BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F904661

ROGER LANKFORD, EMPLOYEE	CLAIMANT
CROSSLAND CONSTRUCTION, EMPLOYER	RESPONDENT
VALLEY FORGE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 9, 2010

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

Claimant represented by HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE FRANK NEWELL, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The claimant appeals and the respondent cross appeals a decision by the Administrative Law Judge. The claimant appealed the finding that the claimant failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment for his compensable shoulder injury. The respondent cross appealed the finding by the Administrative Law Judge that the claimant’s average weekly wage was $372.60. Based upon our de novo review of the record, we affirm in part and reverse in part the

decision of the Administrative Law Judge. Specifically, we affirm the decision finding that the claimant has failed to prove by a preponderance of the evidence he was entitled to additional medical treatment for his shoulder. However, we reverse the finding that the claimant's average weekly wage is $372.60. Our calculations indicate that the claimant's average weekly wage is $365.39.

A.C.A. § 11-9-518 (Repl. 2002) provides:

> (a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract for hire in force at the time of accident and in no case shall be computed on less than a full-time workweek in the employment.
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> (2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the week in which the accident occurred and by multiplying the hourly wage by the number of hours in a full-time workweek in the employment.
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> (b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.
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> (c) If, because of exceptional circumstances, the

> average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

The evidence demonstrates that the claimant did not have an employment contract that guaranteed a specific number of hours that the claimant would work each week. The payroll records indicate that the claimant's hours per work varied from a low of 16 to a high of 52. The claimant initially earned $9.00 per hour before receiving a raise to $9.50 per hour for forty hours of work in a week and time and a half per hour for any overtime hours. The payroll records in evidence indicate that the claimant was paid $16,826.01 for regular hours and $1,808.74 for overtime hours for a total of $18,634.76 for the 51 weeks prior to his admittedly compensable injury. Therefore, the claimant's average weekly wage is $365.39. Accordingly, we reverse the decision of the Administrative Law Judge and find the claimant's average weekly wage is $365.39

The next issue to be addressed is the claimant's entitlement to additional medical treatment recommended by Dr. Jeffrey Evans. Employers must promptly provide medical services which are reasonably necessary for treatment of

compensable injuries. Ark. Code Ann. § 11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). 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. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

The medical evidence demonstrates that the claimant sustained an injury to his right shoulder in the form of a posterior glenoid labral tear on September 10, 2001, while the claimant was employed by a different employer. The claimant received extensive treatment for this injury. He was initially treated by Dr. Stephen Heim and subsequently by Dr. Jeffrey Evans. The claimant was found to have a lesion or mass of the proximal humerus that was

consistent with an enchondroma or cartilage tumor. An enhanced MRI scan which was taken shortly after this injury, was interpreted as also showing degenerative changes in the form of mild spurring and capsular hypertrophy. The labral tear was surgically repaired by Dr. Evans on March 5, 2002. The claimant was discharged from further treatment for this injury by Dr. Evans on April 25, 2002.

The claimant returned to Dr. Evans, on January 7, 2003, for recurrent difficulties with his right shoulder that began while he was at home. Dr. Evans noted that the claimant was experiencing some hypermobility of his shoulder and diagnosed right shoulder instability. The claimant continued under treatment by Dr. Evans through at least February 18, 2003.

The claimant sustained another injury to his right shoulder, on January 17, 2005, while he was in prison. Following this injury, the claimant complained of significant pain and inability to use his right shoulder. The claimant continued to require medical services, including repeated injections and he had extensive limitations and restrictions on the use of his right shoulder through at least February 24, 2006.

The claimant sustained the current injury on April 19, 2007. The first medical report in the record is the report of an MRI that was performed on the claimant’s right shoulder on June 5, 2007. This report indicated that this MRI was performed at the request of a Dr. C. Ted Hood. However, no reports or records of Dr. Hood, proceeding this MRI, are in the record. The MRI indicated no change in the cyst or tumor involving the proximal end of the claimant’s right humerus from that noted in the February 5, 2002 MRI. The presence of degenerative changes of the acromioclavicular joint and some progression in these changes were noted. Further, the MRI was interpreted as showing abnormalities indicative of an impingement syndrome and there was no significant joint effusion of the right shoulder joint.

The claimant was seen on June 8, 2007, prescribed oral medication and given an orthopaedic referral for further evaluation and treatment. He was also given a release to return to work by Dr. Hood, with restrictions against performing any duties that required pulling, pushing, or lifting in excess of 10 pounds and abducting or raising of the right arm. Dr. Hood further required the

claimant to wear a sling on his right arm during the work day.

On June 25, 2007, the claimant again came under the treatment of Dr. Evans. X-rays were taken of the claimant’s right shoulder, which showed only the presence of post-operative changes of the shoulder joint. In his report of June 25, 2007, Dr. Evans recounted the claimant’s previous problems with his right shoulder in 2002 and 2003, but made no mention of the claimant’s shoulder injury and difficulties in 2005 through February of 2006. Dr. Evans indicated that the claimant had no problems with his shoulder after 2003 problems. Dr. Evans diagnosed the claimant’s difficulties as being attributable to the two metal anchors or screws that were placed in the glenoid neck during the 2002 reconstructive surgery. He recommended that the claimant undergo an arthroscopy of the right shoulder for diagnostic purposes and, if necessary, to remove the previously implanted “hardware”.

The arthroscopic surgery was performed by Dr. Evans on July 20, 2007. Dr. Evans observed that the two metal screws or anchors in the glenoid neck had not become dislodged, but were firmly buried into the bone and he did

not remove them. Dr. Evans further found that the claimant had Grade 4 chondromalacia of the glenoid and humeral head, fraying of the superior labrum, an absent bicep tendon, fraying of the anterior labrum, and moderate synovitis of the glenohumeral joint. The undersurface of the rotator cuff was found to be normal. Dr. Evans debrided the frayed portion of the labrum. The post-operative diagnosis of the claimant's right shoulder condition, was "right shoulder degenerative joint disease".

In his follow up report of August 2, 2007, Dr. Evans noted that the claimant was doing well and was back at work at light duty. He recommended that the claimant be placed on Celebrex and undergo a program of physical therapy to increase range of motion and provide parascapular muscle strengthening. He restricted the claimant to light duty until his next follow up in six weeks. Dr. Evans' diagnosis of the claimant's condition remained right shoulder "degenerative joint disease." In this report, Dr. Evans expressed the hope that the claimant's shoulder could last until the claimant was well up into his 50's or 60's, before he required a shoulder replacement.

On September 13, 2007, Dr. Evans noted that the

claimant “was doing very well with no complaints of pain at all”. He recommended that the claimant continue to take Celebrex on a daily basis. Dr. Evans’ diagnosis remained “right shoulder degenerative joint disease”. He scheduled the claimant to return for follow up for this condition in two months.

The claimant returned for scheduled follow up on November 15, 2007. At that time, Dr. Evans noted that the claimant’s difficulties consisted mainly of discomfort at night and in the evening, when the claimant laid back in a chair and the chair pushes forward on the right scapula. On physical examination, Dr. Evans noted no objective abnormalities, and the only subjective abnormality noted was a lack of external rotation of the right shoulder. Dr. Evans prescribed continued use of the Celebrex, Ultram, and two Tylenol Arthritis Strength tablets twice a day. He scheduled the claimant for a routine follow up visit in six months. Dr. Evans’ diagnosis of the claimant’s difficulties remained that of “right shoulder degenerative joint disease”.

On February 7, 2008, the claimant returned to Dr. Evans and he noted that the claimant had experienced an episode of difficulties with his right shoulder, “since the

gate at work swung around and hit him on the shoulder”. Dr. Evans observed the presence of crepitus on range of motion of the right shoulder. Otherwise, the claimant’s findings, were essentially normal. The claimant was given an injection into the right shoulder.

The claimant saw Dr. Evans on May 5, 2008, and he was complaining of increased difficulties with his right shoulder, after being required to use a heavy hammer over head at work. Dr. Evans observed slight crepitus, on range of motion of the right shoulder, but otherwise, his examination was essentially normal. Dr. Evans’ diagnosis continued to remain that of right shoulder degenerative joint disease. Dr. Evans injected the claimant’s right shoulder and noted an immediate 100 percent relief of the claimant’s pain. He directed the claimant to limit his activity, as tolerated, and to follow up on an as needed basis.

The claimant did not return to Dr. Evans until January 26, 2009. At that time, the claimant was complaining of increased discomfort in his right shoulder. Dr. Evans observed crepitus during the range of motion testing of the right shoulder. He also noted some reduction in the range of

motion of the right shoulder, but observed that the stability, motor coordination, sensation, and cardiovascular status of the right shoulder and arm were all normal. Dr. Evans diagnosed the claimant's difficulties as "right shoulder degenerative joint disease". He injected the claimant's right shoulder again and instructed the claimant to return for follow up in three months.

Dr. Evans addressed the issue of causation of claimant's shoulder difficulties in a letter to the respondent, dated March 24, 2008. In this letter, Dr. Evans stated:

> I first saw Roger on January 2, 2002, for his right shoulder glenoid labral tear. I have seen him numerous times over the past six years, all of which, by my record, were workman's compensation visits. He most recently had a shoulder arthroscopy on July 20, 2007, with the major finding being degenerative joint disease of the right glenohumeral joint. I have not released him for the shoulder portion of his workman's compensation case. He has done really well with his shoulder, but I anticipate that he will continue to require Celebrex for perhaps the rest of his life. Perhaps, for your paperwork purposes, his degenerative joint disease of the shoulder could be more accurately termed post traumatic arthritis. By whatever term is used for the diagnosis, his primary issue with the shoulder is the wear of the glenohumeral joint. It

> may become symptomatic enough years from now to require a total shoulder arthroplasty.

The evidence clearly establishes that the claimant had extensive pre-existing damage to his right shoulder, including degenerative joint disease, prior to the work-related incident on April 19, 2007. Dr. Evans opined that the claimant's pre-existing degenerative joint disease is an arthritic condition that is progressive in nature. There is absolutely no objective evidence that the compensable injury of April 19, 2007 resulted in any additional permanent or long term physical damage to the claimant's right shoulder. Specifically, the observations made by Dr. Evans during the right shoulder arthroscopy on July 20, 2007, revealed no evidence of any recent physical damage to the claimant's right shoulder joint but only the presence of pre-existing degenerative changes that related back to the claimant's previous unrelated injury. Throughout his treatment of the claimant, Dr. Evans' diagnosis has remained that of degenerative joint disease of the right shoulder.

After conducting a de novo review of the record, we find that the claimant has established that his need for treatment is for his degenerative joint disease of his right

shoulder, not for his compensable right shoulder injury of April 19, 2007. The preponderance of the evidence clearly demonstrates that the claimant's compensable right shoulder injury, on April 19, 2007, was a temporary aggravation of the claimant's pre-existing and progressive degenerative or arthritic disease and that the claimant had returned to his pre-injury state by at least January 30, 2009. Therefore, any need for further treatment recommended by Dr. Evans was for the natural progression of the pre-existing degenerative joint disease. Accordingly, we affirm the decision of the Administrative Law Judge.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant is entitled to additional reasonable and

necessary medical treatment for his compensable shoulder injury.

On April 19, 2007 the claimant fell into a hole, hanging up his shoulder on some wood he was holding under his arm. The claimant testified that he reported the incident immediately, and the claim was initially accepted as compensable. The medical records indicate that the claimant underwent arthroscopic surgery, performed by Dr. Jeff Evans on July 20, 2007, and subsequently received injections in his shoulder as late as January 26, 2009. The claimant testified that he was scheduled to see Dr. Evans after the January 26, 2009 office visit, but the insurance company canceled the appointment.

The majority opinion makes it clear that this claim was denied because of Dr. Evans' repeated referral to the claimant's condition as being degenerative joint disease. However, Dr. Evans explained to the insurance company claims representative, in a letter dated March 24, 2008, that what he referred to as degenerative joint disease of the claimant's shoulder could be more accurately termed post-traumatic arthritis. Not even the insurance company interpreted Dr. Evans' letter as an indication that the

treatment that he provided the claimant was not due to the admittedly compensable April 19, 2007 injury. Yet, the majority somehow interprets the letter as meaning that, when Dr. Evans refers to post-traumatic arthritis, he is attributing that to the claimant's pre-existing condition instead of to the admittedly compensable April 19, 2007 injury that resulted in arthroscopic surgery on July 20, 2007.

The claimant testified that he went to work for the respondent in May of 2006 as a carpenter's aide. He was a basic laborer for a carpenter and his job involved climbing ladders and carrying materials. He performed that job until his April 19, 2007 admittedly compensable injury without receiving any medical treatment or missing any work. It was the specific identifiable accident that occurred on April 19, 2007 that caused his condition to become symptomatic and require medical treatment.

The claimant testified that there was no period of time between April 19, 2007 and when he last saw Dr. Evans that he felt that his shoulder had completely recovered.

To conclude that the claimant reached maximum medical improvement by January 26, 2009, when his treating

physician’s Progress Note on that date specifically indicates that the claimant was to follow-up in three months, is simply error. To conclude that Dr. Evans’ March 24, 2008 letter explaining that the claimant’s condition is actually post-traumatic arthritis does not support the claimant’s claim is ignoring the fact that an admittedly compensable accident on April 19, 2007, caused the claimant to become symptomatic enough that he required treatment, including arthroscopic surgery and multiple injections in his shoulder.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner