

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H207068**

GARY EWING,  
EMPLOYEE

CLAIMANT

RELIABLE PULTRY SUPPLY, INC.,  
EMPLOYER

RESPONDENT

ACADIA INS. CO./UNION STANDARD INS. CO.,  
CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

**OPINION FILED SEPTEMBER 9, 2024**

A hearing was held before Administrative Law Judge Chandra L. Black, Miller County, Texarkana, Arkansas.

Claimant represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 11, 2024 in Texarkana, Arkansas. A prehearing telephone conference was held in this matter on February 28, 2024. 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 start of the hearing. I hereby accepted the following 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 August 10, 2022, when the Claimant sustained a compensable injury to his right bicep and cheek.
3. The Claimant's average weekly wage on August 10, 2022, was \$1, 2226.35, entitles him to weekly compensation rates for temporary total disability (TTD) benefits is \$790.00; and his rate for permanent partial disability (PPD) compensation is \$593.00.
4. The Respondents accepted the injuries to the Claimant's right bicep and cheek as compensable and paid appropriate benefits associated with these conditions. However, the Respondents have controverted the alleged cervical spine injury
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 cervical spine injury on August 10, 2022.
2. Whether the Claimant is entitled to reasonable and necessary medical benefits for his neck condition to include the neck surgery and physical therapy treatment.
3. Whether the Claimant is entitled to TTD from November 10, 2023, until November 30, 2023.
4. 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 he sustained compensable injuries to his neck on August 10, 2022, or in the alterative, as a compensable consequence of after to returning to work on light duty and over-using his left upper extremity to the extent he injured his neck. Claimant had absolutely no neck problems or radicular symptoms in his arms prior to the work relate event.

The Claimant further contends that the surgery to his neck recommended by Dr. Calhoun is reasonable, necessary and related such that Respondents should be ordered to pay for same.

Claimant further continues that he should be ordered to pay attorney's fees as provided by law.

Respondents:

Respondents contends that the Claimant did not suffer a cervical spine injury in August 10, 2022. It is Respondents' position the Claimant's need for medical treatment, if any, is associated with that body part is related to preexisting and underlying problems not an acute injury.

**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 the witness and observe his 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 evidence that he sustained a compensable injury his neck on August 10, 2022.
4. The Claimant proved by a preponderance of the evidence that the medical treatment of record he received was reasonable and necessary treatment for his neck compensable August 10, 2022, neck injury, including the surgery by Dr. Calhoun.
5. The Claimant proved his entitlement to temporary total disability from November 10, 2023, until November 29, 2023.

6. The Claimant's attorney is entitled to a controverted attorney fee.

Summary of Evidence

Mr. Gary Ewing (referred to herein as the "Claimant"), was the only witness to testify during the hearing.

The record consists of the June 11, 2024 hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 comprises the Commission's Prehearing Order filed on February 28, 2024 and the parties' responsive filings; Claimant's Abstract of Table of Content consisting of fourteen (14) numbered pages was marked as Claimant Exhibit No. 1; Claimant's Medical Record Exhibit consisting of two hundred and eleven (211) pages was marked Claimant's Exhibit 2; Respondents' Hearing Exhibit Index Medicals consisting of thirty-one (31) numbered pages was marked as Respondents' Exhibit 1; and Respondents' Hearing Exhibit Index Non-Medicals consisting of fourteen (14) numbered pages was marked as Respondents' Exhibit 2.

Testimony

The Claimant completed the eleventh grade and obtained their GED. He began working for Reliable Poultry full time in 2017. According to the Claimant, Reliable supplies chicken houses with equipment, supplies and materials. They perform repair work on them, and they build from the ground up. Upon the date of hire, the Claimant was a warehouse hand. Subsequently, the Claimant was assigned to go in the field and do service work. He became a service technician in the middle of 2018. The Claimant continued to be employed by Reliable as of the date of the hearing. However, since his return to work following his injury, he has been assigned duties to work in the warehouse.

Prior to going to work for Reliable, the Claimant was on Social Security Disability benefits. He drew these benefits from 2010 to 2017. The nature of the Claimant's disability included four

back surgeries. He testified that his last two back surgery were his worst ones. The Claimant sustained prior injuries while working for Aero Metal Craft. He testified that he has been involved with prior workers' compensation cases twice, but he needed up settling the claims. The Claimant admitted that he decided to participate in Social Security's return to work program. He was able to successfully return to work for Reliable. Ultimately, the Claimant successfully transitioned off of disability and continued to work for Reliable. The Claimant denied that he had any medical problems of any kind that were limiting his ability to do his before August 10, 2022.

Regarding his work accident at Reliable on August 10, 2022, the Claimant testified that he was working in McNeil, Arkansas at a chicken farm. The Claimant testified that he was changing out the machine of the ceiling of the chicken house. He had gotten a call to that he needed to go to that location to change out the vent machine of one of the chicken houses. The Claimant testified that the vent weighed approximately fifty pounds.

Specifically, the Claimant stated:

Q What were you going to have to do to work on or replace this vent machine?

A We was going to have to take it down out of the ceiling. You make sure the breaker is off. You unwire it out of the junction box, and when I unwired it, the cord was pushed up on top of the board it was mounted to, so I just pulled the cord down, unwired it, well, it all fell to the floor.

Q Were you standing on a ladder at the time?

A I was on an eight-foot ladder. Yes, sir.

Q All right.

A And Eddie was working off of a six on the lower side of the house where the machine was getting it ready.

Q So you were going to take the vent machine down out of the ceiling area?

A Yes, sir.

Q What happened when tried to do that?

A We took the lag bolts out of it, and I told him, I said when we get it loose, I'm going to throw it back here behind me. That way it's between the water line and the wall out of our way so we don't trip over it. He said that's fine, so we took it loose. I took it and I threw it.....

Q At the time you took it loose, did you anticipate that it was free and clear?

A Yes. But in a dim chicken house, you can't see everything correctly, and the lights was all on bright.

Q Okay.

A So when I threw the machine, it went away from me, and when it went away, I went to turn about the time, I heard something, and I looked back and it was swinging back towards me.

Q Okay.

A And when it hit me, Eddie was reaching for me, but it'd done knocked me away from him.

Q So it was still connected to the extent that when he tried to throw it, it actually swung back and struck you?

A There was one staple at the end of that board covered in dust that that cord was still attached to and neither one of saw it. I didn't see it, and I'd pulled on the cord.

Under further questioning, the Claimant testified that the machine hit him in the face and that is when the ladder started falling. The Claimant was hit on the right cheek. When the Claimant fell, he and the ladder landed on the machine. His face was cut and bleeding. The Claimant also also sustained a cut across his bicep, but it did no bleed out. He confirmed that he fell on his right arm. The Claimant explained that the location of were his arm was actually cut was on his lower bicep, underneath the lower area.

The Claimant was taken to the emergency room in Magnolia. They put stitches in his arm. However, the cut on his face did not require stitches. The Claimant agreed that medical records

show he had a nine-centimeter gash underneath of his arm. He was treated in the emergency room and discharged home, with instructions to follow-up with his family physician. The Claimant saw his family physician, Dr. Caldwell about the stitches. On August 25, 2022, the Claimant followed-up with his doctor. His family doctor referred him to wound care treatment, which was at a Nashville hospital. The Claimant testified that he continued to treat with Dr. Caldwell after the stitches had been removed. According to the Claimant, when he went to see Dr. Caldwell before the stitches were removed, he complained about his face still being swollen, and his head and down his collarbone being swollen and his that his neck was hurting. However, when asked if he specifically complained about his neck hurting at that time, the Claimant replied, “No, I don’t. I just told him I was swoled up and it was hurting “clean down” in my shoulder and arm.”

He confirmed that that he was hurting on his right side. Dr. Caldwell recommended that The Claimant have an MRI of his neck and his upper extremities. During that time, there was a period of time when the Claimant was paid workers’ compensation benefits. He stated he was paid workers benefits until about December. The Claimant denied that he had any prior problems with his neck or the type of symptoms that he was complaining of in his right arm and side at that time. According to the Claimant he had never had any problems his left arm before his work accident. However, the Claimant agreed that he developed problems in his left arm after the accident, which included pain issues in in it and numbness.

In Dr. Caldwell’s progress note of September 27, 2022, he makes note of the Claimant having used his left upper extremity to do a majority of his work since the time of his injury. He also noticed that the Claimant had decreased strength bilaterally and complained his neck now hurt. After the Claimant received some testing, he came under the care of an orthopedic specialist,

Dr. Walden. While under the care of Dr. Walden, he tried to obtain some physical therapy treatment for the Claimant, but the carrier denied this treatment until February 10, 2023.

The Claimant was released to return to go back to work in December 2022, with a two-pound lifting restriction. He confirmed that his employer allowed him to return to work with this limitation. The Claimant testified that he started physical and some occupational therapy as well. Per the Claimant, he went through twelve to fourteen weeks of therapy. At that time, the Claimant testified that he was having symptoms of pain that about a seven or eight. According to the Claimant, he was unable to do the therapy most of the time.

He underwent an MRI of his neck for the first time. The Claimant confirmed that Dr. Walden references some nerve conduction studies and there was a mention of possible treatment for carpal tunnel on the right side. Although there was mention of surgery, the Claimant told Dr. Walden he did not wish to undergo carpal tunnel surgery if he did not have to do so. The Claimant confirmed that he did not have any carpal tunnel treatment or surgery. He further confirmed that he did not have any carpal tunnel treatment.

Ultimately, Dr. Walden recommended that the Claimant be seen by a neurosurgeon, and he also provided his thoughts of what was going on with the Claimant's neck. The Claimant testified that after Dr. Walden referred him to Dr. Calhoun, the workers' compensation carrier refused to pay for any more of his treatment. He confirmed that Dr. Calhoun wanted him to having surgery. However, the Claimant agreed that he the next doctor after he saw Dr. Walden, he saw Dr. John Bracey at UAMS. According to the Claimant, the workers' compensation carrier paid for him to see Dr. Bracey, but he is an orthopedic specialist and not a neurosurgeon. He confirmed that he only saw Dr. Bracey and once, and that he did not provide him with any treatment of any kind.



Per the Claimant, Dr. Bracey referred him for evaluation by a neurosurgeon for his neck complaints. At that point, the Claimant went for evaluation by Dr. Calhoun.

On May 4, 2023, the Claimant had an independent medical evaluation by Dr. Calhoun. He conformed that the workers' compensation paid for this evaluation. Pursuant to this evaluation, Dr. Calhoun recommended that the Claimant undergo a new MRI for his neck and have more physical therapy. The Claimant testified that the carrier paid for the MRI, but they refused to pay for the physical therapy. He confirmed that Dr. Calhoun changed his physical restrictions to twenty pounds at that time. The Claimant admitted that he was able to continue working for the employer with some accommodations for his work in the service tech area. After the Claimant underwent the new MRI on his neck, Dr. Calhoun recommended that the Claimant have neck surgery. On May 31, 2023, Dr. Calhoun expressed that opinion and explained how he thought it was related to his claim. At that point, the Respondents denied the claim.

Although some of the medical demonstrates some opinions by various providers, one of them is a Dr. Long, but the Claimant denied he ever talked to or met him, nor was he ever evaluated by him. The Claimant further denied that he was ever evaluated by an osteopath, Sara Martinez. He also denied ever seeing or being evaluated by an orthopedic doctor, Dr. James Depuy. However, Dr. Calhoun continued to try to appeal the process to get authorization for him to have neck surgery. The Claimant admitted that he was aware of the process.

Ultimately, the Claimant underwent neck surgery, but he had to pay for it out of his own pocket. The Claimant underwent neck surgery on November 10, 2023. He returned to work on November 30, 2023. The Claimant used his Blue Cross Blue Shield to pay for his neck surgery. According to the Claimant, his out-of-pocket expenses were roughly over \$1,200.00. The Claimant testified that Dr. Calhoun was surprised to find out during his first follow-up visit with him that he

had gone back to work so soon. He explained that he had only twenty days to be off and he wanted to go back to work as quickly as possible because he had bills to pay.

The medical records demonstrate that Dr. Calhoun removed a large central disc herniation C6-7. The Claimant confirmed that after his neck surgery, Dr. Calhoun gave him some steroid shots in his shoulder. There was a six-month delay in the Claimant getting the surgery. As a result, he did not undergo any physical therapy treatment.

In terms of improvement in his arms, the Claimant had some improvement. The Claimant testified that he was about 35% better after the surgery. He confirmed that the last progress note of April 10, 2023 is the last time he saw Dr. Calhoun. On April 25, 2023, Dr. Calhoun issued a letter with permanent restrictions. The Claimant testified that he became aware of the report when Reliable Poultry had requested in an email from Dr. Calhoun's office for his progress note on how the Claimant was doing. He testified that after they received the letter from Dr. Calhoun, they cut his pay from \$22.00 down to \$18.00 an hour. The Claimant accepted a re-assignment to the warehouse on a permanent basis. Currently, the Claimant works forty hours a week and two and a half hours of overtime a week. The Claimant testified that in the service tech area, he was paid every two weeks and getting a hundred hours plus. He also was able to get all the overtime he could get, and every fourth weekend he was on call, for which he was paid \$200.00.

The Claimant does not take any pain medication for his neck. He confirmed that he is able to perform his on-the-job duties with the restrictions. However, the Claimant gets help from coworkers. The Claimant testified that he is has not been able to fish in two years, and last year he did not hunt all. The previous year, the Claimant hunted several days, but he was just not there. He and his wife used to hunt together all the time. According to the Claimant, he is able to run the

Weedeater. The Claimant testified that he had been married for thirty-two years, and she walked out due to the stress and financial issues.

Since his release from Dr. Calhoun's care, the Claimant confirmed that he has not received any other additional medical treatment.

On cross-examination, the Claimant confirmed that when he was struck in the face with the vent, it did not cause any structural damage to the bones in his face. The Claimant admitted that he did not require any stitches or steri strips for the slight cut on his face. He confirmed that he was not knocked unconscious when the vent hit him.

He admitted that during his deposition, he indicated that his neck symptoms started right away when he got hit. The Claimant testified that he mentioned swelling and pain, but he did not recall if he said his neck right off. He testified that he was experiencing neck pain whether he called it the neck. According to the Claimant, he was swelled up and hurting from his neck all the way down into his shoulder.

Under further questioning, the Claimant testified:

Q What valid reason would you have for not telling doctors that you were having neck pain and swelling your neck if it was, in fact going on?

A I did tell Dr. Caldwell.

Q Okay. I'm asking if it's not in the medical records in a certain place, what excuse do you have for that?

A I don't have one.

The Claimant confirmed that he tagged two deer the year before. He admitted that he hunted from a ten-foot stand, a box stand, with a modern gun. The Claimant admitted this took place before he got to see Dr. Calhoun and before he had surgery. He confirmed that his wife moved out around August or September of 2023. According to the Claimant, he tried to take care

of his household chores and keep the house functional as it relates to laundry, dishes, cooking, and cleaning. He confirmed that he is able to drive. The Claimant further confirmed having driven himself to the hearing.

Under further questioning, the Claimant testified that he does bank fishing. According to the Claimant, he has a boat, but he has not used it. He admitted that he catfish. Per the Claimant, Reliable has been pretty good to him about keeping him working when they could. While the Claimant was off work due to his surgery, the Claimant received his vacation pay, along with the two holidays, which included Thanksgiving pay.

The Claimant testified the work at the poultry supply company and the poultry supply business is not hard work depending on the job. He confirmed that the jobs he has worked and the work experience he has had at Reliable is the easiest line of work he has ever been in. The Claimant stated, “I love it. Working in a poultry supply is the top of the line to me.” According to the Claimant, he has done a lot of manual labor but poultry, but poultry supply is the best. He confirmed that no one at Reliable has pressured him or pushed him to work outside of any restrictions that brought he has brought to them. The Claimant confirmed that they allowed him to come back to the warehouse. He admitted that if he has to lift or push something, the store manager will come out and help him. The Claimant agreed that he will be allowed to continue work for the company as long as he wants to continue working. He testified that the guy the guy that was working with him on the day of his injury, he has known him for thirty-seven years, and that he is still the manager of the service department. The Claimant agreed that he has some influence or power if he vouches or takes position on his behalf in the company.

On redirect examination, the Claimant confirmed that although Dr. Caldwell’s records do not specifically mention the word neck for six weeks in between the date of injury and when

the word neck comes up, he was having pain from the top of head down to his shoulder area. He testified that he was having pain down the right side of his face. According to the Claimant, it would go down in his shoulder toward the end of his shoulder to the top of his right shoulder.

The Claimant agreed that Dr. Caldwell mentions in his clinic note of January 9, 2023, that the he had started hurting when the accident happened in August. He confirmed that he is satisfied with the care that he has received from Dr. Caldwell. The Claimant testified that only thing he wish he done differently with his medical treatment is that he wishes he gotten the surgery sooner.

On recross-examination, the Claimant testified that although the medical he may not have mentioned neck until September 27<sup>th</sup> he explained to Dr. Caldwell on multiple times that he was hurting from his head all the way down to into his shoulder. He confirmed that the doctor that he talking and communicating about is his primary care physician. The Claimant testified that he has been his PCP for four years. He admitted that he does not have any problems communicating with his doctor and that there are no communication barriers. The Claimant explicitly confirmed that he is not maintaining that he actually mentioned a neck problem before September 27<sup>th</sup> and his doctor just failed to document it.

Under redirect examination, the Claimant admitted that he had symptoms on both sides of his neck. He went on to say that it started hurting bad into his right shoulder, and it started to work its way over the left and he started having problems with both arms and hands. The Claimant also admitted that he had a conversation with his doctor at one time about him overusing it when he was back at work. He denied having any issues with his neck or arms before the accident. The Claimant testified that had been his lower back prior to the accident at work.

Upon examination by the Commission, the Claimant denied that he ever missed work due to problems with his neck or arms. He denied calling in sick due to problems with his neck prior

to his work-related fall. The Claimant further denied ever had any injuries to his neck prior to his accident at work. He confirmed that he fell from an eight-foot ladder when the vent hit him and he fell to the ground of the chicken house. The Claimant hit his right side.

### **Medical Records**

A review of the medical records demonstrates that on August 10, 2022, the Claimant sought medical treatment for his compensable work-related fall from Magnolia Regional Medical Center. The Claimant reported that he fell from a ladder at work. Per these emergency room notes, the Claimant sustained a laceration to his right upper arm, for which he received stitches. He was also noted to have a cut on the cheek of his face, but it did not require any sutures. The Claimant also had some swelling his cheek along with an abrasion. Medical staff note that the Claimant did not have any bleeding from the laceration on bicep. Ultimately, the Claimant was discharged from the hospital with instructions to follow-up with his regular physician.

On August 25, 2022, the Claimant presented to his primary care physician, Dr. Charles Caldwell for removal of the stitches under his right arm. The Claimant reported that he was working on a chicken house, removing a piece of a piece of equipment from the ceiling when it became hung and struck him on the right upper extremity and face. The Claimant gave a history of having fallen off the ladder to the ground. He stated that the sutures had become painful. Dr. Caldwell removed the sutures and discussed treatment options with the Claimant, which included calling a specialist. Wound care was consulted and saw the Claimant in the clinic. At that time, Dr. Caldwell assessed the Claimant with “1. Laceration of right upper extremity, initial encounter. 2. Traumatic wound dehiscence, initial encounter.” He directed the Claimant to closely monitor at home and follow-up with him in two weeks as directed. A non-adhesive bandage was placed along with Coban on the Claimant’s bicep. Dr. Caldwell placed the Claimant on limited use of his right

upper extremity to no weight bearing weight greater than two pounds until wound care could evaluate him in two weeks.

The Claimant underwent evaluation by clinician, Daniel Patterson, RN, at Howard Memorial Hospital under the supervision of Dr. Clay Ferguson, on September 1, 2022. At that time, he underwent evaluation for an initial wound encounter. His wound assessment was, “The patient’s potential to heal is excellent.” The Claimant’s wound was cleansed and a topical skin protectant in the form of a barrier ointment was applied to protect the surrounding skin.

On September 27, 2022, the Claimant underwent evaluation by Dr. Brian Caldwell. The Claimant reported that maybe he a pulled muscle. He gave a history of having developed a lot of of upper chest, back and left arm pain. The Claimant stated that he had using his left upper extremity to most of work since his injury. He told Dr. Caldwell that he had recently noticed that he had a lot of decreased strength bilaterally, along with weakness of both upper extremities at times. The Claimant specifically complained that he had now had neck pain. Per these medical notes, the Claimant continued to have a lump and pain in his right upper forearm. His assessments were “1. Injury of forearm muscle or tendon, right initial encounter. (Primary). 2. Cervical radiculopathy. 3. Facial injury, subsequent encounter.” The Claimant stated that the medications did not work well for him, especially narcotic based medications. Therefore, Dr. Caldwell recommended getting MRI of right forearm and cervical spine for further evaluation.

The Claimant underwent an MRI of his right forearm on October 4, 2022, which was unremarkable. Also on that same day, the Claimant had an MRI of his right elbow, which revealed “unremarkable findings.”

Dr. Justin Walden, orthopedic specialist, evaluated the Claimant on October 12, 2022. At that time, the Claimant complained of pain and weakness of his right upper extremity. However,

he also reported that since his injury he was having cramping sensation in his right forearm. The Claimant also complained of muscle spasms over the volar aspect of in his right forearm. He further complained of numbness and tingling diffusely through his right hand. The Claimant stated he had weakness with grip in right hand. He reported mild improvement with oral anti-inflammatories. Dr. Walden discussed treatment and options with the Claimant, which included physical therapy, occupational therapy, advanced imaging, splint application, cast application, bracing and surgical intervention as indicated. Per these progress notes, an EMG and nerve conduction study was ordered for the Claimant's right upper extremity. He stated that the Claimant could return to work with a no lifting over two pounds to his right upper extremity and no repetitive use of his right hand.

On November 10, 2022 the Claimant presented to Dr. Drake Hardy for consultation and EMG and nerve conduction study. His chief complaints included numbness, tingling, pain and weakness in his right arm and hand. The Claimant also complained of neck pain. Per these notes, the Claimant provided a history of no prior serious injury to his neck or to his right arm or hand otherwise. Dr. Hardy's impression of the electrodiagnostic testing was "Abnormal nerve conduction and electromyographic study consistent with mild compression of the right median nerve at the carpal tunnel with a median motor distal latency of 4.3 ms and a median peak sensory latency of 4.0 ms. There was no evidence of motor axonal dropout but there was evidence of mild sensory axonal dropout. No evidence of denervation was seen in the right abductor pollicis brevis muscle brevis muscle." Dr. Hardy opined that here was no evidence of an injury to the right ulnar nerve with stimulation proximal to the laceration side. However, Dr. Hardy specifically opined that he found no evidence of any other peripheral nerve entrapment and no evidence to suggest peripheral neuropathy, cervical radiculopathy or any other neuromuscular disease.



The Claimant presented to Dr. Walden on December 7, 2022 for complaints of right upper extremity pain and weakness. His assessment was “Laceration right arm with weakness of his right hand.” Dr. Hardy returned the Claimant to work with restrictions.

Progress notes demonstrate that the Claimant continued to follow up with Dr. Caldwell. On January 9, 2023, the Claimant complained of left ear and neck pain that started hurting when he had his work-related accident in August 2022. Dr. Caldwell’s assessment at that time include among other diagnoses, “cervical radiculopathy,” which he prescribed medication and discussed other treatment options with follow-up directions.

Notes authored by Dr. Walden on January 16, 2023, shows that the Claimant’s presented with a chief complaint of right upper extremity pain and weakness. The Claimant also complained of persistent grip strength and difficulty carrying objects in his right hand. Although the Claimant had been recommended for physical therapy, he did attend any therapy sessions because the insurance carrier did not approve this treatment .

Ultimately, the Claimant underwent outpatient occupational therapy treatment beginning on January 20, 2023 continuing through February 28, 2023.

On March 1, 2023 the Claimant returned to Dr. Walden with continued complaints of right upper extremity pain and weakens. He reported with any attempted lifting more than five pounds when in therapy, he begins to have uncontrollable shaking his right arm. Dr. Walden expressed increased weakness in right arm despite therapy. He recommended repeat EMG and nerve conduction study due to increasing weakness. Dr. Walden stated that he would obtain MRI of the cervical spine. The Claimant was returned to work with lifting restrictions.

The Claimant continued with outpatient occupational therapy from March 2, 2023 through March 16, 2023.

On March 23, 2023 the Claimant underwent an MRI cervical spine without contrast due to a history of right pain, along with a history of laceration of the right arm. An impression was rendered by Dr. Mark Robbins. Specifically, Dr. Robbins found the following;

1. Multilevel degenerative disc changes greatest at C5-6.
2. Bulging disc osteophyte complex C3-4 and C6-7 with mild cord effacement.
3. Broad bulging disc osteophyte complex and central disc protrusion C5-6 with cord effacement and mild canal stenosis.

The Claimant returned for a follow-up visit with Dr. Walden on April 3, 2023, for continued complaints of right upper extremity pain and weakness. At that time, Dr. Walden opined that the Claimant had undergone imaging studying of his cervical spinal stenosis.

On that same day, the Nurse Case Manager, Jackie Cooper, wrote to Dr. Justin Walden to request that he evaluate the Claimant and share recommendation for treatment and address the following:

- \*In your profession opinion, are there any acute objective findings reported on his cervical MRI? If so, please list.
- \*In your professional opinion, are there any acute objective findings on the recent EMG/NCV, if so, please list.
- \* What is your recommendation for work restrictions for Mr. Ewing?
- \* What is your recommendation for further treatment for Mr. Ewing?
- \* What is your projection for MMI for Mr. Ewing and RTW FD?

The Claimant presented to Dr. John Bracey on May 4, 2023, for evaluation of the right upper extremity complaints. Dr. Bracey opined, relevant part: “That the Claimant’s carpal tunnel syndrome worst not acute in nature, was secondary to some mild pre-existing carpal tunnel and unrelated to the work injury. He opined that he believe the Claimant’s complaints of right upper extremity weakness are secondary to his cervical radiculopathy. Specifically, Dr. Bracey stated the Claimant worsening weakness since his injury was likely secondary to a cervical cause such as radiculopathy. He opined that his was probably related to the trauma he sustained to his head and

neck. Dr. Bracey believed that best course of treatment for the Claimant would be for him to have follow-up with orthospine or neurosurgery for further evaluation of the cervical spine.

Dr. Calhoun was posed several by the nurse case manager on May 4, 2023. However, Dr. Calhoun recommended that the Claimant undergo repeat cervical MRI because the previous study was suboptimal study. It was his professional opinion that the Claimant sustained C5-6 cervical herniation with possible cervical myelopathy, cervical strain. Per his letter, Dr. Calhoun was of the opinion the central disc herniation at C5-6 could be acute.

An MRI was performed of the Claimant's cervical spine on May 31, 2023. Dr. Andrew A. Finkbeiner, opined:

1. Broad-based disc bulge and central protrusion with partial compression of the ventral cord at the C5-6 level along with uncovertebral and facet hypertrophy contribute to abutement of bilateral exiting C6 nerves.
2. Broad-based disc bulge, a central disc herniation with compression of the ventral cord at the C-7 level as well as a facet hypertrophy contribute to abutement of the existing left C7 nerve.
3. Shallow broad-based disc bulge with partial compression of ventral cord at the C3-4 and C4-5 levels.

The Claimant presented to Dr. Calhoun on May 31, 2023, due to chief a complaint of neck and arm pain, chronic pain. Dr. Calhoun opined that eh Claimant's MRI showed central disc herniations at C5-6 and C6-7 with spinal cord edema at both levels. He specifically opined that the edema is indicative of an acute injury, and that the hand weakness is due to central cord syndrome from the spinal cord edema. Therefore, Dr. Calhoun requested authorization from the workers' compensation carrier to all the Claimant to undergo C5-6 and C6-7 anterior cervical discectomy and fusion for stenosis. He stated that the Claimant underwent an MRI, and it confirmed the above. Dr. Calhoun also stated that the Claimant had failed to improve with conservative measures.

On July 2, 2023, Dr. Justin Long opined that the Claimant's complaints demonstrated on the MRI of March 23, 2023, and May 31, 2023 of the cervical spine are multilevel disc degenerative changes. He opined that the findings at C4-C6 are chronic in nature and not the result of his injury on August 10, 2022.

An Osteopath, Sarah Martinez, provided a professional opinion of the whether the cervical findings on the MRI is related to the Claimant's work injury of August 10, 2022, or a subsequent fall at work. On July 31, 2023, Martinez opined that the diagnostic imaging reported no acute pathology but did demonstrate pre-existing multifactorial degenerative changes of the cervical spine, none of which are consistent with the fall of August 10, 2022, or May 12, 2023, fall. She went on to state that degenerative changes of the spine are a part of the normal aging process.

The Radiologist sent an addendum on August 24, 2023, to the MRI, which read, "No definite focus of altered signal or edema is seen within the cervical cord at the C5-C6 or C6-7 level.

On August 28, 2023, Dr. Calhoun sent a letter to appeal denial of his request for the Claimant to undergo a C5-6 and C6-7 anterior cervical discectomy and fusion. He opined that the Claimant had worsening symptoms, and he felt the Claimant suffered a central cord injury during his fall. This was based on numbness and clumsiness in both hands. Dr. Calhoun stated that the Claimant's symptom had been misdiagnosed as carpal tunnel syndrome. He also noted that the Claimant's repeat MRI showed significant compression of the spinal cord at C5-6 and C6-7. Per Dr. Calhoun, even though the findings of the disc herniation at C5-6 and C6-7 could be viewed as pre-existing, the fall caused the injury to his spinal cord with the development of the of the central cord syndrome.

A Utilization Review Recommendation Report was issued on September 11, 2023 denying the Claimant's the for cervical surgical intervention.

On November 10, 2023, the Claimant underwent neck surgery under the care of Dr. Calhoun, which resulted in a Procedure Note, which reads:

Preoperative Diagnoses:

1. C5-6 cervical stenosis with cervical myelopathy.
2. C6-7 cervical stenosis with cervical myelopathy.

Postoperative Diagnoses:

1. C5-6 cervical stenosis with cervical myelopathy.
2. C6-7 cervical stenosis with cervical myelopathy.
3. C6-7 central herniation nucleus pulposus.

Operative Procedures:

1. C5-6 anterior discectomy and bilateral foraminotomy.
2. C6-7 anterior discectomy and bilateral foraminotomy.
3. C5-6 arthrodesis with PEEK cage and local autograft.
4. C6-7 arthrodesis with PEEK cage and local autograft.
5. C5,C6,C7 anterior plating.

### **ADJUDICATION**

#### **A. Compensability**

The Claimant has asserted that he in addition to his right bicep and cheek injuries, he also sustained a neck injury during his work-related injury of August 10, 2022. In the alternative, the Claimant sustained a compensable consequence injury to his neck as a result of his August 10, 2022 injury.

However, the Respondents contends that the Claimant did not suffer a cervical spine injury in August 10, 2022. It is Respondents' position the Claimant's need for medical treatment, if any, is associated with that body part is related to preexisting and underlying problems and not an acute injury.

The burden of proving a specific incident compensable injury is the employee's and must be proved by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If the Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

"Compensable injury" means an accidental injury causing 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. Ark. Code Ann. § 11-9-102(4)(A)(i). 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).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant proved by a preponderance of the credible evidence that he sustained a work-related injury to his neck on August 10, 2022. More specifically, I cannot find that there is the existence of a causal connection between the Claimant's August 10, 2022, employment related incident/activities, and the medically documented objective findings for his neck injury as demonstrated the MRI of his neck following his compensable fall at work.

In the case at bar, the Claimant worked for Reliable Poultry since 2017. The Claimant worked initially as warehouse technician. Subsequently, the Claimant transitioned over into the position of a service technician. His most recent employment duties entailed the duties of servicing chicken houses. The Claimant has an extensive prior history of back problems. He has had four prior back surgeries that resulted in him been on Social Security Disability benefits prior to going

to work at Reliable. His testimony demonstrates that successfully off Social Security Disability and went to work for Reliable without any medical problems or limitations. The Claimant testified that at the time of his injury on August 10, 2022, he did not have any physical limitations or restrictions.

On the day of his accidental fall at work on August 10, 2023, the Claimant working with a coworker at a chicken at McNeil, Arkansas. The Claimant was on an eight-foot ladder working on the ceiling of a chicken trying to remove a vent from the ceiling when the vent hit him on the side of his face causing him to fall to the ground. The Claimant sustained injuries to his bicep and had a cut on the cheek. He was treated at a local hospital emergency room and discharged home.

Although the Claimant suffered from significant problems with his low back and had undergone four surgeries to his low back, the Claimant had no prior problems or injuries to his neck. The Claimant's testimony demonstrates that he suffered problems with his neck following his compensable work fall. He readily admitted that there is no documented complaints of a neck problem until almost six weeks after his fall. However, the Claimant credibly testified that he complained to his Dr. Caldwell that he had problems with his head down to neck. I found the Claimant to be credible and forthcoming with his account of having reported these problems to Dr. Caldwell. There is no evidence whatsoever demonstrating that the Claimant suffering prior complaints of any difficulties to his neck. His testimony demonstrates that he was able to perform his job duties with complaints of any neck problems prior to his work-related fall of August 10, 2022. I am also persuaded that the Claimant's fall is consistent with an injury to his neck. Here, the Claimant was hit on the side of the face with a vent weighing more than 50 pounds. The Claimant fell from an 8-foot ladder to the ground of a chicken house.

I find that the evidence preponderates that the Claimant's neck injury resulted from the August 10, 2022, fall.

Here, the medical evidence presented by the Claimant from his cervical MRI of May 31, 2023 and the subsequent MRI August 24, 2023 contains pre-existing degenerative changes. However, it is well-established in workers' compensation law that a pre-existing condition may be aggravated by a work-related and be found compensable as a new injury. I find that to be the case here. I reached this conclusion based on the following probative evidence found in the expert opinion of the Claimant's treating physician, Dr. Calhoun. I have attached significant weight to his expert opinion. Specifically, on August 28, 2023, Dr. Calhoun sent a letter to appeal denial of his request for the Claimant to undergo a C5-6 and C6-7 anterior cervical discectomy and fusion. He opined that the Claimant had worsening symptoms, and he felt the Claimant suffered a central cord injury during his fall. This was based on numbness and clumsiness in both hands. Dr. Calhoun stated that the Claimant's symptom had been misdiagnosed as carpal tunnel syndrome. He also noted that the Claimant's repeat MRI showed significant compression of the spinal cord at C5-6 and C6-7. Per Dr. Calhoun, even though the findings of the disc herniation at C5-6 and C6-7 could be viewed as pre-existing, the fall caused the injury to his spinal cord with the development of the of the central cord syndrome.

Considering the expert opinion of the Dr. Calhoun, the Claimant's treating surgeon, the mechanism of the Claimant's fall, no prior problems or complaints of the neck or any type of prior injuries or treatment for his neck, and because his pre-existing degenerative disc disease was asymptomatic, and there being no subsequent injuries to his work related incident, I find that on August 10, 2022, the Claimant sustained a spinal cord injury to his neck with the development of



central cord syndrome, which resulted in his need for surgical intervention to his neck as performed by Dr. Calhoun on November 10, 2023.

I realize that Dr. Long and Martinez opined to the contrary, I have assigned minimal weight to these opinions considering all of the foregoing evidence to the contrary and because they did not physically evaluate or examine the Claimant. Hence, I find that the Claimant has met his burden of proof of all the necessary requirements for an injury to his neck on August 10, 2022.

B. 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). The Claimant bears the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005).

The Claimant proved that the treatment of record that he received for his August 10, 2022 neck injury was reasonable and necessary for his neck injury, including the surgery by Dr. Calhoun. The Claimant failed to improve after significant conservative for his neck symptoms and related problems. All of this treatment and the diagnostic tests were reasonable and necessary to diagnose and treat the Claimant compensable neck injury.

C. Temporary Total Disability

Here, the Claimant contends that he is entitled to temporary total disability benefits for his neck injury from November 10, until November 29, 2023.

An injured employee for an unscheduled injury is entitled to receive temporary total disability compensation during the time that he is within his healing period and totally incapacitated from earning wages. Arkansas State Highway and Transportation Department v.

Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

The Claimant proved his entitlement to temporary total disability for his compensable cervical spine injury of August 10, 2022, from November 10, 2023 until November 29, 2023. The Claimant underwent neck surgery on November 10, 2023 and returned to work on November 29, 2023 before his healing period needed because he had bills pay. Hence, the evidence shows that the Claimant remained in his healing and totally incapacitated from earning his regular wages from November 10, 2023 through November 29, 2023 so as to prove his entitled to temporary total disability for that time period. Therefore, I find that the Claimant proved his entitlement to temporary total disability from November 10, 2023 through November 29, 2023.

D. Attorney's Fee

The Respondents have stipulated that they controverted this claim for a neck injury in its Therefore, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded to the Claimant, pursuant to Ark. Code Ann. § 11-9-715.

**AWARD**

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

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. § 11-9-809.

Per Ark. Code Ann. §11-9-715, the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Act.

**IT IS SO ORDERED.**

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