

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204207

B. J. WALLACE, EMPLOYEE	CLAIMANT
GARLAND COUNTY HABITAT FOR HUMANITY, EMPLOYER	RESPONDENT
BANKERS STANDARD INSURANCE CO./ ESIS, INC., CARRIER/TPA	RESPONDENT

OPINION FILED JULY 18, 2024

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed February 1, 2024. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings.

I. HISTORY

B. J. Wallace, now age 69, testified that he became employed with the respondents, Garland County Habitat for Humanity, in about October

2021. The parties stipulated that the employment relationship existed at all pertinent times. The claimant testified on direct examination:

Q. Tell me what happened on March 8<sup>th</sup>, 2022?

A. Okay. We got a call for a rep – for a washing machine, and so we went out front, they was three of us. They was a green van that was pulled up sideways, and the center doors opened up. And so we got the washing machine in but the guy had a – a lip there about a – oh, probably two inches high so you couldn't push it in. So one of the guys went around and was gettin' into the van to try to lift the washing machine up. Well, the other guy that was helping me on the left side, he dropped his end and so that left me with a washing machine trying to fall out....I'm trying to grab it and hold it and it's tryin' to fall out at the same time, and that's – that's where I got hurt....

Q. Tell me where you hurt.

A. I hurt – it was my shoulders and around in the back part around my scapula area, especially the right scapula, and then the – If you're trying to ask for the pain now or right then, it wouldn't just an onset right then because after – it was afterwards when I went to feelin' a lot of the pain. But it goes across my back over to my left one, but not as bad....

Q. You reported the injury?

A. Yes.

Q. Okay. And your employer eventually sent you to the doctor. Is that correct?

A. Yes.

According to the record, the claimant treated at CHI St. Vincent Hot Springs on March 16, 2022. It was reported at that time, "The problem began on 3/8/2022. 1<sup>st</sup> visit; 3/16/22: helping load a washing machine – wound up with all the weight when loading. Developed pain mostly in the shoulder blade area, burning, stinging and interferes with sleep laying on R

shoulder, tried salopas, no prior shoulder issues.” Physical examination on March 16, 2022 revealed the following:

exam R shoulder, No swelling, bruising or wound present.  
TTP medial to scapula and across sup. trap  
Limited ROM  
Mild crepitus with PROM  
Xray AC jt arthritis  
L shoulder, No swelling, bruising or wound present  
TTP medial to scapula  
Limited ROM  
Mild crepitus with PROM.  
xray with AC jt arthritis  
Cervical Spine;  
No swelling, bruising or wound present.  
No Palpable spasm noted  
TTP  
Limited ROM  
xray: ant. spur of c3.

The diagnosis was “1. Sprain of other specified parts of left shoulder girdle, initial encounter[.] 2. Sprain of other specified parts of right shoulder girdle, initial encounter[.]” Dr. Mark Larey noted, “The cause of this problem is related to work activities.” Dr. Larey recommended conservative treatment.

An x-ray of the claimant’s cervical spine was taken on March 16, 2022 with the impression, “Normal alignment. Disk spaces maintained. Mild anterior spurring C3 and C5.” An x-ray of the claimant’s right shoulder was taken on March 16, 2022 with the findings, “There are no acute fractures or dislocations. What is seen of the scapula appears unremarkable. AC joint arthrosis.” An x-ray of the claimant’s left shoulder

was taken on March 16, 2022 with the findings, "There are no acute fractures or dislocations. What is seen of the scapula appears unremarkable. AC joint arthrosis."

Dr. Larey continued to provide follow-up treatment.

An MRI of the claimant's right shoulder was taken on June 14, 2022:

HISTORY: 67-year-old male with right shoulder pain after an injury at work....

FINDINGS: Moderate hypertrophic changes are present along the acromioclavicular joint. There is a type II acromion. The muscles and tendons comprising the rotator cuff are preserved without tear or tendinopathy. The labrum is preserved. There is mild chondromalacia along the glenohumeral joint. There is no bone marrow edema or subchondral cyst formation. There is no joint effusion. The deltoid muscle is normal in appearance.

IMPRESSION: 1. No evidence of rotator cuff or labral pathology.  
2. Mild chondromalacia along the glenohumeral joint.

An x-ray of the claimant's left shoulder was also taken on June 14, 2022:

HISTORY: 67-year-old male with left shoulder pain after injury at work....

FINDINGS: Moderate hypertrophic changes are present along the acromioclavicular joint. There is a type II acromion. The muscles and tendons comprising the rotator cuff are preserved. The labrum is grossly normal in appearance. There appears to be mild chondromalacia along the glenohumeral joint. No subchondral cysts are seen along the glenohumeral joint. There is no bone marrow edema. There is small subchondral cyst in the greater tuberosity of the humerus. The deltoid muscle is normal in appearance.

IMPRESSION: 1. Hypertrophic changes along the acromioclavicular joint.  
2. No evidence of rotator cuff or labral pathology.

3. Mild chondromalacia along the glenohumeral joint.

The claimant followed up with Dr. Larey on June 16, 2022:

The problem began on 3/8/2022....here for MRI review. Still pain occurring in R scapular region and often at night when he is sleeping gets numb/tingling feeling going down R arm into finger. Hasn't been having to lift as he has been on light duty. [Scheduled] to start PT next week.... Discussed he will wind up on permanent restrictions as I don't see him being able to resume full lifting. Will request EMG/NCS of R upper extremity. Go ahead with PT. Recheck post EMG or PT whichever is completed first....

The claimant received physical therapy visits at Hot Springs Sports Medicine beginning June 22, 2022. The last physical therapy treatment of record took place on or about July 22, 2022. According to a statement at hearing by the claimant's attorney, the respondent-carrier paid for all of the medical treatment provided the claimant through approximately July 22, 2022.

The claimant testified on direct examination:

Q. Now, I know that in July of 2023, about a year after this accident at work that we're here on today, you had a – you had a head injury. Is that correct?

A. Yes. I don't know if you'd call it a injury. I raised the – the hood was up on the car. I raised up, and when I raised my head it come – where it latches, that come loose. Well kinda dropped my head a little bit and it – it didn't – it wasn't like the whole thing come down on my head....

Q. Did you sustain any injury to your cervical spine in that accident or was that your head?

A. It was just my head....

Q. That did not happen at work.

A. No.

A CT of the claimant's head was taken on or about July 4, 2023 with the impression, "No acute intracranial abnormality." It was noted at that time, "68-year-old male on Xarelto who presents after head injury with some intermittent headaches and neck pain. Differential diagnoses include skull fracture, intracranial bleed, or cervical spine fracture."

A CT of the claimant's cervical spine was taken on July 4, 2023 with the following findings:

Alignment of the craniocervical junction is preserved.  
Vertebral bodies of the cervical spine demonstrate normal heights and alignment. Disc spaces are maintained.  
Prevertebral and paravertebral soft tissues are within normal limits.  
IMPRESSION: No traumatic fracture or malalignment of the cervical spine.

A pre-hearing order was filed on July 26, 2023. According to the text of the pre-hearing order, the claimant contended, "The claimant contends that on March 18, 2022, the claimant was loading a washing machine into a vehicle with a co-worker, and the co-worker was unable to hold onto his end causing the claimant to sustain an injury to his neck, both his right and left shoulders, and his lower back. The respondents initially accepted the claim as compensable and paid some medical benefits. He contends that on March 16, 2022, the claimant received treatment from Dr. Mark Larey, who ordered twelve (12) sessions of physical therapy (PT) and placed the claimant on light duty work restrictions. On March 14, 2022, Dr. Larey

halted the PT and ordered MRIs of the claimant's left and right shoulders. The claimant contends that June 14, 2022, MRIs revealed evidence of rotator cuff and labral pathology, as well as chondromalacia along the glenohumeral joint of both the claimant's left and right shoulders. The claimant contends that, thereafter, on June 16, 2022, Dr. Larey opined the claimant should continue PT, and he ordered an EMG/NCS study, noting the claimant would eventually need to be placed on permanent restrictions. The claimant contends at this point the respondents denied the claim and stopped paying for all medical treatment. Therefore, for all the reasons set forth above the claimant contends he sustained compensable injuries as set forth above within the course and scope of his employment, and that he is entitled to additional medical, and TTD benefits, and his attorney is entitled to attorney's fees. The claimant specifically reserves any and all other issues for future litigation and/or determination."

The parties stipulated that the respondents "have paid some medical benefits, but they controvert any and all additional medical and/or indemnity benefits other than those they have paid to date." The respondents contended, "The respondents contend the claimant was involved in an admitted work incident/event on March 8, 2022, while he was assisting another employee to load a washing machine into a vehicle. The respondents contend they initially accepted the claim as compensable, and

paid some medical benefits; however, relevant medical records and diagnostic studies conducted after the date of the alleged injuries failed to reveal any acute or other 'trauma related' objective medical findings of any injuries as the Act requires. Instead, the only medical findings were degenerative in nature, and not causally connected or related to the admitted work incident/event. Consequently, the respondents contend all the subject conditions were clearly preexisting and not work-related or 'compensable' within the Act's meaning. Accordingly, the respondents contend the alleged injuries to the claimant's neck, both his right and his left shoulders, and lower back/spine are not compensable since there are no objective medical findings which are causally connected or related to the subject March 8, 2022, work incident/event. Alternatively, in the event the Commission deems this claim to be compensable, the respondents contend the claimant sustained nothing more than a temporary aggravation(s) of clearly and demonstrably preexisting conditions for which they have paid all appropriate medical benefits, and the claimant is entitled to no additional medical or other benefits pursuant to the Act. Furthermore, the respondents contend that if the respondents have and continue to employ the claimant on a full-time basis, this claim is a 'medical only' claim. Therefore, if the Commission deems the claimant is entitled to any additional medical benefits, the respondents contend he is not entitled to



TTD benefits since he continued to work on a full-time basis without any lost time or wages. Finally, and alternatively, the respondents contend that if the Commission awards additional medical or indemnity benefits to the claimant, pursuant to **Ark. Code Ann.** Section 11-9-411 (Lexis Replacement 2023) they are entitled to a dollar-for-dollar credit/offset for any such benefits paid to the claimant by any and all third-party payor(s), including but not limited to, health insurance, short- and/or long-term disability (STD or LTD) benefits, as well as unemployment benefits. The respondents specifically reserve any and all other issues for future litigation and/or determination.”

The parties agreed to litigate the following issues:

1. Whether the claimant sustained “compensable injuries” within the meaning of the Arkansas’ Workers’ Compensation Act (the Act) to his neck, both his right and left shoulders, and his lower back on March 8, 2023.
2. If the claimant’s alleged injuries are deemed compensable, the extent to which he is entitled to additional medical and TTD benefits.
3. Whether the claimant’s attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

A hearing was held on November 3, 2023. The claimant testified that he was suffering from increased pain in his shoulders and back. The claimant testified that he wanted to undergo electrodiagnostic testing recommended by Dr. Larey. The respondents at hearing proffered a set of

medical exhibits, “Proffered Respondent Exhibit 1.” The administrative law judge did not allow admission of this exhibit into evidence. The administrative law judge filed an opinion on February 1, 2024 and found that the claimant failed to prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Supp. 2023), provides, in pertinent part:

- (A) “Compensable injury” means:
- (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Supp. 2023). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Supp. 2023). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

Administrative law judges and the Full Commission are charged with strictly construing the provisions of Act 796 of 1993. See Ark. Code Ann. §11-9-704(c)(3)(Supp. 2023). Strict construction means narrow construction and requires that nothing be taken as intended that is not clearly expressed. *Hapney v. Rheem Manuf. Co.*, 341 Ark. 548, 26 S.W.3d 771 (2000). The doctrine of strict construction requires a fact-finder to use the plain meaning of the language employed. *Holaday v. Fraker*, 323 Ark. 522, 920 S.W.2d 4 (1996). Noticeably absent from the language of Ark. Code Ann. §11-9-102(4)(A)(i)(Supp. 2023) *et seq.* is any requirement that an employee prove by a preponderance of the evidence that he sustained an “acute” injury.

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Supp. 2023). 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).

An administrative law judge found in the present matter that the claimant failed to prove he sustained a “compensable injury.” It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support an administrative law judge’s findings. *Roberts v. Leo*

*Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983), citing *Jones v. Scheduled Skyways, Inc.*, 1 Ark. App. 44, 612 S.W.2d 333 (1981). The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence of record. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The Full Commission finds in the present matter that the claimant did not establish a compensable injury by medical evidence supported by objective findings. The claimant contended that he sustained an accidental injury arising out of and in the course of employment on March 8, 2022. The claimant testified that he felt pain in his shoulders and back after lifting a washing machine. The claimant did not establish a compensable injury by medical evidence supported by objective findings. The claimant treated at CHI St. Vincent Hot Springs beginning March 16, 2022. Physical examination of the claimant's right shoulder and neck did not reveal any objective medical findings. "TTP (Tenderness to Palpation)" was noted, but "Tenderness" is not an objective medical finding establishing a compensable injury. *Rodriguez v. M. McDaniel Co., Inc.*, 98 Ark. App. 138, 252 S.W.2d 146 (2007). Complaints of pain and tenderness are not

objective medical findings. *Ozark Natural Food v. Pierson*, 2012 Ark. App. 133, 389 S.W.3d 105, citing Ark. Code Ann. §11-9-102(16)(Supp. 2023).

There were no reports in the present matter of objective medical findings such as bruising, swelling, or muscle spasms. Nor is there any probative evidence demonstrating that “Mild anterior spurring C3 and C5” was causally related to the alleged March 8, 2022 accidental injury. There is no medical evidence supported by objective findings to establish the existence and extent of an injury allegedly occurring March 8, 2022. See *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). The MRI testing of the claimant’s right shoulder and left shoulder on June 14, 2022 did not establish a compensable injury supported by objective findings. The evidence does not demonstrate that “mild chondromalacia” or “type II acromion” were objective medical findings establishing a compensable injury. We also note that an MRI taken July 4, 2023 showed “No traumatic fracture or malalignment of the cervical spine.”

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings. The claimant did not prove that he sustained a compensable injury to his shoulders, neck, or back on March 8, 2022 or any other date. The Full Commission notes that “Proffered Respondent Exhibit 1” has not been admitted into the evidence

of record, and we have not considered this exhibit in our *de novo* review. The Full Commission affirms the administrative law judge's finding that the claimant did not prove he sustained a compensable injury, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents

DISSENTING OPINION

The ALJ found that the Claimant failed to prove, by a preponderance of credible evidence that he sustained a compensable injury. After conducting a thorough *de novo* review, I would rule in favor of the Claimant for his compensable shoulder injury and that he is entitled to reasonable and necessary medical treatment for such injury.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical

evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

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). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

On March 8, 2021, Claimant was loading a washing machine into a van with a co-worker when the co-worker accidentally dropped his end of the washing machine and the Claimant attempted to hold all of the weight of the washing machine to prevent it from falling off of the van. The Claimant was initially diagnosed with a sprain of his left and right shoulder by Dr.

Mark Larey. Dr. Larey also noted the Claimant's limited range of motion as well as mild crepitus with passive range of motion. Dr. Larey stated that the Claimant's injuries were related to his work activities. The Claimant underwent an MRI on June 14, 2022, which revealed "chondromalacia along the glenohumeral joint" of both his shoulders and "hypertrophy changes along the acromioclavicular joint." Considering these objective findings and the statement relating to causation it is my opinion that the Claimant sustained injuries to both his shoulders in his work accident. Although the Claimant is approximately 69-years-old and may have had some degeneration in his shoulders, when a work accident causes the condition to become symptomatic the result is a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

Therefore, I would rule that the Claimant has proved by a preponderance of the evidence that he sustained a compensable injury of his right and left shoulder. Further, Claimant is entitled to such medical treatment as may be reasonably necessary for his compensable injury including an EMG/NCS as recommended by Dr. Larey.

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M. SCOTT WILLHITE, Commissioner