

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H303801**

**WILLIAM CLARK, EMPLOYEE**

**CLAIMANT**

**CAM SERVICES LLC,  
EMPLOYER**

**RESPONDENT**

**ACCIDENT FUND INS. CO. AMERICA,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 8, 2023**

Hearing before Administrative Law Judge Steven Porch on August 28, 2024, in Little Rock, Arkansas.

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

Respondents were represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A full hearing was held on this claim on August 28, 2024. A prehearing telephone conference took place on July 16, 2024. A prehearing order was entered on that date and subsequently entered evidence, with amendments by the parties, as Commission Exhibit 1. The parties' stipulations are set forth.

**STIPULATIONS**

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier relationship existed on June 6, 2023.
3. Respondents accepted the claimant's injury to the shoulder as compensable and certain benefits have been paid.
4. Respondents controvert in its entirety any injury to the Claimant's cervical spine.

5. The Claimant's average weekly wage is \$687.28 which entitles him to \$458 in temporary total disability benefits and \$344 in permanent partial disability benefits weekly.

### **ISSUES**

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury to his cervical spine by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment for his cervical spine.
3. Whether Claimant is entitled to Temporary Total Disability (TTD) from August 9, 2023, to a date to be determined.<sup>1</sup>
4. Whether Claimant is entitled to a controverted attorney's fees.

All other issues are reserved.

### **CONTENTIONS**

Claimant's Contentions: On June 6, 2023, Claimant was loading mulch when a sharp pain went down his left arm. He reported the injury, and the Respondents accepted a left shoulder injury. However, the Respondents denied the cervical spine injury. An MRI to the left shoulder revealed a signal abnormality in the glenoid labrum consistent with a possible labral tear. An MRI of the cervical spine revealed a disk extrusion at C3-4. Claimant contends that he sustained a compensable injury in the scope and course of the employment and that he is entitled to temporary total disability benefits, medical treatment, and that his attorney is entitled to an attorney fee.

Respondents' Contentions: Respondents contend that Claimant reported a left shoulder

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<sup>1</sup> Claimant made clear at the hearing (Trans. p.116, lines 5-16) and in his post hearing brief that is blue-backed and made a part of this record, that the temporary total disability benefits sought were from August 9, 2023, to a date to be determined. I accept this August 9, 2023, date as the start date.

injury on June 6, 2023, which has been accepted as compensable. An MRI revealed a possible labral tear. The Claimant has a long history of degenerative disc disease and pain management for which he obtained a medical marijuana card from the State of Texas. Respondents controvert any injury to the Claimant's cervical spine in its entirety.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, 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. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has proven by the preponderance of the evidence that he sustained a compensable injury to his cervical spine by specific incident during the course and scope of employment on June 6, 2023.
4. The Claimant is entitled to reasonable and necessary medical treatment, including two surgeries performed by Dr. Lawrence O'Malley, including out of pocket expense, mileage and reimbursement for private health insurance.
5. Claimant is entitled to TTD from August 9, 2023, to a date to be determined.
6. Claimant has proven by the preponderance of the evidence that his attorney is entitled to controverted attorney's fee.

**CASE IN CHIEF**

**Summary of Evidence**

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of 191 pages, Respondents' Exhibit 1, medical records, that consist of 66 pages, and Commission Exhibit 1, Pre-

Hearing Order, that consists of 5 pages. The post hearing briefs of the parties, Form AR-C, and Form AR-1 are blue-backed and made a part of this record. The Claimant was the only witness testifying in the full hearing.

Claimant began working for Cam Services (“Respondent/Employer”) in April of 2023, as a maintenance worker. His job duties involved pressure washing Walmart parking lots, mowing grass, and shoveling mulch. Claimant alleges he has suffered compensable injuries to his left shoulder and neck on June 6, 2023, while shoveling mulch at work. Claimant alleges he felt a sharp pain running through his left shoulder and arm. Claimant reported the injury to his supervisor on the same day but did not immediately seek medical treatment. Eventually, on June 12, 2023, Claimant went to the Ozark Health Medical Center with complaints of left shoulder/arm pain. (CL EX 1; p 1-22). The Claimant was experiencing some numbness in his left thumb. (RESP. EX 1; p. 37-38). Following this visit, Claimant was sent by the Respondents to College Park Family Care to treat with Dr. Gil Johnson. Claimant was seen by Dr. Gil Johnson on June 15, 2023, again with left shoulder and arm complaints. Dr. Johnson opined that the Claimant’s decreased range of motion were suggestive of a rotator cuff tear. (CL EX 1; p 23-24). Dr. Johnson recommended light duty. A left shoulder MRI was performed on June 29, 2023, that revealed low grade degenerative fraying of the supraspinatus tendon, mild joint osteoarthritis, and signal abnormality in the glenoid labrum both superiorly and inferiorly and possible labral tearing, particularly inferiorly. (CL. EX 1; p 39-44). There was no high-grade or full-thickness rotator cuff tear. *Id.* On June 30, 2023, Dr. Johnson referred the Claimant to an orthopedic surgeon and continued to keep the Claimant on light duty. (CL. EX 1; p 45-50).

On July 18, 2023, Claimant underwent a cervical spine CT that revealed degenerative changes at C4-5, C5-6, and C6-7. (CL. EX 1; p 57-60). Claimant returned to OrthoArkansas where

an MRI to the cervical spine was again ordered. (CL. EX 1; p 88-91). An MRI on July 24, 2023, revealed degenerative disk disease most pronounced at C5-6 and C6-7. (CL. EX 1; p 94-99). However, Faith Gebhart, PA-C, reviewed the MRI and noted that the Claimant suffered a disk extrusion at C3-4 and referred Claimant to a spine surgeon. (CL. EX 1; p 94-99).

On July 26, 2023, Claimant was treated by Dr. Stephen Paulus, who noted that the Claimant suffered from a disk herniation at C3-4, and further opined, “As he does describe acute radiculopathy in the context of C3-4 disk herniation, I suspect the likelihood of his neck and radicular arm pain being at least 51% caused by work related injury.” (CL. EX 1; p 100-102). Claimant received epidural steroid injection.

On August 9, 2023, Claimant was seen by surgeon, Dr. Jason Smith, who wrote: “He has an MRI scan which is here for my review. This shows a disk protrusion at C3-4 causing mild contact with the cord. At C5-6 and C6-7 there are disk protrusions, anterior and posterior osteophytic spurring, severe bilateral neuroforaminal narrowing, and moderate central canal stenosis.” (CL. EX 1; p 106-107). Dr. Smith took the Claimant off work for one month. *Id.*

On September 6, 2023, Dr. Smith noted that the Claimant continued to have severe left arm pain and weakness and recommended a C5-6 and C6-7 ACDF. Dr. Smith also noted that while the Claimant had a central disk protrusion at C3-4, he did not think it was the primary source of his current symptoms and discussed that the Claimant may need to have it treated in the future. (CL. EX 1; p 110). On October 5, 2023, Claimant underwent a cervical discectomy and fusion from C5-C7. (CL. EX 1; p 111). Claimant continued to follow up with Dr. Jason Smith for his post operative treatment, and Dr. Smith noted that he had improvement in the left arm pain radiating down the shoulder, however, he was having increased pain in the left shoulder. (CL. EX 1; p 144). Dr. Smith again opined that the Claimant was temporarily totally disabled. *Id.*

Due to continued complaints of ongoing left shoulder pain, Dr. Smith, on January 20, 2024, sent Claimant back to Dr. Schock for a shoulder evaluation with the caveat that if his symptoms are not better then there will be a consideration of a C3-4 decompression. (CL. EX 1; p 151). An MRI arthrogram was performed on February 12, 2024, which revealed a nondisplaced left posterior superior labral tear. (CL. EX 1; p 157-160). Dr. Schock saw Claimant on February 14, 2024, and did not recommend surgery for his shoulder. (CL. EX 1; p 163). However, an EMG/NCV was performed on February 20, 2024, that revealed residual left C5-6, C6-7 radiculopathy. (CL. EX 1; p 167-171).

On March 6, 2024, Dr. Smith wrote: "I am ordering a new MRI scan of the cervical spine so that we can evaluate if the disc herniation at C3-4 has changed. Finally, in my opinion, his cervical injury was coincident with his shoulder injury, and was work related. A week before his injury he was capable of pressure washing numerous Walmart parking lots by himself. At this point he is completely unable to work and is totally temporarily disabled. His pain remains quite severe to the shoulder and into the arm. I will see him back after the MRI scan of the cervical spine." (CL. EX 1; p 172-175).

On April 17, 2024, Dr. Jason Smith stated that Claimant needed a posterior cervical foraminotomy bilateral C6-C7 for ongoing foraminal stenosis and radula symptoms and left at C7-T1 needs PT for shoulder, may need future surgery on the C3-4 disc if it becomes more symptomatic. (CL. EX 1; p 176-178). Claimant testified that he had not had any pain in his left shoulder or cervical spine prior to the date of injury.

### Adjudication

- A. Whether Claimant sustained compensable injuries to his cervical spine by specific incident.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant’s alleged injuries, defines “compensable injury”:

- (i) An 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) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required

to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

I find that Claimant has proven by the preponderance of the evidence that he has sustained a compensable cervical spine injury during the course and scope of his employment by specific incident. Claimant testified that he was shoveling mulch in the scope and course of employment on June 6, 2023, when he felt a pop followed by a rubber-band sensation going down his arm causing his thumb and index finger to go numb and start burning. Trans. p. 17, lines 20 -23. He reported the injury to his supervisor and was eventually sent for medical treatment. The Claimant sought medical treatment and was referred to Dr. Schock, who opined that the left arm pain was cervical radiculopathy, and he needed treatment for his cervical spine injury.

Faith Gebhart, PA-C, reviewed Claimant's MRI and noted that he suffered a disk extrusion at C3-4 and referred him to a spine surgeon. (CL. EX 1; p 94-99). On July 26, 2023, Claimant was treated by Dr. Stephen Paulus, who also noted that the Claimant suffered from a disk herniation at C3-4, and further opined, "As he does describe acute radiculopathy in the context of C3-4 disk herniation, I suspect the likelihood of his neck and radicular arm pain being at least 51% caused by work related injury." (CL. EX 1; p 100-102). Spine surgeon, Dr. Jason Smith opined: "He has an MRI scan which is here for my review. This shows a disk protrusion at C3-4 causing mild contact with the cord. At C5-6 and C6-7 there are disk protrusions, anterior and posterior osteophytic spurring, severe bilateral neuroforaminal narrowing, and moderate central canal stenosis." (CL. EX 1; p 103-107). Furthermore, a EMG/NCV performed on February 20, 2024, revealed residual left C5-6, C6-7 radiculopathy on electromyography. (CL. EX 1; p 167-171).

Though Respondents argue that there are no objective medical findings only degenerative findings, Faith Gebhart, PA-C, Dr. Stephen Paulus, and Dr. Jason Smith have all identified



herniated disks from that very MRI where other healthcare professionals cited only degenerative findings. I credit the medical findings of Faith Gebhart, PA-C, Dr. Stephen Paulus, and Dr. Jason Smith. The Claimant has proven by the preponderance of the evidence that he has objective findings.

Moreover, Claimant's doctors have causally related his injuries to the work accident. On July 26, 2023, Dr. Stephen Paulus opined, "As he does describe acute radiculopathy in the context of C3-4 disk herniation, I suspect the likelihood of his neck and radicular arm pain being at least 51% caused by work related injury." (CL. EX 1; p 100-102). Additionally, on April 17, 2024, in response to a question, Dr. Jason Smith, one of Claimant's treating physicians and spinal surgeon, wrote "Yes" to the following question, "Do you believe, within a reasonable degree of medical certainty, that the injuries you treated Mr. William Clark for (after the 06/06/2023 on the job injury) were caused by the work-related accident?" (CL. EX 1; p 176-178). I credit Dr. Paulas and Dr. Smith's opinions. Thus, I further find that the Claimant has proven by the preponderance of the evidence that his cervical injuries were causally connected to his work-related incident.

B. Whether Claimant is entitled to additional reasonable and necessary medical treatment for his cervical spine.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes

reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

I find by the preponderance of the evidence that Claimant has proven he is entitled to reasonable and necessary medical treatment in the form of a cervical anterior fusion for the C5-C6-C7. On April 17, 2024, Dr. Jason Smith stated that Claimant needed a posterior cervical foraminotomy bilateral C6-C7 for ongoing foraminal stenosis and radula symptoms and left at C7-T1 needs PT for shoulder, may need future surgery on the C3-4 disc if it becomes more symptomatic. (CL. EX 1; p 176-178). I credit this recommendation. I further find the Claimant has proven by the preponderance of the evidence that the treatment provided for his cervical spine injury, and the treatment recommended for Claimant's cervical spine, made by Dr. Smith, were all reasonable and necessary and the Claimant was entitled to the treatment he received as well as the treatment recommendations.

C. Whether Claimant is entitled to temporary total disability benefits.

Claimant sustained an unscheduled cervical spine injury. Ark. Code Ann. § 11-9-521. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability

compensation for that period within the healing period in which he suffered a total incapacity to earn wages. *Arkansas State Highway & 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). Also, a Claimant must demonstrate that the disability lasted more than seven days. *Id.* § 11-9-501(a)(1). Claimant must prove entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark, 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Again, a Claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

The Claimant testified that he has not worked for Respondent/Employer since August 6, 2023. Trans. p. 37, lines 4-22. I credit this testimony. Dr. Jason Smith took the Claimant off work on August 9, 2023, and has continued to keep the Claimant off work. As mentioned previously, Dr. Jason Smith recommended further treatment to improve Claimant's condition in the form of a posterior cervical foraminotomy bilateral C6-C7 for ongoing foraminal stenosis and radula symptoms and left at C7-T1 needs PT for shoulder, and the possibility of a future surgery on the C3-4 disc if it becomes more symptomatic. Dr. Smith has made clear he is not prepared to release him to work based on his recommendations concerning Claimant's medical needs and has, in fact, not released Claimant to work. Since that is the case, I find by the

preponderance of the evidence that the Claimant is entitled to temporary total disability benefits from August 9, 2023, to a date yet to be determined.

**ATTORNEY FEES**

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). Under Ark. Code Ann. § 11-9-715 (Repl. 2012):

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them.

Discussion. The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to additional indemnity benefits. Thus, the evidence preponderates that his counsel, the Hon. Laura Beth York, is entitled to the fee as set out above.

**CONCLUSION AND AWARD**

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums, minus any lawful offsets, shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2002). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

**IT IS SO ORDERED.**

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Hon. Steven Porch  
Administrative Law Judge