

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111738

RONNIE C. HUDSON,
EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 9, 2007

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

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

Respondents represented by the HONORABLE BETTY J. HARDY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's
opinion filed June 6, 2006. The administrative law judge
found, among other things, that the claimant did not prove
Dr. Hefley's medical treatment was reasonably necessary.
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 proved
Dr. Hefley's treatment was reasonably necessary. We find

that the claimant proved he was entitled to temporary total disability compensation from August 29, 2003 until March 22, 2004.

I. HISTORY

Ronnie Hudson, age 58, testified that he had been employed with the Little Rock Fire Department for 35 years. The parties stipulated that the employment relationship existed on May 19, 2001. Captain Hudson testified on direct examination:

Q. Tell the Judge what happened on that date.

A. We had a structure fire on Comstock, and me and my hoseman attempted to go in through the garage. The house kind of exploded and blew us out of the house and back between two cars in the garage, with him landing on top of me. It was a pretty good explosion, and I ended up hurting my left shoulder....

Q. Tell the Judge what kind of problems you were having with your left shoulder after this.

A. It hurt. I couldn't lift it without it hurting. It just hurt all the time, and I couldn't pick up anything real heavy with it without it hurting. I had quite a bit of pain with it.

The stipulations indicated that the respondents initially accepted compensability for a left shoulder injury and provided medical treatment.

The claimant began treating with Dr. W. Scott Bowen in June 2001. An MR of the claimant's left shoulder was taken in June 2001, with the following impression: "1. Small, high grade partial thickness tear along the anterior leading edge of the distal supraspinatus tendon at its insertion. This involves the mid substance of the tendon and extends to the articular surface. There is no retraction. 2. Mild edema in the subdeltoid bursa may reflect mild bursitis. 3. Degenerative hypertrophy at the level of the AC joint with impingement on the supraspinatus musculotendinous junction."

Dr. Bowen's impression after reading the MRI was "Symptomatic partial rotator cuff tear, left." Dr. Bowen planned an arthroscopic decompression and AC joint resection.

The claimant testified that he presented on his own to Dr. William F. Hefley, Jr. Dr. Hefley saw the claimant in July 2001 and planned "left shoulder arthroscopy, acromioplasty, distal clavicle excision and treatment of the rotator cuff tear."

The record indicates that the respondent-carrier sent the claimant to Dr. David N. Collins on July 3, 2001. The claimant agreed on cross-examination that the respondents

directed him to see Dr. Collins. Dr. Collins' impression was "1. Occupational related injury left shoulder. 2. Rotator cuff tear."

A left shoulder arthrogram was taken on July 5, 2001, with the following impression: "Mild degenerative changes at the acromioclavicular joint and at the insertion of the rotator cuff. There is no evidence of a rotator cuff tear."

Dr. Collins reviewed the arthrogram and at first treated the claimant conservatively. In October 2001, however, Dr. Collins performed a "repair of rotator cuff tear, left shoulder."

Dr. Collins provided follow-up care after surgery. By February 2002, Dr. Collins reported that the claimant was "asymptomatic" and had "nearly full range of motion."

On April 1, 2002, Dr. Collins pronounced maximum medical improvement and assigned a permanent impairment rating.

The record contains a Form AR-N, Employee's Notice Of Injury, signed by the claimant on June 1, 2002. The claimant reported that an accident occurred on June 1, 2002. The claimant wrote that a ceiling had fallen on his head

"jamming my neck," and that he had injured his neck, shoulder, and back.

Dr. Collins reported on June 4, 2002 that the claimant had sustained a new injury to the right shoulder: "This occurred when a ceiling came down and hit him and 2 coworkers....Left shoulder exam shows very minimal crepitation and ROM is full in the overhead position." Dr. Collins gave the following impression: "1. Occupation related injury, right shoulder. 2. Rule out occupation related full thickness rotator cuff tear, right."

The claimant followed up with Dr. Collins on July 12, 2002:

He reports bilateral shoulder pain, worse at night. It is difficult to account for his symptoms as there has been no event of injury. I have reviewed synopsis of surveillance tapes for this gentleman with Melissa Morgan. This shows him engaged in what appears to be very heavy activities....Both shoulders are examined today. There is really not significant crepitation.... I am unable to account for his pain based on a structural lesion. We have not obtained a bone scan, which could be a possibility to rule out occult osseous lesion. Fortunately, the MRI did not pick up any signs of neoplasm on the right side. If his symptoms persist, I would suggest that he be evaluated by a primary care physician to rule out all possible extrinsic and systemic causes of shoulder pain bilateral. From my standpoint, he can return to work without

restrictions. It would not be necessary for me to see him again.

A claims specialist wrote to the claimant on July 30, 2002, stating, "We have received a report from Kenneth M. Rosenzweig, M.D., wherein he advised that you have reached maximum medical improvement from your injury captioned above. Dr. Rosenzweig further indicated that you have a eleven (11%) percent permanent partial impairment to your body as a whole as a result of your injury captioned above." The parties stipulated that the respondents "provided medical treatment and indemnity benefits until July 30, 2002, including an 11% anatomical impairment rating."

The claimant testified with regard to his left shoulder, "It was terrible. It never got any better. It just continued to hurt." The record indicates that Dr. Kevin Roberts referred the claimant back to Dr. Hefley. Dr. Hefley saw the claimant in July 2003 and gave the following impression: "1. 2 years post left shoulder open surgery. I'm not sure what procedure was actually done. Perhaps he had a mild partial acromioplasty. I do not believe he had a distal clavicle excision. He does have residual impingement now and I'm suspicious that he has a rotator cuff tear....He

is going to require arthroscopy, subacromial decompression, distal clavicle excision and other treatment as required. We'll discuss this more when we review the MRI."

The respondents' attorney cross-examined the claimant:

Q. As I understand from your deposition, you went to Dr. Hefley on your own for your left shoulder?

A. Yes, I did.

Q. In fact, I think you actually said, "I went back in and got the left shoulder redone with Dr. Hefley. He scoped it, and that was not workman's comp. I just did it on my own in July of 2003." Is that right?

A. Yes.

Q. And I think that's what Dr. Hefley indicated in his reports, that it was going to be on your own and was not a work comp claim at that point in time. Is that right?

A. Yes.

Q. Now, you never did turn those bills in to the City of Little Rock or to Risk Management Resources until you requested a hearing and we started this process here; right?

A. Right.

Q. In fact, when we had the hearing in April of 2004 over an issue for your right shoulder, you also said then that you had had your left shoulder done on your own?

A. Right.

Q. And at that point, you weren't seeking any benefits for your left shoulder; is that right?

A. I don't think that's true. See, I didn't know none of this stuff.

An MRI of the claimant's left shoulder was taken on July 22, 2003, with the following impression: "Postoperative shoulder with no evidence of rotator cuff tear. Note is made of supraspinatus, infraspinatus, and subscapularis tendinosis. Rotator cuff arthropathy is noted with degenerative changes of the acromioclavicular joint with inferior spurring. No evidence of fracture or dislocation."

Dr. Hefley reviewed the MRI and reported on August 4, 2003:

He has surgical changes at the insertion of the supraspinatus into the humeral head. The radiologist mentioned "rotator cuff arthropathy", but reading the report it does not seem he is using that term with the conventional definition of the term. I don't see any evidence of glenohumeral arthritis. He does have AC DJD and some tendonitis of the supraspinatus, infraspinatus and subscapularis....I've recommended left shoulder arthroscopy, subacromial decompression, distal clavicle excision and other treatment as required. We will debride or repair the cuff as required and address glenohumeral pathology as indicated....

Dr. Hefley gave the following impression: "1. Left shoulder impingement syndrome, AC DJD and I suspect partial rotator cuff tear."

Dr. Hefley performed surgery on August 29, 2003. The pre-operative diagnosis was, "Left shoulder rotator cuff tear, acromioclavicular degenerative joint disease." Dr. Hefley performed the following type of operation: "Left shoulder arthroscopy, SLAP repair and rotator cuff repair, subacromial decompression, distal clavicle excision and removal of previous sutures, and implant pain control pump. Removal of previous sutures." The post-operative diagnosis was, "Left shoulder small full thickness rotator cuff tear, acromioclavicular degenerative joint disease, Type 2 SLAP lesion."

Dr. Hefley wrote to Dr. Roberts on August 29, 2003:

I took Ronnie Hudson to the operating room today for left shoulder arthroscopy. I found a Type 2 SLAP lesion. He had a small tear of the anterior edge of the supraspinatus. I could see sutures from a previous rotator cuff repair through bone tunnels in the tuberosity. He had a large anterior acromiale spur and significant AC joint degenerative changes. I did an arthroscopy, SLAP repair, rotator cuff repair, subacromial decompression, and distal clavicle excision and removed the previous suture knots that might have been contributing to his impingement. I implanted

a pain control pump. He tolerated surgery nicely. I'm going to put him in a Type 1 cuff protocol in physical therapy.

The claimant testified that he was off work beginning August 29, 2003.

Kenneth Weaver, PA-C, followed up with the claimant on September 3, 2003: "He states the shoulder is doing fairly well. He seems pleased with the procedure at this point."

The claimant also continued to follow up with Dr. Hefley, who noted on November 24, 2003, "The shoulder is feeling well. He has some mild pain....On exam he has full active range of motion in the shoulder. There is no crepitation....He'll continue his shoulder home exercise program....He is going to return to work as a firefighter in January."

However, the claimant returned to Dr. Hefley on December 31, 2003: "Two weeks ago a lawnmower was falling and he reflectively (sic) caught it with his left hand. He felt a sharp burn and sting in the shoulder and has had pain since then and inability to raise the arm." Dr. Hefley planned an MR arthrogram of the claimant's left shoulder.

An MRI of the left shoulder post-arthrogram with contrast was taken on January 7, 2004, with the following impression: "1. Full-thickness tear to the supraspinatus tendon without retraction of the musculotendinous junction. 2. Severe degenerative changes and/or partial tear to the superior labrum. The biceps anchor appears intact, however. 3. Postoperative changes from previous cuff repair and partial acromioplasty. Mild degenerative changes persist at the residual acromioclavicular joint."

The claimant was administered a left shoulder injection on January 7, 2004.

Dr. Hefley reviewed the MR arthrogram and reported on January 19, 2004, "He has a 1 centimeter full thickness supraspinatus tear and severe degenerative changes and/or partial tear of the superior labrum. Part of this could be post-operative changes....I discussed options with Ronnie. I suggested returning for arthroscopic inspection. If required revision rotator cuff repair, revision subacromial decompression....For now he wants to continue the shoulder home exercise program and return to talk with me in a month....He is currently on sick leave at work. He doesn't feel like he can work and we'll keep him off."

The claimant continued to follow up with Dr. Hefley.

Dr. Hefley gave the following impression on March 22, 2004: "1. 7 months post left shoulder arthroscopic cuff and SLAP repair with apparent small recurrent tears, but doing well symptomatically." Dr. Hefley planned the following: "1. He is increasingly happy with his shoulder and wants to continue exercising it and give it some time. 2. I'll let him return to work next week at normal duty. 3. He'll return here at his discretion."

The claimant testified that he returned to work on March 22, 2004.

On June 1, 2005, Dr. Hefley resumed treating the claimant for right shoulder pain. Dr. Hefley also noted, "His left shoulder is doing fine after we revised his shoulder arthroscopy. He seems quite happy with it at this point." Dr. Hefley performed surgery on the claimant's right shoulder on June 29, 2005.

A pre-hearing order was filed on November 16, 2005. The parties stipulated that the claimant "has withdrawn his request for a Hearing as to the alleged injury to his right shoulder. AWCC file F304722 will be returned to open

general files and file F111738 will proceed to a hearing on the issues set forth herein."

The parties agreed to litigate the following issues:

"1. Whether Claimant's medical treatment by Dr. Hefley was authorized, reasonable and necessary. 2. Whether Claimant is entitled to additional medical benefits, including out of pocket expenses and mileage. 3. Whether Claimant is entitled to reimbursement of vacation and sick time."

A hearing was held on December 20, 2005. At that time, the claimant withdrew the issue of reimbursement for vacation and sick time. The claimant contended that he was entitled to temporary total disability from August 28, 2003 through March 22, 2004.

The claimant testified, "After Dr. Hefley went in and redone it, the pain went away and it worked fine. So it's okay. He fixed my shoulder."

The administrative law judge found, in pertinent part:

7. Claimant did not sustain his burden of proving by a preponderance of the evidence that Dr. Hefley's medical treatment was reasonably necessary because he did not establish that his compensable injury is a factor in his resulting need for this treatment. There is evidence in the record that the left shoulder injury had resolved at the time of Claimant's release by Dr. Collins; he did not treat his claim as work-related at the

time he sought Dr. Hefley's treatment in July of 2003; and the medical records do not establish that the tear treated by Dr. Collins is the same tear treated by Dr. Hefley.

8. Claimant did not sustain his burden of proving by a preponderance of the evidence his entitlement to additional medical benefits for the same reasons given in paragraph 7 for his failure to establish that Dr. Hefley's July 2003 medical treatment was reasonably necessary.

9. Claimant did not sustain his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 28, 2003 to March 22, 2004. The proof does not support a finding that Claimant was incapacitated because of his compensable injury. Evidence in the record indicates that the left shoulder injury resolved at the time of Dr. Collins' release of Claimant; the medical records do not establish that the tear treated by Dr. Collins is the same tear treated by Dr. Hefley; and Claimant did not treat his time off work following his second surgery as an "incapacity because of compensable injury."

The claimant appeals to the Full Commission.

II. ADJUDICATION

A. 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) (Repl. 1996). The claimant must prove by a preponderance of the evidence that he is entitled to additional medical treatment. *Wal-Mart*

Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the administrative law judge found that the claimant did not prove Dr. Hefley's treatment was reasonably necessary. The Full Commission reverses this finding. The respondents initially accepted compensability for a work-related accident occurring May 19, 2001. The claimant credibly testified that he injured his left shoulder while putting out a fire on that date. A subsequent MR study of the claimant's left shoulder showed a tear in the supraspinatus tendon. Dr. Bowen's impression after reading the MRI was "symptomatic partial rotator cuff tear, left." Dr. Bowen planned surgery. Dr. Hefley saw the claimant in July 2001 and planned procedures including a left shoulder arthroscopy, acromioplasty, distal clavicle excision, and treatment of the rotator cuff tear.

The respondents sent the claimant to Dr. Collins. Dr. Collins performed a repair of the left rotator cuff in October 2001. The record indicates that the claimant's shoulder afterward was at times reported to be symptomatic;

however, the claimant credibly testified, "It never got any better. It just continued to hurt." The Full Commission recognizes the claimant's testimony that the claimant thought he presented to Dr. Hefley on his own, but the record indicates that Dr. Roberts referred the claimant back to Dr. Hefley. Dr. Hefley's reports in July 2003 and following indicated that the claimant needed additional medical treatment for his left shoulder. Dr. Hefley performed surgery on August 29, 2003. Dr. Hefley informed Dr. Roberts that, during surgery, "I found a Type 2 SLAP lesion. He had a small tear of the anterior edge of the supraspinatus. I could see sutures from a previous rotator cuff repair through bone tunnels in the tuberosity....I did an arthroscopy, SLAP repair, rotator cuff repair, subacromial decompression, and distal clavicle excision and removed the previous suture knots that might have been contributing to his impingement."

The Full Commission finds that the claimant proved Dr. Hefley's surgery on August 29, 2003 was reasonably necessary in connection with the claimant's May 19, 2001 admitted injury. The evidence before us demonstrates that the physical abnormalities reported by Dr. Hefley were the

causal result of the compensable injury. We note the claimant's credible testimony that his pain was gone following surgery from Dr. Hefley, and that Dr. Hefley "fixed my shoulder." This probative evidence of post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. *Winslow v. D&B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). We reverse the administrative law judge's finding that surgical treatment provided by Dr. Hefley was not reasonably necessary.

B. Authorized Physician

Ark. Code Ann. §11-9-514(a)(3) sets forth the claimant's rights and responsibilities concerning change of physician. Ark. Code Ann. §11-9-514 also provides:

(b) Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the claimant's expense.

(c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

See, Sharp v. Lewis Ford, Inc., 78 Ark. App. 164, 78 S.W.3d 746 (2002).

The respondents essentially contend in the present matter that Dr. Hefley's treatment was not authorized. The respondents rely on a Form AR-N signed by the claimant on June 1, 2002. The respondents assert that the claimant knew the change of physician rules and could not seek "unauthorized" treatment from Dr. Hefley. The administrative law judge determined that the June 1, 2002 Form AR-N was for an injury to the claimant's right shoulder on June 1, 2002. This Form AR-N did not apply to the compensable May 19, 2001 event, and there is no evidence of record that the claimant received the change-of-physician rules with regard to the May 19, 2001 injury. We agree with the administrative law judge's determination that the claimant's treatment with Dr. Hefley was not unauthorized pursuant to the statutory change of physician rules.

C. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). The determination of when the healing period ends is a question of fact for the Commission. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

The administrative law judge found that the present claimant was not entitled to temporary total disability. The Full Commission reverses this finding. The claimant sustained an admittedly-compensable injury to his left shoulder on May 19, 2001. The claimant underwent surgery by Dr. Collins in October 2001. The claimant testified, however, that his shoulder symptoms never entirely subsided. Dr. Hefley resumed treatment of the claimant in July 2003. Dr. Hefley performed surgery on August 29, 2003. As we have discussed, this reasonably necessary medical treatment included "an arthroscopy, SLAP repair, rotator cuff repair, subacromial decompression, and distal clavicle excision." The record demonstrates that the claimant entered a healing

period for the May 19, 2001 compensable injury no later than August 29, 2003. The evidence also demonstrates that the claimant was totally incapacitated to earn wages from August 29, 2003 until Dr. Hefley released the claimant on March 22, 2004. The claimant testified that he returned to work on March 22, 2004. The Full Commission finds that the claimant proved he was entitled to temporary total disability compensation from August 29, 2003 until March 22, 2004.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that Dr. Hefley's treatment was not reasonably necessary, and we reverse the administrative law judge's finding that the claimant did not prove he was entitled to temporary total disability. The Full Commission finds that Dr. Hefley's medical treatment, including left-shoulder surgery, was reasonably necessary pursuant to Ark. Code Ann. §11-9-508(a). We find that the claimant proved he was entitled to temporary total disability compensation from August 29, 2003 until March 22, 2004. The respondents are entitled to an offset for any benefits the claimant received pursuant to Ark. Code Ann. §11-9-411(a). The claimant's attorney is entitled to fees for legal services in

accordance with Ark. Code Ann. §11-9-715(Repl. 1996). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of two-hundred fifty dollars (\$250), pursuant to Ark. Code Ann. 11-9-715(Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.