

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409800

JOHN W. KENNEDY, EMPLOYEE

CLAIMANT

ASPLUNDH TREE EXPERT CO., EMPLOYER

RESPONDENT

LIBERTY MUTUAL FIRE INS. CO., CARRIER

RESPONDENT

OPINION FILED DECEMBER 14, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 4, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE KRISTOFER E. RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On August 30, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects the stipulation that the employment relationship existed on or about October 17, 2003. Respondents denied that the Commission has jurisdiction of the claim based upon location of the accident asserted and the location of the contract of hire. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The testimony of John W. Kennedy, the claimant, coupled with medical

reports comprise the record in this claim.

DISCUSSION

John Wesley Kennedy, the claimant, with a date of birth of November 7, 1976, testified that while employed as an assistant manager of a Holiday Inn in Jonesboro, Ar., he was approached by an individual, who was later identified as Jeff Lynch of respondent-employer, a supervisor for Region 36, which at the time included Arkansas. Claimant was informed by Mr. Lynch that if he ever wanted to get out of “this business”, he should give him a call and come to work for him. Claimant was advised that the nature of the job was surveying for the power company. The testimony of the claimant reflects within two weeks of the job offer he telephoned Mr. Lynch to relay his interest in the job.

Claimant noted the Mr. Lynch gave him his business card which identified him as a Supervisor for Region 36 of respondent-employer, which included Arkansas. The address reflected on the business card was in Maumelle/Little Rock. Claimant’s testimony reflects regarding his employment by respondent-employer:

After I made that call, he brought back up the guy that I would immediately be working under, which was Ed Gray. They both came back to the bar on one evening and kind of interviewed me, you know, to see if I would work out for Ed, you know, I guess they liked what they seen and they told me that I needed to be there on Monday morning, first thing, in Maumelle, and so I proceeded to go that way. (T. 10).

Claimant testified that Ed Gray was also based out of the same office in Maumelle as was Jeff Lynch. Claimant added that Mr. Gray also lived in Maumelle.

Claimant estimated that he commenced his employment with respondent-employer in August 2000. Regarding his work location, claimant testified:

I worked - when I first started out, I stayed here in Arkansas. I bounced from a lot of different places like - the job they hired me to do was to go out and look at the power lines and explain how much it would - I was putting in bids, more or less. I was looking at the power lines. I was knocking on doors, talking to people, letting them know we were coming through, so once you finished a circuit in one area, you'd proceed to another area, and which it was pretty much just Arkansas, whenever I first started. I just - after about a year-and-a-half, almost two years, I was in nothing but Arkansas. (T. 11).

Claimant explained how he eventually ended up in Mississippi:

There was a situation where there was a couple of general foremen who were in some trouble down there and they approached us, because we were the next chain of command. You know, we were the guys right under the general foremen and they looked to us for the promotion, when it come time for a promotion, the would talk to the tree landers, which was my division, and they had come to a couple of other ones that had a little seniority over me. They didn't want to move. I told them that I really didn't have that much of a problem with it, so they gave me a new title as General Foreman and asked me to move to Mississippi with them. (T. 11-12).

The testimony of the claimant reflects that the change in job duties and responsibilities or promotion occurred in the Fall of 2002. Claimant reported to Jackson, Mississippi for the new assignment. Thereafter, claimant performed his job duties in Mississippi.

With respect to the accident injury of October 17, 2003, which serves as the basis for the present claim, the testimony of the claimant reflects:

On this particular day, I was actually running a ticket truck for Hector. The ticket truck, in being that Energy calls - they have a dangerous tree that's out there that they want to pay us to take down. It's not necessarily on the line that we're cutting at the time. It's just a dangerous tree that could cause problems. So we go out and proceed to take down this tree. I've been running tickets for him for a while down 40. You know, run the tickets for him. The - it's a big cottonwood. The - got to working on it, cut out most of it to where all we had left was pretty much the trunk still standing. I thought it was too much of a lean, honestly. The guys put ropes in the trees and put the tope on the truck.

