

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313557

DOUG N. TOSH,  
EMPLOYEE

CLAIMANT

SAIA MOTOR FREIGHT LINE,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED SEPTEMBER 8 , 2005

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

Claimant represented by the HONORABLE STEVEN McNEELY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE ANDY L. CALDWELL,  
Attorney at Law, Little Rock, Arkansas.

Decision of the administrative law judge: Affirmed.

OPINION AND ORDER

The respondent appeals and the claimant cross-appeals from an administrative law judge's opinion filed on October 27, 2004. The administrative law judge found, in pertinent part, "The claimant has proven by a preponderance of the evidence that he sustained a compensable left shoulder injury in the course of and arising out of his employment. The claimant has failed to prove by a preponderance of the evidence that he sustained a left hand injury, which was supported by objective findings. Respondents remain responsible for all reasonable and necessary medical

treatment the claimant has pursued for treatment of his shoulder. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages pertaining to his left shoulder injury from February 19, 2004 through May 19, 2004." After reviewing the entire record *de novo*, the Full Commission affirms the decision of the administrative law judge.

#### I. HISTORY

The claimant, age 57 (10-30-47), worked as a line driver for the respondent out of its Little Rock terminal. According to the claimant, on September 19, 2003, he lost his balance while attempting to swing a portable nose stand beneath a trailer. The claimant was unable to recover his balance and began falling. Therefore, in an attempt to keep his head from hitting the back frame of the truck, the claimant threw his left arm out to catch himself. The claimant caught himself on the back frame of the truck, between the two rail frames. According to the claimant, he felt a sharp pain in his left shoulder and hand. However, the claimant managed to complete his remaining job duties of securing the dolly stand beneath the trailer, and he was able to put his truck in its designated area. Thereafter,

the claimant removed his personal belongings from his company truck and got into his personal vehicle and drove home. The claimant left the terminal at approximately 9:00 or 9:30 p.m.

The claimant first sought treatment for his injury on September 23, 2003. At that time, the claimant was seen by Dr. William Warren due to complaints of arm pain, which he reported as having resulted due to an injury that had occurred on September 19, 2003, at approximately 9:00 p.m. The claimant reported having injured his arm as a result of attempting to catch himself from a fall. Dr. Warren wrote, "The patient suffered an axial load injury of left shoulder. The mechanism of injury was a fall left on level ground. The pain is located on left shoulder. The pain did not radiate...." Dr. Warren assessed the claimant as having "shoulder strain," for which he prescribed medications and placed the claimant on modified activities.

An MRI of the left shoulder was taken on September 24, 2003, with the following impression:

**IMPRESSION:**

1. The previous left shoulder MR of 4-9-03 revealed moderate outlet stenosis and mild impingement change upon the supraspinatus tendon without evidence of cuff tear. The recent episode of trauma has resulted in a small, focal, full

thickness, non-retracted tear of the anterior margin of the supraspinatus tendon, with accompanying peritendinous inflammation and fluid distension of the overlying subacromial-subdeltoid bursa.

2. The patient has lateral column, medial column, and anterior column arch stenosis, with evidence of loss of the normal depressor mechanism exacerbating the multidirectional instability and impingement process.

3. The left AC joint inflammation was not as pronounced on the prior examination.

On September 26, 2003, the claimant was seen by Dr. Warren for follow-up care of his left shoulder injury. The claimant had not been working due to being placed off work pending medical work-up. The claimant's pattern of symptoms was no better, as he had not noted any improvement. After reviewing the claimant's MRI, Dr. Warren assessed him as having a "complete rupture of rotator cuff," for which he referred the claimant to an orthopedic surgeon. He also directed the claimant to refrain from engaging in any activity.

The claimant was seen by Dr. Warren again on October 15, 2003, for follow-up care. It was during this visit that the claimant made his first complaint about having injured his left wrist during the September 15, 2003 incident. Dr. Warren wrote, "Pt states that he hurt his left wrist during the fall and this was not an issue in the beginning. Now

the patient notes pain in the wrist on the left and desires evaluation. The pain is located on dorsal aspect of the left wrist...." Dr. Warren assessed the claimant with "wrist contusion and wrist sprain; and sprain of the shoulder and upper arm." As a result, Dr. Warren placed the claimant on modified activity with limited use of his left wrist and continued his previous medications as prescribed. In addition to this, Dr. Warren reported that an x-ray of the left wrist was negative. Since the claimant was already scheduled for left shoulder surgery the next day, Dr. Warren recommended that he undergo a bone scan at that time.

Dr. William F. Hefley, Jr., performed surgery on the claimant's left shoulder on October 16, 2003. In a letter on that same date, Dr. Hefley wrote:

I took Doug Tosh to the operating room today for left shoulder arthroscopy.

I found very mild glenohumeral chondrosis. He had 2-cm. Full thickness rotator cuff tear and AC joint hypertrophy.

I did an arthroscopy, subacromial decompression, distal clavicle excision and arthroscopic rotator cuff repair. He tolerated surgery nicely.

I want to put him on Type 2 cuff protocol in physical therapy.

The claimant was seen on October 22, 2003, by Dr. Hefley for follow-up of his surgery. Although the claimant's shoulder was feeling well, Dr. Hefley directed the claimant to refrain from working and instructed him to return to see him in three weeks.

On October 30, 2003, the claimant was seen by Dr. Michael Moore for evaluation of his left thumb. The claimant reported having injured his hand on September 19, 2003, when he fell and sustained a jamming injury to his left thumb and hand. The claimant further reported that since his incident, he had been experiencing pain near the basilar joint of the left thumb. The claimant also described pain over the volar and radial aspect of the left wrist, but denied any numbness in the fingers of his left hand or arm. X-rays of the left thumb were ordered, which revealed, "advanced degenerative changes of the left thumb basilar joint, but there was no evidence of an acute fracture." Dr. Moore wrote:

It is my opinion Mr. Tosh's clinical history, physical examination, and x-ray studies are consistent with left thumb basilar joint degenerative arthritis and mild flexor carpi radialis tendonitis. I suspect her [sic] had pre-existing degenerative arthritis of the left thumb basilar joint. The injury that occurred on 09/19/03 has exacerbated the left thumb symptoms

related to degenerative arthritis and is responsible for greater than 51% of his current symptoms.

The claimant was seen by Dr. Bowen on November 5, 2003, due to continued complaints of left shoulder pain following a left shoulder arthroscopic rotator cuff repair by Dr. Hefley. Dr. Bowen reported that the claimant was experiencing significant shoulder pain as a result of having driven his truck over a bump and jarred his shoulder approximately five days ago.

The claimant was seen again by Dr. Bowen due to continuing complaints of shoulder pain on November 13, 2003. At that time, Dr. Bowen wrote, "He is experiencing discomfort and pain on a regular basis. Apparently, he pushed up on his shoulder when he was moving into his car cab and strained it...." Dr. Bowen's impression was, "possibly reinjury of rotator cuff tear."

On November 17, 2003, the claimant was seen by Dr. Hefley for follow-up of his left shoulder surgery, as the claimant was one month post-op. Although the claimant was doing much better, he reported having jarred his shoulder some 10 days earlier. Dr. Hefley gave approval for the

claimant to work for the respondent as a security guard since the claimant would not be using his left arm.

The claimant was seen on December 11, 2003, by Dr. Moore for follow-up evaluation of his left thumb. The claimant had continued complaints of recurrent pain near the left thumb basilar joint. Dr. Moore noted that recent x-rays had revealed advanced degenerative changes of the left thumb basilar joint. The claimant reported that his pain was worse when performing pinching and gripping tasks. Dr. Moore reviewed the treatment options with the claimant, which included, continued splinting, anti-inflammatory medication, repeat injection, or surgical treatment. The claimant felt that his left thumb symptoms were significant; therefore, he elected to undergo surgery. Dr. Moore continued the claimant's current work status of limited use of his left arm relating to his left shoulder rotator cuff repair, which had been performed on October 16, 2003.

On December 17, 2003, the claimant was seen by Dr. Hefley for complaints of intermittent severe pain in the shoulder, which he described as a "stabbing pain." Although the claimant was working light duty and doing physical therapy, he felt he was not getting sufficient sleep and

that was contributing to his pain. Dr. Hefley maintained the claimant's light duty restrictions and continued his physical therapy in a Type 2 protocol. However, Dr. Hefley reported that if the claimant's pain persisted, an MRI would be ordered to determine if the claimant had re-torn his cuff when he re-injured it about a month post-op.

Subsequently, the claimant had continued complaints of shoulder pain, which he reported to Dr. Hefley during a follow-up visit on January 12, 2004. Therefore, Dr. Hefley ordered an MRI and continued the claimant on light duty status.

An MRI was taken on January 19, 2004, with the following impression.

IMPRESSION:

1. Retear of the majority of supraspinatus contribution to the rotator cuff with accompanying subacromial space inflammation, fluid distension, and glenohumeral joint effusion.

On February 2, 2004, the claimant underwent left thumb trapezial resection arthroplasty with Dr. Moore due to "left thumb basilar joint degenerative arthritis."

The claimant underwent a second surgery to his left shoulder with Dr. Hefley on February 19, 2004 due to "left shoulder recurrent rotator cuff tear."

On March 24, 2004, Dr. Hefley wrote:

I have been treating Doug Tosh for a left shoulder injury that he sustained at work on or about September 19, 2003. This necessitated left shoulder arthroscopy in October of 2003. He developed a recurrent tear and required revision surgery on February 19, 2004. Both surgeries, including the second surgery which was a revision rotator cuff repair, are a result of and related to the original work injury of September 19, 2003 within a reasonable degree of medical certainty.

The claimant was seen by Dr. Hefley on April 19, 2004, for follow-up care of left shoulder surgery and complaints of right shoulder pain, a condition unrelated to this claim. As to the claimant's left shoulder surgery, Dr. Hefley noted that an examination of his left shoulder revealed maintenance of good position, and he further noted that his left shoulder arthroscopic revision cuff repair was doing well. As a result, Dr. Hefley recommended that the claimant be given three full months to heal since he had to be able to lift 200 pounds to return to work.

On May 4, 2004, Dr. Moore reported that the claimant had reached maximum medical improvement following left thumb trapezial resection arthroplasty and assessed him with a 15% permanent partial rating for this thumb using the Guides to the Evaluation of Permanent Impairment (4<sup>th</sup> ed. 1993).

Although the respondent paid some benefits to the claimant for his injury from September 19, 2003 until February 2, 2004, it has subsequently denied his claim for workers' compensation benefits in its entirety. Therefore, the claimant has brought this claim asserting his rights to benefits.

Dr. Moore's deposition was taken on August 5, 2004.

Dr. Moore testified:

Q. Based upon what Mr. Tosh told you, would it surprise you to learn that he did not report any pain, any symptoms regarding this hand, wrist, thumb for approximately one month after his alleged fall?

A. Well, that would be unusual from what we -- that would be an unusual presentation from what we normally see. As I previously stated, if you have a fairly significant injury to a part like a thumb that precipitates arthritic problems, it's usually right after that incident.

Q. Is that inconsistent with what he told you?

A. I can't remember exactly what he told me. I think Mr. Tosh told me, basically, that he had thumb pain symptoms after this injury that occurred 9/19/03.

Q. Was it your understanding that it had been so just right after the incident itself?

A. I would probably assume it would be.

Q. Does it change your opinion, based upon what I've told you, that his alleged incident

exacerbated this pain, can you say within a reasonable degree of medical certainty?

A. Well, I can say that it's a little unusual or not a frequent occurrence to experience symptoms related to an arthritic joint after an injury to that joint a month after the incident. As I previously stated, the vast majority of the patients, in my experience, who injure a joint with arthritis experience the joint pain symptoms immediately if not real shortly thereafter.

As to his prior opinion, Dr. Moore specifically testified that his opinion wherein he reported that the claimant's injury (to his left thumb) was exacerbated by the fall does not change because it was based on the clinical history and the report given to him by the claimant. However, Dr. Moore admitted that his opinion would change if there were changes in the claimant's report.

On August 19, 2004, Dr. William Hefley's deposition was taken. Dr. Hefley stated within a reasonable degree of medical certainty that both the initial surgery and the revision were the result of the claimant's fall. Dr. Hefley also testified that the claimant's second need for surgery was a natural and probable consequence of his first surgery. He further testified that it normally takes three months for someone to heal after having undergone surgery to repair a rotator cuff tear.

A hearing was held in this matter on August 26, 2004. During the hearing, the claimant gave testimony. The claimant testified that in April of 2003, he had an accident in his personal vehicle on his way to work one morning. According to the claimant, someone rear-ended him. Following this accident, the claimant experienced stiffness of the neck and shoulder, and upper back and neck problems. The claimant admitted that the seatbelt caused injuries to his left shoulder, which resulted in him having to undergo an MRI to the left shoulder. According to the claimant, he was off work approximately three and one-half to four weeks. However, the claimant testified that he returned to work for the respondent around May 1<sup>st</sup> or 5<sup>th</sup> and worked without any problems performing his job duties until September 19, 2003.

As to the September 19, 2003, incident, the claimant testified that when he got home that night he could tell that this was going to be something serious because it did not go away after taking a BC powder or something of the kind. Therefore, the claimant telephoned his central dispatcher, Carol Anne Barnes, and reported his injury. The claimant testified that the next morning (Saturday), he

called the terminal manager, Joe Boykin, and left a message requesting that he call him, but he never returned his call.

The claimant essentially testified that he did not return to work the following week because he was already scheduled for vacation leave, as he and his wife had planned a camping trip to Hot Springs, which they did take. The claimant denied having injured his shoulder in any way while getting ready for his camping trip. However, the claimant's shoulder pain and related symptoms continued to worsen. As a result, the claimant called Mr. Boykin again, and at that time advised him of his injury. The claimant testified that he sought treatment on Tuesday from the company doctor, Dr. Warren, who referred him to Dr. Hefley.

The claimant further testified that on October 16, 2003, Dr. Hefley performed surgery on his shoulder. Upon being questioned as to what caused him to have to undergo a second surgery to his shoulder, the claimant testified:

Q. Following that, what happened that caused you to have another surgery and some more problems?

A. After the surgery just a few days later I started going to physical therapy. And my wife drove me the whole time and everything, but, on October 31<sup>st</sup>, it didn't work out to where she could take me. I did physical therapy and come back out to leave to go home. And, when I'm

getting in my pickup, I have another sharp pain in shoulder.

Q. What happened following that? Did your shoulder get any better?

A. No it didn't. I waited a day or so, I think it was, and Dr. Hefley wasn't in. So I went to see Dr. Bowen. That should be all in the record.

The claimant further testified that he eventually had another surgery on his left shoulder. According to the claimant, his shoulder is doing better, but he still has pain.

As to his hand injury, the claimant testified that he believes he hurt his hand the same time that he hurt his shoulder because his hand was outstretched and he landed on the frame of the truck, which caused his thumb to bend back. The claimant testified that he thought he reported his left hand problems to Dr. Warren when he saw him the first time. According to the claimant, he also reported his hand problems to Dr. Hefley's P.A./physician assistant, around the first of October, but these records have been lost due to the tape recorder being inoperable. The claimant testified that Dr. Warren referred him to Dr. Moore for evaluation and treatment of his hand problems. According to the claimant, Dr. Moore performed surgery on his hand during

the first part of February (2004). Since this time, the claimant has not returned to work. As of the date of the hearing, the claimant testified that Dr. Moore has released him from care due to his left hand injury. However, the claimant testified that he remains under treatment for his shoulder problems.

On cross-examination the claimant admitted that he had complained of problems of motor strength and numbness in his left thumb dating back to 2001. He also admitted to problems with his thumb that had occurred within the last year of this incident.

The claimant also testified that according to his understanding of the respondent's reporting policy for injuries, he was required to report his injury to his immediate supervisor, which would have been central dispatch. The claimant further testified that if unable to reach central dispatch, then he would have been required to notify the terminal manager of his injury. However, the claimant stated that he was not required to notify Charlotte Jackson of his injury.

Mrs. Carolyn Tosh, the claimant's wife, also gave testimony during the hearing. Mrs. Tosh testified that she

was aware of her husband's prior thumb problems. According to Mrs. Tosh, her husband would sometimes experience pain in both thumbs as a result of arthritis, for which he received injections. She also admitted that the claimant had experienced some pain in his left thumb that dated back to at least 2001.

Ms. Charlotte Jackson, who works for the respondent performing billing duties also gave testimony during the hearing. Ms. Jackson testified that company policy requires that an injured employee let someone at the terminal know if they are injured, and that person would be the terminal manager. She testified that the injured employee should notify their supervisor of the injury, and if the supervisor is not present, then they should notify her. Ms. Jackson essentially testified that she spoke with the claimant on the evening of the incident when he came into the office to fill out paperwork pertaining to his arrival and other related matters. Ms. Jackson testified that the claimant did not notify her of any injury, nor did she observe any visible signs of an injury.

A Prehearing Conference was held in this claim on June 23, 2004, and as a result, a Prehearing Order was entered in

the claim on that date. The following stipulations were submitted by the parties and accepted by the administrative law judge:

- 1). There was an employer-employee relationship on September 19, 2003.
- 2). The compensation rates are \$440/\$330.

By agreement of the parties the issues to be litigated were limited to the following:

- 1). Compensability of the claimant's left shoulder and left hand injury.
- 2). Related medicals.
- 3). The claimant entitlement's to temporary total disability from February 2, 2004, to a date to be determined.
- 4). Entitlement to attorney's fees.

The claimant contended that he sustained a compensable left shoulder and left hand injury on September 19, 2003, and is entitled to medical benefits and temporary total disability benefits from February 2, 2004, to a date to be determined and attorney's fees.

In contrast, the respondent contended that the claimant did not sustain a compensable injury in the course and scope of his employment. Respondent further asserted the notice defense with September 23, 2003, being the first notice.

Some initial benefits were paid but the claim was controverted as of February 2, 2004.

After a hearing before the Commission, the administrative law judge found, in pertinent part, "The claimant has proven by a preponderance of the evidence that he sustained a compensable left shoulder injury in the course of and arising out of his employment. The claimant has failed to prove by a preponderance of the evidence that he sustained a left hand injury, which was supported by objective findings. Respondent remains responsible for all reasonable and necessary medical treatment the claimant has pursued for treatment of his shoulder. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages pertaining to his left shoulder injury from February 19, 2004 through May 19, 2004."

The respondent appeals and the claimant cross-appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

The claimant contends that he sustained a compensable injury to his left shoulder on September 19, 2003, while

performing job duties for the respondent. Ark. Code Ann.

§11-9-102(4) (A) defines compensable injury as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E) (i).

The administrative law judge found that the instant claimant has proven by a preponderance of the evidence that he sustained a compensable left shoulder injury in the course of and arising out of his employment on September 19, 2003. The Full Commission affirms this finding. The claimant essentially testified that he sustained an accidental injury at work on the evening of September 19, 2003. The claimant gave a credible account of the fall, and of his initial attempts to report the incident to at

least two persons in management within hours of his fall, and of having eventually reported this incident to management. The claimant's account of the incident is also corroborated by the medicals. Moreover, Dr. Hefley's clinical impression of the claimant having suffered a torn rotator cuff to his left shoulder is consistent with the claimant's report of the incident. The administrative law judge relied on the new "objective findings" found in the September 24, 2003 MRI report, namely "a small, focal, full thickness, non-retracted tear of the anterior margin of the supraspinatus tendon." According to this report, a previous left shoulder MRI of April 9, 2003, revealed moderate outlet stenosis and mild impingement changes upon the supraspinatus tendon without evidence of cuff tear. The previous MRI of April 9, 2003, which revealed no evidence of a cuff tear, is evidence that the post-traumatic changes (a small, focal, full thickness, non-retracted tear of the anterior margin of the supraspinatus tendon) seen on the September 24, 2003 MRI are objective findings establishing an accidental injury. Pursuant to these findings, Dr. Hefley performed surgery on the claimant's left shoulder on October 16, 2003, and he found the claimant to have a full thickness rotator cuff

tear, which he repaired. The claimant also underwent extensive physical therapy treatment to his left shoulder. Dr. Hefley has opined that the claimant's rotator cuff tear resulted from his recent episode of trauma (fall of September 19, 2003). There are no medical opinions to the contrary, nor is there any other probative evidence before the Commission suggesting that the claimant's left shoulder rotator cuff tear resulted from some other source. The Full Commission affirms the administrative law judge's finding that the claimant sustained a compensable left shoulder injury in the course of and arising out of his employment on September 19, 2003.

On February 19, 2004, the claimant underwent a second surgery to his left shoulder with Dr. Hefley due to "left shoulder recurrent rotator cuff tear." The claimant credibly testified that he reinjured his left shoulder on October 31, 2003, while getting into his pickup truck after having received physical therapy treatment to this shoulder. The Full Commission finds that this incident did not constitute an independent intervening cause, which would have broken the causal connection between the claimant's original shoulder injury of September 19, 2003 and this

subsequent incident. Instead, we find that this second incident was a natural and probable consequence of his original compensable left shoulder injury, as there is no evidence to support a finding that getting into his pickup truck after having undergone physical therapy treatment to his left shoulder could be deemed unreasonable under the circumstances of this case. In addition, we note that Dr. Hefley has opined in the present matter that both surgeries (including the second surgery which was a revision rotator cuff repair), are a result of and related to the original work injury of September 19, 2003. The Full Commission finds that the claimant proved that his "left shoulder recurrent tear" was a natural and probable consequence of and causally connected to his original compensable left shoulder injury.

The claimant also alleges that he sustained an injury to his left hand during his September 19, 2003 fall. The administrative law judge found that the claimant failed to prove by a preponderance of the evidence that he sustained a left hand injury, which was supported by objective findings. The Full Commission affirms this finding. Although x-rays revealed preexisting advanced degenerative arthritis in the

claimant's left thumb, there are no reports of swelling, contusion, or other objective findings establishing that this preexisting condition was exacerbated by his injury. While we recognize that Dr. Moore has opined "The claimant's injury that occurred on September 19, 2003, exacerbated the left thumb symptoms related to his degenerative arthritis and is responsible for greater than 51% of his current symptoms," We do not attach any weight to this opinion because although Dr. Moore references the x-rays which revealed advance arthritis of the thumb, he does not cite any other report in order to provide a contrast in his preexisting arthritis, which would thereby establish an exacerbation of this condition. As a result, we affirm the administrative law judge's finding that the claimant failed to prove he sustained an injury to his left hand, which was supported by objective medical findings.

B. Medical treatment

An 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 claimant bears the burden of proving that he is entitled to

additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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 administrative law judge found in the present matter, "Respondents remain responsible for all reasonable and necessary medical treatment the claimant has pursued for treatment of his left shoulder condition." The Full Commission affirms this finding. Specifically, we find that the claimant proved that the two left shoulder surgeries performed by Dr. Hefley and all of the other medical treatment the claimant has pursued for treatment of his left shoulder condition were reasonably necessary in connection with his compensable left shoulder injury of September 19, 2003, pursuant to Ark. Code Ann. §11-9-508(a).

C. Temporary total disability

An injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

The administrative law judge found in the present matter that the claimant has proven by a preponderance of the evidence that he remained in his healing period from his left shoulder problem and was totally unable to earn wages from February 19, 2004 through May 19, 2004. The Full Commission affirms this finding. Here, the preponderance of the evidence shows that the claimant remained totally incapacitated from earning wages from February 19, 2004, the date that Dr. Hefley performed the second surgery on his left shoulder, until May 19, 2004, at which point Dr. Hefley opined he should have made a full recovery from his surgery. In a report dated April 19, 2004, Dr. Hefley reported he would give the claimant a full three months to recover from his second shoulder surgery before releasing him to work. In addition to this report, during his deposition, Dr. Hefley stated that it takes three months for someone to heal from rotator cuff tear surgery. In the present matter, the administrative law judge correctly relied upon Dr. Hefley's expert opinion in finding that the claimant's healing period for his second left shoulder surgery ended on May 19, 2004. Temporary total disability cannot be awarded after the claimant's healing period has ended. Trader v. Single

Source Transportation, Workers' Compensation Commission  
E507484 (Feb. 12, 1999).

III. CONCLUSION

Based on our *de novo* review of the entire record, the Full Commission affirms all of the findings of the administrative law judge. We find that the claimant has proven by a preponderance of the evidence that he sustained a compensable left shoulder injury in the course of and arising out of his employment. The claimant has failed to prove by a preponderance of the evidence that he sustained a left hand injury, which was supported by objective findings.

Respondent remains responsible for all reasonable and necessary medical treatment the claimant has pursued for treatment of his shoulder. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages pertaining to his left shoulder injury from February 19, 2004 through May 19, 2004.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the administrative law judge's

decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 1996).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing in part on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

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

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OLAN W. REEVES, Chairman

Commissioner Turner concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

\_\_\_\_\_I respectfully concur, in part, and dissent, in part, from the majority opinion.

\_\_\_\_\_I concur that the evidence is more than sufficient to justify the majority's finding of compensability in regard to the claimant's shoulder injury. The claimant's testimony establishes that his injury occurred while he was acting in the course and scope of his employment and that he was performing employment services at the time of the accident. The nature and extent of the injury has been established by objective medical findings supported by the considered medical opinion of his treating physician. Likewise, the dates in which the majority specified that the claimant was entitled to receive TTD benefits are in accordance with the directive of Dr. Hefley as set out in the medical records and in his deposition. I therefore concur with the majority's decision in regard to the claimant's shoulder injury.

The remaining issue in this case is compensability of the claimant's left hand injury. I respectfully dissent from the majority finding that there was no objective evidence supporting the existence of an injury to the claimant's left thumb and hand.

\_\_\_\_\_According to the claimant, he was employed as a "line driver" for the respondent. In that capacity,

he drove a large tractor trailer rig making deliveries to designated points and returning to the respondent's terminal during the course of the day. The claimant testified that his normal run took 10 to 12 hours to complete.

\_\_\_\_\_The claimant testified that his injury occurred on Friday, September 19, 2003. On that date, the claimant testified that he returned to the terminal at approximately 9:00 p.m. He delivered his paperwork to the business office and then proceeded to unhook the trailers he had been pulling (during the course of his testimony he referred to these trailers as "pups"). In essence, the claimant's testimony was that he stumbled while unhitching the trailers and, in trying to stop his fall, he reached out and grabbed part of the trailer. According to the claimant's testimony, he began experiencing severe pain in his shoulder immediately following the accident. He also testified that in catching himself he had bent his thumb back and injured his hand as well.

\_\_\_\_\_The claimant testified that in the incident when his shoulder was injured, he attempted to grab onto a trailer and his thumb had been bent under the palm of

his hand. The claimant stated that he had advised Dr. Warren of this incident when he saw him in September 2003 but that Dr. Warren did not note the problem the claimant was having with his thumb and hand, presumably because Dr. Warren was focused on his shoulder injury. The claimant also stated that he advised Dr. Hefley of his hand problems in his initial visit with him on October 1, 2003. However, Dr. Hefley's record regarding that visit has been lost so that cannot be confirmed. The first medical record reflecting complaints of the claimant's left hand are set out in a report from Dr. Warren dated October 15, 2003. Under the section of Dr. Warren's report which describes the patient history, the following statement occurs:

Pt states that he hurt his wrist during the fall and this was not an issue in the beginning. Now the patient notes pain in the wrist on the left and desires evaluation. The pain is located on dorsal aspect of the left wrist.

Dr. Warren referred the claimant to Dr. Michael Moore of the Arkansas Hand Center for further treatment. In a report dated October 30, 2003, Dr. Moore diagnosed the claimant as suffering from advanced degenerative disease in his thumb and opined that the

claimant's difficulties were more than 51% the result of his job related accident. Dr. Moore later surgically corrected the claimant's problem.

The majority, affirmed the administrative law judge's finding that the claimant failed to prove he sustained an injury to his left hand, which was supported by objective medical findings.

A.C.A. §11-9-102 (16) (A) (i) states that objective findings are those findings that cannot come under the voluntary control of the patient. In the present case, Dr. Moore performed surgery on the claimant based upon his review of the claimant's x-rays. He stated that those x-rays revealed advanced degenerative changes in the claimant's left thumb basilar joint. X-rays are clearly objective tests which provide findings which were not under the control of the claimant. I do not see how it can be argued that Dr. Moore's findings were not objective.

I also note that A.C.A. §11-9-102 (16) (B) states that medical opinions directing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. In this case, Dr. Moore stated both in his medical reports and in his

deposition that he firmly believed that the claimant's thumb problems were made symptomatic as a result of his fall. His opinions are undeniably stated within a reasonable degree of medical certainty.

For that reason, I believe that the claimant has established that he suffered an injury to his thumb on September 19, 2003 and that the existence of this injury is established by objective findings in the form of x-rays. Further, Dr. Moore's opinions in regard to the nature of the injury, the compensability, and the propriety of his treatment were all stated within a reasonable degree of medical certainty. In my opinion, the majority was in error to disregard Dr. Moore's opinions.

In summary, I believe that the claimant has established a compensable injury to his shoulder as a result of the fall he described and that the majority's finding in regard to this injury should be affirmed. I further find that the claimant established a compensable injury to his left hand and thumb in the same accident and that he is entitled to appropriate and disability benefits resulting from that injury as well. Since the majority found that this aspect of the claimant's

injuries were not compensable, I respectfully dissent in this regard.

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SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, and dissent, in part, from the majority opinion.

The claimant's testimony reveals that at the time of his alleged accident he had been employed as a truck driver for the respondent employer for about 20 years. The claimant testified that on the evening of Friday, September 19, 2003, he lost his balance and fell while attempting to swing a portable nose stand beneath a trailer that he had just unhitched from his tractor trailer rig. The claimant further testified that in an effort to avoid hitting his head on the back frame of the tractor, he threw his left arm out to catch himself. The claimant stated that he caught himself on the back frame of his truck, between the two rail frames. The claimant testified that he felt an immediate sharp pain

in his shoulder and his hand following this incident. Afterwards, the claimant finished his designated task of securing his truck and trailers, and he then he went home. The claimant guessed that it was around 9:00 or 9:30 p.m. when he left the terminal yard that evening.

The claimant testified that, to his knowledge, the only other employee present at the time of his alleged incident was Ms. Charlotte Jackson, who is the night-shift person in charge of billing. The testimony of Ms. Jackson reflects that she spoke to the claimant on the night of September 19, 2003, when he came into the office area to clock in and fill out his paperwork. Ms. Jackson credibly testified that she and the claimant had a brief conversation about his upcoming vacation as he was filling out his paperwork. Ms. Jackson further testified that during their encounter, the claimant gave her no indication, either verbally or physically, that he had been injured. After he had finished his paperwork, Ms. Jackson observed the claimant leave through the front door of the building. According to Ms. Jackson's testimony, the claimant's personal vehicle was parked in the back lot, and he had used the back door to enter the building. Ms. Jackson was unaware of the

claimant's activities prior to coming into the office or after he left. Ms. Jackson stated, however, that company policy requires employees to notify someone at the terminal of any injury. Concerning an employee's duty to report an injury, Ms. Jackson testified as follows:

If an employee is injured, they need to let someone know at the terminal. It's the terminal manager, if he's present; if he's not, then it's the supervisor. If they're not present, then they are to notify me.

The claimant testified regarding his understanding of the respondent employer's proper procedure for reporting an accident as follows:

Q. Do you know if SAIA has a policy for reporting injuries?

A. Sure.

Q. What is that policy, as you understand it?

A. The policy, as I understand it, is that you report it to your immediate supervisor.

Q. And who would your immediate supervisor have been?

A. My immediate supervisor would have been central dispatch.

Q. Do you know if it was policy to report it to the terminal manager?

A. You do that after you talk to central dispatch. If the terminal manager is available, you talk to him.

Q. Do you know if there is a policy if the terminal manager is not available?

A. No, I do not.

Q. You don't know whether or not you're supposed to report that to Charlotte [Jackson]?

A. No.

The claimant had no specific recollection of having conversed with Ms. Jackson on the evening of his alleged accident. The claimant admitted however, that he did not report his alleged injury to Ms. Jackson. Rather, the claimant stated that he phoned his central dispatcher, Ms. Carol Anne Barnes, after he returned home, and that he reported his injury to her. The claimant further alleged that he phoned and left a telephone message for his terminal manager, Mr. Joe Boykin, early the next morning. The claimant stated that he did not speak personally with Mr. Boykin, but that he left a message for Mr. Boykin to telephone him back. Further, the claimant admitted that he did not state in his message to Mr. Boykin that he had been injured on the previous evening.

The claimant testified that he and his wife left for their week-long camping trip in Hot Springs on the Sunday following his injury. On Tuesday, September 23, 2004, the claimant called Mr. Boykin, informing him of his injury and seeking approval to seek medical treatment. The claimant was seen that same day by Dr. William Warren in Little Rock. Dr. Warren's report of that visit reflects that the claimant complained to him "about his arm which was injured on 9/19/2003 9:00:00 PM." Under the history section of this report, Dr. Warren wrote:

The patient suffered an axial load injury of left shoulder. The mechanism of injury was a fall left on level ground. The pain is located on left shoulder. The pain did not radiate.

Following his September 23<sup>rd</sup> examination of the claimant, Dr. Warren assessed him with left shoulder strain for which he prescribed medications. Nothing was noted in Dr. Warren's initial report regarding the claimant's alleged hand injury.

As it is clearly established by objective medical evidence, it is beyond question that the claimant suffered from a torn left rotator cuff, which was surgically repaired in October of 2003. It is

questionable, however, that the claimant's injury occurred at work or was causally connected to his work activities, as he alleges. First, the claimant, even if he did not converse with her as she has described, had gone into the office on the evening of September 19, 2003, and was obviously aware that Ms. Jackson was present. Regardless of his belief about proper reporting procedures, it seems illogical that the claimant would not have at least sought Ms. Jackson's assistance if he had taken so serious a fall as to cause him "excruciating pain" as he described it in his testimony. Furthermore, the claimant, who was a 20 year veteran of the company, did not report his alleged injury to Ms. Jackson and fill out the proper forms after the incident occurred, which she testified was in violation of company policy. In fact, the claimant did not officially report his injury to anyone until the Tuesday following his alleged accident. And in spite of him having allegedly torn his rotator cuff and broken his thumb on the evening of September 19, 2003, the claimant did not seek immediate or even closely temporal medical attention for these reportedly severely painful conditions. Rather than seek medical attention for his

injuries, the claimant went camping instead. Finally, Dr. Moore testified by deposition on August 5, 2004, that if the claimant had experienced a "significant jamming injury or injury like he reported on 9/19/03, I would expect his thumb to hurt shortly if not right after that injury." The claimant did not complain of problems with his thumb until several weeks after the alleged incident. In addition, Dr. Moore testified that the claimant had moderate to advanced arthritis in his thumb joint. Dr. Moore stated, based upon his experience, that when a traumatic injury exacerbates an arthritic joint, it is unusual for that joint not to become symptomatic immediately or shortly after the injury.

As I previously stated, the vast majority of patients, in my experience, who injure a joint with arthritis experience the joint pain symptoms immediately if not real shortly thereafter.

When questioned about previous reports in which Dr. Moore had indicated that the claimant's injury was exacerbated by his alleged fall, the doctor admitted that he had relied upon the claimant's presentation in forming his opinion. Dr. Moore also admitted that the

claimant had failed to inform him of an automobile accident in which he had been involved in April of 2003. It is well established that the Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Accordingly, I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable injury on September 19, 2003, to his left shoulder. There were no witnesses to the claimant's alleged fall, and he did not report the incident until four days afterwards, when he first sought authorization to be treated. Furthermore, the record clearly shows that the claimant suffers from arthritis which has, and continues to affect other areas of his anatomy in similar fashion to his alleged injuries. However, I concur with the majority opinion finding that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his left hand as a result of his alleged fall on September 19, 2003. Therefore, for all the reasons set forth

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herein, I must respectfully concur, in part, and  
dissent, in part, from the majority opinion.

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KAREN H. MCKINNEY, Commissioner