

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F303522**

**RICKY GRACY, EMPLOYEE**

**CLAIMANT**

**FORREST CITY WATER UTILITIES,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**MUNICIPAL LEAGUE WC TRUST,  
THIRD-PARTY ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED JULY 1, 2004**

Hearing before Administrative Law Judge Andrew L. Blood, on April 9, 2004, at Wynne, Cross County, Arkansas.

Claimant represented by the Honorable Kathleen Talbott, Attorney At Law, Wynne, Arkansas.

Respondent represented by the Honorable J. Chris Bradley, Attorney At Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine claimant's entitlement to workers' compensation benefits.

On March 2, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Ricky Gracey, the claimant, and Kenny Douglas, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

Ricky Gracey, the claimant, with a date of birth of June 16, 1964, commenced his employment with respondent on June 14, 1983. In correspondence dated October 14, 2003, claimant was directed to turn in his uniform and keys, which to him signaled the termination of his employment with respondent. Claimant had been off work pursuant to the direction of his treating physicians since September 29, 2003, and, as of the October 17, 2003, date, had exhausted his vacation and sick leave. Claimant attributed his inability to work and incurred medical treatment relative to his left shoulder to a January 24, 2002, work-related injury.

There is no evidence in the record to reflect that claimant experienced an limitations or restrictions on his physical activity prior to his employment with respondent. In his employment with respondent claimant was foreman over the pump and collection group. Claimant's testimony reflects, relative to his routine job duties:

We worked on all the wastewater pumps, sometimes water pumps. I mean if they broke down. We did electrical work. We ran sewers, that's a total different job but that was part of mine too, just stuff like that. (T. 13-14).

In addition to his employment with respondent, claimant at one time did some homebuilding, however denies that he has done any since the last part of 2001. Claimant concedes that he may have done some repair work in 2002 on some rent houses that he own.

The credible evidence reflects that prior to January 2002, the only time claimant had experienced difficulty with his shoulders was a 1997 work-related injury in the employment of respondent. The 1997 injury occurred when claimant and a co-worker were lifting a manhole into the back of a truck, and the co-worker dropped the side he was holding. The jerk experienced by the claimant from the afore caused pain in his back between his shoulder blades

and in both arms. After receiving initial medical treatment under the care of a local physician, Dr. James Merritt, he was seen by Dr. Lawrence , a physician with Semmes-Murphey, for complaints growing out of the 1997 injury. Claimant did not lose time from work, and recovered from the 1997 injury with three to four months. The 1997 injury was filed and accepted as a workers' compensation claim. There is no evidence in the record to reflect that claimant experienced residuals, limitations, or restrictions relative to his physical activities following his recovery from the 1997 injury.

On January 24, 2002, claimant suffered an accidental fall while discharging employment duties for respondent. The accident was reported to appropriate supervisory personnel of respondent and the claimant's left knee injury growing out of the accident was accepted as compensable, with the payment of corresponding medical benefits. Claimant asserts that in addition to the injury to his left knee, he also suffered an injury to his left shoulder and neck in the January 24, 2002, accident, for which he is entitled to medical and indemnity benefits.

The testimony of Kenny Douglas, who has been employed by respondent for twenty-nine (29) years, reflects that he had occasion to work with claimant from time to time. Mr. Douglas worked with the claimant on January 24, 2002, when the accident occurred. Regarding his recollection of the accident, Mr. Douglas testified, "we write everything up when we have an accident". (T. 8). The credible testimony of Mr. Douglas reflects, regarding his observation during the January 24, 2002, accident:

We went down to Gregory Street. We were called down on a waste water spillage, it was stopped up. We got down there and the people that lived in the house has put plywood down over, it was an electrical box. Mr. Gracey stepped up on it and it broke through and he fell back and injured his shoulder. (T. 8).

Mr. Douglas explained that as the claimant fell back his hand caught first, and then he fell on back. Mr. Douglas noted that claimant was able to get up without assistance, however complained of hurting his shoulder.

