

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F204129 and F303483

CLIFFORD ANDERSON,  
EMPLOYEE

CLAIMANT

CUSTOM METAL FINISHERS,  
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 18, 2005

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

Claimant represented by the HONORABLE FREDERICK S. "RICK"  
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE MARK MAYFIELD,  
Attorney at Law, Jonesboro, Arkansas.

Decision of administrative law judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed June 9, 2004. The administrative law judge  
found that the claimant was temporarily totally disabled  
"for the period beginning January 5, 2002, and continuing  
through the end of his healing period, a date to be  
determined." The administrative law judge found that "the  
respondent shall pay all reasonable hospital and medical  
expenses arising out of the injury of March 26, 2002."

After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability compensation or additional medical treatment after the respondents controverted benefits in January 2003.

I. HISTORY

The record indicates that Clifford Ray Anderson, age 49, began working for Custom Metal Finishers, Inc. in January 1996. The parties stipulated that the claimant "suffered an injury to his left arm, shoulder, and neck" on March 26, 2002. The claimant testified, "I was reaching over a tank, draining a tank with a siphon hose. My coat was unzipped. The gear is about so big around and my coat was unzipped and it grabbed a hold of my coat and pulled me - I was kind of like this (indicating), this arm was down beside the tank....and I jerked it to try to get out of it."

The impression from a radiology report on March 27, 2002 was "Questionable fracture left scapular body. Possible healing or partial healing. There is no significant displacement. Otherwise, negative study."

A return to work slip from Dr. Michael Langley appears to indicate that the claimant could return to light work on April 2, 2002. The claimant testified that he re-injured his arm at work on April 10, 2002. Another return to work slip from Dr. Langley dated April 10, 2002 indicated that the claimant could return to work on an "undetermined" date.

Barbara W. Gifford, President of Custom Metal Finishers, testified that the respondent-employer paid for "the initial doctor's visit and the initial prescription of pain pills."

The conclusion from an MRI of the left shoulder on May 1, 2002 was "Acromioclavicular joint DJD with mild inferior spurring which causes mild contouring of the superior aspect of the distal supraspinatus. This could be a source of clinical impingement. Clinical correlation is recommended."

Dr. Jason C. Brandt reported on July 24, 2002:

Mr. Anderson is seen today in follow-up from his subacromial decompression 6-11-02. His original injury was 3-26-02 when he was working. He got his coat caught in a gear work and had a twisting injury to his left arm. His motion has improved. His symptoms have improved although he still has some burning sensation in the anterior aspect of his left shoulder. He complains of a knot in the anterior distal deltoid region on his left shoulder. Motion today is full. Portal sites are

well healed....There is somewhat of a palpable mass just anterior and distal to the deltoid insertion. A similar mass is palpable on the right upper extremity, but not quite as prominent....

At present, work restrictions are no overhead duty, 5 lb. lifting restriction. I will see him in four weeks.

Dr. Mary S. Shields wrote on July 31, 2002 that the claimant was "unable to perform current duties" at work.

The claimant's testimony indicated that he attempted to return to work in August 2002, but that the respondent-employer did not comply with his physical restrictions. Barbara Gifford denied that the respondents did not comply with the claimant's restrictions. "Anytime we've got a restriction we try to comply with it," she testified. "He couldn't lift his arm. He couldn't lift either arm so we had him not lift either arm. He couldn't do - one time he said he couldn't sweep. We took all the brooms away. He didn't have to sweep anymore. We were literally trying to find work to keep him occupied, to keep him employed."

On August 5, 2002, Dr. Brandt took the claimant off work until an August 12, 2002 follow-up appointment. On August 12, 2002, Dr. Brandt indicated that the claimant

could return to light duty on August 14, 2002. Dr. Brandt wrote, "no overhead activity - Right arm work only - with sedentary duty. Work must be adjusted if he experiences pain." Ms. Gifford testified that she did not have the claimant "on a timecard" after August 14, 2002.

The claimant underwent electrodiagnostic testing on August 22, 2002, at which time the resulting impression was "Abnormal nerve conduction velocity study and electromyography testing of the left upper extremity." The conclusion was "1. The electromyography testing revealed abnormalities in the biceps and deltoid muscles. The findings are consistent with a Left C5 radiculopathy. 2. The patient has mild Left median nerve compression at the wrist based on the transpalmar latencies."

On August 28, 2002, Dr. Brandt took the claimant off work until an appointment with Dr. Cooper on September 4, 2002. There is no treatment of record from Dr. Cooper.

The conclusion from a post-myelogram CT of the cervical spine on September 18, 2002 was "Minimal degenerative disc disease of the cervical spine with no clear herniation or stenosis."

Dr. Terence P. Braden, III performed an Independent Medical Evaluation on September 27, 2002. Dr. Braden noted, "He reports he has been returned to duty a number of times, but each time the arm begins to hurt severely during the workday. He says, at time (sic), he needs to take pain medication just to function with the arm in the work environment." Dr. Braden stated:

1. The status of Mr. Anderson's current condition and diagnosis: It appears as though Mr. Anderson has complex regional pain syndrome in the left upper extremity. This could have been caused by the traction injury to the left arm itself as well as the twisting that occurred in a tourniquet-type fashion around the proximal arm. This would also explain the findings on his electrodiagnostic testing by needle exam in the C5 distribution that the deltoid and the biceps were both affected....
5. I have been asked for a plan of treatment. My plan of treatment at this time is to increase his Neurontin. I also discussed with Mr. Anderson that continued use of narcotic analgesia would not be in his best interest from a tolerance as well as from an addiction standpoint. He understands this. I think referral for Pain Anesthesia for consideration of stellate ganglion or other nerve block would be appropriate to see if we can give him some distinct improvement in the left upper extremity.
6. I think he should remain out of the work environment until we can ascertain a safe and comfortable return, hopefully with an aggressive and expedient manner.
7. It is unknown at this time what the further expected course and length of treatment to attain maximum medical improvement will be.

Dr. Braden wrote on or about September 27, 2002, "No work until seen by me 1 month 10/31/02".

The claimant continued to follow up with Dr. Shields.

Dr. John D. Brophy carried out a comprehensive physical examination of the claimant and reported on December 23, 2002:

Mr. Cliff Anderson is a 47-year-old white male seen in consultation for an independent medical evaluation at the request of Workers' Compensation concerning left shoulder and upper extremity pain. On 26 March, 2002 while working, his clothing was caught in a gear, pulling him into the machine causing a tourniquet effect around the proximal left upper extremity at the mid-humerus....

Cervical MRI dated 3 August, 2002 demonstrates no evidence of HNP or nerve root compression. Cervical myelogram/CT scan dated 18 September, 2002 demonstrates no evidence of HNP or nerve root compression. Specifically, there is excellent filling of both C5 nerve roots. EMG/nerve conduction study dated 22 August, 2002 is considered consistent with possible left C5 radiculopathy. This is based on EMG findings in muscle testing of the deltoid and biceps. In my opinion, these changes could be the result of local trauma related to the tourniquet effect on his arm or the surgical incision at the left deltoid.

**IMPRESSION:** Cervical/trapezius myofascial pain syndrome without clinical evidence of radiculopathy or neuropathy or radiographic evidence of cervical nerve root compression.

RECOMMENDATIONS: The radiographic studies were reviewed with Mr. and Mrs. Anderson. I have suggested initiation of a serious endurance exercise program such as walking with an exaggerated arm swing in an effort to tone his trapezius and cervical muscles. There is no indication for surgical intervention. From a neurosurgical perspective, there is no objective reason why he could not return to work at full duty without restriction as of 24 December, 2002. He would be considered at maximum medical improvement on 24 December, 2002 with a PPI rating (according to the AMA Guidelines, 5<sup>th</sup> Ed.) of zero (0%).

The respondents' attorney questioned Barbara Gifford:

Q. Had he quit?

A. He hadn't called me or talked to me or written to me. I had not fired him or terminated him but it was my understanding that he had a zero impairment, 100% restriction release from an IME on December 23<sup>rd</sup> of '02. And it was up to the employee to let the employer know....

Q. What were your expectations from Mr. Anderson with -

A. I expected he should have called me or written to me and let me know the results of his release so that we could put him back to work, complying with the restrictions.

Q. Were you - did you have a position one way or the other about whether or not Mr. Anderson could come back to work at that point in time?

A. If we would have had a job for him, we would have done out (sic) best to make sure that he could have been employed.

The claimant testified that he received benefits until January 2003. The administrative law judge appears to have determined that the respondents controverted further benefits after January 5, 2003.

Dr. Mary S. Shields wrote on January 9, 2003:

Cliff Anderson has been a patient of mine following his original date of injury, March 26, 2002, and had subsequent development of headaches, left arm pain, shoulder pain, weakness, and neuropathy. His lifestyle dramatically changed after his injuries and he began to live a much more sedentary lifestyle. Anxiety and depression developed secondary to the stress of financial duress, inability to work, hypertension, and pain.

He has been seen by me consistently since the date of his first visit and through Workmen's Comp has been shuffled from doctor to doctor. No actual medications have been tried. Different tests and injections have been administered without actual end in sight. He is still in significant pain; still has medical problems as a result of all his injuries, and I feel that he has not completely been worked up and treated. What he needs is one physician that can completely follow him through a course of therapy. He is not a viable member of society. He is unable to return to the work force and evidently he is not going to be seen or further evaluated with any hopes of trying to improve his quality of life or get him back in the work force....

He does have an appointment with Dr. Safman in regards to his headaches, neck pain, and neuropathy for January 10 at 11:15 a.m. This is a physician with an extensive medical background who can give an objective opinion and, perhaps, make

us a recommendation, and it is really in everyone's best interest to let Mr. Anderson be evaluated and see what else can be done for him before writing him off....

The record indicates that the claimant underwent additional electrodiagnostic testing on January 30, 2003, with the impression, "Abnormal nerve conduction velocity study and electromyography testing of the left upper extremity." The conclusions were "1. The electromyography testing revealed abnormalities in the biceps and deltoid muscles. The findings are consistent with a Left C5 radiculopathy. 2. The patient has mild Left median nerve compression at the wrist based on the transpalmar tendencies." The results from this EMG testing were identical with the EMG results reported on August 22, 2002.

On March 17, 2003, Dr. Shields assessed "1. Hypertension. 2. Dyslipidemia. 3. Insomnia. 4. Major depression with suicidal ideations. 5. Chronic pain. 6. Status post work-related injury."

The claimant was referred to Dr. Alonzo Burba on June 13, 2003.

On September 18, 2003, Dr. Burba signed a form apparently prepared by the claimant's attorney: "This man is

a patient of mine. It is my opinion, within a reasonable degree of medical certainty, that testing, including, but not limited to, an EMG Study, an Epidural Injection, medications, an MRI, and a complete pain consultation with William Ackerman, M.D., in regards to this man's injury is necessary."

A pre-hearing conference was held on October 29, 2003, and a pre-hearing order was filed on November 12, 2003. The claimant contended that he "sustained an injury to his left shoulder and neck on or about March 26, 2002, and April 10, 2002, during the course of and arising out of his employment with Custom Metal Finishers, Inc." The claimant contended that he had "unpaid medical bills including, but not limited to, Marshall Moral Hospital in Walnut Ridge, AR, Bruce Safman, M.D., and Mary Shields, M.D." The claimant "states he was told he was fired, then his employer said he was not terminated, stating he quit December 23, 2002. The claimant has been off work, and was receiving t.t.d. benefits, which were cut off in January." The claimant requested medical treatment from Dr. Shields and Dr. Burba. The respondents

contended that the claimant had been paid all temporary total disability compensation to which he was entitled.

The parties agreed to litigate the issues, "Compensability of April 2002, arm injury; temporary total disability benefits (subsequent to 1-5-03); 505(a) benefits; unpaid medical benefits; compensation benefit rate; and controversion."

The record indicates that Dr. Thomas M. Ward began prescribing medication for the claimant on November 13, 2003. Dr. Ward informed Dr. Shields on December 16, 2003, "Today we have placed his arm in a support wrap next to his body to prevent weight bearing properties from the sling that he is wearing affecting his neck and shoulder pain. We have also given him a prescription for outpatient physical therapy to start as soon as he returns home....Overall I believe specific use of these instructions along with some awareness by Mr. Anderson that his condition may not improve quickly enough for his interest have the ability to at least place Clifford in a position to take a real look at what future needs his arm and shoulder injury have forced him to take into consideration and make those appropriate changes

carefully and without regard to some of his anxieties related to long-term return to work."

Dr. Ward wrote to the claimant's attorney on January 14, 2004:

Mr. Anderson was seen in my office on 1/8/04. He presented me with some documents to complete related to his disability status and future capacity for activities.

In relation to his current abnormalities, Mr. Anderson does not have the ability to work at this time.

Given the future of his worker's comp injury, I am unable to comment in greater detail related to improvements in the future.

If Mr. Anderson is to be given any recognition of his injuries by his past employer then it would be necessary for us to refund his current payer sources payment on his treatment.

For this purpose I am requesting that you provide us with a protective letter indicating our interests pertaining to his present treatment efforts and in the event that there are monetary values of compensation, that our office be notified to allow us to reimburse the Medicaid provider presently providing his treatment....

Hearing before the Commission was held on February 20, 2004. The claimant testified that his condition had improved, because "in November I had 24 Botox shots....I had like eight on each side. I had some underneath the armpit,

some here on top of my shoulder, some here on the back of my muscle, some here in front of my muscle." The claimant testified that Medicaid paid for this treatment.

The administrative law judge found, in pertinent part:

4. On March 26, 2002, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant was temporarily totally disabled for the period beginning January 5, 2002, and continuing through the end of his healing period, a date to be determined.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of March 26, 2002.

7. The respondents have controverted the payment of temporary total disability benefits subsequent to July 5, 2003, and the payment of incurred medical and mileage relative to the Claimant's March 26, 2002, compensable injury.

8. On April 10, 2002, the claimant did not sustain an injury arising out of and in the course of his employment.

The administrative law judge awarded temporary total disability compensation "for the period covering August 14, 2002, and continuing through the end of the claimant's healing period, a date yet to be determined, as a result of the claimant's compensable injury of March 26, 2002." The respondents appeal to the Full Commission. (The claimant does not appeal the administrative law judge's finding that

the claimant did not sustain a work-related injury on April 10, 2002).

## II. ADJUDICATION

### A. Temporary disability

"Disability" means incapacity because of compensable injury to earn, in the same or other employment, the wages which the employee was receiving at the time of the compensable injury. Ark. Code Ann. §11-9-102(8). "Healing period" means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). Temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood based on medical evidence, age, education, experience, and other matters reasonably expected to affect the claimant's earning power. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981), citing Rooney & Travelers Insurance Co. v. Charles, 262 Ark. 695, 560 S.W.2d 797 (1978). Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Breshears, *supra*.

The parties stipulated that the claimant sustained a

compensable injury "to his left arm, shoulder, and neck" on March 26, 2002. This presents a potential adjudicatory problem as to whether the injury was scheduled (left arm) or unscheduled (shoulder and neck). The administrative law judge relied on the Breshears legal standard for unscheduled injuries. The Full Commission will therefore adjudicate this claim based on Breshears, because most of the treatment was for the claimant's shoulder (unscheduled), and neither party argues that the administrative law judge relied on the incorrect standard. The claimant expressly contends that the administrative law judge "interpreted and correctly applied the applicable case law and Arkansas Statute and Codes."

In any event, an x-ray on March 27, 2002 showed a questionable fracture in the left scapular body. The claimant treated with several different physicians, and the record suggests that the respondent-carrier began paying temporary total disability compensation. An MRI of the left shoulder in May 2002 showed degeneration and spurring. The record indicates that Dr. Brandt performed shoulder surgery on June 11, 2002, indicating that the claimant remained in a

healing period as of that date. Dr. Brandt assigned work restrictions in July 2002. The claimant testified that he was unable to perform restricted duty. In August 2002, Dr. Brandt took the claimant off work until he could be seen by a Dr. Cooper. There is no subsequent treatment of record from Dr. Cooper. Dr. Braden independently evaluated the claimant in September 2002. Dr. Braden diagnosed "complex regional pain syndrome in the left upper extremity." Dr. Braden took the claimant off work and stated he did not know when the claimant would reach maximum medical improvement.

The claimant saw Dr. John Brophy, a physician selected by the respondents, on December 23, 2002. The claimant characterizes Dr. Brophy as an "infamous" physician who "successfully jeopardized" the claimant's ability to return to work. The record demonstrates otherwise. The record shows that Dr. Brophy thoroughly and comprehensively examined the claimant. Dr. Brophy's impression was "cervical/trapezius myofascial pain syndrome without clinical evidence of radiculopathy or neuropathy or radiographic evidence of cervical nerve root compression." Dr. Brophy wrote, "From a neurosurgical perspective, there

is no objective reason why he could not return to work at full duty without restriction as of 24 December, 2002. He would be considered at maximum medical improvement on 24 December, 2002 with a PPI rating (according to the AMA Guidelines, 5<sup>th</sup> Ed.) of zero (0%)."

The Full Commission finds that the claimant's healing period ended no later than December 24, 2002. The healing period continues until the employee is as far restored as the permanent character of his injury will permit. When the underlying condition causing the disability has become stable, and when nothing further in the way of treatment will improve that condition, the healing period has ended. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). In the present matter, the record indicates that the claimant's compensable shoulder injury, for which he underwent surgery, had become stable no later than the time of Dr. Brophy's examination. The evidence does not show that any further treatment would improve the claimant's condition after Dr. Brophy's release as of December 24, 2002. The Full Commission finds that the claimant reached the end of his healing period no later than December 24,

2002, on which date Dr. Brophy found the claimant would be "considered at maximum medical improvement." The claimant is not entitled to temporary total disability after the end of his healing period. Elk Roofing Co. v. Pinson, 22 Ark. App. 191, 737 S.W.2d 661 (1987).

The Full Commission recognizes that Dr. Shields wrote on January 9, 2003 that the claimant was "unable to return to the work force." Dr. Ward stated in January 2004, "Mr. Anderson does not have the ability to work at this time." It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. Minnesota Mining & Manufacturing v. Baker, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Commission attaches more significant probative weight to the expert opinion of Dr. Brophy, who opined that the claimant had reached maximum medical improvement in December 2002. The Full Commission notes that the respondents did not actually cease paying temporary disability compensation until about January 5, 2003. The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability after this date.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The employee must prove by a preponderance of the evidence that he is entitled to additional medical treatment. Morgan v. Desha County Tax Assessor's Office, 45 Ark. App. 95, 871 S.W.2d 429 (1994). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The Full Commission finds that the instant claimant did not prove he was entitled to additional medical treatment other than that already provided by the respondents. The Full Commission notes that Dr. Brophy pronounced maximum medical improvement as of December 24, 2002. The preponderance of evidence does not support Dr. Shields' statement in January 2003 that "no actual medications have been tried." Nor does the record support Dr. Shields' conclusion that the claimant "has not completely been worked up and treated." The claimant was prescribed a number of

medications and was treated by several qualified physicians following his compensable injuries. The preponderance of evidence does not demonstrate that additional treatment would be reasonably necessary in connection with the claimant's compensable injury. Nor does the record demonstrate that the "Botox injections" described by the claimant were reasonably necessary.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability compensation or additional medical treatment. The decision of the administrative law judge is reversed, and this claim is denied and dismissed.

\_\_\_\_\_IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

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**DISSENTING OPINION**

The Majority is finding that the claimant reached his healing period in December 2002, and is therefore not entitled to any further temporary disability benefits. They are further concluding that certain medical treatment the claimant received from his treating doctors was not reasonably necessary and that he is no longer entitled to additional medical treatment. Because those findings are in direct contravention to every physician who has actually treated the claimant, I must respectfully dissent from the Majority's Opinion.

The claimant suffered an admittedly compensable injury to his left shoulder on March 26, 2002. The damage sustained in that injury included not only the claimant's shoulder but the muscles in his upper arm and scapular region. As a result of his injuries, the claimant has undergone a variety of treatments in an attempt to restore the functional usage of his shoulder and arm. To date, these treatments have not been entirely successful and the claimant remains significantly disabled.

The doctors who have provided treatment to the claimant have consistently opined that he is still under active treatment and is still disabled. Dr. Mary Shields, a general practitioner who had been treating the claimant since the occurrence of his injury, has opined in a number of letters that he cannot work and that he needs additional treatment for his shoulder. Dr. Thomas Ward, in late January 2004, has also opined that the claimant is disabled and still under his active treatment. Additionally, Dr. Jason Brandt, a Little Rock orthopedist, directed the claimant to remain off work in August 2002, and never released him to full duty. Dr. Terence Braden, who performed a consultative examination of the claimant at the request of the respondent, also opined in September 2002 that the claimant was in need of additional treatment and was disabled.

The Majority has chosen to ignore the opinions of all of those physicians and instead rely upon the opinion of Dr. John Brophy, a Memphis neurosurgeon. The claimant saw Dr. Brophy upon a referral from the respondent. In reviewing Dr. Brophy's report, I find that he is an odd

choice for performing this type of examination. As stated, Dr. Brophy is a neurosurgeon. The claimant, however, does not have a neurosurgical problem. In fact, one of the diagnostic tests performed on the claimant was a MRI scan of the cervical spine which was negative for any problems in that area. Further, the injuries the claimant sustained were to his shoulder joint and to the muscles in and around that part of his body. Normally, these are not the types of problems a neurosurgeon would be treating.

In any event, Dr. Brophy saw the claimant on December 23, 2002. In a report of that date, the claimant's treatment history was summarized, specifically noting that the claimant's cervical MRI did not demonstrate any herniated discs or nerve root compression. Dr. Brophy also discussed the abnormal nerve conduction study performed on the claimant on August 22, 2002. Significantly, Dr. Brophy attributed these abnormal findings to injuries to the claimant's arm sustained in his compensable injury.

In his report, Dr. Brophy states, "there is no indication for surgical intervention." He concludes his report with the following statement:

"From a neurosurgical perspective, there is no objective reason why he could not return to work at full duty without restriction as of 24 December 2002. He would be considered at maximum medical improvement on 24 December 2002, with a PPI rating (according to the AMA Guidelines, 5<sup>th</sup> Ed.) of zero (0%). (Emphasis added).

During his testimony, the claimant described the cursory nature of Dr. Brophy's examination. I believe this testimony is entirely correct since Dr. Brophy was only seeing the claimant for the limited purpose of determining whether he was a candidate for neurosurgery. Since the claimant was not suffering from any condition likely to benefit from neurosurgery, I am sure the examination was very brief.

There was considerable discussion during the hearing, and in the parties briefs, regarding the objectivity of Dr. Brophy and the amount of weight that should be given to his opinion. While I do not question Dr. Brophy's objectivity or credibility, I believe that his report should not be given a great deal of weight simply because it is not particularly relevant to the claimant's actual injuries. Dr. Brophy, as indicated above, is a

neurosurgeon. The claimant clearly did not have any neurosurgical problems. All of the diagnostic testing performed on him indicated the claimant did not have any injuries to his spinal column, spinal cord, or any impingements of any of the nerve roots exiting therefrom. In my opinion, Dr. Brophy is entirely correct in his statement that the claimant is not a candidate for neurosurgical intervention. Likewise, I believe Dr. Brophy is correct when he states that from a "neurosurgical perspective" there is no reason the claimant cannot return to work. However, the claimant's problem is not neurosurgical in nature. Instead, the claimant has suffered a traumatic orthopedic injury to his shoulder and the surrounding muscles and is in need of pain management, physical therapy, muscular and joint injection treatments, medication, and other forms of therapeutic treatment. Even Dr. Brophy suggested the claimant initiate an exercise program to improve the muscle tone in his trapezius and paraspinal muscle.

In my opinion, the Majority is in error when they disregard the clear opinions of physicians who have

familiarity with the claimant's condition and experience with providing the type of treatment he needs. For that reason, I would find that the claimant is still within his healing period and is entitled to additional medical treatment such as that prescribed by Dr. Shields, Dr. Burba, Dr. Ward, and others. I, therefore, respectfully dissent from the Majority's Opinion.

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SHELBY W. TURNER, COMMISSIONER