We tie the ropes to the two other trees and we had a handline itself that we were pulling against. As we finished undercutting, we were back-cutting and trying to pull the tree over. As we did, the rope on the truck broke. That was one of our main anchor lines, so all that was really left was one little tight line and us guys pulling on another line that was also tied off to a tree. We had a bind on it, and when that rope broke, it fell against us. I was in the front of the line. There was about six or seven guys behind me on the rope. I didn't realize it, but they had turned loose and whenever they turned loose, it was like a rubber band effect, and when it did, it jerked me up in the air. Before I could actually get my hands off the rope, I was probably ten foot in the air.(T. 13-14).

Claimant landed on his right back side. Claimant explained the mechanics with respect to the nature of his injuries:

Yes, I landed just - I turned a complete flip in the air and as I was landing, I was headed head-first, and I was able to tumble over a little bit and when I smacked on - basically, my shoulder took the brunt of the impact and my hip on that side. (T. 14).

The claimant testified that he was in charge of the job site where the accident occurred.

Claimant explained the symptoms he experienced following the accident:

The moment that I hit the ground, I can't remember raising up. I didn't lose consciousness, but when I raised up, I was dizzy and I remember I was trying to catch my breath and I had crawled up to my hands - one hand on the ground and one knee, and I was just on the ground that way just trying to catch my breath.

And as I proceeded to catch my breath, I got up and my arm and and leg was hurting pretty good at that point in time. (T. 15).

Claimant testified that he reported the accident to his supervisor as well as others:

. . . I had to make phone calls immediately to Energy because we had knocked out a significant portion of the town when the power line got busted. The trees hit the power line and tore it down, so I had to contact Energy and also had to contact my immediate supervisor, too, to let him know what was going on and that we were going to be out there for a while and let him know. (T. 15).

Claimant added that the time of the reporting, he informed his supervisor, Hector, of the mechanics of the accident, that he had gotten thrown by the tree and was hurting “pretty good”, however would finish the job as quick as they could. Claimant testified that he also had to call Hector’s immediate supervisor, Benancio Monterro, afterwards.

Claimant testified that he believe that October 17, 2003, was on a Thursday. Regarding finishing up the job at the site of the accident, the testimony of the claimant reflects:

We finished it - what we did is we got the tree that we - when the tree fell, it was big enough that it fell across a four - I mean, almost a four-lane road, so what we did is we cleaned it up so that if they had all the power lines, we cut it up enough that we could get it over the curb to get it off the power line and stuff so that they could re-establish the poles and stuff of that nature. (T. 16-17).

Operating under the belief that October 17, 2003, was a Thursday, when in fact it was a Friday, claimant’s testimony reflects regarding his request for medical treatment:

The first time - I told them when I went back out there on Friday I was hurt pretty bad. We went ahead and went back out there and finished the job completed. I went back to the house and rested over the weekend, and it I told them then that I probably needed to go to the doctor, and they said, well, sleep on it this weekend and see how you feel on Monday. If Monday you’re still hurting, then we’ll get you on to the doctor, and I was like, okay. (T. 17).

Claimant’s testimony reflects that the Monday following the October 17, 2003, accident he proceed to the doctor for treatment of his injuries growing out of the accident. Claimant asserts that the medical clinic from which he obtained treatment was located on Ellis Avenue in Jackson, Mississippi. Though he could not remember the name of the clinic, claimant explained that it was similar to NEA Clinic in Jonesboro, for first aid. Claimant added, regarding the clinic:

. It's just a little medical place. I mean, it was a nice place, but if I'm not mistaken, that's where Asplundh picked for us to go for workers' comp. cases. Where there was going to be an injury, that was who they chose for us to use and that's who we were suppose to use. (T. 18).

Claimant explained that he had directed employees under his supervision to facility for worked related injuries.

Claimant asserts that very little was provided in the way of medical treatment at the time of his visit to the designated facility. Claimant maintains, regarding the medical treatment:

. . . . They ordered - they wanted me to get an MRI. At that point in time, they rescheduled - from the physical findings, he - well, see really, he had to take off my shirt, examine me, and told me that he really couldn't see anything - that he needed me to get an MRI to see what was going on in the shoulder. (T. 18).

Claimant testified that he reported the doctor's recommendation to his supervisor. Regarding the response of his supervisor to the afore, claimant's testimony reflects:

The result of that was he said then, well, we've got to go back to work right now - we'll try to get it later. He kept telling me that, you know, hey, right now we're kind of busy. Hector didn't speak real good English, too, on top of things, so - he was from Honduras, so, he kept saying that, you know, we had to go do this right now, cause I think there was something going on up in the north part of Mississippi that I had - he needed me to go up there while he went to Vicksburg to handle something else. (T. 18-19).

Claimant described his interaction with his supervisor and request for further medical treatment as a "cat and mouse game".

Regarding the number of times that he personally recalled bring up the question of medical treatment to his supervisor, claimant's testimony reflects:

On four different occasions, cause after the first occasion I had said something to him, there's a couple of weeks went by and then the same clinic called my house wondering - cause I had missed my appointment

for my MRI. They had made me an appointment and I missed the appointment because I was gone with Hector again. And then I brought it up to Hector once more after that. Once they gave me the call, I brought it up to Hector. I said, hey look, they called me and they really want to see me for that MRI and my shoulder's still a little stiff, and he, aw now, we've got to go to - we've got to go down to Louisiana this week, though, I mean, we're gonna be down there for a little bit - maybe we can get back and you'll have time to go. I was like, okay. And, see, we was working from 6:00 in the morning til 6:00 in the evening, Monday through Friday, and it's kind of, you know, that's a rough schedule. (T. 19-20).

Claimant's testimony reflects that during the above time period, he was experiencing ache in the right shoulder, however not as severe as in the time period immediately following the October 17, 2003, accident. Claimant observed that when driving his truck he felt pain in the right shoulder. The testimony of the claimant further reflects:

. When I'd put my arm on this angle right here, you could- I could feel the pain up in the shoulder. It just felt like there was something stuck into it and it was just a sharp pain up in the shoulder that just stayed there. And if I couldn't - really didn't have any motion above my head. If I had to, like I say, if I'm trying to help the guys lift a log or something, and I tried to pick it up, I really couldn't go above my chest with it, cause it just hurt. (T. 20).

Claimant's testimony reflects that he remained in the employment of respondent-employer six to eight months following his October 17, 2003, accident. Claimant acknowledged that he did not again see a doctor for medical treatment following his visit in October 2003, to the Jackson, Mississippi respondent-designated medical provider until November 22, 2004, when he was seen at Piggott Family Medical Clinic. Claimant explained, regarding the November 22, 2004, visit for medical treatment:

I went for the doctor to - I started having problems, you know, and went back to the doctor to see if, you know, he could do x-rays or something and see - I talked to my father and he said something about it may be a rotator cuff tear, cause he had had some problems similar to

this. So I went to the doctor and tried to talk to him about that and the x-rays didn't show anything and then he ordered an MRI again. (T. 20-21).

Claimant testified that there were days where his shoulder would not hurt, however there were other times that when he woke up in the morning it would be really sore and hurting to the point of "almost numb". (T. 21). Claimant described the progression of symptoms in his right shoulder and arm attributable to the October 17, 2003, accident:

They started to get a little bit worse there whenever - it started affecting my sleep, and that's - when it started affecting my sleep is when I got a little more worried about it. At first it - when I first had the injury, it affected my sleep cause it was tore up pretty good, but as time went on, it got a little bit better, but then it got to where it started getting worse again and I don't know if it was the weather, or what it was, but it started getting worse again. (T. 21).

Claimant denies suffering another accident or injury in the interim which caused his symptoms to worsen. Claimant added that at the time of the worsening symptoms he was no longer working, but rather going to school.

The testimony of the claimant reflects that in February 2005, he did have the MRI scan of his shoulder performed at Advanced Orthopaedics by Dr. Stroope, pursuant to a referral by his family physician, Dr. Blake. Claimant confirmed the findings of the physical examination performed by his treating physicians, to include a sensation of grinding in his right shoulder. Claimant denies having any problems with his right shoulder prior to the October 17, 2003, accident.

While the October 17, 2003, accident occurred in Mississippi, claimant acknowledged that there was a contact to the state of Florida regarding the accident. Claimant explained:

My contact with Florida was that that's who Benancio and all them worked for. They transferred me over, after I moved to Mississippi,

there was a position change. Everything got rescheduled. Every region got redone that was in the South at that point in time. I was under - I was the only one in Mississippi - the only General Foreman. It was Region 36. I got transferred over. I think it's Region 190, and it turns out it out of West Palm Beach, Florida. (T. 24).

Claimant denies that with the restructuring he went through a re-hiring program, or that he was in any way hired out of the state of Florida. Claimant maintains that when he was initially hired by respondent-employer and completed paperwork and forms, it was done in the Maumell, Arkansas office of respondent-employer. Regarding the continuous nature of his employment with respondent, claimant's testimony reflects:

Yes, went through Maumell, and even whenever I was in Mississippi for the first while that I was in Mississippi, I can't exactly remember a time frame, but I want to say for the first six months I was in Mississippi, I still - I went to meetings and we had the monthly meetings - I went to Maumelle with these guys. (T. 25).

Claimant acknowledged that he filed workers' compensation claims in both Florida and Mississippi relative to the October 17, 2003, accident, pursuant to recommendation of an attorney. Claimant's testimony reflects, regarding the status of the Florida and Mississippi claims:

I've only got the green card back so far from Mississippi. I don't really know what the status of the one is in Florida. The green card meaning that had I sent a certified letter and they had to send back the reply that they received it. That's the only status that I've got, thus far, on it - that they received my claim. (T. 25-26).

Claimant concedes that the Florida and Mississippi filings were done out of caution in case the Arkansas claim failed.

On cross-examination, claimant acknowledged that he only went to the doctor for his injury one time, the Monday following the October 17, 2003, accident, and that he did not again

return for medical treatment until over a year later. Claimant testified that when he got released by the doctor he returned to performing his regular job supervising his crew. Claimant testified that while he continued performing his job for six to eight months following the initial doctor's visit he continued to request medical treatment. Claimant's testimony reflects:

For six to eight months after, in which, I still made recalls to my supervisors about, hey look, I need to go back to the doctor, they called me about the MRI. Okay, we've got to go to Louisiana, a little work to do there, and then we'll get you back to the doctor. I was like, okay. Well then, a little while passed after that, I mentioned it to him again and he's - we've got to go down here to Florida this week and we're headed to Texas and we'll get you to the doctor when we get there and I was like, okay. (T. 26-27).

The testimony of the claimant reflects that he left the employment of respondent rather than be transferred to Houston, Texas. Claimant explained:

I mean, I had been on the road with Asplundh for a few years now, and it was about a five to six day a week grind to be on the road and then come home for a couple of days and then have to shoot off back down there - it just, it's rough. (T. 27).

After voluntarily resigning his employment with respondent-employer rather than be transferred to Houston, Texas, claimant testified that a short time thereafter he went to the doctor for treatment relative to his right shoulder complaint. After leaving the employment of respondent, claimant obtained unemployment benefits and started attending school.

The testimony of the claimant reflects that he attended classes at Arkansas Northeastern College in Blytheville and Black River Vocational Technical College. Claimant took classes and became certified as an EMT, however was unable to find work and an EMT. Claimant is now studying to be an RN.

Claimant's testimony reflects that while he received unemployment benefits he looked for

a job. Claimant is now employed part-time at Mitchell's Pharmacy, in Kennett, Missouri.

Claimant acknowledged that he has not missed any work due to his October 17, 2003, accident.

Claimant acknowledged that when he went to the doctor in Arkansas, November 22, 2004, he had been lifting weights. Claimant noted that the weight-lifting difficulty occurred the week of the doctor's visit. Claimant's testimony reflects:

I went to the doctor and I felt I was starting to get a little bit of a belly on me and I started trying to work our a little bit again.

Yes, sir. I could not push weight on that side at all and that really started to - it started really making me wonder what was going on with me shoulder.

I paid for a month's worth of membership and went for a week and I couldn't tell you exactly when, but I know I went for a week and that's all that was wrote. I couldn't do anything with that side. I could jog on the treadmill. I think I went back up there a couple of times to jog on the treadmill. (T. 29).

* * *

I think there was two days that I tried to do shoulders and one day I tried to do chest. I'd do like shoulders, legs, you know, maybe jog, or another day I'd do curls and I'd do chest, or you know, you mis it up a little bit on a day-to-day basis. I think there was two different attempts that I made on my upper body that just - I couldn't do anything with that side, and the left side's my weak side, I could throw stuff around like it wasn't anything. (T. 30).

Claimant acknowledged that lifting the weights made his arm hurt. Claimant added that there was actually a lot of pain whenever he tried to push the weights. Claimant's testimony reflects that while the pain experienced in the weight-lifting "reminded" him of the type he experienced when struck by the tree in the October 17, 2003, accident, it was not of the same degree.

Claimant testified that once he felt the pain during the weight-lifting effort, he stopped

lifting the weights. Claimant's testimony reflects:

Cause right after I started looking at my arm and couldn't push weight on that side at all, I mean, on this side I'd have 45-pound bars on and I can slant it with this side. 45 pounds really isn't a lot. This side here just would not go up. I was like, there's something wrong here, - and, go to the doctor. (T. 30).

Claimant's testimony reflects that after the MRI scan was obtained by the radiologist he was contacted by Dr. Blake, his family doctor, and told of some abnormal findings. (T. 31).

Claimant acknowledged that when he was seen by Dr. Stroope, the orthopedic physician, he was told that the findings were negative. Claimant paid for the bill for the MRI scan and Dr. Stroope. The testimony of the claimant reflects that his medical treatment while under the care of Dr, Stroope included therapy and an injection in the shoulder, which helped "quite a bit".

Claimant described the physical examination performed by Dr. Stroope, and the findings generated as a result of same:

He had me take off my shirt, raise my shoulder, and I guess he could feel it in there - that's the only thing I know, cause he made me do it on both sides.

No, at the point in time, I really didn't notice it was popping. It popped some, every once in a while, but, heck, I just thought it was - my fingers pop sometimes, too, but, you know.

I don't even know how crepitation feels like - I mean, I do know kind of from my nursing school now, but back then, I didn't even know what crepitation was. The doc's the one that had to explain it to me. (T. 33).

In relaying his complaint to Dr. Stroope, claimant testified that he informed him that he could not move his shoulder past a certain point because of pain.

In describing his medical treatment under the care of Dr. Stroope regarding his shoulder complaint, claimant's testimony reflects:

It did help. It did help quite a bit. And the exercises - I think the exercises helped as much as the shot - the shot itself. He put me on this - the rubber ban strap where I have to stretch it so many times a day in so many directions and so many different exercises to do to building back up the strength in that shoulder - and some of the joints itself, is what he said. (T. 32-33).

Claimant estimates that he has paid out in medical expenses relative to his injury, \$1270.00, for the MRI, \$600.00-\$700.00, to Dr. Stroope, and, \$130.00 to have the MRI read by a certified radiologist. Claimant testified that there is no further treatment planned on his shoulder, unless it starts hurting again, which would require a return visit to Dr. Stroope.

The medical in the record reflects that on November 22, 2004, claimant was seen at the Piggott Family Medical Clinic by his family physician, Dr. Dennis N. Blake for his right shoulder complaint. The office note regarding the afore visit reflects that claimant relayed a history of having suffered an injury at work to the shoulder in October 2003, while employed by respondent-employer in Mississippi. Following his physical examination of the claimant's right shoulder, Dr. Blake's impression was "possible right rotator cuff tear". The clinic note reflects that Dr. Blake plan a MRI of the claimant's right shoulder, however claimant was released to return to the clinic on a prn basis. (JX. #1, p. 1).

On February 9, 2005, claimant underwent a MRI scan of his right shoulder at Piggott Community Hospital pursuant to the recommendation of Dr. Blake. The February 9, 2005, MRI scan report reflects:

IMPRESSION: MINIMAL SUBCHONDRAL CYS FORMATION,
CONSISTENT WITH EARLY DEGENERATIVE
CHANGE IN THE SUPERIOR PORTION OF THE
HUMERAL HEAD. (JX.#1, p. 2).

On February 11, 2005, claimant was referred by Dr. Blake to Dr Henry F. Stroope, an orthopedic

surgeon.

Claimant was initially seen by Dr. Stroope at Advanced Orthopaedics, pursuant to the above referral, on February 22, 2005. A Health History completed by the claimant at the time of the initial orthopedic visit reflects that claimant relayed that he injured his right shoulder in October 2003 at work. (JX. #1, p. 3).

The February 22, 2005, office note of Dr. Stroope relative to the claimant reflects, in pertinent part:

02/22/2005: Mr. Kennedy is a new patient to me today. He is a very pleasant, 28-year-old right hand dominant white male who presents today with the chief complaint of right shoulder pain. He had a history of injuring his right shoulder in an on-the-job accident in October of 2003, when he was working for the Asplundh company. He was holding a rope and trying to pull a tree. The rope broke and apparently threw the patient through the air, landing directly on his right shoulder. He had acute onset of R shoulder pain which slowly improved over several weeks, but he states that his R shoulder has really never been well since that time. He apparently was dismissed from that job task 6 months after the injury, and presents now complaining, once again, of right shoulder pain. He states that he has been trying to go to the gym and lift weights, but cannot do so, secondary to right shoulder pain, and that his non-dominant L arm seems to have become dominant now when it comes to lifting any object. He does have some pain at night when he is trying to sleep on it.

* * *

MRI: The patient's recent MRI scan of the shoulder was reviewed. The MRI scan shows really a normal-appearing shoulder and I do not really see any evidence of degenerative change of the shoulder, as dictated by Dr. Hazel (?) The radiologist. Essentially, what I see is a negative MRI of the shoulder.

PHYSICAL EXAM: Clinical exam of the patient's right shoulder is performed. There is no atrophy of the shoulder girdle musculature. He is tender over the greater tuberosity, consistent with impingement process. He has positive impingement signs to a moderate degree. He is nontender over the acromioclavicular joint. He has full range of motion of the right

shoulder, but elevation of the arm to shoulder height and above this reproduces symptoms. He does have some mild crepitation with glenohumeral rotation with the arm at shoulder height and above. He has good strength with resisted external rotation and forward elevation against resistance, although this does reproduce pain.

* * *

ASSESSMENT: In my opinion, the patient has impingement syndrome, which could be a residual from his previous injury, which occurred in 2003.

PLANS: The plan today is to inject the right subacromial space with Depo-Medrol and Lidocaine to hopefully alleviate his tendinitis symptoms and to place him in a rotator cuff strengthening program. I will see him back in 4 weeks and re-evaluate. (JX. #1, p. 4).

Claimant was seen in follow-up by Dr. Stroope on March 22, 2005, relative to his diagnosed impingement syndrome of the right shoulder. Following the March 22, 2005, examination, Dr. Stroope noted dramatic improvement in the claimant's shoulder pain, and that he was back to full activities. Claimant was not provided a follow-up appointment, but rather released to return to activities as tolerated and to return to the clinic on an as need basis. (JX. #1, p. 5). Finally, in a June 28, 2005, correspondence to claimant's attorney, Dr. Stroope opined that after reviewing the clinic notes relative to the claimant, that the claimant's shoulder pain was directly related to the claimant's on-the-job injury. (JX. #1, p. 6).

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

FINDINGS

1. The employment contract between the claimant and respondent-employer, which

serves as the basis for the employment relationship in the present claim, was entered in the state of Arkansas. Accordingly the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On October 17, 2003, the relationship of employee-employer-carrier existed among the parties.

3. On October 17, 2003, the claimant sustained an injury to his right shoulder arising out of and in the course of his employment.

4. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of October 17, 2003.

5. The respondents have controverted this claim in its entirety.

CONCLUSION

There is not a dispute regarding the existence of the employment relationship between the claimant and respondent-employer on October 17, 2003. Claimant asserts that while discharging employment duties on a job site in the state of Mississippi he suffered an injury to his right shoulder which required medical treatment. Respondents deny that the claimant has sufficient ties to the state of Arkansas to bring his claim within the jurisdiction of the Arkansas Workers' Compensation Commission. Further, respondents deny that the claimant sustained a compensable injury while in their employ.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of

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

Ark. Code Ann. §11-9-707 provides that in any proceeding for the enforcement of a compensation claim, a prima facie presumption shall exist that the Workers' Compensation Commission has jurisdiction. In *International Paper Co. v. Tidwell*, 250 Ark. 623, 466 S.W.2d 488 (1971), the Arkansas Supreme Court enumerated elements to be considered in reaching a decision on jurisdiction relative to a workers' compensation claim before the Commission. When the grounds considered in *Tidwell* are applied to the instant claim, the evidence preponderates that the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

The evidence in the record reflects that at the time claimant was broached by supervisory personnel of respondent-employer, he was a resident of Arkansas and the initial contact was had in Jonesboro, Craighead County, Arkansas. Claimant traveled to Maumelle, Arkansas in Pulaski County to interview with supervisory personnel of respondent-employer for the employment position. Further, the credible evidence reflects that claimant completed employment document and forms during a visit to the local office of respondent-employer in Maumelle, Arkansas where he was hired. Claimant discharged employment duties for respondent-employer in Region 36, which encompassed Arkansas. While there is credible evidence that the injury which gives rise

to this claim occurred in the Jackson, Mississippi area, at a point in time that claimant was assigned to Region 190 out of West Palm Beach, Florida, and discharged duties as a general foreman, there is no evidence to reflect that a subsequent contract of hire was entered into between the claimant and respondent-employer. Claimant remained a resident of Arkansas throughout his employment with respondent. In *Tidwell*, the Arkansas Supreme Court noted the State's interest to have a remedial procedure available for its residents and to secure compensation for its residents physicians and hospitals. *Id.* at 493-94. Accordingly, the evidence preponderates that the Commission has jurisdiction of this claim, and the respondents have failed to rebut the prima facie presumption of jurisdiction.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim asserted, compensation must be denied. Ark. Code Ann. §11-9-102 (4) (A) (i); *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). In the instant claim, there is no evidence to reflect that the claimant required medical treatment relative to his right shoulder prior to his employment with respondent in August 2000. Further, there is no evidence to reflect that the claimant experienced physical limitations or restrictions relative to his right shoulder prior to his employment with respondent.

The evidence in the record does reflect that the claimant successfully discharged his assigned employment duties with respondents through October 17, 2003. Claimant discharged the duties of a general foreman, which entailed supervisory responsibility of his crew. The credible evidence reflects that on October 17, 2003, while discharging employment duties claimant suffered an injury to his right shoulder. The injury was reported to appropriate supervisory personnel of respondents. There is also credible evidence in the record to reflect that

the claimant requested and was provided access to respondent-designated medical provider relative to the right shoulder injury.

Since the claimant was himself a supervisor he was aware of the identity of respondents' designated medical provider at the time of his October 17, 2003, accident. Claimant had previously referred job-related injured employees to the designated medical provider. Claimant was seen by respondent-designated medical provider for complaints relative to his right shoulder attributable to the October 17, 2003, accident the Monday, October 20, 2003, following the accident. The credible evidence discloses that while the claimant was released to return to work, the attending examining physician scheduled a MRI scan for the right shoulder.

Claimant notified his immediate supervisor of his continuing need to follow-up with the doctor relative to the MRI scan. The credible testimony of the claimant reflects that due to a language barrier, he was unable to impress on his supervisor the importance of following through with the recommended MRI scan. Instead, claimant, who was able to discharge his employment duties, was told of the necessity of proceeding to designated projects, and maybe then returning for the MRI scan. Claimant acknowledge that his symptoms did improve with time, however never completely abated.

Claimant continued to discharge employment duties for respondents for at least eight (8) months following the October 17, 2003, accident. Claimant voluntarily resigned from the employment of respondent rather than be transferred to the Houston, Texas area. Claimant explained that the Houston job assignment would place him too far from home. Claimant was able to return home periodically during his employment with respondent while working in Mississippi, and other parts of the country.

When seen by medical providers in Arkansas relative to his right shoulder complaints, claimant relayed a consistent history of his injury. Specifically, when seen at the Piggott Family Clinic on November 22, 2004, by Dr. Dennis Blake, claimant relayed the history of the October 2003, work-related injury to his right shoulder while working in Mississippi for respondent-employer. The physical examination of the claimant during the November 22, 2004, visit to Dr. Blake resulted in an assessment of his complaint as a possible rotator cuff tear. Following additional diagnostic studies, to include a MRI scan of the right shoulder, claimant was referred by Dr. Blake to an orthopedic physician for further treatment.

When seen by the orthopedic surgeon, Dr. Henry F. Stroope, on February 22, 2005, claimant again relayed a history of the October 2003, work-related accident while employed by respondent-employer as the basis for the complaints relative to his right shoulder. Dr. Stroope had access to the claimant's February 9, 2005, right shoulder MRI scan. The MRI scan did reflect a finding of "minimal subchondral cyst formation" which was consistent with early degenerative change in the superior portion of the humeral head. During the physical examination, Dr. Stroope noted objective finding of an injury, which included "some mild crepitation" with glenohumeral rotation with the right arm at shoulder height and above.

The claimant's injury was diagnosed as impingement syndrome by Dr. Stroope. Medical treatment provided relative to diagnosed impingement syndrome included an injection in the right subacromial space with Depo-Medrol and Lidocaine, as well a instruction in a therapy program to strengthen his rotator cuff. Finally, in his June 28, 2005, correspondence, Dr. Stroope expressed the opinion that the claimant's impingement syndrome was directly related to the October 17, 2003, accident.

The Arkansas courts have recognized that there will be time when a claimant's account of a work-related incident and the resulting injury is the only evidence available as to the causation between the two. In cases of the afore, the issue of causation resolves down to a matter of credibility. In the instant claim, the claimant identified the approximate date of his employment, the location that the employment contract was entered into, the identifies of his supervisors at the time of the October 17, 2003, accident, and the fact that he had obtained medical treatment the Monday following the accident at the designated medical provider of respondents. Respondents have not supplied any credible evidence, documentary or otherwise to the contrary.

The evidence preponderates that the claimant suffered an injury to his right shoulder, arising out of and in the course of his employment with respondent on October 17, 2003, which cause internal harm to the body and required medial services. Further, there is medical evidence supported by objective findings establishing the injury. The injury was caused by a specific incident and is identifiable by time and place of occurrence. Respondents have controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medical procedure or device is reasonable and necessary is a question of fact. In the instant claim, the credible evidence reflects that following the claimant's initial medical treatment on or about October 20, 2003, following the October 17, 2003, accident, the attending physician recommended and scheduled a MRI scan of the claimant's right shoulder. Although the claimant did not actually get the MRI scan for the right shoulder until February 9, 2005, the credible evidence reflects that he requested access or an

opportunity to have the diagnostic procedure from his supervisor shortly after the recommendation, however was “put-off” by same. Claimant continued to experience symptoms relative to his right shoulder since the October 17, 2003, accident, while continuing to perform his assigned job duties. There is no evidence or assertion that claimant suffered an intervening incident or accident with respect to his right shoulder.

The medical treatment received by the claimant on and after November 22, 2004, relative to his right shoulder complaints is reasonable and necessary in connection with the October 17, 2003, compensable right shoulder injury. To date, claimant has paid the cost of medical treatment received relative to his right shoulder injury since November 22, 2004. The medical treatment received by the claimant at the Piggott Family Medical Clinic, Piggott Community Hospital, and at Advanced Orthopaedics, is reasonable, necessary, and related to the October 17, 2003, compensable injury, and for which respondents are liable. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses growing out of the claimant’s compensable injury of October 17, 2003, to include medical related mileage. Respondents are further herein ordered and directed to reimburse the claimant for sums expended to medical providers relative to his October 17, 2003, compensable right shoulder injury.

The claimant’s attorney has rendered valuable legal services in this claim, and is entitled to attorney fees at the maximum level, pursuant to Ark. Code Ann. §11-9-715, should indemnity benefits be awarded in the claim in the future.

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.

Andrew L. Blood, Administrative Law Judge