Dr. O'Malley noted that a June 2022 X-ray taken at Howard Memorial Hospital corroborated the claimant's reported history of right shoulder instability and dislocations. (CX3 at 31). Consequently, Dr. O'Malley stated he intended to "proceed with revision, right reverse shoulder arthroplasty". (CX3 at 42-43). Dr. O'Malley also ordered pre-surgery lab/blood work at the time to rule out any infection in the claimant's right shoulder. (CX3 at 34). Although the medical report in question states this blood work came back as "Abnormal" (CX3 at 37), Dr. O'Malley stated in his clinic note that, "His [the claimant's] labs were normal" (CX at 43), and on August 2, 2022, he proceeded with the right shoulder revision/reverse arthroplasty procedure. (CX3 at 50-51) (Bracketed material added). Following this procedure the claimant testified he did not have, "formal physical therapy" as Dr. O'Malley notes in his progress notes (CX3 at 63-69), but said he did perform therapy on his own at home. (T. 32). Dr. O'Malley placed the claimant at MMI for this right shoulder surgery as of November 21, 2022. (CX3 at 74).

After the August 2, 2022, surgery and around the time he assessed the claimant at MMI as of November 21, 2022, the claimant testified he began to have concerns about noticeable

discoloration that appeared on and in the area of his right shoulder. (T. 33-34). He forwarded pictures to Dr. O'Malley' s office expressing his concerns and trying to schedule a return visit. (CX1 at 75-78; T. 33-34). The claimant returned to see Dr. O'Malley on March 16, 2023, for evaluation of the discoloration in his right shoulder and the adjacent area. Interestingly – and incorrectly – Dr. O'Malley's progress note for this visit references a history of, "almost four-year status post revision right reverse shoulder arthroplasty..." when, of course, Dr. O'Malley had performed the second revision/surgery on August 2, 2022, some eight (8) months earlier. Dr. O'Malley also noted the, "large well demarcated area of skin discoloration" and "...ordered labs to rule out infection...". (CX3 at 84). At this time and once again for the second time, although the lab results/blood work report states they are "Abnormal" (CX3 at 80-81), Dr. O'Malley fails to address or to even reference these "abnormal" blood test results in the follow-up visit of April 20, 2023 (CX3 at 91-96), and he did not order any additional lab/blood work at that time. Also, his progress note for this visit states, "no imaging today" (CX3 at 91); however, a prior clinic note dated March 16, 2023 (CX3 at 82), refers to an X-ray (CX3 at 94) which clearly refers to a, "broken screw...unchanged as compared to prior radiographs." (CX3 at 82; 94).

Only 44 days after the claimant's April 20, 2023, visit with Dr. O'Malley, on June 3, 2024, the claimant presented himself for evaluation and treatment at Christus St. Michael Hospital (St. Michael) in Texarkana, Texas. The claimant underwent a CT scan at this time. The CT scan report for this visit states under the "IMPRESSION" section:

1. Postsurgical changes of reversed total shoulder arthroplasty.
2. Focal cortical discontinuity at the lateral superior margin of the proximal humerus concerning for osteolysis.
3. Multiloculated fluid collection at the superior deltoid muscle measuring approximately 8.9 x 5.3 x 6.4 cm in size. Findings are suspicious for particle disease or infection.
4. Scapular notching.

(CX3 at 110). *Dorland's Illustrated Medical Dictionary* **(???? Edition, Publisher, etc.???**

Page ???) defines "osteolysis" as: "The dissolution of bone, applying especially to the removal or loss of calcium from bone. It is an active, progressive biological process driven by bone-destroying cells (osteoclasts) in which bone tissue breaks down, degenerates, and weakens."

The St. Michael's physician immediately referred the claimant back to Dr. O'Malley who saw the claimant on June 8, 2023, at Baptist Health in Conway. Dr. O'Malley immediately admitted the claimant to the hospital and treated him for a right shoulder infection and abscess and removal of his shoulder hardware. (CX3 at 135-136; 158-159). The claimant was admitted to the hospital on June 8, 2023, and discharged on June 12, 2023. (CX3 at 112-162).

During this hospitalization in Conway and thereafter in follow-up, the claimant also was treated by a physician specializing in infectious disease, Dr. Mladjen Veselinovic. Dr. Veselinovic's clinical note of June 8, 2023, states in pertinent part:

> Status post right reverse shoulder arthroplasty for right rotator cuff arthropathy 05-08-19 by Dr. O'Malley status post revision reverse shoulder arthroplasty on 08-02-22 due to frequent dislocation. Was admitted to the hospital on 06-08-23 for right deltoid muscle abscess and secondary right shoulder joint infection after bacteremia with GAS. ID Problem List: Right deltoid abscess due to right TSA (total shoulder arthroplasty) PJI (periprosthetic joint infection) with Group A Strep. S/P Stage I Revision likely hemodynamic due to bacteremia....

(CX3 at 146).

Dr. O'Malley continued to follow the claimant's progress following the septic episode. In his progress note of August 3, 2023, Dr. O'Malley specifically stated: "Of note, I do believe this is still related to his original injury, which was a workers' comp injury...." (CX3 at 172). After Dr. O'Malley, Dr. Justin Rabinowitz assumed the claimant's care. Dr. Rabinowitz's records note the claimant's history of a, "right shoulder chronic prosthetic joint infection status post explant treatment with IV antibiotics... ." (CX3 at 180-181).

After the last of four (4) surgical procedures on his right shoulder, the claimant underwent a year of infectious disease IV antibiotic therapy and antibiotic suppression to avoid any further complications. (CX3 at 270-271; 275-276; 279-321; and 326-328). Dr. Rabinowitz placed the claimant at MMI as of December 31, 2024. (CX3 at 344).

In response to an email from the claimant's attorney to a Longview, Texas chiropractor, Joe Hugghins, dated January 21, 2026, Chiropractor Hugghins issued a report entitled, "Impairment Evaluation". (CX3 at 350-358). Chiropractor Hugghins personally examined the claimant on February 10, 2026, and examined certain of the claimant's medical records related to his December 26, 2018, compensable right shoulder injury which he recites on page 3 of his report. (CX3 at 353). Chiropractor Hugghins opined the claimant was entitled to a total of a 20% BAW permanent anatomical impairment rating based on his evaluation conducted in accordance with the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (AMA, 4th Edition, 1993) (the *AMA Guides*). This equates to an additional two percent (2%) over and above the stipulated amount of the claimant's permanent anatomical impairment rating on 18% BAW, which the respondents have accepted and paid. (Stipulation 5, *supra*).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by

a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2025 Lexis Replacement). There is no presumption that a claim is compensable, that an injury is job-related, or that a claimant is entitled to benefits. *Crouch Funeral Home v. Crouch,* 262, Ark. 417, 557 S.W.2d 392 (1977); *Okay Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979). The claimant has the burden of proving by a preponderance of the evidence that she is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially, without giving the benefit of the doubt to either party. ***Ark. Code Ann.*** § 11-9-704(c)(4); *Gencorp Polymer Products v. Landers***,** 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987). The ALJ, the Commission, and the courts shall strictly construe the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles***,** 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Correc. v. Glover***,** 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions

of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); and *Farmers' Coop., supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and to resolve conflicting medical opinions; and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999); *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (Ark. App. 2001). Although it is within the Commission's province to weigh conflicting evidence, it may not arbitrarily disregard medical evidence or the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (Ark. App. 2004).

Compensable Consequence

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (Ark. App. 2000); *Hubley v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (Ark. App. 1996). The test is whether a causal connection exists between the two (2) episodes at issue. *Sword, supra; Jeter v. McGinty Mech*., 62 Ark. App. 53, 968 S.W.2d 645 (Ark. App. 1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, ___ S.W.3d ___ (Ark. App. 2009). This determination generally is a matter of reasonable inference and other relevant factors. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (Ark. App. 1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

Pursuant to ***Ark. Code Ann.*** § 11-9-705(a)(3) (2025 Lexis Repl.), a claimant has the burden of establishing the existence of a compensable consequence by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman,* 2009 Ark. 373, ___ S.W.3d ___ (Ark. App. 2009) (citing *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947)). A compensable consequence must be established utilizing all of the statutory elements of compensability. This includes the requirement that there be medical evidence of an injury supported by objective findings. *See, e.g., Nichols v. Omaha School Dist.,* 2010 Ark. App. 194, 374 S.W.3d 148 (Ark. App. 2010).

In their post-hearing brief, the respondents cleverly argue that while Dr. O'Malley, the claimant's primary treating orthopedic surgeon since his initial admittedly compensable right shoulder injury of December 26, 2018, opined the claimant's septic condition of June 2023 was related to his original compensable right shoulder injury, Dr. Mbonu – an infectious disease specialist physician who briefly treated the claimant at St. Michael – opined the claimant's "right shoulder region *appears* to be secondarily infected. History and clinical findings suggest a primary cutaneous process." (Respondents' Exhibit 2 at 28; Respondents' Post-Hearing Brief at 4-5) (Emphasis added). The respondents also argue one (1) or more of the claimant's "falls" constituted an independent intervening cause(s), breaking the chain of causation between the claimant's compensable right shoulder injury and the June 2023 infection/septic condition. (Resps.' Brief at 6). While I respect the respondents' argument in this regard and applaud their attorney's ingenuity in finding this needle in a haystack of medical records (apologies for the somewhat mixed metaphor), I must respectfully disagree for the following reasons.

First, I find that the opinions of Dr. O'Malley, the claimant's treating orthopedic surgeon who treated him for some five (5) years, operated on him four (4) times, and was intimately familiar with all the relevant facts, his voluminous and relevant medical records and diagnostic history; the medical records and stated opinion of Dr. Veselinovic, the infectious disease specialist physician who actually treated the claimant for the June 2023 infection/septic condition and whose clinical notes repeatedly refer to the claimant's right shoulder hardware and osteolysis (which was obviously a compensable consequence and medical condition that more likely than not would have never manifested *but for* the claimant's 12/26/2018 right shoulder injury; the medical records of Dr. Rabinowitz, who assumed care of the claimant from Dr. O'Malley; as well as the totality of the medical evidence/records in the record to be more informed and credible on these facts than Dr. Mbonu's apparent off-the-cuff opinion in medical *dicta* which uses the word "appears" in reference to the etiology of the subject right shoulder infection. (CX3 at 146 and 172; 110; 135-136; 158-159; 180-181). All this evidence – as well as the totality of the medical records in evidence – compels the conclusion that the preponderance of the evidence reveals the claimant's septic condition of June 2023 constitutes a compensable consequence of his compensable right shoulder injury of 12/26/2018.

Second, there exists no medical evidence in the form of a physician's medical opinion or medical records that relate the June 2023 right shoulder infection/septic condition to any of these falls about which the claimant testified. Therefore, it would constitute sheer speculation and conjecture for a fact finder to reach this conclusion which, of course, is improper since speculation and conjecture may not be substituted for proof. *See, Deana, supra*.

Third, a close review of the medical evidence in the record and simple common sense lead one to the conclusion the claimant's four (4) right shoulder surgeries/procedures which were necessitated by the obvious complications that followed his admittedly compensable right shoulder injury more likely than not would be the cause of his right shoulder infection/septic condition than any of the causes the respondents argue in their well written brief. And even assuming the fact the claimant admittedly had a number of other nonwork-related health conditions which prevented his right shoulder injury from healing completely or made him more susceptible to infection of his right shoulder, it is a well settled, black letter principle of workers' compensation law that an employer takes the employee as he finds him; and an employment-related incident that aggravates a preexisting condition(s) is (are) compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (Ark. App. 2003). Stated another way, a preexisting disease or infirmity does not disqualify a claim if the work-related incident aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which the claimant seeks benefits. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (Ark. App. 2003). Of course, while this law specifically relates to cases involving alleged aggravations of preexisting conditions, the same general legal principle applies here: Even if a claimant has other nonwork-related medical conditions that render him more susceptible to any compensable consequence – in this case, an infection/septic condition – this does not prevent a finding that the latter manifested condition is not a compensable consequence of the compensable injury.

Consequently, again, based on the applicable law as applied to the medical and other evidence of record in this case reveal the claimant's June 2023 right shoulder infection/septic condition

more likely than not constitutes a compensable consequence of his compensable December 26, 2018, admittedly compensable injury rendering the respondents responsible for payment of the medical treatment and related expenses at issue.

Temporary Total Disability

A claimant is entitled to TTD benefits during his healing period in order to compensate him for his total incapacity to earn wages. *See, Mad Butcher, Inc. v. Parker*, 4 Ark. App. 628 S.W.2d 582 (Ark. App. 1982). Temporary Total Disability (TTD) is the period within the healing period during which the claimant has a total incapacity to earn wages. *Carrick v. Baptist Health,* 2022 Ark. App. 134, 643 S.W.3d 466 (Ark. App. 2022). The "healing period" is defined as the period necessary for healing of an injury resulting from an accident, and it ends when the employee is as far restored as the permanent nature of the injury will permit. ***Ark. Code Ann.*** Section 11-9-102(12) (2025 Lexis Repl.); *Easley v. College Hill Middle School,* 2024 Ark. App. 597, 701 S.W.3d 800 (Ark. App. 2024). An injured employee is entitled to TTD benefits when the employee is totally incapacitated from earning wages and remains in the healing period and is totally incapacitated from earning wages. *See, Easley, supra.*

In his trial brief, the claimant's attorney makes an interesting and intriguing argument, as follows. Although the claimant had retired in June 2021 and no longer was employed with the respondents or any other employer, but they did accept and pay for the second right shoulder reverse arthroplasty of August 2, 2022, the respondents did not but should have paid him TTD benefits from the time he reentered a second healing period on August 2, 2022, until he reached MMI from the surgery. In support of this argument the claimant cites various cases which stand

for the proposition the law does not prohibit a claimant from being awarded TTD benefits when he is drawing social security benefits. (Claimant's Post-Trial Brief at 6-7). Again, while a rather ingenious argument, I must respectfully disagree the claimant is entitled to any award of TTD benefits on these facts.

First, and significantly, despite other compelling evidence to the contrary, the claimant self-servingly testified that while he voluntarily retired at age 67 (at least in part because he was unable to perform his job duties due to his ongoing right shoulder problems), he would have continued to work until the age of 70 if he had not injured his right shoulder. (T. 24). It should be noted that after his shoulder surgery the claimant's treating physician opined he reached MMI as of October 19, 2021, and released him to full duty work as a boiler operator and maintenance man. (Comms'n Ex. 1, Stipulation 5; T. 19; 54; Respondents' Exhibit 3). Moreover, in light of the claimant's well-documented medical history of other serious, nonwork-related health conditions – which included among other things a heart valve problem that eventually required major surgery – more likely than not the claimant did not retire, either in part or in whole, simply because he allegedly was unable to perform his job duties as a result of his right shoulder injury. Indeed, any one of the claimant's serious, nonwork-related health conditions more likely than not would have prevented him from working much, if any, beyond the age of his voluntary retirement at 67. (T. 19; 54; RX3).

Second, in order to be entitled to TTD benefits the claimant must not only be in a healing period, he must be totally incapacitated from earning wages. After he voluntarily retired in 2021 June, the claimant was not earning wages, period. He was not working, and was not even in the

job market. Consequently, for the claimant to be entitled to and awarded TTD benefits long after he retired, was admittedly physically and mentally compromised and/or debilitated by other serious, nonwork-related health problems, would not only be contrary to the applicable aforementioned law, it would fly in the face of the very legislative purpose of TTD benefits, it would be unjust and not in conformity with the basic principles related to this form of indemnity benefits. Indeed, TTD benefits are a form of *indemnity* benefits intended to help reimburse the claimant for a loss of income from the respondent-employer. In this case and cases such as this, the claimant has not lost any income because he is retired and not earning income from employment of any kind. I find the claimant is not entitled to additional TTD benefits on these facts.

Permanent Anatomical Impairment

The claimant must prove by a preponderance of the ***Ark. Code Ann.*** § 11-9-102(4)(F)(ii)(a) (2025 Lexis Replacement) states that: "Permanent benefits shall be awarded only upon a determination the compensable injury was the "major cause" of the disability or impairment." "Major cause" is defined as more than fifty percent (50%) of the cause, and the claimant must prove the compensable injury was the "major cause" of his disability or impairment by the preponderance of the evidence. ***Ark. Code Ann.*** § 11-9-102(14). In addition, any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings. ***Ark. Code Ann.*** § 11-9-704(c)(1)(B). Finally, pursuant to ***Ark. Code Ann.*** § 11-9-522(g), the Commission has adopted the *American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment* (4th Edition 1993) (the *AMA Guides*), for assessing permanent

anatomical impairment, "exclusive of any sections which refer to pain and exclusive of straight leg raising tests or range of motion tests when making physical or anatomical impairment ratings to the spine." And *see*, 11 ***CAR*** *Section* 25-129 (***Code of AR Regulations***, 2025 Lexis Repl.), formerly cited as Commission Rule 099.34.

Of course, the Commission is required to weigh the medical evidence and to translate this medical evidence into an appropriate finding regarding permanent impairment using the *AMA Guides*. *Polk County v. Jones,* 74 Ark. App. 159, 47 S.W.3d 904 (Ark. App. 2001). Consequently, the Commission may assess its own impairment rating using the Guides rather than relying solely on its determination of the validity of ratings assigned by physicians. *Id*.

Among the other criteria governing the assessment and assignment of a permanent anatomical impairment rating, the Commission must be determined when the condition – particularly when the condition is a soft tissue injury – becomes "permanent." The *AMA Guides* define a "permanent impairment" as an "impairment that has become static or well stabilized with or without medical treatment and is not likely to remit despite medical treatment." *See AMA Guides,* 4th Ed., page 315. Pursuant to the *AMA Guides*, 4th Ed., page 9: "An impairment should not be considered 'permanent' until the clinical findings, determined during a period of months, indicate that the medical condition at issue is static and well stabilized."

Based on the applicable law as applied to the facts of this case, I find the claimant is entitled to the additional 2% BAW permanent anatomical impairment rating due to the increase in his impairment as a result of his compensable consequence. Chiropractor Joe Hugghins issued a report dated February 10, 2026. Dr. Hugghins's report states he conducted a passive range of motion evaluation and relied upon the correct 4th edition of the *AMA Guides* to conclude the claimant was entitled to a total 20% BAW permanent anatomical impairment rating associated with his right shoulder injury and the compensable consequences thereof. (CX3 at 356). Of course, the parties stipulated the claimant was initially assigned an 18% BAW impairment rating which the respondents' accepted and paid the associated PPD benefits in full. (Stipulation No. 5, *supra*). Consequently, I find the claimant is entitled to the additional 2% BAW impairment rating and the PPD benefits commensurate with it.

For all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant has met his burden of proof by a preponderance of the evidence in demonstrating his infection/septic condition constitutes a compensable consequence of his December 26, 2018, compensable right shoulder injury.

2. The claimant has met his burden of proof in demonstrating he is entitled to payment of his medical bills and related expenses incurred as a result of the medical treatment he received related to his compensable consequence, the right shoulder infection/septic condition.

3. The claimant has failed to meet his burden of proof in demonstrating he is entitled to additional TTD benefits when he reentered a second healing period after his second reverse arthroplasty on August 2, 2022, since he did not experience a total incapacity from earning wages since he was admittedly and voluntarily retired and not earning any wages during the healing period at issue.

4. The claimant has met his burden of proof in demonstrating he is entitled to additional the additional 2% BAW impairment rating Chiropractor Hugghins's assigned the claimant related to the septic condition which is a compensable consequence of the claimant's admittedly compensable right shoulder injury

and, of course, the PPD benefits commensurate with the additional 2% BAW impairment rating.

5. The claimant has met his burden of proof in demonstrating his attorney is entitled to the maximum statutory attorney's fee on the additional PPD benefits based on Chiropractor Hugghins's 2% BAW permanent anatomical impairment rating.

6. The respondents have failed to meet their burden of proof in demonstrating they are entitled to a dollar-for-dollar credit/set-off for payment of the claimant's medical treatment and related expenses for his alleged preexisting, nonwork-related right shoulder rotator cuff repair pursuant to ***Ark. Code Ann.*** Section 11-9-411. (*See*, claimant's contentions, *supra*).

AWARD

The respondents hereby are directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ***Ark. Code Ann.*** Section 11-9-809, and *Couch v. First State Bank of Newport,* 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett,* 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer,* 358 Ark. 89, 186 S.W.3d 229 (2004).

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp