

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G507816**

ANTHONY M. SALCIDO, EMPLOYEE	CLAIMANT
SUPERIOR INDUSTRIES, EMPLOYER	RESPONDENT
CENTRAL ADJUSTMENT COMPANY, INC., CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 1, 2016

Hearing before ADMINISTRATIVE LAW JUDGE AMY GRIMES, in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On February 4, 2016, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A pre hearing conference was conducted on December 1, 2015, and a pre hearing order filed that same date. A copy of the pre hearing order has been marked as Commission's Exhibit No. 1 and with modification and no objection is made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on April 29, 2015.
3. The date of compensable injury is April 29, 2015.

The issues to be litigated are limited to the following:

1. Whether the claimant is entitled to surgery recommended by Dr. Heinzelmann.

The claimant contends that he sustained a compensable injury while working for the respondent on or about April 29, 2015. At that time, he was in the course and scope of his employment when he

injured his right shoulder. Dr. Andrew Heinzelmann has recommended surgery for his right shoulder, which has been denied by the respondent. The respondents contend that the claimant is not entitled to any additional treatment. The respondents contend that the claimant's current need for treatment does not arise out of the compensable injury.

The above stipulations are hereby accepted as fact. From a review of the record as a whole to include medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered. The claimant is entitled to the surgery recommended by Dr. Heinzelmann. He has proven that the requested surgery is reasonable and necessary for the treatment of his admittedly compensable injury of April 29, 2015.

FACTUAL BACKGROUND

The claimant is a 40-year-old male with a 10th grade education who has worked for the respondent for four years. The claimant ran ovens, making car and truck rims for the respondent. On April 29, 2015, the claimant suffered an admittedly compensable injury while pulling rims from the ovens with pliers. He stated he pulled the rims about every five minutes. On the day of the claimant's compensable injury, the claimant suffered pain in his right shoulder. Prior to April 29, 2015, the claimant manned the ovens for the respondent every day, working a forty-hour work week. He testified that he had no prior right shoulder injuries and no prior issues performing his job. The claimant was sent to doctor by the respondent. The claimant stated that he had seen a doctor for a prior back injury. He added that the back injury was resolved without further problems. The claimant was sent to physical therapy, which he stated did not help his right shoulder pain. He was then referred to Dr. Heinzelmann for his right shoulder.

The claimant has submitted medical records in this matter. Dr. Heinzelmann's records from June 29, 2015 reflect that the claimant's right shoulder pain has been ongoing since his work-related

injury in April of 2015. Dr. Heinzelmann examined the claimant and reviewed his x-rays and a prior MRI. He diagnosed the claimant with a rotator cuff tear of the right shoulder and recommended an injection as initial treatment for the claimant. On August 8, 2015, the claimant again saw Dr. Heinzelmann who noted that he was not improving and recommended surgery for the claimant's right shoulder. Dr. Heinzelmann noted a review of a prior MRI. The records show that an MRI was performed on June 5, 2015, noting the rotator cuff tear. The claimant stated that he considered Dr. Heinzelmann his treating physician. He added that he wanted to have the surgery recommended by Dr. Heinzelmann.

The claimant further testified that he has continued to work for the respondent. He stated that he has been assigned different jobs. He added that he had been assigned to use a push broom, paint decks, and collect metal samples. The claimant testified that he continued to have pain while collecting the metal samples and using the push broom. The claimant continued to work despite testifying to continued pain. He continued that he had no prior workers' compensation claims and had no prior medical treatment or right shoulder problems. On the date of the hearing, the claimant testified that the condition of his shoulder had not changed since April 29, 2015. He stated that he had continued pain and had since the time of his compensable injury. The claimant stated that he continued regular activities at home including mowing his lawn and repairing 4-wheelers. He continued that he had repaired 4-wheelers before his compensable injury and continued to do so after the injury.

The respondents have submitted photographs showing the claimant working on and lifting a 4-wheeler into a car. The photos are dated June 11, 2015. The claimant was asked about the photos and testified that he did not feel that he caused any injury to his shoulder by lifting the 4-wheeler. He further stated that he had already had an MRI prior [performed on June 5, 2015] to lifting the 4-wheeler on June 11, 2015. The respondents have submitted the report of Dr. McAlister. The claimant stated

that he was never examined by Dr. McAlister. Dr. McAlister's report of September 3, 2015 is in evidence. It reflects that he reviewed all the claimant's medical records. Dr. McAlister stated that the physician and MRI findings did not meet the strict criteria for a tendon tear and could be commonly seen in asymptomatic patients. However, he stated that he would defer to an orthopedic consultation to determine the need for early surgical intervention.

DISCUSSION

The claimant suffered an admittedly compensable injury on April 29, 2015. He now asks the Commission to determine if he is entitled to surgery recommended by Dr. Heinzelmann. Arkansas Code Annotated §11-9-102(4)(F)(i) states:

“When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability as provided by this chapter.”

Once it is settled that a claimant has a compensable injury, the question of medical services must be determined by looking at the facts in question and determining if the medical services are reasonably necessary for the treatment of the claimant's injury. A. C. A. §11-9-508(a) requires that:

“The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.”

What constitutes reasonable and necessary treatment under Arkansas Code Annotated §11-9-508(a) is a fact question for the Commission. Wright Contracting Co. v. Randall, 12 Ark App. 358, 676 S.W. 2d 750(1984).

Here, the claimant testified that he had suffered continued right shoulder pain. He stated that while he continued to work and go about his daily activities, he had continued right shoulder pain. The respondents submitted photos of the claimant lifting a 4-wheeler into a car. The claimant stated that

he had indeed lifted the 4-wheeler into the car. He also testified that he did not feel he caused further injury to his right shoulder. I have reviewed the evidence the respondents have submitted and I find that it does not change the outcome of this matter. Furthermore, I note that the photos are dated on June 11, 2015. The MRI in this matter revealing a rotator cuff tear had already been performed on June 5, 2015. This claimant suffered an admittedly compensable injury. He has continued to have pain related to a right shoulder injury. He has seen Dr. Heinzelmann who has recommended surgery to repair a rotator cuff tear based on an examination and review of the MRI noted above. The claimant also testified that at the time of the hearing, his right shoulder condition was essentially the same as on April 29, 2015. He stated that none of the treatment he had previously gotten had improved his condition. The respondent has also submitted the report of Dr. McAlister. The doctor opines that the MRI and physician's notes do not meet the strict criteria for an early rotator cuff surgery. A review of the evidence reveals that Dr. McAlister simply reviewed all reports and testing he was provided. He did not, however, examine the claimant in order to form his opinion. Therefore, I find the opinion of Dr. Heinzelmann, the claimant's treating physician, to be more credible as to the continued treatment.

After a review of the whole of the evidence, I find that the claimant has proven by a preponderance of the evidence that the surgery recommended by Dr. Heinzelmann is reasonable and necessary for the treatment of his admittedly compensable injury of April 29, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant has proven by a preponderance of the evidence that the surgery recommended by Dr. Heinzelmann is reasonable and necessary for the treatment of the claimant's admittedly compensable injury from April 29, 2015.

ORDER

The claimant has proven by a preponderance of the evidence that the recommended surgery is reasonable and necessary for the treatment of his admittedly compensable injury. The respondents shall be responsible for providing, to the claimant, the surgery recommended by Dr. Heinzemann.

IT IS SO ORDERED.

AMY GRIMES
ADMINISTRATIVE LAW JUDGE