Mr. Douglas's testimony reflects that while he was aware that the claimant went to the doctor for his shoulder complaint, he did not do so on the date of the occurrence. According to Mr. Douglas, claimant complained about his shoulder the remainder of the day, and on other occasions when he work with him. Regarding his observation of the claimant relative to his left shoulder on subsequent occasions, Mr. Douglas testified:

Yeah, well, he carried his shoulder quite a bit through a long time.

And I did witness him one day when I walked in had ice on it, you know.(T. 9).

I'm not aware of his knee. It was more of his shoulder that he was complaining to me about and his neck. (T. 11)

Claimant's testimony reflects, regarding the mechanics of the January 24, 2002, accident, which serves as the basis for the present claim:

We was called down there to check a sewer leak and the yard was flooded with water. And I knew about where the man-hole was and I wanted to go over there and see to make sure if it was a sewer or a water leak and what was going on. I wasn't running. And I tried to keep my feet from getting wet going across there and I fell through something. I came down falling forward, come back and caught myself and my elbow come up and hit me in the rib and I come up with my right arm and pulled myself out of the hole. (T. 14).

Claimant noted that he immediately felt pain in his left shoulder following the accident, however continued working. The accident and injury was reported to claimant's supervisor, Marlon

Brown, and an accident report completed. Claimant continued performing his job duties following the accident, however because of the residuals of the injury was limited:

I was - - I couldn't perform all of it, the pain and stuff I couldn't do a whole lot of lifting and stuff. I mean, they helped me out all they could.(T. 15)

Claimant did not seek medial treatment for complaints growing out of the January 24, 2002, accident until February 13, 2002, when he was seen at the emergency room by Dr. Apurva R. Dalal, of East Arkansas Orthopedics. The February 13, 2002, report of Dr. Dalal reflects a history of the claimant's left shoulder complaint consistent with the January 24, 2002, accident:

**CHIEF COMPLAINT:** 37 YO M who has come to us W/a C/O LT shoulder pain. PT states that he sustained an injury to the LT shoulder a few WK ago. States that after that his LT shoulder has been constantly hurting. He states that at times he does not have any pain, however, at times when he tries to pull on objects the pain starts. The pain is so bad that he states that he cannot even lift his arm to do anything. He states that direct touching the LT shoulder causes sever pain. Today he is not having any pain. He is a RT hand dominant individual and this is affecting his LT shoulder.(CX. 1, p.1).

Following his examination of the claimant during the February 13, 2002, visit, Dr. Dalal's impression of claimant's complaint was that of left shoulder rotator cuff tendonitis and biceps tendonitis, for which three (3) weeks of physical therapy was recommended. Claimant was also placed on Vioxx.

The testimony of the claimant reflects that the February 13, 2002, medical treatment of Dr. Dalal did not aid in reducing the symptoms in his left shoulder. The medical reflects that claimant was again seen by Dr. Dalal on April 23, 2002, in follow-up of the previous visit. The medical report of Dr. Dalal reflects that claimant registered complaints to both his left shoulder and left knee during the April 23, 2002, visit. Claimant attributes both complaints to the January

24, 2002, accident.

The April 23, 2002, report of Dr. Dalal reflects, relative to the claimant:

**CHIEF COMPLAINT:** He was seen for injuries sustained to his LT knee. There is a questionable partial tear of the ACL on MRI. He is here today stating he was standing on his porch and his knee gave way and he fell down on his LT shoulder. He states he did not know what had happened, now his shoulder is hurting him and he is here for that.(CX. 1, p. 3).

While principle treatment was rendered to the claimant's left knee during the April 23, 2002, visit to Dr. Dalal, the left shoulder was also examined and x-rayed. The report, again reflected the impression relative to the claimant's left shoulder complaint, "LT shoulder injury, possible rotator cuff tendonitis, questionable tear".

The claimant's left knee injury was accepted as compensable by respondent as growing out of the January 24, 2002, accident. Diagnostic studies performed at the direction of Dr. Dalal during the April 23, 2002, visit disclosed evidence of a partial tear of the ACL, for which surgery was recommended. Dr. Dalal noted in the April 23, 2002, report, that first the left knee complaint would be addressed, and thereafter the left shoulder, if it did not get better in the next two-three weeks. (CX. 1, p. 3).

Following the April 23, 2002, visit to Dr. Dalal, claimant did not again obtain medical treatment relative to his left shoulder until January 2003, although he continued to experience residual symptoms in the shoulder. Claimant continued to discharge his regular job duties in the employment of respondent. On January 21, 2003, claimant was seen by Dr. James Jacobs, a Wynne family practice physician, for complaints relative to his left shoulder and neck which he attributed to the January 24, 2002, accident. (CX. 1, p. 5). After obtaining the results of

additional diagnostic studies, Dr. Jacobs initially referred the claimant to Dr. Morris W. Ray, a Memphis neurosurgeon, and later to Dr. John Ball, a Jonesboro orthopedic surgeon. (CX. 1, p. 6-7).

On February 4, 2003, claimant was evaluated by Dr. Ray pursuant to the referral of Dr. Jacobs. The February 4, 2003, report reflects, in pertinent part:

Mr. Gracey is a 38 year old man referred by Dr. Jacobs with a history of neck pain, left shoulder pain, left anterior chest pain, pain and numbness and tingling in the left upper limb and twitching of the left index finger and numbness of the face and left cheek.(CX. 1, p. 8).

The report noted, with respect to the claimant's past history, the left knee operation. Dr. Ray's February 4, 2003, report reflects that the claimant had a MRI of the brain which showed a possible hemangioma, which served as the basis for the referral to him. While Dr. Ray noted the claimant's 1997 treatment by Dr. Lawrence for left arm and some pain in the left chest, claimant dated "his current symptoms for a year". The February 4, 2003, report of Dr. Ray further reflects:

Mr. Gracey says that he fell in May or June of last year into an electrical outlet box and that was when he injured his knee and had it operated on. He says they wanted to operate on his shoulder but he didn't want them to at that time. Since then he's had some grinding sensation in his shoulder.

He also describes an area over the left shoulder blade which grinds and pops and his describes this also.

\* \* \*

His neck has a full range of motion without pain but there is some crepitation.

His left shoulder has some crepitation over the scapula when moving



Claimant was seen in follow by Dr. Ball on March 11, 2003. After noting the claimant's continuing complaints, the March 11, 2003, report reflects:

His work activity involves a lot of bending over at the waist, reaching down and lifting up, and that seems to cause stinging sensations. He notes it affects his arm as well, and he has spasms in the deltoid and upper pectoralis on the L side.

We again review the onset of this problem, which came on after a fall, but got better after he received some treatment for it until he developed the knee problem and had to go back to using some crutches.

He notes that cold packs or ice seems to help the symptoms. He gets an occasional drawing sensation in his index finger and pain in the ring and little fingers. He states that the neurology people at Semmes-Murphy had suggested some further testing on his brain, and that a MRI of the cervical spine had been done, and there were some minor abnormalities found. We again reviewed his mechanism of injury. He was out in a flooded yard walking at a fast pace, when he stepped on a sheet of plywood that he did not see underneath the surface of water. This caused him to slip and have a hard fall. He felt that he hurt his spine, shoulder, and knee.

In regard to the medication, he states that Aleve seems to work pretty well and some of the others have bothered his stomach. He has a helper at work now who does most of the lifting and that seems to have helped him as well. He also noted that his symptoms never seem to completely go away. If this were a bone level problem, would have expected to have seen some uptake on this on the bone scan. Unfortunately, there is not a real good test for the soft tissue irritation around the spine. We are left with trying to find some successful symptomatic treatment as the body goes through its normal healing process. Sometimes physical therapy can be helpful.

We have given him some samples of Bextra 10 mg to try. We have also offered to refer him to therapy, but he wants to defer that for the time being. We will plan on recheck in one month to see if we need to consider an injection to the area. . .(CX. 1, p. 13-14)

The evidence in the record reflects that claimant was off work for doctor visits and medical treatment relative to his left shoulder in February and March 2003. (CX. 1, p. 15).

On May 20, 2003, claimant was seen in follow-up at Semms-Murphey by Dr. Ray for complaints of neck pain as well as burning and tingling sensation to the left side of the neck, and hand numbness. Dr. Ray noted that the recommended MRI of the brain was denied by respondent. Claimant was continuing to work, although he was experiencing pain around the left scapula region. Claimant underwent the EMG and nerve conduction on his left arm during the May 20, 2003, visit, which disclosed mild carpal tunnel. (CX. 1, p. 17-20).

On June 13, 2003, claimant was seen in follow-up by Dr. Ball. Dr. Ball noted that claimant had undergone an extensive work-up for his complaint of pain in the left scapular area. By the time of the June 13, 2003, visit of the claimant, Dr. Ball had received and reviewed the records from Semms-Murphey Clinic. The June 13, 2003, clinic note reflects:

. . . So far, there have not been determined, any anatomic reasons to explain his pain and no identified nerve compression syndrome, no identified abnormality of the scapula. Unfortunately, this is not a rare circumstance. Discussed with him the fact that I have little in the way of active treatment to offer to him. He's aware of some surgical interventions that have been done and I've told him that I am aware of this also but have no personal experience or background to do such or to recommend any particular physician for him for such intervention. I would be happy to refer him for subspecialty care but I think it is unlikely that a subspecialist would have other treatment to offer him. I've recommended that he enroll in an Occupational Therapy Program for treatment of his painful scapular bursitis with modalities to include inferential US, corrective exercises and a trial of transcutaneous nerv stimulator. (CX. 1, p. 23).

Claimant subsequently underwent physical therapy pursuant to the recommendation of Dr. Ball. (CX. 1, p.24-30). Claimant testified that for a period of time the physical therapy help in the

treatment of his injury. When seen by Dr. Ball in follow-up on July 28, 2003, claimant noted that the TENS unit had been very helpful and that he was doing better, although he continued to have a bit of popping in the left shoulder and pain. (CX. 1, p. 31).

Claimant noted that the symptoms relative to his left shoulder grew progressive worse and that treatment measures to address them became less effective, to the point that he was unable to continued working. Specifically, claimant's testimony reflects that the physical therapy ceased to be of benefit and that he found himself taking stronger medication, which although addressing the pain complaint, rendered him unable to function. The September 29, 2003, clinic note of Dr. Ball reflects, with respect to the claimant's visit on said date:

Mr. Gracey has continued to have problems with myofascial pain around his L scapula. This is particularly made worse By his work activities.(CX. 1, p. 32).

After noting the results of the claimant's physical examination, to include retro-scapular crepitation and diffused tenderness, Dr. Ball prescribed additional occupational therapy for the claimant. Claimant requested two (2) weeks off work to allow his symptoms to subside without the stress of his work activities. Dr. Ball authored an off-work slip for the claimant through October 17, 2003. (CX. 1, p.32-33).

Claimant acknowledged that on September 27, 2003, he was involve in an accident on a four-wheeler for which he sought and obtained medical treatment at the emergency room of Cross Ridge Community Hospital in Wynne. The credible testimony of the claimant reflects that he jumped of the four-wheeler, which rolled over his body, making contact with his back. Claimant denies that he suffered an additional injury to his left shoulder or neck in the September 27, 2003, accident or that the same resulted in an increase in the pain in his left shoulder or neck.

Claimant explained that he went to the hospital after the accident because he began to experience chest pain. (RX. 1, p. 15).

Claimant's testimony reflects regarding his inability to work a year and a half following the January 24, 2002, accident:

I wanted to work. I ain't never had any desire to quit.  
I took pain pills and over the counter stuff and ice and whatever  
it took to cope with. I just wanted to stay.

\* \* \*

It got to where I couldn't do much to control the pain.  
I mean I could take pain pills and it'd still come and they'd  
give me stronger pain pills and it'd just about knock me out  
so I just couldn't do it anymore. (T. 21).

Claimant asserts that Dr. Ball referred him to Dr. David N. Collins, a Little Rock orthopedic and upper extremity specialist, relative to his left shoulder complaint. Claimant noted that Dr. Collins informed him, once he arrived for the evaluation, that the purpose of the visit was for a second opinion, and, as a consequence, he did not receive medical treatment although he was seen by same on two occasions.

Claimant was initially seen by Dr. Collins on January 12, 2004. The clinic notes of Dr. Collins relative to the initial evaluation of the claimant reflects that he had access to and reviewed prior pertinent medical records of the claimant. Dr. Collins' impression of the claimant's complaint, as reflected in the clinic notes was; occupation related injury involving left shoulder girdle and upper extremity, myofascial pain syndrome, and shoulder pain syndrome. Dr. Collins recommended additional diagnostic studies, and continued the claimant's work status as recommended by Dr. Ball. (CX. 1, p. 38-40).

In his January 12, 2004, report to Dr. Ball relative to the evaluation of the claimant, Dr.

Collins relayed:

. . . He apparently has intractable pain and dysfunction as a result of occupation related injury approaching two years ago. He seems to have a refractory subscapular condition which has been unresponsive to conservative care. His workup to date has been negative for a structural lesion of the scapula or ribs. He does not appear to have denervation. There is atrophy of the shoulder girdle which may be explained on the basis of disuse.

My only recommendations would be to complete and [an] electrodiagnostic evaluation more proximally and to apply orthopedic surgery only as a last resort. I do not think he has exhausted conservative care which would include pain management services, physiatric services and intensification of a physiotherapy routine. . . (CX. 1, p. 37).

In furtherance of the evaluation by Dr. Collins, on January 27, 2004, claimant underwent electrodiagnostic testing under the direction of Dr. Reginald J. Rutherford, a Little Rock neurologist. Claimant was seen by Dr. Collins on January 30, 2004, following the electrodiagnostic testing of Dr. Rutherford. After noting the results of testing by Dr. Rutherford, the January 30, 2004, clinic note of Dr. Collins reflects:

A structural lesion is not identified. He appears to have a functional alteration of scapulothoracic rhythm with secondary focal pain in the region of the superomedial angle of the scapula. Track record for superomedial angle resection of the scapula (partial osteotomy of the scapula) has been met with mixed results. I am not offering this for Mr. Graecy.

Instead, I would suggest that he return to work without restriction. We have not identified a threatening structural lesion that would imply progress deterioration of osteoarticular, ligamentous, musculotendinous or neurologic status.

He is released from my care.(CX.1, p. 44).

Claimant's credible testimony reflects that he remained symptomatic and unable to work following his January 30, 2004, visit with Dr. Collins. In February/March 2004, claimant sought treatment under the care of Dr. David Staggs, a Searcy family practice physician. Claimant explained, regarding the visit to Dr. Staggs:

Well, because I wasn't satisfied with what Dr. Collins told me and he told me just suffer and I didn't want to do that. I wanted to do something to stop the pain. I went to see Dr. Staggs. I was having headaches and stuff like that. (T. 22).

The testimony of the claimant reflects he was provided medication by Dr. Staggs for treatment of his left shoulder and neck pain, and a referral to Dr. Scott Bowen, a Little Rock orthopedic surgeon.

On March 4, 2004, claimant was seen by Dr. W. Scott Bowen, relative to his left shoulder complaint pursuant to the referral of Dr. Staggs. The clinic note of Dr. Bowen reflects, relative to the claimant:

. . . . He is under the care of Dr. Staggs in Searcy and has had Dr. John Ball in Jonesboro do work on his knee. He has had a history of pain to the left shoulder since an injury occurred in January, 2000 when he fell in an electrical box, putting his arm outstretched behind him and jamming it. Since that time, he has had significant pain. He has undergone well over six months of physical therapy and had multiple Cortisone injections into the trigger point area of his scapulothoracic burse without significant or prolonged relief. He had pain with overhead activities and has pain at rest and pain with any overhead motion.(CX. 1, p. 46)

After noting the results of his examination of the claimant, which included a severe audible crepitus and palpable crepitus through the scapulothoracic joint on the left side with a palpable clunk, Dr. Bowen noted that a MRI relative to the claimant showed , "small partial thickness tear in the supraspinatus tendon". Dr. Bowen's impression of the claimant's complaint is

scapulothoracic bursitis. The March 4, 2004, clinic note of Dr. Bowen concludes, relative to the claimant:

Discussed with him that this is a very difficult problem. He has had multiple conservative treatments to this point and is still symptomatic. We discussed that there were people in the southeast doing scapulothoracic arthroscopy but this is not done here. I will be glad to refer his to a larger institution to see if they can help him. I gave his the names of Stephen Burkhart in San Antonio, Buddy Savou in Jackson, MS or Lou Biglioni At the Hospital for Speciality Surgery in New York City. (CX. 46).

In a March 18, 2004, correspondence to claimant's attorney, Dr. Bowen opined that the claimant's injury and present need for medial treatment relative to same grew out of the January 24, 2002, accident in the employment of respondent. (CX. 1, p. 47).

After a thorough consideration of all the evidence in this record, to include the testimony of the witnesses, review of the medical reports, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 24, 2002, the relationship of employee-employer existed between the parties.
3. On January 24, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$423.00/317.00, for temporary total/permanent partial disability.
4. On January 24, 2002, the claimant sustained an injuries to his left shoulder and neck, in addition to his left knee, arising out of and in the course his employment.

5. The claimant was temporarily totally disabled for the periods he was off work relative to his compensable left shoulder and neck injuries subsequent to the January 24, 2002, to include but not limited to the period beginning September 29, 2003, and continuing through the ending of his healing period, a date yet to be determined.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the compensable injuries of January 24, 2002, to the claimant's left knee, left shoulder and neck.

7. The respondent has controverted the payment of all benefits relative to claimant's injuries to his left shoulder and neck growing out of the January 24, 2002, accident.

### **CONCLUSIONS**

It is undisputed that claimant suffered an accidental fall on January 24, 2002, while discharging employment duties for respondent. The injury suffered to his left knee in the January 24, 2002, accidental fall was accepted as compensable by respondent and corresponding medical benefits paid on behalf of the claimant. Claimant asserts that he also suffered injuries to his left shoulder and neck in the January 24, 2002, accident in addition to his knee, for which he is entitled to corresponding medical and indemnity workers compensation benefits. Respondent deny that claimant suffered injuries other than to his left knee in the January 24, 2002, accident.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

Claimant had been employed by respondent since June 14, 1983, at the time of the January 24, 2002, accident. Other than a work-related accident in the employment of respondent

in 1997, from which he fully recovered within four months, there is no evidence the claimant experienced physical limitations or restrictions in his employment with respondent prior to January 24, 2002, relative to his left shoulder or neck. Claimant is right hand dominant.

Neither the occurrence or the mechanics of the claimant's January 24, 2002, accidental fall is disputed. The credible evidence in the record reflects that following the accident claimant registered complaints relative to his left shoulder to his co-worker, Kenny Douglas, who was present and witnessed the accident, and to his supervisor, Marlon Brown. Although claimant continued to work following the January 24, 2002, accident, he continued to experience complaints of pain and other symptoms relative to his left shoulder and neck. The afore was witnessed by claimant's co-worker, Kenny Douglas.

When claimant first sought and obtained medical treatment for complaints growing out of the January 24, 2002, accident, his chief complaint was that of left shoulder and neck pain, which he related to the fall in the accident. The medical in the record reflects that claimant consistently relayed complaints of neck and left shoulder pain and symptoms to medial providers and related same to the January 24, 2002, accident.

In order to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence pursuant to Ark. Code Ann. § 11-9-102 (4) (A)(i), the claimant must establish by a preponderance of the evidence: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective medical findings, as defined in Ark. Ann. Code § 11-9-102 (16),

establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W. 2d 876 (1997). The claimant in the instant claim has sustained his burden of proof by a preponderance of the evidence that he suffered an injuries to his left shoulder and neck as well as to his left knee in the January 24, 2002, accident in the employment of respondent.

The claimant's January 24, 2002, accidental fall, while discharging employment duty, was witnessed by Kenny Douglas. Claimant had neither required, sought, or obtained medical treatment relative to his neck or left shoulder since four months following his compensable 1997 injury in the employment of respondent. The mechanics of claimant's January 24, 2002, accidental fall as witnessed by Kenny Douglas and relayed by claimant is consistent with the resulting diagnosed injury to claimant's left shoulder. The left shoulder injury of the claimant is supported by objective evidence, to include muscle spasm, fluid, atrophy, and electrodiagnostic studies, MRI's.

The evidence preponderates that medical treatment rendered to the claimant relative to his left shoulder and neck complaint, commencing with the initial February 13, 2002, visit and treatment by Dr. Dalal has been reasonable, necessary and related to the treatment of claimant compensable injuries. The evidence further preponderates that the medical treatment rendered to the claimant under the care of Dr. Jacobs, Dr. Ball, Dr. Ray, Dr. Staggs, Dr. Collins, and Dr. Bowen, as well as referral therefrom, has been reasonable necessary medical treatment relative to the January 24, 2002, compensable injury of the claimant to his left shoulder and neck. Pursuant to Ark. Code Ann. § 11-9-508, respondent is liable for the cost of the medical treatment rendered

to claimant relative to his January 24, 2002, compensable injuries.

Claimant received medical treatment relative to his compensable January 24, 2002, left shoulder and neck injuries initially on February 13, 2002. Although claimant continued discharging employment duties for respondent between the January 24, 2002, accident and February 13, 2002, he continued to experience residuals of the compensable injuries. Further, the evidence discloses that there were occasions subsequent to February 13, 2002, and prior to September 29, 2003, when claimant was off work due to his compensable injuries. On some occasions, claimant was unable to work because he was undergoing medical treatment relative to the compensable injury. On other occasions claimant was unable to work because he was incapacitated as a result of the injuries.

The evidence in the record preponderates that claimant has not reached the end of his healing period relative to the injuries suffered in the January 24, 2002, accident, relative to his left shoulder/neck complaint. Temporary total disability is that period within the healing period in which the claimant suffers a total incapacity to earn wages. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W. 2d 677 (1998). Claimant last discharged employment duties for respondent on or about September 28, 2003. Claimant's inability to perform employment duties subsequent to September 29, 2003, is the product of his compensable injury of January 24, 2002, in that he remains in his healing period and suffers a totally incapacity to earn wages. Respondent has controverted all workers' compensation benefits relative to claimant's January 24, 2002, left shoulder/neck injuries.

#### **AWARD**

Respondent is hereby ordered and directed to pay to the claimant temporary total

disability benefits at the weekly rate of \$423.00 for the periods during which claimant was off work totally incapacitated from engaging in gainful employment, as a result of his compensable injuries of January 24, 2002, relative to his left shoulder/neck, to include the period commencing, but not exclusive of, September 29, 2003, and continuing through the end of his healing period, a date yet to be determined. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable related medical, nursing, hospital, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injuries of January 24, 2002, to his left knee, left shoulder/neck.

Maximum attorney fees are herein awarded to the claimant's attorney, the Honorable Kathleen Talbott, on the controverted portion of this award relative to indemnity benefits, pursuant to Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood,  
Administrative Law Judge**