

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904931

PORTER SIMS, EMPLOYEE	CLAIMANT
BRYANT SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WCT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 19, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE DANIEL E. WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed October 24, 2023. The administrative law judge found that the claimant failed to prove he was entitled to additional temporary total disability benefits or additional medical treatment. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. We find that the claimant proved additional medical treatment as recommended by Dr. Smith was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

**I. HISTORY**

Porter Sims, now age 69, testified that he became employed with the respondents, Bryant School District, in about September 2005. The respondents' attorney examined the claimant at a deposition of record:

Q. Describe for me the work that you were doing for the Bryant School District.

A. Installing and maintaining the HVAC equipment and other jobs as needed.

Q. What would "other jobs as needed" entail?

A. Moving furniture, digging ditches, building fence, remodeling rooms, painting. Could be about anything you could think of, really.

The parties stipulated that the employment relationship existed at all pertinent times, including December 20, 2018. The respondents' attorney examined the claimant:

Q. What happened in December 2018?

A. I tripped and fell in the hallway of Hurricane Creek Elementary School....

Q. And how did you land?

A. On my shoulder.

The parties stipulated that the claimant "sustained an admittedly compensable injury to his left shoulder" on December 20, 2018 "for which the respondents paid medical and indemnity benefits."

According to the record, Dr. P. Allan Smith performed surgery on July 24, 2019: "1. Left shoulder arthroscopy with rotator cuff repair. 2. Biceps tenodesis with labral debridement. 3. Subacromial

decompression.” The post-operative diagnosis was “1. Left rotator cuff tear. 2. Impingement. 3. Biceps tendon and labral tear.”

Dr. Smith reported on February 19, 2020, “Porter Simms (sic) underwent a left rotator cuff repair with biceps tenodesis on July 24, 2019. They reached MMI on January 28, 2020. Based on the guides to the evaluation of permanent impairment, fourth edition, they sustained a 4% upper extremity impairment or a 2% whole person impairment[.]” The claimant testified that he eventually returned to full-duty work following surgery performed by Dr. P. Allan Smith, but that he continued to suffer with left shoulder pain.

Dr. Shahryar Ahmadi performed a second surgery on December 14, 2020: “Arthroscopy, left shoulder, surgical debridement, extensive.” The pre- and post-operative diagnosis was “1. Left shoulder rotator cuff tear, low-grade articular-sided tear of the supra and infraspinatus and subscapularis. 2. Internal derangement of the left shoulder. 3. Left shoulder bursitis.”

Dr. Ahmadi noted on March 23, 2021:

Is status post left shoulder arthroscopy and debridement....  
Porter Ray Sims is a 65 y.o. Underwent above procedure on  
December 14, 2020. Patient finished a course of physical  
therapy. Currently does not have any significant pain....  
In summary this is 65-year-old gentleman who is [more] than  
3 months out from left shoulder arthroscopy and debridement.  
He is doing very well and completely satisfied result of  
operation. Impairment rating was done today. At this point he

can go back to normal activity without any restriction. We are going to follow the patient as needed basis.

Dr. Ahmadi assigned the claimant a 4% whole-person impairment rating on March 23, 2021. Dr. Ahmadi also stated on March 23, 2021, "It is my medical opinion that Mr. Porter Sims may return to work without restrictions." The claimant testified that "my arm seemed to feel pretty good" following surgery by Dr. Ahmadi. The claimant testified, however, that he again began to feel pain in his left shoulder.

An MRI left shoulder arthrogram was taken on December 23, 2021 with the following impression:

1. Circumferential labral tearing.
2. Focal moderate grade partial-thickness articular sided tear involving the anterior fibers of the supraspinatus tendon which is in close proximity to the tendon anchor within the humeral head. This finding is suggestive for a residual versus recurrent tendon tear. Mild supraspinatus tendinopathy.
3. Contrast is present within both the glenohumeral joint capsule and the subacromial-subdeltoid bursa without a distinguishable full thickness tendon defect.
4. Moderate subscapularis tendinopathy.
5. Glenohumeral cartilage loss.

Dr. Joel N. Smith performed surgery on March 10, 2022: "1. Left shoulder arthroscopic repair involving the subscapularis. 2. Left shoulder mini open biceps tenodesis. 3. Left shoulder arthroscopy with chondroplasty of the humeral head, glenoid and labral debridement." The post-operative diagnosis was "Left shoulder pain with rotator cuff tear, biceps tendinitis, chondromalacia."

The respondents' attorney examined the claimant:

Q. And then Dr. Joel Smith did surgery and he kept you off work?

A. Yes, ma'am.

Q. Did you receive disability checks, from Workers' Comp, while you were off work?

A. Yes, ma'am. I received checks.

Q. All right. So, how was your shoulder after this third surgery?

A. It hurt. But they kept telling me that's expected after surgeries and I figured that, too. That was my third one.

Q. Where was the pain after this third surgery?

A. Same area. On top of my left shoulder, like it is right now.

On March 15, 2022, Kelly Payer, LPN informed "Misty," "Please excuse Mr. Sims from work March 10, 2022 until his postoperative appointment March 22, 2022. An updated work note will be given at that time." The record indicates that Kelly Payer was corresponding with Misty Thompson, a Claims Supervisor for the respondent-carrier.

The claimant testified that he retired from employment with the Bryant School District on or about June 30, 2022.

The record includes a series of Daily Notes from Athletico Physical Therapy beginning August 8, 2022. It was assessed at Athletico Physical Therapy on August 8, 2022, "Held on functional IR stretch in attempts to decrease the client's increased c/o burning that follow. The client continued to have some burning pain in the arm with table exercises."

Dr. Smith's impression on August 16, 2022 included "1. Shoulder Pain, Left." Dr. Smith signed a note indicating, "The patient was last

evaluated on 08/16/2022....Mr. Sims is to remain off work until seen back in clinic in 6 weeks.”

Kelly Payer sent the following communication on August 31, 2022:

RTW  
To whom it may concern,  
Mr. Sims may return to work at a sedentary position only with no use of the left arm.

The record indicates that Dr. Joel Smith’s signature was attached to Kelly Payer’s August 31, 2022 communication.

Misty Thompson sent an e-mail to Leslie Nichols, a Bookkeeper with the respondent-employer, on August 31, 2022: “Attached is an updated work release on Mr. Sims. Light duty – sedentary position only with no use of the left arm. If he remained employed by the District, would light duty be available within these restrictions?” Terry Harper, the respondent-employer’s Maintenance Director, informed Leslie Nichols on August 31, 2022, “Yes if he would be allowed to be put in light duty.” Leslie Nichols then corresponded with Misty Thompson on August 31, 2022: “Good afternoon, please see the response from Terry Harper regarding Porter Sims. Accommodations would be made for him to return to work if he was still employed.” Misty Thompson then wrote, “Got it! I will issue his final TTD check tomorrow, \$664.00 for the dates of 08/24-08/31/22.”

The respondents’ attorney examined the claimant:

Q. Did [Dr. Smith] ever send you back to work?

A. He – on August Misty called me and told me that Dr. Smith said I could go back to work on light duty, with no use of my left arm. But she didn't add that. That was – she just said I could go back to work on light duty. I found out the no use the left arm was in there. But she didn't tell me that.

Q. How'd you find that out?

A. From my doctor.

Q. So what did you do when she told you that you were released to light duty, back in August?

A. I said that was fine. I had no arguments.

Q. Had you already retired, at that point?

A. Yes, ma'am. I retired in June, she called me in August.

The claimant's attorney examined Terry Harper:

Q. Mr. Harper, what is your job title within the Bryant School District?

A. I'm our Facilities Maintenance Director.

Q. All right. And as the Maintenance Director were you the supervisor of Mr. Sims?

A. No, sir....I didn't take the job until July 1<sup>st</sup> of last year....I never supervised Buddy.

Q. Okay. So you don't know Mr. Sims?

A. I know him.

Q. Okay. How do you know him?

A. Just because we're in the same building. I was in transportation at the time. I was one of our administrators of transportation....

Q. Was he employed by the District on August 31<sup>st</sup> of 2022?

A. That would be an HR question. I'm not sure at that point and time....

Q. Did you answer the question?

A. From Leslie Nichols, I did.

Q. And what was your answer?

A. I said [as read], "Yes, if he would be allowed to be put on light duty."

Q. Was there a specific job mentioned?

A. That was it....

Q. Any details at all about a job that may or may not have been communicated to my client?

A. Nope, not – not by me. Our practice is I have several on light duty now that are sedentary from six to eight hours a day, but I bring them back in just so they don't have to burn their vacation time or their sick time. So I accommodate – I've never said no to anyone.

Q. Are those people employed by the Bryant School District?

A. Yes.

The respondents' attorney cross-examined Terry Harper:

Q. Do you know of any reason why Porter Sims would not have been allowed to return to work?

A. Not to my knowledge, no.

Q. And the testimony is going to come, according to Mr. Sims' attorney, that Mr. Sims had retired. Do you know of any reason why he would not have been rehired on light duty restrictions?

A. Not to my knowledge, no.

The claimant followed up for treatment at Athletico Physical Therapy beginning September 7, 2022. It was noted at Athletico on September 15, 2022, "The client reports that he rolled over in bed 3 days ago when he felt a pop in his shoulder, resulting in increased pain. The client notes that his pain eventually dissipated and now he feels his normal shoulder burn."

Dr. Joel N. Smith reported on September 27, 2022:

This is a 67 year old male who is being seen for a chief complaint of follow up shoulder pain, involving the left shoulder. This occurred in the context of an injury at work and has been treated with activity modification and physical therapy. The left shoulder pain occurs when sleeping on shoulder, occurs at night, constantly occurs, and occurs with activity and associated with still complaints of pain. Has pain with PT, pain with sleeping, and was helping his son change a carburetor on Saturday, holding a wrench, and felt a pop – pain has increased since then. The left shoulder pain 4 out of 10 currently. He has the following pertinent history: prior



rotator cuff repair. He reports intermittent functional limitations and difficulty lifting objects/weight. Since the last visit, his condition is stable....

Dr. Smith's impression included "1. Shoulder Pain, left....Plan: Order MRI – shoulder." Dr. Smith stated, "Mr. Sims is to remain off work until seen back in clinic for MRI result follow up."

Misty Thompson informed a Workers' Compensation Paralegal on October 17, 2022 that the respondent-carrier would not authorize the MRI recommended by Dr. Smith on September 27, 2022.

An MRI left shoulder arthrogram was taken on November 23, 2022 and was compared to the MRI taken December 23, 2021, with the following impression:

1. Prior rotator cuff repair with near full-thickness midsubstance subscapularis tear and deep articular sided and interstitial tearing superiorly and inferiorly at the subscapularis tendon. There are intact bursal sided fibers at the anchor superiorly at the lesser tuberosity.
2. Anchor superiorly in the humeral head with fibers of the supraspinatus tendon maintaining continuity to the anchor. There is, however, mild articular sided fraying/thinning of the supraspinatus tendon with articular sided/interstitial tearing propagating across the conjoined portion/anterior infraspinatus tendon just proximal to the footplate tear. No full-thickness supraspinatus or infraspinatus tear.
3. Circumferential labral tearing/detachment.
4. Prior biceps tenodesis.
5. Defect in the joint capsule at the superior margin of the subscapularis tendon with gadolinium extending from the joint space into the subacromial/subdeltoid bursa.
6. Moderate acromioclavicular joint arthritis. Mild glenohumeral arthritis.

Dr. Theodore Hronas corresponded with the respondents' attorney on March 15, 2023:

At your request, the following films and reports were reviewed:  
MRI arthrogram of the left shoulder, 12/23/2021.  
Operative note, 03/10/22. Joel N. Smith, M.D.  
MRI arthrogram of the left shoulder, 11/23/2022.

The clinical history is of a work-related accidental injury described as a fall injury resulting in a torn left rotator cuff. Rotator cuff repair was performed in 2019, 2020, and 2022. On September 24, 2022, his left shoulder popped while changing a carburetor. Two MRI arthrograms of the left shoulder are presented for review. The studies are of good quality and sufficient for diagnostic purposes. I am a board-certified radiologist with additional training in body and musculoskeletal MRI and therefore my primary focus will be on the study provided.

The MRI arthrogram of the left shoulder, 12/23/2021, shows susceptibility artifact within the humeral head related to metallic bone anchors secondary to prior rotator cuff tear. There is a small 2 mm region of contrast signal involving the undersurface of the supraspinatus tendon characteristic of a grade II articular surface tear. The infraspinatus and teres minor muscles and tendons are normal. There is abnormal contrast traversing the superior margin of the subscapularis characteristic of a full thickness tear creating a defect within the adjacent rotator cuff interval, with contrast from the joint space communicating directly with the subacromial/subdeltoid bursa. There is glenohumeral joint arthritis. The long head of the biceps tendon is not seen within the bicipital groove.

Following the MRI arthrogram, further surgery was performed, 03/10/2022, which included arthroscopic repair of the subscapularis, mini open biceps tenodesis, and humeral head chondroplasty with glenoid and labral debridement.

An MRI arthrogram of the left shoulder, 12/23/2022, was performed approximately nine months after the prior surgical intervention and three months after the injury that occurred on

09/24/2022. The exam shows susceptibility artifact related to bone anchors used in repair of the supraspinatus and subscapularis tendons. A previously seen small articular surface tear of the supraspinatus has resolved. There is an extensive high grade partial articular surface tear of the midsubstance of the subscapularis tendon with abnormal contrast occupying the rotator interval characteristic of complete tear of the superior glenohumeral ligament and rotator interval capsule. The coracohumeral ligament is intact. The infraspinatus and teres minor muscles and tendons are normal. The long head of the biceps tendon is not visualized consistent with tenodesis. There is again circumferential labral tearing and detachment.

In summary, there are findings of a successful repair of a supraspinatus tendon. The most recent MRI arthrogram shows a progressive high grade articular surface tear of the subscapularis tendon with a complete tear of the adjacent rotator interval capsule and likely the superior glenohumeral ligament. There is unchanged circumferential tearing/detachment of the labral and stable mild glenohumeral osteoarthritis.

My findings herein are stated within a reasonable degree of medical certainty.

A pre-hearing order was filed on June 1, 2023. According to the pre-hearing order, the claimant contended, "The claimant contends he is entitled to TTD benefits from August 31, 2022, to a date yet to be determined. The claimant contends that on or about December 20, 2018, he sustained an admittedly compensable injury to his left shoulder when he tripped and fell while working on air conditioning (AC) units. The claimant has undergone three (3) surgeries between July 24, 2019, through March 10, 2022, and has attended multiple visits for conservative treatment. The

claimant contends that on August 16, 2022, he saw Dr. Smith, who continued his off-work status until September 27, 2022. The claimant contends that on August 31, 2022, without a physician visit/examination, and without any consultation from the claimant, he received a random electrically signed note from a licensed practical nurse (LPN) purporting to change his work status to sedentary with no use of his left arm. At this point, the adjuster for the Arkansas School Board Association Workers' Compensation Trust, Ms. Misty Thompson, discontinued PPD benefits to the claimant. Thereafter, on September 27, 2022, the claimant returned for his scheduled visit with Dr. Smith. The claimant contends he informed Dr. Smith he had felt a 'pop' in his left shoulder while holding a wrench which caused an increase in his left shoulder pain. The claimant contends that Dr. Smith, without any reference to the aforementioned LPN's August 31, 2022, note, continued to keep the claimant on off-work status until he returned to Dr. Smith for review of an MRI Dr. Smith ordered at the September 27, 2022, visit. The claimant contends the respondents have failed and/or refused to pay for any medical treatment past September 27, 2022, and have failed to pay him any additional TTD benefits since they terminated them on August 31, 2022. Therefore, the claimant contends he is entitled to payment of the subject and ongoing medical care, as well as

TTD benefits from the date the respondents terminated them on August 31, 2022, through a date yet to be determined.”

The parties stipulated that the respondents “controvert the payment of any additional medical or indemnity benefits other than those they have already paid to date....The respondents contend the claimant has received all benefits to which he is entitled. The claimant was released to sedentary duty as of August 31, 2022, which the respondent-employer, the Bryant School District (the school district) offered and made readily available to the claimant; however, the claimant refused this offer of light duty employment and failed and/or refused to even attempt to return to work. Consequently, the respondents contend the claimant is not entitled to any additional TTD benefits since the employer has work that comports with the claimant’s physical limitations and restrictions, they offered this work and made it available to him, but he failed and/or refused to accept this offer and did not even attempt to perform the light duty job. In addition, the respondents contend that any additional medical treatment the claimant may require after August 31, 2022, is not causally related to his compensable injury, but is the result of a new injury and/or independent intervening cause that occurred as the result of the claimant working at home and lifting the wrench.”

The parties agreed to litigate the following issues:

1. Whether the claimant is entitled to additional medical and TTD benefits.
2. Whether the claimant's attorney is entitled to a controverted fee on these facts.
3. The parties specifically reserve any and all other issues for future litigation and/or determination.

After a hearing, an administrative law judge filed an opinion on October 24, 2023. The administrative law judge found, among other things, that the claimant failed to prove he was entitled to additional temporary total disability benefits after August 31, 2022. The administrative law judge found that the claimant sustained a "new injury or aggravation" in September 2022 and was therefore not entitled to additional medical treatment. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of his injury will permit. *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997). The

determination of when the healing period has ended is a question of fact for the Commission. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

An administrative law judge found in the present matter, “2. The claimant has failed to meet his burden of proof in demonstrating he is entitled to additional TTD benefits after August 31, 2022[.]” The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. The claimant testified that he became employed with the respondents, Bryant School District, in about September 2005. The claimant testified that he installed and maintained HVAC equipment for the claimant, and that he also performed other duties which occasionally required manual labor. The parties stipulated that the claimant sustained a compensable injury to his left shoulder on December 20, 2018. The claimant testified that the injury occurred after he tripped and fell.

The claimant thereafter underwent three left shoulder surgeries performed by Dr. P. Allan Smith, Dr. Ahmadi, and Dr. Joel N. Smith. The claimant’s testimony indicated that he received temporary total disability benefits for times he was off work following surgery. As we have noted, the claimant’s testimony indicated that he retired from employment with the Bryant School District on or about June 30, 2022. The claimant continued

to receive follow-up treatment related to his left shoulder injury. In a note dated August 31, 2022, Dr. Smith appeared to agree that the claimant could “return to work at a sedentary position only with no use of the left arm.” The claimant testified that he was not expressly informed that he could return to work “with no use of the left arm.” Nevertheless, the claimant also testified that he had “no arguments” that he had been released to light duty. Terry Harper, the respondent-employer’s Facilities Maintenance Director, credibly testified that the claimant would have been allowed to return to light-duty work. The claimant did not express an interest in ending his retirement and returning to sedentary or light-duty work for the respondents. Whether or not the claimant remained within a healing period, the Full Commission finds that the claimant was not totally incapacitated from earning wages on or after August 31, 2022. Therefore, the claimant did not prove he was entitled to additional temporary total disability benefits. *See Breshears, supra.*

B. Reasonably Necessary Medical Treatment

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(F) BENEFITS.

(i) When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability as provided in this chapter...

(iii) Under this subdivision (4)(F), benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A



nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

An administrative law judge found in the present matter, “3. The preponderance of the evidence demonstrates the claimant sustained a new injury or aggravation supported by new and objective medical findings in September 2022; therefore, he has failed to meet his burden of proof in demonstrating he is entitled to additional medical treatment at the respondents’ expense after the date they last paid his medical expenses in late September 2022.” The Full Commission does not affirm this finding.

The parties stipulated that the claimant sustained a compensable injury to his left shoulder on December 20, 2018. Dr. Smith performed a left shoulder arthroscopy and rotator cuff repair on July 24, 2019. Dr. Ahmadi performed a left shoulder arthroscopy on December 14, 2020. An MRI left shoulder arthrogram on December 23, 2021 showed, among other things, “1. Circumferential labral tearing.” Dr. Joel Smith performed a left shoulder arthroscopic repair on March 10, 2022. A physical therapist reported on September 15, 2022 that the claimant felt a “pop” in his left shoulder while simply rolling over in bed. The claimant also testified that his left shoulder would occasionally “pop” during aggressive physical therapy treatment.

Dr. Smith reported on September 27, 2022, “Has pain with PT, pain with sleeping, and was helping his son change a carburetor on Saturday, holding a wrench, and felt a pop – pain has increased since then.” It is

within the province of the Workers' Compensation Commission to reconcile conflicting evidence and to determine the true facts. *Georgia-Pacific v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998), citing *Arkansas Dep't of Health v. Williams*, 43 Ark. App. 169, 863 S.W.2d 583 (1993). The evidence does not demonstrate in the present matter that the so-called "wrench incident" in September 2022 was an independent intervening cause which caused or prolonged disability or a need for medical treatment. The question is whether there is a causal connection between the primary injury and subsequent disability. *Guidry v. J&R Eads. Const. Co.*, 11 Ark. App. 219, 669 S.W.2d 483 (1984). If there is such a connection, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. *Id.*

In the present matter, the Full Commission finds that treatment recommended by Dr. Smith on and after September 27, 2022 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The evidence does not demonstrate that the claimant's act of simply handing a wrench to his son on or about September 24, 2022 resulted in an "independent intervening cause" which absolved the respondents of liability for providing reasonably necessary medical treatment. Nor is there any probative evidence demonstrating that the

claimant sustained a “new injury or aggravation” on or about September 24, 2022. In addition, there is no portion of Dr. Hronas’ March 15, 2023 report which can be construed as evidence for a finding that there was an independent intervening cause on or about September 24, 2022. There is no probative evidence demonstrating that the abnormalities shown on the November 23, 2022 MRI were the result of an “independent intervening cause” involving a wrench. Nor was the claimant acting “unreasonably” on or about September 24, 2022.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. We find that additional medical treatment recommended by Dr. Smith on September 27, 2022, including diagnostic testing, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). There are currently no other recommendations for additional medical treatment. The respondents did not prove that there was an “independent intervening cause” in accordance with Ark. Code Ann. §11-9-102(4)(F)(iii)(Repl. 2012). For prevailing in part on appeal, the claimant’s attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved additional medical treatment as recommended by Dr. Smith was reasonably necessary in accordance with Ark. Code Ann. § 11-9-508(a)(Repl. 2012).

Ark. Code Ann. § 11-9-508(a) (Repl. 2012) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." In addition, the claimant must prove a causal connection between the work-related accident and his alleged disability. *Bates v. Frost Logging Co.*, 38 Ark. App. 36, 827 S.W.2d 664 (1992). Plainly stated, the claimant must demonstrate by a preponderance of the evidence there exists a causal relationship between his current condition and his

employment. *Harris Cattle Co. v. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well settled that there is no causal connection when an alleged injury is the result of an independent intervening cause since:

“benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.”

Ark. Code Ann. § 11-9-102(4)(F)(iii).

An aggravation is a new injury resulting from an independent incident. *Farmland Ins. Co. v. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Our appellate courts have consistently held that since an aggravation is a new injury, it must be proved by new objective medical findings of a new injury to a preexisting condition. See *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (2012).

A recurrence is not a new injury but simply another period of incapacitation resulting from a previous injury. *Atkins Nursing Home v. Gray*, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior

injury. *Weldon v. Pierce Bros. Constr.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021).

In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept or reject medical opinions. *Williams v. Ark Dept. of Community Corrections*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation.

Here, the claimant must prove a causal relationship exists between his employment, his 2018 compensable injury, and his condition after the September 2022 carburetor incident. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

On August 31, 2022, Dr. Smith released the claimant with light duty restrictions at that time, stating that the claimant “may return to work at a sedentary position only with no use of his left arm.”

Despite these clear restrictions, the claimant advised Dr. Joel Smith on September 27, 2022, he “was helping his son change a carburetor on Saturday [September 24, 2022], holding a wrench, and felt a pop – pain has increased since then.”

Throughout his treatment, the claimant underwent two MRIs, one prior to the claimant’s 2022 surgery and one in November of 2022, after the carburetor incident. Dr. Theodore Hronas, a board-certified radiologist, reviewed these MRIs and opined that the first MRI conducted on December 23, 2021 revealed:

...susceptibility artifact within the humeral head related to metallic bone anchors secondary to prior rotator cuff tear. There is a small 2 mm region of contrast signal involving the undersurface of the supraspinatus tendon characteristic of a grade II articular surface tear. The infraspinatus and teres minor muscles and tendons are normal. There is abnormal contrast traversing the superior margin of the subscapularis characteristic of a full thickness tear creating a defect within the adjacent rotator cuff interval, with contrast from the joint space communicating directly with the subacromial/subdeltoid bursa. There is glenohumeral joint arthritis. The long head of the biceps tendon is not seen within the bicipital groove.

Dr. Hronas further noted the claimant later underwent an arthroscopic repair of the subscapularis, a mini open biceps tenodesis, and a humeral head chondroplasty with glenoid and labral debridement on March 10, 2022.

The MRI conducted on November 23, 2022, approximately three months after the carburetor incident, showed:

...susceptibility artifact related to bone anchors used in repair to the supraspinatus and subscapularis tendons. A previously seen small articular surface tear of the supraspinatus has resolved. *There is extensive high grade partial articular surface tear of the midsubstance of the subscapularis tendon with abnormal contrast occupying the rotator interval characteristic of complete tear of the superior glenohumeral ligament and rotator interval capsule.* The coracohumeral ligament is intact. The infraspinatus and teres minor muscles and tendons are normal. The long head of the biceps tendon is not visualized consistent with tenodesis. There is again circumferential labral tearing and detachment. (Emphasis added).

Dr. Hronas opined that the November 2022 MRI shows “findings of a successful repair of a supraspinatus tendon,” but that it also shows “a progressive high grade articular surface tear of the subscapularis tendon



with a complete tear of the adjacent rotator interval capsule and likely the superior glenohumeral ligament.” These findings were not present on the December 23, 2021 MRI.

The weight of the credible evidence is clear: There were new objective medical findings resulting from the carburetor-repair incident in September 2022 after the claimant had been released with light duty restrictions.

Although, the claimant tries to downplay this incident by claiming he did not do anything but hold a wrench, it is well settled that a claimant’s testimony is considered disputed as a matter of law. Uncorroborated testimony of an interested party is always considered to be controverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). It is patently clear that while the claimant denied performing any work which might injury or harm his shoulder, his statements are directly contradicted by the weight of the evidence.

There is simply no credible evidence to support the claimant’s own self-serving testimony that he did not sustain a new injury or aggravation while using a wrench to help his son change the carburetor when he felt a pop and pain in his shoulder in September 2022.

After this incident, an MRI revealed “a progressive high grade articular surface tear of the subscapularis tendon with a complete tear of

the adjacent rotator interval capsule and likely the superior glenohumeral ligament,” which was not present in any records or on any test results prior to the September 2022 injury. There is, in fact, no evidence showing that these new findings are the natural and probable result of the compensable injury. These new objective findings provide clear objective medical evidence that this new injury is unrelated to the claimant’s 2019 on-the-job injury.

The weight of the credible evidence shows that the claimant sustained a new injury or aggravation resulting from an independent intervening event in September 2022 that is not causally related to his 2018 left shoulder injury. To find otherwise, in light of the clear MRI findings, would require speculation and conjecture, which cannot substitute for credible evidence to support a claim for benefits pursuant our Rules. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

Accordingly, for the reasons set forth above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner