

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601017

MICHAEL WALKER, EMPLOYEE

CLAIMANT

MOBLEY CONTRACTORS, INC., EMPLOYER

RESPONDENT

NATIONAL FIRE INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED APRIL 26, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 9, 2007, at Forrest City, St. Francis County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

A pre-hearing conference was conducted in this claim on February 6, 2007, from which a Pre-hearing Order of the same date 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' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record.

The testimony of Michael Walker, the claimant, Judy Don, and Marvin Householder, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

_____Michael Walker, the claimant, with a date of birth of April 13, 1966, has a six grade education, testified that he had been employed by respondent-employer as a general laborer for approximately one year prior to October 2005. Claimant underwent a pre-employment physical prior to his employment with respondent. Claimant asserts that he did not have any physical limitations or restriction at the time of his employment.

The testimony of the claimant reflects that prior to his employment by respondent he worked for Higgins Farms. Claimant worked construction in Pine Bluff for four years. Claimant is right hand dominate.

Claimant asserts that he suffered an injury to his right shoulder on October 11, 2005, at approximately 4:30 p.m. while he and another employee, James, removed a cover from a bridge. In describing the mechanics of the accident claimant testified:

And we was uncovering the bridge and there was a bridge cover, one of them was kind of raggedy, and we was pulling it off the bridge, uncovering the bridge, taking it off the bridge, and a piece ripped, tore, like a rag, a towel tearing into?

And I was pulling and fell off the bridge, pulling me and James, and he told me to go tell Marvin that I had got hurt, you know, let him know. And I went down and told Marvin that I had fell off the bridge, and Marvin told me which it would be all right, so I went on that evening after I got off work and I went to the clinic up there, the Parkin Clinic up there, and they sent me to the emergency room for more exam, check to see if I had broken any bones or anything got hurt. That's the clinic I went to. (T. 8-9).

Claimant lived in Parkin at the time of the October 11, 2005, accident. Claimant maintains that he told his supervisor, Marvin Householder, at the time he reported the accident that he had injured his right shoulder in the accident. Claimant acknowledge that while medical treatment was not offered by his supervisor, he did not request any.

After getting off work at 5:00 p.m. on October 11, 2005, claimant testified that his right shoulder was still causing him problems. In addition to his right shoulder injury, claimant's testimony reflects that he also injured his right wrist, which was skinned in the accident.

The medical records reflect that the claimant was seen at the White River Rural Health Center in Parkin on October 26, 2005. Claimant was seen at the emergency room of Cross Ridge Hospital in Wynne on October 28, 2005. Claimant testified that he is unsure when he first received medical treatment for his injuries growing out of the October 11, 2005, accident. In addressing the discrepancy in the medical records, claimant maintains that the October 26, 2005, medical records relate to treatment for an injury to his left hand.

Claimant maintains that after the October 11, 2005, right shoulder injury he continued to work for respondents, later sustaining an injury to this left hand. Claimant testified that he did not miss time from work following the October 11, 2005, right shoulder injury. At another point, claimant testified that while he suffered two work related injuries in his employment with respondent, right shoulder and left hand, he is uncertain which injury was sustained first. (T. 13).

When faced with the contents of the October 26, 2005, progress notes of the clinic reflecting that the area of complaint was the claimant's right shoulder, claimant testified that he returned to the claimant with problems with his right shoulder approximately two weeks following the first visit. The record reflects the presence of a November 23, 2005, visit to the White River Rural Clinic by the claimant.

While the claimant testified that he was taken off work relative to his right shoulder injury, he cannot remember the name of the doctor only that it was one of the physicians at the clinic in Parkin. Claimant asserts that when he returned to the clinic in follow-up of his right

shoulder injury he was taken off work for three (3) days by the doctor.

Claimant testified that after the two or three days that he was directed to remain off work he returned to work. Claimant's testimony reflects that he continued to work for about one month. Claimant maintains that he ceased working when the job was completed and the crew was moving to a job in West Memphis. The testimony of the claimant reflects that when he began working for respondent he worked on job in Jonesboro. The claimant's testimony reflects that he was able to do his job with respondent until mid-November 2005, when the job moved to West Memphis.

Claimant maintains that he received medical treatment for his right shoulder at the clinic in Parkin after the mid-November 2005, date. In addition to the medical treatment he received for his right shoulder injury at the White River Rural Clinic in Parkin and at the emergency room of Cross Ridge Community Hospital, the claimant testified that he also received treatment in Forrest City:

I seen Doctor - - I can't remember his name, but I went over there - - I was still having problems with my shoulder, and they relocated, when I went back to Forrest City over to my mother's I went to the doctor for my right shoulder. (T. 17).

Claimant's testimony reflects that he received the Forrest City medical treatment in April 2006.

Claimant testified that the last treatment he received was had at Baptist Memorial Hospital in Forrest City, where he obtained x-rays for the shoulder. Claimant has not worked anyplace since last working for respondent in mid-November 2005.

Claimant testified that he has not looked for work since his employment ceased with respondent in mid-November 2005, because he is continuing to have problems with the right

shoulder. Claimant's testimony reflects that he takes Hydorcodone and a muscle relaxer that he obtains from the clinic in Parkin. Claimant testified that in approximately January 2007, he returned the clinic in Parkin for treatment of his right shoulder, and that he received an injection in the shoulder and another prescription filled. (T. 19). Claimant also noted that the last prescription for muscle relaxers was for 90 pills, which he obtained from the clinic in Parkin.

Claimant's testimony reflects that he is unable to work due to residuals of his injury to include right shoulder pain and low back pain. Claimant maintains that he has reported his difficulties with his right shoulder and low back to each of his medical providers. In describing the location of his pain, the testimony of the claimant reflects that he experiences a constant sharp pain in the top of his right shoulder. Although he is taking Hydorcodone and muscle relaxers claimant maintains that they do not help alleviate his symptoms. Claimant asserts that his low back pain had its onset at the time of October 11, 2005, fall. Claimant notes that the low back pain is located just above his belt line.

While the claimant applied for unemployment compensation benefits after his employment with respondents ceased in mid-November 2005, he testified that he was turned down because he did not have enough quarters in. The testimony of the claimant reflects that had the job with respondent not relocated to West Memphis he would not have continued to work for respondent because his position had been filled with someone else. Claimant maintains that had he been offered a job with respondents at the West Memphis job he would have accepted it.

While the claimant maintains that he was not physically able to perform his job following the October 11, 2005, accident until his employment ceased in mid-November 2005, he nevertheless worked and was paid his regular wages. Claimant noted that he was on light duty

following the accident until his employment ceased. Claimant explained that the light duty consisted of picking up scrap material/lumber off the yard.

Claimant asserts that he was told by Mr. Householder not to report his injury to the safety offices, Sarah. Claimant added:

She would give me safety for not getting hurt on the job, but I had gotten hurt on the job and she didn't know nothing about it. That's the only thing. (T. 25).

Claimant's testimony reflects that he told supervisory personnel that he had been to the doctor for his right shoulder injury after he received the treatment on October 11, 2005. Claimant testified that while he was provided job duties by respondent within his restriction his medical bill were not paid. The claimant does not have any medical records regarding medical treatment received after January 31, 2006.

On cross-examination claimant acknowledged injuring his back in a motor vehicle accident in October 1999, and receiving medical treatment at Cross County Hospital. Claimant has no recollection of not being able to raise his right arm at the shoulder growing out of the accident.

Regarding his low back complaint, claimant noted that he did not say that he injured his low back in the October 11, 2005, accident, only that he "was having back pain". (T. 28).

Claimant asserted, on cross examination, that his low back pain started two or three months following the October 11, 2005, accident. Claimant's testimony reflects that he was lifting some steel when he injured his left hand and low back (T. 29). Claimant expressly relayed that he was not claiming his back injury as a part of the October 11, 2005, right shoulder injury and fall from the bridge.

The claimant acknowledged receiving medical care on May 6, 2005, at Baptist Medical Center in Forrest City for his right shoulder. Claimant had injured the right shoulder in a fall at his house. The claimant was trying to move a couch out of his house with a friend when he fell out the door and landed on the right shoulder. During his deposition the claimant testified that his right shoulder hurt for weeks after the May 2005, accident. Indeed the testimony of the claimant reflects that his right shoulder never did stop hurting and was still hurting in October 2005.

The claimant disputes that he was telling medical personnel at the White River Rural Clinic on October 26, 2005, that he had fallen off a bridge approximately a month earlier and that the same resulted in his right shoulder complaint. (T. 31). When questioned regarding the number of falls that he had suffered, claimant testified:

No, sir, I fell off the bridge. After I fell off the bridge, I had another fall at home. (T. 31).

In describing the fall at home which occurred after the fall from the bridge at work, claimant's description is similar to the history provided during the May 6, 2005, visit to Baptist Memorial Hospital in Forrest City:

After the bridge fall, I was moving a couch at the house and me and my brothers were moving the couch, and I fell out the door trying to hold the couch up. (T. 31).

Claimant was questioned regarding the sequence of events and responded:

I don't remember which one it was. The only time I know is when I fell off the bridge first and I still was having the same problem with my shoulder, and the second fall was at home, not on the bridge. (T. 32).

Claimant estimated that he continued to work for respondents about three week to a

month following the fall from the bridge in which he injured his right shoulder. As noted above, claimant testified that during the remainder of his employment with respondents he was picking up 2 x 4"s and hooking up steel. Further, the claimant continued to be supervised by Mr. Householder.

While the claimant maintains that the reason he ceased working for respondents was because the job moved, he denies that he was laid off because of transportation problems. Claimant concedes that he did have transportation problems, however asserts that his girlfriend was taking him back and forth to work.

Claimant acknowledge hurting one of the finger on his left hand and receiving medical treatment on November 14, 2005. The finger injury occurred at work and the claimant received medical treatment in connection with it.

While the claimant testified that his back pain prevents him from working, he further testified that the right shoulder bothers him more than the back. Claimant asserts that he is unable to do even the light duty work that he was doing at the time his employment ceased because of the pain in his shoulder and back. Claimant maintains that he was physically unable to do the light duty job earlier, however he "went along with the job to keep the job". (T. 38). Claimant testified that he did not tell Mr. Householder about the May 2005, accident where he fell at home and hurt his shoulder because he was not working during that period of time. (T. 34).

Claimant testified that he takes one (1) Hydrocodone a day and that he takes one muscle relaxer every four hours for a total of three (3) per day.

The testimony of the claimant reflects that he has applied for social security disability benefits, and he is awaiting a hearing. Claimant's testimony reflects that he is represented by an

attorney relative to his social security disability claim.

Marvin Householder is employed as the bridge superintendent for respondent. Mr. Householder testified that he hired the claimant on the Beaver Slough job project. sometime in 2005. The bridge project referenced by the claimant as to location of his right shoulder injury is located approximately 15 miles out on Highway 70.

Mr. Householder testified regarding his recollection of the claimant registering complaints regarding shoulder pain:

Yes, he come up to me one day and said that he was having some shoulder problems and would like to go see a doctor. I told him to go see a doctor if he wanted to.

And I asked him what had happened, if anything had happened on the job, and said no.

He said he had hurt his shoulder at home. (T. 42).

Mr. Householder noted that the claimant did not describe how he hurt his shoulder at home.

Regarding a fall from a bridge being reported by the claimant, Mr. Householder testified:

He didn't come to me and tell me directly that he had fallen off the bridge. One of his - - one of my co-workers told me later that afternoon that he had been pulling on the burleine, which is the blanket that covers the bridges when we cure them out, and it had ripped and he fell off - - fell and hit the ground.

But other than that, that was my only knowledge of it. (T. 42).

As far as the claimant getting medical treatment on the day he relayed that he was have some shoulder problems and wanted to see a doctor Mr. Householder testified:

Yes, I told him that it was all right to go to the doctor, that being he didn't report any accident to me, that I didn't see where it would be a workman's comp. claim, but he could go. (T. 42-43).

Mr. Householder testified that at the time of his conversation with the claimant regarding his shoulder problem it was not his impression that the problem was of recent origin:

No, he - - I had asked him what he had - - how long it had been hurting him. He said, "Oh, it's a shoulder problem that's been bothering mer for a long while." (T. 43).

Mr. Householder denies that the claimant ever reported that he hurt his shoulder falling of the bridge.

Mr. Householder provided testimony regarding the policy of respondent regarding the reporting of work related injuries:

Right. Right. I told him if he has an accident on the job, the normal procedures are that he comes and tells me about it so I can document it, whether he goes to the doctor or not, and he did not. (T. 43).

Mr. Householder's response reflects that since the claimant had followed the procedure outlined above he was informed that he could not file a workers' compensation claim. The claimant's co-worker at the time of the bridge incident was James Smith, who is no longer employed by respondent.

The testimony of Mr. Householder reflects that Ms. Sarah Alvey is the safety coordinator for respondent. Mr. Householder testified that he was contacted by Ms. Alvey and directed to diary his recollection of his contact with the claimant regarding the claimant's shoulder complaint.

Regarding the claimant's continued employment with respondents after obtaining medical treatment for the right shoulder, the testimony of Mr. Householder reflects:

He was on my books until January - - the first week in January of '06.

I was showing his name. He was not there these days, but up until Christmas of '05, he was still on payroll.

The second week of January is when he come by and told me - - asked me if I could put him up in a motel room in West Memphis so he could continue to come to work, and I told him I could not. (T. 44-45).

Mr. Householder testified that the reason the claimant was off work was because of transportation problems.

Mr. Householder maintains that following the day that the claimant came to him and mentioned having a shoulder problem he continued to work doing his regular job and "never favored his shoulder at all". (T. 45). It is the recollection of Mr. Householder that the claimant worked regular 10 hours days from October 2005 through the first of the year, January 2006. Mr. Householder testified that the reason the claimant stopped working for respondents was because respondents would not put him up in a motel in West Memphis.

The testimony of Mr. Householder reflects that the job moved to West Memphis. Claimant was traveling from Forrest City and Parkin to get to West Memphis. Mr. Householder testified that the claimant was able to make the trip for a while on a daily basis:

He was making that trip from Parkin every day as long as he worked on the Beaver Slough job out here on Highway 70. Now, there was times that he didn't show up because of transportation problems, but on an average, he was the first one on the job. (T. 46).

Mr. Householder testified that at one point the claimant's girlfriend came to the job site and had in her possession some doctor bills that had been incurred by the claimant in the treatment of his right shoulder. Mr. Householder added that the claimant's girlfriend relayed that she was tired of paying the bills and wanted respondents to pay them. Mr. Householder contacted Ms. Sarah Alvey, the safety coordinator of respondents, in response to the afore. The

testimony of Mr. Householder reflects, in pertinent part:

Michael's girlfriend, and made a statement that she was tired of having to pay them or something to that effect, so then I called Sarah and told her about it - - that - - what Michael had told me about his shoulder, that he had hurt it earlier in the year than what he fell off the bridge. (T. 47).

Mr. Householder testified that the claimant had said that his shoulder had been hurting since April 2005.

The testimony of Mr. Householder reflects that his conversation with the claimant in which claimant relayed that he was having shoulder problems occurred two or three weeks after he received information regarding the fall from the bridge by the claimant. Regarding Mr. James Smith, the claimant's co-worker at the time of the accident, Mr. Householder testified:

He informed me that Michael had ripped the burleine and fell down and hit his shoulder the day that it happened or that afternoon, but Michael did not come forth and tell me anything about it for two or three weeks. (T. 50).

The testimony of Mr. Householder reflects that after his conversation with the claimant regarding shoulder problems, claimant did go see a doctor. Mr. Householder added that the doctor asked that the claimant be put on light duty of a week, and respondents accommodated the request. While assigned to light duty claimant performed the tasks of cleaning up, picking up boards and pulling nails.

Mr. Householder noted that by the time of the claimant's November 14, 2005, left hand injury, claimant was back performing his regular job duties. Mr. Householder testified that the claimant continued performing his regular job duties until he [claimant] decided to quit. Mr. Householder denies that the claimant ever reported to him that he was having problems as a result of a work related right shoulder injury. (T. 51).

While Mr. Householder testified that he had a conversation with the claimant's girlfriend about medical bills that claimant had incurred for treatment, he denies that he saw the bills. The testimony of Mr. Householder reflects:

She actually, if I remember correctly, she didn't say it was his right shoulder - - it had anything to do with his shoulder. She just said that she had some bills that she thought was work related and so then I took it the next step, and I went to my safety advisor. (T. 52).

Mr. Householder denies that he told the claimant that he would take care of the bills, but rather testified that he informed the claimant that he would "take it up with Sarah Alvey and it would be out of" his hands. (T. 52).

Ms. Judy Don, who resides in Parkin, testified that she has known the claimant for approximately seven (7) years. Ms. Don identified herself as the claimant's girlfriend. Ms. Don confirmed that the claimant commenced his employment with respondents in 2005.

Ms. Don's testimony reflects that she is the individual identified by Mr. Householder as bringing bills to the job site. Nevertheless, Ms. Don testified:

I didn't bring any bills to him. When Michael first went to the doctor, I brought him a statement saying that he was - - had got hurt and he would be off from work for about three days. Three or four days. That's what I brought him. (T. 56).

Ms. Don maintains that she furnished the medical statement to Mr. Householder regarding the claimant the same day that the claimant went to the doctor in Parkin. Ms. Don elaborated regarding the timing of the claimant's first medical treatment relative to his shoulder:

Yeah, that's the first day that he got hurt. He went to the doctor that evening, and his shoulder was hurting, so I - - me and my sister, we took the - - the statement from the doctor back out there and gave it to Marvin and told him that - - what had happened, and Michael was off from work for about three or four days that day, and he said well, okay then.

So he went back to the doctor again. They give him another statement saying that he was off for two more days. I carried that back to him and I asked him was he going to get paid for the days that he was off from work, and he told me that he would get paid - - he was going to get paid for the days he was off from work. And them are the only two letters that I took out there to him. No doctor bills or nothing. (T. 57).

Ms. Don denies that she had a conversation with Mr. Householder regarding medical bills:

No, the only thing that occurred after a month or more, you know, Michael got this check and I was looking on there and his days wasn't on there, so a month passed by and I asked Michael, I said they didn't put your working days on there yet, so I went and carried him some lunch that evening and luckily Marvin was out there besides him, and I asked him was they going to pay him for them days that he had been off from work, that's when he stated to me that they wasn't going to pay him for them days the he was off from work, and they also wasn't going to pay him for getting hurt out there or something because he didn't come right to him the same day and report it, and I went back home, and I called the - - I didn't talk to no lady, I talked to a man. He was a human source man or something, and he told me that hadn't nobody contacted him that anyone had gotten hurt out there on the job, that he was going to get with Michael and he was going to get with Marvin and see what went on on the job, so I didn't hear nothing else from them, so I asked Michael had anybody come out there and talked to him, and he told me no, he hadn't heard from nobody, so I hadn't carried no papers or nothing else out there. (T. 57-58).

Although Ms. Don testified that she knew the claimant in 1999 she was unaware of the motor vehicle accident in which he injured his shoulder.

The medical in the record reflects that on October 31, 1999, the claimant was treated in the emergency room of Cross County Hospital for injuries sustained in a motor vehicle accident. Among the observations recorded regarding the claimant was that he would "not raise his right arm at the shoulder because of pain in right flank".(RX. #1, p. 1). The claimant was seen at the emergency room of Baptist Memorial Hospital in Forrest City relative to injuries received in another motor vehicle accident. Claimant relayed complaints of neck and left arm/shoulder pain

growing out of the September 13, 2001, motor vehicle accident. (RX. #1, p. 2-7).

The record reflects that the claimant was again seen at the emergency room of Baptist Memorial Hospital in Forrest City on May 6, 2005, with a complaint of right shoulder pain. The testimony of the claimant reflects that the afore visit and medical treatment was the product of moving furniture (a couch) at home. X-rays of the claimant's right shoulder obtained during the May 6, 2005, visit reflect, in pertinent part:

Findings:

The bones and joints of the right shoulder are unremarkable. No fracture or dislocation is identified. Normal internal and external rotation is demonstrated.

IMPRESSION:

Negative radiographs right shoulder. (RX. #1, p. 11).

Chronically, the medical reflects that the claimant next received medical treatment on October 26, 2005, at the White River Rural Health, Inc./, Parkin Medical Clinic. The progress note relative to the visit reflects, in pertinent part:

39 yobm here for R shoulder hurts can't lift up started fell about month ago off the end of bridge. (RX. #1, p. 12).

The October 26, 2005, Progress Note reflects assessments of right shoulder pain and frozen shoulder. Claimant was provided Flexeril and Lodine and an MRI of the right shoulder was planned. Finally, the October 26, 2005, Progress Note reflects that the claimant was directed to rest for two (2) days and exercise. Claimant was also directed to return to the clinic in one (1) week, PRN. (RX. #1, p. 12).

On October 28, 2005, the claimant underwent the MRI of his right shoulder at Cross Ridge Community Hospital. The radiology report relative to the MRI scan reflects, in pertinent

part:

Oblique sagittal, oblique coronal as well as axial views of the right shoulder were obtained. Evaluation reveals proliferative changes of the AC joint causing some impingement. There is no evidence for overt rotator cuff tear. The biceps tendon is normally located within the bicipital groove.

IMPRESSION: Mild impingement. No evidence of overt tear. (RX. #1, p. 14).

A November 1, 2005, Progress Note relative to a visit by the claimant to the White River Rural Health, Inc./Parkin Medical Clinic, reflects that when the claimant was seen for the MRI results he relayed that the pain medication was not working, that he had been unable to sleep due to the pain and that he hurt constantly. The Progress Note also reflects the medications provided to the claimant which included Tylenol 3, prn; Lodine 400 mg BID; and Flexirel. The claimant was prescribed Percocet, and directed to return to the clinic prn if he did not improve. (RX. #1, p. 15). The claimant was also provided a Certificate to Return to Work by the attending physician, Dr. Allen, at the time of the November 1, 2005, visit to Parkin Medical Clinic, which released the claimant to return to work on November 3, 2005. (RX #1, p. 16).

The medical reflects that the claimant was seen at the emergency room of Cross Ridge Community Hospital on November 14, 2004, as a result of a work-related injury to his left hand. The emergency room report reflects that the claimant's left hand injury was sustained at 1:30 p.m. on the date of the visit. The claimant suffered the left hand injury when steel fell on it. After receiving emergency medical treatment, claimant was directed to follow-up with his primary care physician in one week, to continue to use his current meds, and was excused from work on November 15, 2005. (RX. #1, p. 17-21). The claimant also underwent a drug test, which was negative, at the time of the November 14, 2005, emergency room visit to Cross Ridge

Community Hospital. (RX. #1, p. 22).

The Medical reflects that the claimant was again seen at the Parkin Medical Clinic on November 23, 2005, relative to right shoulder pain. The Progress Note relative to the afore visit reflects under the objective heading, right shoulder bicipital groove, trigger point, ROM of shoulder restricted secondary to pain. Claimant was provided Oxycodone, prn. The November 23, 2005, Progress Note reflects that in addition to being prescribed Ultrian and Depomedrol, claimant was referred to an orthopedic and directed to avoid heavy lifting for two weeks. (RX. 1, p. 23).

A November 23, 2005, Referral Form, which was generated by Dr. Purnima Sarkar, the attending physician during the claimant's visit to the Parkin Medical Clinic of the same date, reflects that an appointment had been scheduled for December 15, 2005, at 10:00 with Dr. Edward Cooper. The Referral Form reflects the entry "right shoulder pain and injury secondary to fall" under diagnosis heading. The Referral Form also directed the claimant to bring \$200.00, for the first visit. (CX. #1).

On January 31, 2006, claimant was seen at the Parkin Medical Clinic due to complaints of right shoulder and hand pain attributable to a fall of 7-8 feet off a bridge at work. The Progress Note relative to the January 31, 2006, visit noted the claimant's medication as Oxycodone. Claimant was also provided ibuprofen. (RX. #1, p. 24). The evidence reflects that another Referral Form was authored by the attending medical personnel, Nurse Practitioner Debra Kail, again referring the claimant to Dr. Edward Cooper, a Jonesboro orthopedic physician, with a scheduled appointment of February 7, 2006, at 1:45 p.m. The Referral Form again reflected that the claimant should bring \$200.00, for the first visit. (CX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, 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 or about October 11, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On or about October 11, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$236.00/\$177.00, for temporary total/permanent partial disability.
4. On or about October 11, 2005, the claimant sustained an injury to his right shoulder arising out of and in the course of his employment.
5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of October 11, 2005.
6. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The claimant maintains that he suffered an injury to his right shoulder within the course and scope of his employment with respondents in October 2005, which required medical treatment and rendered him incapacitated from engaging in gainful employment for a period of time. Claimant seeks corresponding medical and temporary total disability benefits. Respondents deny that the claimant suffered a compensable injury to his right shoulder.

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 provision. Claimant maintains that the present claim for workers' compensation benefits in the product of a fall he suffered while within the course and scope of his employment.

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; 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).

In the instant claim, the evidence preponderates that the claimant suffered a fall from a bridge while performing duties. At the time of the fall the claimant was working with another employee, James Smith. The claimant's accident was reported by Mr. Smith to appropriate supervisory personnel of respondent. The testimony of the claimant's supervisor, Mr. Marvin Householder, reflects that the claimant reported having pain in right shoulder and the need for medical treatment following the point in time that he acquired knowledge of the claimant's fall off the bridge. Further, the claimant was given the go-ahead to obtain medical treatment by his supervisor.

The evidence preponderates that on May 6, 2005, claimant sought medical treatment relative to his right shoulder as a result of an accidental fall while moving furniture at home. X-rays of the right shoulder had in conjunction with the May 6, 2005, visit by the claimant to

Baptist Memorial Hospital were unremarkable and negative. There is no evidence in the record to reflect that the claimant again sought medical treatment relative to his right shoulder prior to October 26, 2005.

In addition to the May 6, 2005, accident in which the claimant injured his right shoulder at home, the evidence reflects that claimant was involved in motor vehicle accidents on October 31, 1999, and September 13, 2001. In both motor vehicle accidents claimant relayed complaints relative to his shoulders. The right shoulder was involved in the 1999 MVA, and the left shoulder was involved in the 2001 MVA. The evidence preponderates that the claimant did not commence his employment with respondent until 1995. Claimant successfully passed a pre-employment physical relative to his employment by respondent. Further, the evidence reflects that the claimant performed his assigned job duties in his employment with respondent without physical limitations or restrictions until October 2005.

Respondents' assertion that the claimant's right shoulder complaint for which he seeks workers' compensation benefits is a recurrence of either the October 31, 1999, motor vehicle accident, the 2001 motor vehicle accident or the May 6, 2005, accident, is not persuasive. A recurrence is not a new injury, but simply a period of incapacitation resulting from a previous injury. *Atkins Nursing Home v. Gray*, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. *Weldon v. Pierce Brothers Construction*, 54 Ark. App. 344, 925 S.W.2d 179 (1996). It is noteworthy that the radiology report of May 6, 2005, yield unremarkable negative findings with respect to the claimant's right shoulder. As previously noted, the claimant discharged his assigned job duties without physical limitations or restriction subsequent to the May 6, 2005,

accident.

The credible evidence preponderates that a specific incident occurred involving the claimant while he was performing employment duties in close proximity to his October 26, 2005, visit to the Parkin Medical Clinic. The testimony of the claimant's supervisor reflects that an accident involving the claimant falling from a bridge was reported to him by a witness to the accident who was working with the claimant at the time of the accident. The October 26, 2005, Progress Note of the Parkin Medical Clinic reflects that the claimant relayed a history of having injured his right shoulder in a fall from a bridge at work.

Although the claimant testified that he sought medical treatment at the Parkin Medical Clinic after he got off work on the day of the accident, which he has identified as October 11, 2005, there are no medical records in the evidence corroborative of same. The evidence preponderates that the claimant relayed complaints of pain regarding his right shoulder to his supervisor prior to seeking medical treatment. Further, the afore complaints were relayed by the claimant to his supervisor after the supervisor acquired knowledge of the claimant's accidental fall from the bridge while performing employment duties from Mr. James Smith, who was working with the claimant at the time of the accident.

The evidence preponderates that the claimant first sought medical treatment relative to his right shoulder injury following the accidental fall off the bridge on October 26, 2005. At the time of the October 26, 2005, visit to the Parkin Medical Clinic claimant provided a history of having falling from the bridge at work "about a month" prior to the visit. There is no evidence in the record to reflect that the claimant fell from the bridge while performing employment duties on more than one occasion. A review of the claimant's testimony reflects that he is a poor

historian.

It is not a prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred, but rather the claimant must prove that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). In the instant claim, the claimant has sustained his burden of proof by a preponderance of the evidence that he suffered an accidental fall at work from a bridge while discharging employment duties on or about October 11, 2005.

The radiology report generated in connection with the claimant's October 26, 2005, visit to the Parkin Medical Clinic relative to his right shoulder complaint yield objective findings establishing the injury. Specifically, the October 28, 2005, radiology report relative to the MRI of the claimant's right shoulder reflected findings of mild impingement. Claimant was provided muscle relaxants and pain medication to address his symptoms. The claimant has sustained his burden of proof by a preponderance of the evidence that he suffered a compensable injury to his right shoulder on or about October 11, 2005. Respondents have controverted this claim in its entirety.

Ark Code Ann. §11-9-508 (a) mandates that the employer 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 medical treatment is a question of fact. In the instant claim, the evidence preponderates that the medical treatment received by the claimant relative to his right shoulder injury subsequent to October 26, 2005, represents reasonably necessary medical treatment in connection to the claimant's compensable injury of on or about October 11, 2005.

Respondents are liable for the cost of said treatment to include the referral to Dr. Edward Cooper. Respondents have controverted this claim in its entirety.

There is evidence in the record that the claimant was directed to remain off work by his treating physician at the Parkin Medical Clinic for two to three days following the initial October 26, 2005, visit. Further, the evidence in the record reflects that the claimant was directed to avoid heavy lifting for two (2) weeks following his November 23, 2005, visit to the Parkin Medical Clinic relative to his compensable right shoulder. The claimant was provided light duty work within the medical restrictions imposed by his treating physician. The claimant's employment with respondents ceased when the claimant encountered transportation difficulties.

The claimant's employment with respondents ceased in December 2005/January 2006, when the claimant was unable to report for work due to transportation difficulties. Claimant filed for unemployment compensation benefits, however was denied same due to a lack of earnings during the quarter. There is no evidence in the record to reflect that the claimant was taken off work by his treating physician relative to his compensable right shoulder injury subsequent to November 23, 2005.

Entitlement to temporary total disability benefits for an unscheduled injury is contingent upon a showing that the claimant is completely incapacitated from earning wages and remains within his healing period. *Arkansas State Highway Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). While the claimant remains within his healing period relative to the October 11, 2005, compensable right shoulder injury, he has failed to sustain his burden of proof by a preponderance of the evidence that was totally incapacitate from earning wage in the same or other employment.

AWARD

Respondents are herein ordered and directed to pay all reasonable and necessary hospital, medical, nursing and other apparatus expenses, to include medical related travel and the referral to Dr. Edward Cooper, growing out of the claimant's compensable right shoulder injury of on or about October 11, 2005.

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