

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
AWCC FILE No H207258**

<b>ANTWAUN R. PERKINS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CENTRAL MALONEY, INC., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR</b>	<b>RESPONDENT</b>

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**OPINION FILED 6 AUGUST 2024**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 9 May 2024 in Pine Bluff, Arkansas.

Tolley & Brooks, Ms. Evelyn Brooks, for the claimant.

Friday, Eldridge & Clark, Mr. Guy Wade, for the respondents.

**I. STATEMENT OF THE CASE**

The above-captioned case was heard on 9 May 2024 in Pine Bluff, Arkansas. The parties participated in a pre-hearing telephone conference on 27 February 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on 5 March 2024. This claim involves a right shoulder injury that was accepted as compensable.

The Order stated the ISSUES TO BE LITIGATED:

1. Whether the claimant is entitled to additional medical benefits for right shoulder surgery and other past treatment.
2. Whether the claimant is entitled to temporary total disability (TTD) benefits for the dates between his last date worked and return to work after right shoulder surgery.
3. Whether the claimant is entitled to a controverted attorney's fee.

All other issues were reserved.

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The parties' CONTENTIONS, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

Per the claimant's CONTENTIONS, he is entitled to medical benefits associated with surgery on his right shoulder and TTD benefits for the time off work for and around that surgery.

Per the respondents' CONTENTIONS, the claimant was treated for an accepted injury and released on 5 December 2022 at maximum medical improvement (MMI), full duty without restrictions. The claimant later sought unauthorized treatment for an injury not related to work. That later treatment was for a degenerative condition that did not exist at the time of the testing or treatment for the compensable injury.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on or about 27 September 2022, when the claimant sustained a compensable and accepted right shoulder injury.
3. The claimant earned an average weekly wage at the time relevant to this claim that entitled him to a TTD rate of \$519 per week and a Permanent Partial Disability (PPD) rate of \$389 per week.

The claimant was the sole WITNESS to testify at the hearing. The transcript reflects that Mr. Michael Bryant was sworn as a witness for the respondents at the beginning of the proceedings, but he was not called to testify.

The EVIDENCE presented consisted of the testimony along with Commission's Exhibit No 1 (the 5 March 2024 Prehearing Order), Claimant's Exhibit No 1 (43 pages of medical records), and Respondents' Exhibit No 1 (45 pages of medical records).

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits related to his right shoulder surgery.
4. The claimant failed to prove by a preponderance of the evidence that he is entitled to TTD benefits for the time between his date last worked and return to work after right shoulder surgery.
5. The claimant failed to prove by a preponderance of the evidence that he is entitled to an attorney's fee.

## III. HEARING TESTIMONY & MEDICAL EVIDENCE

### *Claimant Antwaun R. Perkins*

The claimant began working for Respondent Central Moloney, Inc. on a permanent basis in December of 2019, after starting there sometime earlier as a temporary employee. He works as a coil winder, producing components for electrical transformers.

Mr. Perkins testified that in the evening of 27 September 2022, he was moving a coil up onto a mandrel when it started to slip from the machine. When he caught it, he felt a pain in his right shoulder. He reported his injury to his supervisor Mr. Michael Bryant, telling him that he felt a "pull" in his shoulder. [TR at 16.] The respondents subsequently connected the claimant with care for his injury from Dr. Charles Pearce. X-ray and MRI imaging was performed, and the claimant was ordered to participate in physical therapy.

The claimant testified that he was placed on light-duty restrictions during the six weeks or so that he participated in physical therapy. Upon completion of physical therapy, he returned to work without any restrictions. The claimant stated that his shoulder was not

“a hundred percent” and that he experienced “a little pain,” but that he went on working without complaint. [TR at 19.]

Then, the following September, the claimant explained, “One night when I raised the hammer to hit [a coil], that’s when it – I had excruciating pain in that shoulder and it was just a sharp pain. I almost dropped the hammer, and I went to the supervisor’s office and told him again. I said, ‘The shoulder’s giving me problems again.’” *Id.* The claimant was returned to Dr. Pearce’s care; he stated that Dr. Pearce declined to offer further treatment after ordering additional imaging.

The claimant testified that he remained off work and sought unauthorized care from his physician Dr. Timmothy Reece, who ordered additional imaging and then referred him on to see Drs. Roy Burrell and Gordon Birk. During his course of treatment, the claimant received at least one injection before undergoing shoulder surgery. He utilized Family Medical Leave Act time while out for his treatments until returning to work on the 15<sup>th</sup> or 16<sup>th</sup> of January 2024. Since returning to work, his shoulder has been “a lot better, a lot better” and “not hurting nearly as bad.” [TR at 25.]

According to the claimant, his shoulder pain was the same in 2023 as it was in 2022:

Q: And was that the same location or a different location that was hurting when you lifted the hammer?

A: Same location.

Q: Has the pain been in the same area from the first coil injury in September of 2022?

A: Yes.

Q: And the joint, could you describe how it felt, how it bothered you?

A: I could raise my arm and I could feel like a ship [sic] pain shoot through it or certain kind of movements, I could feel the pain.

Q: Before the accident in September of 2022, had you had any trouble with that right shoulder?

A: None.

Q: And between the time of that accident with the coil, and then, lifting the hammer in September of 2023, had you had any other injuries to that right shoulder?

A: No, I hadn’t.

[TR at 26.]

On cross examination, the claimant confirmed that he reported his injury in 2022 to his supervisor and that he returned to his shift after they completed some paperwork. He confirmed being directed to treatment after experiencing some trouble with his shoulder the next day. He recalled Dr. Pearce ordering imaging and sending him for physical therapy. The claimant acknowledged that Dr. Pearce found him to be at MMI on 5 December 2022, returned him to work without restrictions, and assigned him a zero percent impairment rating. [TR at 32-33.]

The claimant testified that in September of 2023, he was seen by Dr. Pearce again after reporting an injury to his supervisor (again). He said that Dr. Pearce examined him, ordered X-rays of his neck and both shoulders, and then stopped treating him (after the respondents denied his claims for additional treatment). The claimant then sought unauthorized treatment with Dr. Reece and, eventually, other providers using his employer's group insurance plan. He recalled undergoing an arthroscopic shoulder procedure in November of 2023 before Dr. Birk returned him to work without restrictions in the middle of January 2024. While he recalled undergoing MRI scans of his right shoulder in October of 2022 and then again in October of 2023, the claimant said that he had not examined those reports.

Having testified earlier that he still experienced pain after his full-duty release in 2022, the claimant acknowledged that he did not make any complaints of shoulder pain or trouble working in the time between his first return to work and then reporting another injury in September of 2023.

Q: Okay. During the ten months that you worked between your release in December of 2022, until the complaints in September of 2023, did you ever report to Mr. Bryant or to the plant nurse or anybody else that you were having problems with your right shoulder?

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A: No, I didn't, because I thought that it – that it—it wasn't worth—I mean, bad enough to complain about it.

Q: So you didn't tell anybody, didn't report anything, and you continued to do everything that was required of your job during that time?

A: Right.

[TR at 39-40.] Mr. Perkins concluded his testimony by confirming that he did not consider the pain he felt in 2023 as a new injury.

*Medical Records*

The claimant first sought treatment the day after his 27 September 2022 shoulder injury. His X-rays were reported as normal. He was assessed with a shoulder strain, prescribed Naproxen for pain, and given no-lifting restrictions. [Cl. Ex. № 1 at 8-9.]

At his 3 October 2022 return appointment, the claimant reported little improvement. He was referred to physical therapy three times per week, for the next two weeks. Work restrictions remained in place, and a follow-up was scheduled for three weeks out. [Cl. Ex. № 1 at 15-16.]

The claimant followed up on 18 October 2022 after completing his ordered physical therapy; he stated that his range of motion was improved, but that his pain was worse. His work restrictions remained while an MRI was ordered. [Cl. Ex. № 1 at 21-22.]

The MRI report from 24 October 2022 states:

CONCLUSION:

1. Moderate degenerative changes of the acromioclavicular joint. There is also capsular edema, which could be reactive/degenerative in nature or indicative of a superimposed low-grade capsular injury. AC alignment is maintained.

2. Mild tendinopathy of the supraspinatus and infraspinatus tendons without discrete tear.

[Cl. Ex. № 1 at 23.]

On 31 October 2022, the claimant saw Dr. Pearce at UAMS. The MRI report was reviewed, and the clinic notes from that visit include an X-ray report stating, "FINDINGS

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AND IMPRESSION: Moderate AC Joint degeneration is seen.” [Cl. Ex. № 1 at 24.] He was prescribed a Medrol Dosepak and diclofenac. His work restrictions were continued, with the note also stating that, “[w]e feel that his shoulder pain is related to an acute injury related to the on-the-job injury as described above.” He was expected to return in a month’s time. [Resp. Ex. № 1 at 25-26.]

The claimant returned to care on 5 December 2022, and Dr. Pearce charted:

IMPRESSION: Essentially resolved right shoulder pain [with] possible underlying mild AC joint arthrosis.

PLAN: 1. The patient has reached maximal medical improvement as of today’s date December 5, 2022.  
2. The patient can return to regular work duties without restriction.  
3. We will provide the patient with Thera-Bands for home use.  
4. Continue home stretching daily.  
5. The patient has sustained a 0% permanent impairment set forth by the American Medical Association, 4<sup>th</sup> Edition.  
6. Recheck as needed.

[Resp. Ex. № 1 at 30.]

After more than nine months without incident, the claimant reported pain to his supervisor again in September of 2023. The claimant presented again to Dr. Pearce. The note from that visit states:

INJURY DATE: Original injury date was September 27, 2022.

HPI: The patient was last seen by me on December 5, 2022 and released from care. He had essentially resolved symptoms. He tells me that he has had some continued intermittent trouble and points to his trapezius as the area of concern. No new injury. He does a lot [of] lifting at work. He works at Central Maloney. He does not have referred pain. He has been taking some ibuprofen as needed for pain.

RIGHT SHOULDER: Appears Normal. Mild generalized tenderness in his trapezius. Full glenohumeral motion. Good strength all planes. No instability.

IMAGING: X-rays of his right shoulder ordered and interpreted by me show no bony abnormality. X-rays of his cervical spine show... some narrowing at C5-C6.

IMPRESSION: Right shoulder girdle pain possibly cervical in nature.

- PLAN:
1. The patient is not at maximal medical improvement.
  2. Either MRI scan cervical spine or referral to 1 of our spine surgeons for further evaluation and care.
  3. Continue regular work duties.
  4. Recheck with me as needed.
  5. No change in impairment rating as it pertains to the shoulder.

[Cl. Ex. № 1 at 30.]

According to the claimant's testimony, he then began seeking unauthorized treatment and saw Dr. Roy Burrell on 10 October 2023, after undergoing an MRI scan on 3 October 2023. The note from the encounter with Dr. Burrell states that the claimant sought earlier care for a 2022 injury and that "it was not completely debilitating and [he returned to work] still having some pain in the shoulder. Patient states now it is back." The radiology impression from that visit included, "Degenerative change AC joint. Degenerative signal superior labrum. This is suspicious for SLAP tear. Lack of joint distention on this evaluation. No paralabral cyst. Mild tendinosis infraspinatus." He was referred for a possible labral tear repair. [Cl. Ex. № 1 at 34.]

The MRI report showed the following findings:

AC Joint: There is mild degenerative spurring. Moderate soft tissue thickening and mild reactive marrow edema. No joint effusion. No fluid seen within subacromial/subdeltoid bursa.

The biceps tendon is intact. No joint distention. Degenerative signal superior labrum is suspicious for SLAP tear. Consider further workup with arthrogram as clinically warranted. No paralabral cyst.

The rotator cuff is intact. Mild tendinosis infraspinatus. No muscle edema or atrophy. No marrow abnormality.

IMPRESSION: Degenerative change AC joint. Degenerative signal superior labrum. This is suspicious for SLAP tear. Lack of joint distention on this evaluation. No paralabral cyst.

Mild tendinosis infraspinatus.

[Cl. Ex. № 1 at 32.]



The claimant then saw Dr. Reece on 16 October 2023, who noted that the claimant had received an injection in his shoulder, but that it had only helped him temporarily. The diagnosis plan states, “His right shoulder MRI shows AC joint DJD [degenerative joint disease] and findings consistent with a labral tear. I have discussed options with him this is something this been ongoing now for quite some time he wants to go ahead and proceed with right shoulder arthroscopy possible debridement of the versus repair of the labrum and then possible AC joint DCE.” [Cl. Ex. № 1 at 37.] An operative report dated 9 November 2023 records that some fraying around the labrum was addressed, but no tears were observed. [Cl. Ex. № 1 at 39-40.]

A clinic note dated 17 January 2024 provided for the claimant’s return to work without restrictions on 16 January 2024. [Cl. Ex. № 1 at 43.]

#### **IV. ADJUDICATION**

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

##### **A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO ADDITIONAL MEDICAL BENEFITS.**

The claimant is not entitled to additional medical benefits for his right shoulder surgery. In September of 2022, he sustained a compensable workplace injury that was accepted by the respondents, who began providing benefits accordingly. He was treated for a right shoulder strain, with imaging revealing some tendinopathy and moderate degenerative changes. The claimant remained off work until December of 2023, when Dr. Pearce released him at MMI to full duty, without restrictions, and without any permanent

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impairment rating. The claimant then continued working without any report of difficulty until September of 2023, when he informed his supervisor that his shoulder was suddenly “giving [him] problems again.”

Upon examination by Dr. Pearce on 18 September 2023, the claimant was found to have some tenderness, but his shoulder appeared normal, with good strength and no instability. Dr. Pearce reviewed updated imaging and thought that the pain could be related to some observed cervical disc narrowing. He continued the claimant’s full-duty work status without restrictions and indicated no change in the assigned (zero percent) impairment rating for the claimant’s shoulder. A referral for pain generating from a possible spine issue was recommended.

Nearly a month later, on 10 October 2023, the claimant presented to another provider for unauthorized care, where he reported several months of pain. He provided an MRI report from the previous week that showed some tendinosis and degenerative changes. The radiologist was suspicious of a possible SLAP tear. The physician referred him to a practice partner for further evaluation of the possible SLAP tear. During the eventual surgery, it was found that the claimant, in fact, had not suffered a tear, and the surgeon only addressed the degenerative issues he observed during the procedure.

At issue is whether the claimant is entitled to benefits for the shoulder treatment received after his 18 September 2023 visit to Dr. Pearce. An employer is required to provide treatment that may be reasonably necessary in connection with a compensable injury. ACA § 11-9-508(a). Reasonable and necessary medical services may include those necessary to diagnose a compensable injury, to reduce or alleviate symptoms, to maintain healing, or to prevent further deterioration of damage. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91

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Ark. App. 260, 209 S.W. 3d 445 (2005). In so doing, he must also establish that the treatment is causally related to his stipulated compensable right shoulder injury of September 2022. *Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 WL 5592602.

I find Dr. Pearce's December 2022 opinion placing the claimant at MMI at that time to be credible. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002) (the Commission may accept or reject a medical opinion and determine its probative value). I further credit his findings in September of 2023, when he found the claimant's shoulder to appear normal, continued his full-duty work without restrictions, and referred him for possible investigation of cervical issues creating his pain. Dr. Pearce did not assess a new shoulder injury or believe additional treatment was necessary, as related to the compensable shoulder injury. Degenerative changes were consistent across the 2022 and 2023 MRI findings, and the surgery that claimant ultimately underwent did not reveal a tear that he could relate back to his compensable injury.

Accordingly, I do not find the course of treatment that the claimant undertook addressing the degenerative issues in his shoulder to be reasonably necessary treatment related to his compensable injury. His claim for medical benefits is, therefore, denied.

**B. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO TTD BENEFITS RELATED TO HIS TIME OFF FOR SHOULDER SURGERY.**

The next issue in this litigation is whether the claimant is entitled to additional TTD benefits associated with his time off from work for unauthorized treatment of his shoulder. A claimant must prove his entitlement to TTD benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). For an unscheduled injury such as the one to the claimant's

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shoulder injury, temporary total disability (TTD) is a period within the healing period in which the employee suffers a total incapacity to earn any wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). A “healing period” is “that period for healing of an injury resulting from an accident.” Ark. Code Ann. § 11-9-102(12). The healing period ends when the underlying condition has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Partker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Whether a healing period has ended is a question of fact for the Commission. *Dallas County Hospital v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

Here, the claimant presented for reevaluation nine months after his release at MMI without restrictions. I credit Dr. Pearce’s opinion that the claimant’s healing period ended in December of 2023. The claimant failed to provide a preponderance of evidence in support of his claim that he either remained in or started a new healing period relating to his compensable shoulder injury after December of 2023. He is not entitled to benefits associated with his time off from work for treatment of his degenerative shoulder condition. His claim for TTD benefits is, therefore, denied.

C. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO AN ATTORNEY’S FEE.

Because the claimant failed to meet his burden on the issue above, he is not entitled to an attorney’s fee.

**V. ORDER**

Consistent with the Findings of Fact and Conclusions of Law stated above, this claim for additional benefits is denied and dismissed.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE