

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612744

RANDY GARRISON,  
EMPLOYEE

CLAIMANT

FIRESTONE TUBE CO.,  
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 11, 2008

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

Claimant represented by the HONORABLE AARON L. MARTIN,  
Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE BETTY DEMORY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed July 20, 2007. The administrative law judge  
found that the claimant proved he was entitled to temporary  
total disability compensation and reasonably necessary  
medical treatment for his right shoulder. After reviewing  
the entire record *de novo*, the Full Commission affirms the  
opinion of the administrative law judge.

I. HISTORY

The record indicates that Randy Garrison began working at Firestone Tube Company in February 1994. Mr. Garrison testified that he had a shoulder injury and surgery in 2004. The claimant agreed that he underwent another shoulder surgery in 2005.

The parties stipulated that the claimant "filed a claim for a right shoulder/elbow injury occurring on June 2, 2006, which was initially accepted as compensable." The claimant testified, "I was pulling a bale of rubber out of the shredder. It got hung up in the shredder, and when I pulled up, I heard a pop in my shoulder."

On October 3, 2006, the claimant signed a Form AR-N, Employee's Notice Of Injury, stating that there was an accident on June 2, 2006: "Employee claims that while pulling a bale of rubber from the shredder he heard a 'pop' in his right shoulder and experienced pain. His right shoulder continued to hurt and felt numbness in his right hand." The parties stipulated that the respondents "made payments on this claim, including some medical and physical therapy."

Dr. Ben J. Kriesel examined the claimant on October 4, 2006 and reported, "x-ray: right shoulder degenerative changes noted, AC joint widened, right elbow degenerative changes with spurring." Dr. Kriesel's assessment included right-shoulder strain. Dr. Kriesel treated the claimant conservatively and assigned work restrictions. The claimant testified that he returned to work at light duty.

A right shoulder MR without contrast was taken on October 9, 2006:

Alignment is normal. Rotator cuff appears intact. There is a small area of fluid signal abnormality along the superior margin of the supraspinatus tendon and musculotendinous junction. The acromioclavicular joint appears normal. There is a half centimeter area of subchondral cystic degenerative type signal in the posterolateral margin of the humeral head. Labrum appears intact.  
Acromioclavicular joint appears normal.

IMPRESSION:

1. Small linear subacromial bursa fluid collection suggesting bursitis. This is somewhat non-specific.
2. Some minimal subchondral cystic degenerative change humeral head.

Leah Martin, APN, assessed right-shoulder bursitis on October 11, 2006. The claimant subsequently began treating with a physical therapist. The claimant informed Dr. Kriesel on October 26, 2006 that physical therapy had "not

helped much yet." Dr. Kriesel assessed right-shoulder bursitis.

A claims specialist informed the claimant on November 8, 2006, "We have been informed that you have missed several of your doctor's appointments and have been warned of the importance of attending these scheduled visits. Seeing as how you have missed three visits now, we are terminating your benefits. If you wish to continue medical treatment you will need to do so under your personal health insurance."

The claimant testified that his light work duty ended on November 9, 2006 and that he had not worked anywhere since that date. The claimant's attendance at physical therapy was sporadic and was discontinued on or about November 16, 2006.

Dr. W. Scott Bowen examined the claimant on November 28, 2006: "Randy is here for a problem involving his right elbow and right shoulder. Two years ago, he had previous surgery for a recurrent slap repair. He had a new injury as of June 2, 2006 where he was at work at the Firestone Plant when he was pulling some jammed rubber products out of the shredder and strained his right elbow and shoulder." Dr.

Bowen reported that x-rays revealed "a previous acromioplasty. The glenohumeral joint is intact....MRI scan by Dr. Kriesel on 10/09/06 indicated some subacromial bursitis only. Otherwise, the rotator cuff and labrum appeared to be intact."

Dr. Bowen gave the following impression: "1. S/P arthroscopic debridement with slap repair, right shoulder. 2. Traumatically induced rotator cuff tendinitis and synovitis with possible injury to subscapularis, right shoulder. 3. Traumatically induced lateral epicondylitis and medial epicondylitis, right elbow." Dr. Bowen planned conservative treatment initially and noted, "3. Continue light duty - Apparently, there is no light duty. If so, she (sic) should be off work."

Dr. Bowen stated on December 19, 2006, "In light of the fact that he became worse with physical therapy, this has been ongoing for a number of months and he did have a specific reinjury in June, recommendation is for relook arthroscopy with evaluation of the labrum and possible repair as well as possibly an open subscapularis repair. We will schedule him for this."

Dr. Bowen operated on January 17, 2007: "1. Right shoulder arthroscopy. 2. Labral debridement and synovectomy. 3. Arthroscopic revision anterior acromioplasty. 4. Arthroscopic distal clavicle resection." The post-operative diagnosis was as follows: "1. Intact rotator cuff. 2. Synovitis with intact labrum with type I abrasion of the superior labrum. 3. Mild external impingement. 4. Acromioclavicular joint arthrosis."

The claimant testified that following surgery, "I have no more pain, and I got use of my arm." The physical therapist's post-surgery notes corroborated the claimant's testimony.

A pre-hearing order was filed on March 5, 2007. The claimant contended that he sustained a compensable injury to his right shoulder and right elbow on June 2, 2006. The claimant contended that he was entitled to temporary total disability benefits from November 9, 2006 through a date yet to be determined.

The respondents contended that the claimant had been provided all appropriate benefits to which he was entitled. The respondents contended that they "provided the Claimant medical treatment and physical therapy. However, the

claimant missed six of nine appointments for physical therapy." The respondents asserted that "any additional treatment sought by the Claimant is not reasonably necessary nor causally related to his June 2, 2006 work-related injury."

The claimant agreed on cross-examination that he was laid off on April 6, 2007. The claimant testified that he applied for and began receiving unemployment benefits. The claimant testified that he was released by Dr. Bowen on or about May 4, 2007.

The administrative law judge found, in pertinent part:

3. Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment for his right shoulder.
4. Claimant has failed to prove by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment for his right elbow.
5. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from January 17, 2007 to May 4, 2007.
6. Respondents are entitled to a dollar-for-dollar offset under Ark. Code Ann. §11-9-411 for treatment of Claimant's right shoulder that was covered by his group health insurance, and for Accident/Sickness disability benefits paid to Claimant from January 17, 2007 to April 6, 2007.
7. Because of problems with the Form AR-W introduced into the record, the issue regarding the valuation of Claimant's average weekly wage

cannot be reached and will be considered reserved.

The respondents appeal 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). 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 proved he was entitled to reasonably necessary medical treatment for his right shoulder. The Full Commission affirms this finding. The claimant contended that he sustained an accidental injury to his right shoulder on June 2, 2006. The claimant credibly testified that he felt a pop in his shoulder while performing his employment service for the respondents. The

respondents initially accepted the claim as compensable but terminated benefits after alleging that the claimant had missed several doctor's appointments. Although the record does show that the claimant missed several scheduled appointments for physical therapy, the record also shows that the claimant informed Dr. Kriesel that physical therapy had not improved the claimant's post-injury physical condition.

The claimant began treating with Dr. Bowen in November 2006, and Dr. Bowen noted that the claimant had sustained a new injury on June 2, 2006. Dr. Bowen also observed that physical therapy had worsened the claimant's physical condition. Dr. Bowen performed right-shoulder surgery on January 17, 2007. The claimant testified that he regained full function of his right arm following surgery, and physical therapy notes entered following surgery corroborated the claimant's testimony. Post-surgical improvement is a relevant consideration in determining whether surgery is reasonably necessary. *Winslow v. D & B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d. 180 (2000).

The Full Commission finds that the instant claimant proved he was entitled to reasonably necessary medical

treatment provided in connection with his compensable right shoulder injury, including all of the treatment provided by Dr. Bowen.

B. 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). Whether or not a claimant's healing period has ended is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

The administrative law judge found that the claimant proved he was entitled to temporary total disability benefits from January 17, 2007 to May 4, 2007. The Full Commission affirms this finding. The claimant sustained a compensable injury to his right shoulder on June 2, 2006. The evidence demonstrates that the claimant remained within a healing period for his compensable injury as of January 17, 2007, the date Dr. Bowen performed surgery. The evidence also shows that the claimant was totally

incapacitated to earn wages no later than January 17, 2007. The claimant testified that Dr. Bowen released him on or about May 4, 2007. The record therefore does not show that the claimant remained within a healing period and was totally incapacitated to earn wages after May 4, 2007.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he was entitled to reasonably necessary medical treatment provided in connection with his compensable right shoulder injury. Said reasonably necessary treatment included the treatment provided by Dr. Bowen. The claimant proved he was entitled to temporary total disability beginning January 17, 2007 to May 4, 2007. The Full Commission therefore affirms the administrative law judge's award of additional medical treatment and temporary total disability compensation. We affirm the administrative law judge's finding that the respondents are entitled to an offset pursuant to Ark. Code Ann. §11-9-411(Repl. 2002). Temporary total disability shall be payable to the claimant with respect to any week for which he received unemployment benefits but only to the extent that the temporary total disability otherwise payable

exceeded the unemployment benefits. See, Ark. Code Ann. §11-9-506(Repl. 2002).

The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on the respondents' appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500). See, Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

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DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant was entitled to reasonable and necessary medical treatment for his right shoulder and finding that the claimant was entitled to temporary total disability benefits for the period January 17, 2007 through May 4, 2007. In my opinion, the

claimant has failed to meet his burden of proof. I find that the claimant is not entitled to additional medical treatment after he failed to comply with his treatment plan and is therefore, not entitled to any temporary total disability benefits.

The claimant was employed by the respondent employer in banbury, which is where the rubber is cooked after it has been shredded and mixed with carbon black and oil. On June 2, 2006, the claimant contended that he was pulling a bale of rubber out the shredder when he heard a pop in his shoulder. The claimant completed an incident pass and continued to work for approximately four months before seeking medical treatment.

The evidence demonstrates that the claimant had prior problems with his shoulder. The claimant ultimately underwent two surgeries to repair a torn bicep tendon, labrum and rotator cuff. The claimant returned to work for the respondent employer.

On October 4, 2006, the claimant requested medical treatment. It is of note that after his June 2, 2006, shoulder injury the claimant sought medical treatment for at least three medical problems and never

mentioned a shoulder injury. On June 26, 2006, the claimant sought treatment for his back after bush hogging, on August 21, 2006, after moving a 42-gallon fish tank and on September 18, 2006 when he was hauling hay and hooking up a trailer.

The claimant was seen by Dr. Kriesel. The claimant underwent an MRI on October 9<sup>th</sup> and was diagnosed with mild bursitis. The claimant was prescribed physical therapy.

On October 26, 2006, the claimant returned to Dr. Kriesel for a cortisone injection. The claimant was accompanied by Ms. Lorrie Chesser, the Safety and Environmental Manager for the respondent employer, to that visit. Ms. Chesser observed the claimant remove his shirt prior to receiving the injection and described it as following:

During that appointment, when they were ready to give Mr. Garrison an injection, he was wearing a long-sleeved shirt over a T-shirt, and Dr. Kriesel asked him just to remove the top shirt, which was a long-sleeved pullover, which he did. And I didn't realize it at first, but the nurse brought it to my attention, that when he removed that shirt, he pulled it over his head smoothly and cleanly, with no

hesitation, in a very fluid  
movement.....

At this same appointment the claimant told Dr. Kriesel that the physical therapy was not helping much yet. It was shortly after this visit that Ms. Chesser received notification that the claimant had missed six of the nine physical therapy appointments. The respondents then denied the claimant's claim for further benefits due to his non-compliance. It was also denied later because the treatment he received was not related to his June 2, 2006, incident.

The claimant returned to Dr. Kriesel on November 9, 2006 and told Dr. Kriesel that physical therapy was not helping at all. The doctor noted that the claimant missed six of nine appointments. Therapy was stopped and on November 15, 2006, Dr. Kriesel referred the claimant to Dr. Scott Bowen, an orthopedist.

Dr. Bowen reviewed the claimant's MRI and X-rays and made the following findings:

1. S/P arthroscopic debridement with slap repair, right shoulder.

2. Traumatically induced rotator cuff tendinitis and synovitis with possible injury to the subscapularis, right shoulder.

3. Traumatically induced lateral epicondylitis and medial epicondylitis, right elbow.

Dr. Bowen prescribed physical therapy for three times a week for three weeks. The claimant missed at least one appointment.

On December 19, 2006, the claimant presented to Dr. Bowen with continued right shoulder and elbow pain. Dr. Bowen's impression was "[c]ontinued right shoulder pain with possible reinjury." That day, he wrote Dr. Kriesel: In light of the fact that he became worse with physical therapy [which is not reflected in the therapy notes], this has been ongoing for a number of months and he did have a specific reinjury in June, recommendation is for relook arthroscopy with evaluation of the labrum and possible repair as well as possibly an open subscapularis repair. The claimant was again referred for therapy in January 2007 and was discharged on the 16<sup>th</sup> of that month. Dr. Bowen on January 17, 2007

performed the following surgical procedures on the claimant:

1. Right shoulder arthroscopy.
2. Labral debridement and synovectomy.
3. Arthroscopic revision anterior acromioplasty.
4. Arthroscopic distal clavicle resection.

His postoperative diagnoses were:

1. Intact rotator cuff.
2. Synovitis with intact labrum with type 1 abrasion of the superior labrum.
3. Mild external impingement.
4. Acromioclavicular joint arthrosis.

Dr. Bowen referred the claimant to physical therapy, three times a week. His therapy evaluation and plan of care dated January 22, 2007 provided that he was "off work until released by MD." The records noted that the claimant missed his February 16 therapy appointment during this period. On March 2, Dr. Bowen wrote Dr. Kriesel that he was prescribing four weeks of strengthening and that after that he expected to release him to full activities. The claimant cancelled his March 7 and 14 appointments, and failed to show for his March

21 session. On March 23, he presented with no pain and with full limits range of motion of all planes in the right shoulder. Dr. Bowen ordered that he continue in therapy to work on strengthening. The claimant failed to show for his March 28 appointment, and cancelled the one on the 30<sup>th</sup> of that month. On April 2, Dr. Bowen ordered four more weeks of therapy to focus on strengthening and wrote Dr. Kriesel that he expected to give a full release with an impairment rating and permanent restrictions of 50 pounds lifting to the waist on a regular basis but only occasional lifting of no more than 25 pounds to his chest or above his head. The claimant canceled his April 13 appointment, and failed to show on the 25<sup>th</sup>.

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that an employer shall provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of the

employee's injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of the compensable injury. Wal-Mart, supra; GEO Specialty Chemical v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000); Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001); White Consolidated Indus. v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000); Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996).

Further, when the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. Wackenhut, supra. The basic test is whether there is causal connection between the two episodes. Id. When assessing whether medical treatment is reasonably necessary for the treatment of a

compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy.

Gardner v. Area Agency on Aging, Full Commission Opinion, January 4, 2006 (Claim No. F302438); Jones v. Seba, Inc., Full Commission Opinion, December 13, 1989 (Claim No. D512553).

The claimant alleges that he is entitled to additional medical treatment for his right shoulder and temporary total disability benefits. My review of the evidence demonstrates that the claimant cannot prove by a preponderance of the evidence that he is entitled to additional medical treatment. The evidence demonstrates that the claimant did not seek medical treatment for approximately four months after the incident. The claimant testified he did not seek treatment because he did not want to go to the trouble and the pain was not that bad. However, the claimant went to the doctor at least three times for other complaints, including June 26, 2006, after bush hogging, August 21, 2006, after moving a 42-gallon fish tank and September 18, 2006, after hooking up a trailer when hauling hay. I find it pretty hard to believe that the claimant sought medical

treatment on three different occasions after the June 2, 2006, incident and did not mention one time he was having trouble with his shoulder. Further, he said it was too much trouble to go to the doctor. Obviously it was not too much trouble to go to the doctor for back pain.

The claimant also missed six of nine physical therapy appointments after he sought medical treatment for his shoulder. Some of these were no show no call. The claimant scheduled these appointments himself. He testified that he missed some of the appointments because his girlfriend's son was sick. The claimant made no attempt to even reschedule any of these missed therapy sessions before returning to Dr. Kriesel. He merely told Dr. Kriesel that the therapy was not helping.

Moreover, the respondents were relieved of any further obligation to pay for medical treatment because the claimant abandoned his course of treatment. The mere existence of a form of treatment that could improve a claimant's condition does not prohibit a finding that a claimant's healing period had ended when he refuses to

undergo the treatment. See, Breakfield v. In & Out, Inc., 79 Ark. App. 402, 88 S.W.3d 861 (2002).

Furthermore, Dr. Bowen's medical records do not support a finding that additional treatment is reasonable and necessary. A review of Dr. Bowen's operative note of January 17, 2007, shows that he claimant did not have a rotator cuff tear or recurrent superior labral tear, as Dr. Bowen suspected before surgery. In fact, Dr. Bowen's post-operative diagnosis was intact rotator cuff, synovitis with intact labrum with type I abrasion of the superior labrum, mild impingement and acromioclavicular joint arthrosis. This is precisely the kind of findings one would expect from someone who had previous surgeries on their shoulder as the claimant did in 2004.

Therefore, after conducting a de novo review of the record, I find that the decision of the Administrative Law Judge should be reversed. In my opinion, the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment after November 9, 2006. Not only did the claimant refuse to comply with treatment by

not showing up for six of his nine therapy appointments, the post-surgical findings of Dr. Bowen demonstrate the claimant is not entitled to additional medical treatment. Because I find that the claimant is not entitled to additional medical treatment, the claimant is also not entitled to temporary total disability benefits.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner