

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F812627

JAMES McCracken,  
EMPLOYEE

CLAIMANT

JIM BROWN COMPANY, INC.,  
EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 15, 2010

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

Claimant represented by the HONORABLE JAMES STANLEY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE RANDY P. MURPHY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part,  
affirmed in part as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed February 12, 2010. The administrative law  
judge found that the claimant proved he sustained a  
compensable injury to his neck. The administrative law  
judge found that the claimant proved he was entitled to  
additional medical treatment, and that the claimant proved  
he was entitled to temporary partial disability benefits.

After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion in part and we affirm in part as modified. The Full Commission finds that the claimant did not prove he sustained a compensable injury to his neck or cervical spine. The Full Commission finds that the claimant did not prove he was entitled to additional medical treatment for his left shoulder. We find that the claimant proved he was entitled to temporary partial disability benefits from March 16, 2009 through June 15, 2009.

I. HISTORY

James McCracken, age 47, testified that he began working for Jim Brown Company, a heating and cooling business, in October 1984. The claimant testified that he worked as an installer and shop foreman: "My job duties was to measure custom jobs, build all the duct work....We had to carry large sheets of steel to the machines, move large sections of duct work in and out of our shop." The claimant testified that he also worked as a part-time deputy sheriff.

A radiology report was entered in August 1994, after the claimant reported falling from a horse: "Cervical spine demonstrates some degenerative changes at C5-C6 with minimal

anterior spurring and some disc narrowing and minimal old wedging on superior surfaces of those two vertebral bodies.”

The following impression was given:

1. Obvious old changes at C5-C6 representing minimal old compression and possible old facet lock at the C5-C6 or C4-C5 level, more apparent on the left side than on the right. There may be acute changes superimposed of edema or spreading, but most of the change seen in the cervical spine is old and appears to be old post traumatic change.

The following report resulted from a radiology consultation in April 1997:

Two views of the left shoulder done April 4, 1997. The patient has had a previous fracture of the mid shaft of the clavicle with asymmetric healing. There also appears to have been injury to the glenoid at that time. No acute fractures or dislocations are noted at this time.

IMPRESSION:

1. Old trauma with asymmetrical healing of the clavicle and irregular lucency of the inferior rim of the glenoid, but no acute fracture or dislocation is appreciated at this time.

An MRI of the claimant's cervical spine was taken in August 2002:

There are considerable degenerative changes through the cervical region with desiccation, loss of T2 disk signal, and osteophyte formation. This is fairly pronounced for a patient of this age. There is associated disk bulging, but at no level is there evidence of actual soft-tissue disk herniation. The osteophytes touch the inferior

aspect of the cord at several levels, but it is especially seen at C4-C5 and C5-C6.

Impression

Severe degenerative change through the cervical spine, as above. Actual soft-tissue disk herniation is not seen.

The claimant began treating with a physical therapist in September 2002: "Patient is a 39 year old male referred to physical therapy with a diagnosis of cervical arthritis. Patient reports that he was in a sitting position when he dozed off and his head either fell forward or backwards. He had immediate pain in his neck....ASSESSMENT: The patient presents with a possible cervical derangement along with right shoulder involvement. Rehab potential is good."

The physical therapist noted on September 12, 2002, "The patient has been seen a total of three visits with patient reporting significant improvement with decreased disturbance in his sleep. Patient has also had significant reduction of muscle spasms throughout the cervical paraspinal musculature." Due to "no shows" on scheduled follow-up appointments, the claimant was discharged from physical therapy in October 2002.

The parties stipulated that the employment relationship existed on or about October 21, 2008. The claimant testified on direct examination:

Q. Now, on October 21<sup>st</sup> of 2008, what were you doing on that particular day in question and what happened?

A. Me and another employee was, we was putting a metal roof in a garage there at the, at Jim Brown Company. And we was carrying large sheets of steel from a trailer out in the parking lot inside. And we was carrying it overhead and going up a incline. The parking lot was chate, and my feet slid out from under me, so I released the metal with my left hand. I was falling, tried to catch myself, and everything just hit on my head and I landed on my knee and left shoulder....

Q. And did the material you were carrying, did it strike you in any way or -

A. It landed on my head.

Q. When you struck the ground, did you feel an immediate discomfort?

A. Yes, sir.

Q. To what parts of your torso?

A. Mainly my left shoulder and knee at the time.

Q. Okay. And any other problems?

A. No, sir.

The parties stipulated that the respondents "accepted the injuries to the claimant's left knee and shoulder as

compensable." The claimant was seen at North Central Arkansas Medical Associates on October 23, 2008:

The patient is a 45 year old male who presents complaining of an injury, shoulder pain, and knee pain. The injury happened 10/21/2008. He says that this is currently on the left. This has been going on for 2 days. The patient states that this is currently aching in quality. This is currently happening constantly. He reports that this is worsened by activity. This is improved by nothing....The patient reports no additional symptoms. He currently denies any other symptoms currently....

The claimant was assessed with "Limb Pain" and "Pain in joint, shoulder region." The claimant was treated conservatively. An x-ray of the claimant's left shoulder was taken on October 23, 2008, with the impression, "No acute fracture or dislocation. Old clavicle fracture and degenerative change is noted."

Dr. Caleb O. Gaston saw the claimant on November 12, 2008 and gave a history of illness:

1. Bilateral leg swelling - this has been going on for over one week now. He denies any changes in his diet. He has never had this trouble before. He denies any shortness of breath. In reviewing his chart, he has had a consistently elevated blood pressure in the range of 140-150/80-90. I told him I believe we should place him on something for blood pressure as well as fluid retention.
2. Left shoulder pain - he injured this two weeks ago when he fell at work carrying sheet metal. He slipped on some loose gravel. He was told not to

file this as Worker's Comp. His pain in his shoulder has worsened. He is lost range of motion posteriorly and superiorly. I told him that likely he needs an MRI. He is going to investigate who is going to cover this.

Dr. Gaston assessed "Edema," "Hypertension, Benign Essential," and "Left Pain in Joint, shoulder region Worsening."

Dr. Gaston followed up with the claimant on December 9, 2008 for the claimant's hypertension. Dr. Gaston noted, "The patient also reports that his left shoulder pain since his injury in October has not improved. His x-rays were negative. We discussed setting him up for an MRI. He injured this while he was carrying sheet metal at work and tripped and a load shifted immediately injuring his shoulder. He is having difficulty lifting his left arm over his head."

An MRI of the claimant's left shoulder was taken on December 12, 2008, with the following impression:

1. Multiple abnormal paralabral cysts along the superior and posterior glenoid labrum. The anterior and superior glenoid labrum is abnormal concerning for labral (sic) injury, especially posteriorly. There is degenerative change of the glenohumeral joint and glenoid labrum. Orthopedic consultation is recommended.
2. Mild degenerative changes of the acromioclavicular joint.

The claimant began treating with Dr. Anthony D. McBride on or about December 21, 2008. The claimant filled out a form and wrote, "Sent by primary care physician due to falling at work and hurting L shoulder and L knee." The claimant checked a box indicating he was no longer working and wrote that his last day on the job was "Friday 12-19-08 after results of MRI @ Imaging Center." The claimant wrote that the location of pain was in the left shoulder, left arm, left hand, and left knee.

Dr. McBride reported on December 23, 2008:

This is a 45-year-old gentleman who states he has never had any prior problems with his left shoulder until he was injured at work on October 21<sup>st</sup>, 2008. He was carrying a sheet of metal with a coworker when his feet slipped on gravel in the parking lot causing him to fall landing on his outstretched left arm and shoulder region. He had onset of pain immediately. He describes his pain over the anterior lateral aspect of the shoulder with intermittent burning and tingling radiating down the medial site (sic) of the forearm towards the ring and little finger. He states these symptoms are constant. He rates his pain as moderately severe....

X-rays of his left shoulder are reviewed and he is noted to have previous clavicle fracture which has completely healed. He states this happened when he was 16 years of age. He does have degenerative changes in the AC joint. Glenohumeral joint has minor degenerative changes as well with inferior osteophytes in the humeral head and glenoid. The cervical spine x-rays today reveal degenerative

disc disease most significant at C5-6 and C6-7 with kyphosis noted. There are significant anterior osteophytes at these levels. Posterior osteophytes are also noted.

The MRI scan of his left shoulder from October of 2008 reveals no evidence of rotator cuff tears. He does have degenerative changes noted in the glenohumeral joint as well as the AC joint. In addition, there is a ganglion type of cyst in the superior aspect of the glenoid extending beneath the supraspinatus muscle. This is likely from the degenerative changes in the glenohumeral joint.

Dr. McBride assessed "Left shoulder pain following an injury as well as ulnar neuritis symptoms. There is nothing on the studies that suggest an acute injury although he may have had an exacerbation of preexisting problems with this injury. PLAN: We are going to get an MRI of his cervical spine since certainly a herniated disc can cause shoulder and arm pain. This would certainly be an acute injury if we find it by his MRI scan. We are also going to get nerve conduction studies of his left arm to rule out ulnar neuritis. Until I get the MRI of his cervical spine, it would be difficult for me to apportion the injuries to preexisting or work-related."

The claimant testified that he continued to work for the respondent-employer until approximately December 23, 2008. The claimant testified, "Mr. Brown found out that I,

they did an MRI, and they said after that that I couldn't work any longer, that I needed to just go home until I was released by an orthopedic doctor." The claimant testified that he received temporary total disability benefits from December 23, 2008 until January 7, 2009. The claimant testified that a physician released him to return to work on January 7, 2009, and that he returned to work at that time. The claimant testified that his work duties were changed from shop foreman to second man on an installation crew. The claimant testified that he "worked on the job site, in attics crawl spaces, basements. Climbing, crawling."

The following impression resulted from an EMG Report on January 14, 2009: "Normal electrodiagnostic study of the left upper extremity and corresponding cervical paraspinal musculature." An MRI of the claimant's cervical spine was taken on January 15, 2009:

There is loss of the normal curvature with actually reversal of the curvature. There is disc space narrowing at the C4-C5, C5-C6, and C6-C7 levels with bony spurs present. The cord itself is intact, but the bony spurs and reversal of the curvature cause some effacement of the cerebrospinal fluid anterior to the cord and actually some very minimal indentation of the cord at C5-C6 and C6-C7 levels, but I do not see edema in the cord. The patient has a rather small cord, as well as a small central canal. No compression fractures are noted. No frankly herniated nucleus

pulposus is noted. I suspect there is some spasm associated with this degenerative change causing the reverse curvature changes.

The claimant followed up with Dr. McBride on January 23, 2009: "**MRI Cervical:** Kyphosis is noted, and diffuse degenerative disc changes are noted in the cervical spine at multiple levels. **Diagnosis - Right Shoulder/Arm:** Pre-existing DJD Left shoulder rendered symptomatic by injury. Also pre-existing cervical multi-level spondylosis with kyphosis rendered symptomatic by injury." Dr. McBride's treatment plan included cervical traction. The record indicates that Dr. McBride also performed a left shoulder injection and returned the claimant to full duty on January 23, 2009. The Working Diagnosis was "L Shoulder Pain."

Dr. Gaston's assessment on February 12, 2009 was "Cervicalgia," "Left Pain in joint, shoulder region," and "Left Pain in joint, lower leg, knee."

Dr. McBride's impression on March 3, 2009 was "Left Knee: Suspect possible medial meniscus tear." Dr. McBride returned the claimant to restricted work on March 3, 2009, with no bending, stooping, climbing stairs, kneeling, or squatting. The Working Diagnosis was "Bil Shoulder & Knee pain."

The claimant testified on direct examination:

Q. On March 3<sup>rd</sup> of '09, you left work. What happened on that day that caused you to cease employment altogether with Jim Brown?

A. Mr., Doctor McBride put me on restricted duty.

Q. And what kind of restrictions did you have?

A. Not lifting over, I think, 15 pounds, no climbing ladders, no crawling, no stooping.

Q. All right. And when you were given these restrictions, did you give those to Mr. Brown?

A. Yes, sir.

Q. And with what result? What happened?

A. He told me the only work he had was clerical, light duty work he had was clerical work. I didn't look like a clerical worker and I just needed to go home.

The record indicates that the claimant received temporary total disability benefits beginning March 3, 2009.

An MRI of the claimant's left knee was taken on March 6, 2009, with the following impression:

1. No acute injury is seen. There is a cystic area in the proximal tibial plateau midline at the intercondylar eminence. With a history of previous trauma, this may be a posttraumatic cyst.
2. There is a small knee effusion.

Dr. McBride's impression on March 13, 2009 was "Left Knee: Quad Tendon strain." Dr. McBride's treatment plan was physical therapy.

The claimant testified that he received temporary total disability benefits until March 16, 2009. The claimant testified on direct:

Q. Now, on March 16<sup>th</sup> the temporary disability benefits stopped, but you didn't go back to work, did you?

A. No, sir.

Q. Matter of fact, it's in the record, you've not worked anywhere since then as far as working at Jim Brown. Is that correct?

A. Yes, sir.

Q. Now, have you done any work at all for the sheriff's office during that period of time?

A. Just paper service.

Q. All right. How, how much are we talking about in terms of hours per month?

A. About 36 hours a month, just serving papers.

Dr. Gaston reported in part on April 2, 2009, "6. Restrictions include avoiding climbing and stairs whenever possible. I would also avoid looking upward or reaching above his head. Because of the knee instability I would also avoid carrying more than 15 pounds."

Dr. McBride noted on May 19, 2009, "The patient is follow up left knee quad tendon sprain. He has been wearing a knee brace and he is finished with PT today. He is doing

okay today....**Impression - Left Knee:** Quadriceps (sic) insertional strain. Has reached maximum medical improvement. No indication for surgery at this time. **Plan**  
**Left Knee:** Patient has attempted to arrange for change of physician. I have nothing further I can offer him at this time. He will need a FCE but I do not believe patient feels he can return to any employment based on the conversations we have had."

The claimant's testimony indicated that the Commission granted him a change of physician to Dr. Harold H. Chakales. Dr. Chakales examined the claimant on May 27, 2009:

Mr. James McCracken is a 46-year-old man who presents with complaints of pain as the result of a work-related injury which occurred on October 21, 2008. He has not worked since March 3, 2009. He complains of neck and left shoulder pain, as well as left knee pain. He has bilateral arm numbness, and bilateral arm and left leg weakness....He states at the time of his injury he was carrying a piece of metal when he fell and injured his left arm, shoulder, neck and left knee. He was seen by Dr. McBride, who stated he had a strain of the neck, shoulder and knee. The patient was released to return to work in January 2009. Mr. McCracken worked for 5 weeks, then returned to see Dr. McBride. He was then placed at limited duty, but his employer told him they did not have light duty work for him. Most of his pain today is in the neck, with pain radiating into the left shoulder, into the arm, and down into his hand. He has occasional numbness in the ring and small fingers. He is also bothered with

chronic pain in the shoulder and is unable to use it normally, as well as having chronic pain in the knee....

An MRI of the cervical spine on January 23, 2009, showed some degenerative changes. He had kyphosis and degenerative joint disease noted.

Mr. McCracken comes in today. He is still having trouble with his neck and the left shoulder and left knee. He is still having left shoulder and neck pain, as well as some chronic knee pain. I think we need to do a current EMG of his neck and both arms to see if there has been any change. He also should have a cervical epidural injection to see if that will offer him any relief. With regard to his shoulder, he needs to have arthroscopy of the left shoulder to see what the pathology is. He will return in 3-4 weeks....

X-rays of the left shoulder show some degenerative changes.

X-rays of the cervical spine show severe reversal of the cervical lordosis. He has cervical disc problems at C5-6, C6-7....

**DIAGNOSES:**

1. Cervical spine injury with reversal of the cervical lordosis.
2. Residuals of an injury to the left shoulder with rotator cuff involvement, with impingement syndrome.
3. Rule out internal derangement, left knee.

**DISCUSSION:**

I will give him some pain pills and see him in 10-14 days and reevaluate him. He was a full time sheet metal working (sic). He worked from the date of injury (October 21, 2008) until December 16, 2008, but started having a lot of pain in his neck, left shoulder and knee, and was taken off work for approximately one month (mid January).

He then worked for 5 weeks but was told there were no light duty jobs available.

The claimant underwent a Functional Capacity Evaluation on June 3, 2009, at which time he was assigned a "Light" work level.

The claimant followed up with Dr. McBride on June 15, 2009:

Mr. McCracken has completed his physical therapy for his quadriceps (sic) tendonitis and continues to wear his supportive knee brace as needed. He continues to complain of pain in the region of the patella-tendon junction. His MRI findings were marginal for tendonitis changes without tears. I believe he has reached MMI and further treatment is not likely to alter his recovery, and surgical treatment is not indicated.

**Impression - Left Knee:** Quadriceps insertional strain. Has reached maximum medical improvement. No indication for surgery at this time....Using the Guides, the impairment rating is 0%. The patient has reached MMI.

Dr. Chakales reported on June 29, 2009:

I saw Mr. McCracken initially on May 27, 2009. He returned to my office today in follow up, and I had the opportunity to review his old medical records, and I have enclosed a copy of that review.

From my standpoint, I think we are dealing with a gentleman who has a potential cervical disc syndrome, as well as problems with the left shoulder rotator cuff and left knee problems. Most likely, he needs to have a current MRI of the cervical spine, left shoulder, and left knee. I

would recommend an EMG of his neck and both arms be repeated.

Mr. McCracken will return in 3-4 weeks. At this time he is temporarily totally disabled and has been disabled since his date of injury.

A pre-hearing order was filed on September 21, 2009. The claimant contended, among other things, that he sustained compensable injuries to his neck, knees, and shoulder on October 21, 2008. The respondents contended that appropriate benefits had been paid as a result of the claimant's left knee and left shoulder injuries. The respondents contended that the claimant's "current problems and any disability" were "related to a pre-existing medical condition."

The parties agreed to litigate the following issues:

1. Whether the claimant sustained compensable injuries to his neck and right knee.
2. Whether the claimant is entitled to reasonably necessary medical treatment, including additional treatment by Dr. Harold Chakales.
3. Whether the claimant is entitled to reimbursement for mileage in connection with his medical treatment.
4. Whether the claimant is entitled to additional temporary total disability benefits.
5. Whether the claimant is entitled to a controverted attorney's fee.

A hearing was held on November 17, 2009. At that time, the claimant contended that he had received temporary total

disability benefits from December 23, 2008 until January 7, 2009, and from March 3, 2009 until March 16, 2009. The claimant contended that he was entitled to additional temporary total disability from March 16, 2009 until June 29, 2009.

The claimant testified that he wanted to follow up with Dr. Chakales and pursue Dr. Chakales' recommendations for additional diagnostic studies. The claimant testified on cross-examination that he was still having problems with his left shoulder, and that his other physical problems were "just mainly my neck and my nerves."

An administrative law judge filed an opinion on February 12, 2010. The administrative law judge found, among other things, that the claimant did not prove he sustained a compensable injury to his right knee; that the claimant did not prove he was entitled to another EMG; that the claimant did not prove he was entitled to additional treatment for his left knee; and that the claimant did not prove he was entitled to additional temporary total disability benefits. The claimant does not appeal any of those findings.

The administrative law judge found that the claimant proved he sustained a compensable injury to his neck, for which the claimant was entitled to additional medical treatment, including another cervical MRI. The administrative law judge found that the claimant proved he was entitled to additional medical treatment for his left shoulder. The administrative law judge found that the claimant proved he was entitled to temporary partial disability benefits from March 16, 2009 to June 29, 2009. The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002), defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body ... 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 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). "Objective findings" are those findings

which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

The employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An administrative law judge found in the present matter, "4. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his neck." The Full Commission reverses this finding. The parties stipulated that the employment relationship existed on or about October 21, 2008. The claimant testified that he slipped and fell while carrying large sheets of steel, and that "everything just hit on my head and I landed on my knee and left shoulder." The claimant testified that he felt immediate discomfort in his left shoulder and knee. The parties stipulated that the respondents accepted compensability of injuries to the claimant's left knee and shoulder. The initial treatment record on October 23, 2008 indicated that the claimant complained of shoulder pain and knee pain. The claimant denied any other symptoms, and the

physician's assessment was "Limb Pain" and "Pain in joint, shoulder region."

Dr. Gaston began treating the claimant on November 12, 2008. Dr. Gaston noted that the claimant complained of left shoulder pain as the result of slipping on loose gravel at work. Dr. Gaston did not report that the claimant complained of any neck pain. The claimant informed Dr. McBride on or about December 21, 2008 that he had injured his left shoulder and left knee. The claimant wrote on a form that he felt pain in his left shoulder, left arm, left hand, and left knee. The claimant did not report an injury to his neck. Dr. McBride's notes beginning December 23, 2008 indicated that the claimant complained of pain in his left shoulder. Dr. McBride also reported, "The cervical spine x-rays today reveal degenerative disc disease most significant at C5-6 and C6-7 with kyphosis noted. There are significant anterior osteophytes at these levels. Posterior osteophytes are also noted. An MRI of the claimant's cervical spine on January 15, 2009 showed "loss of the normal curvature with actually reversal of the curvature. There is disc space narrowing at the C4-C5, C5-C6, and C6-C7 levels with bony spurs present....I suspect there is some

spasm associated with this degenerative change causing the reverse curvature changes." Dr. McBride thereafter reported on January 23, 2009, "Kyphosis is noted, and diffuse degenerative changes are noted in the cervical spine at multiple levels."

STEDMAN'S MEDICAL DICTIONARY 925 (26<sup>th</sup> ed. 1995) defines "kyphosis" as "A deformity of the spine characterized by extensive flexion." The record in the present matter does not demonstrate that the kyphosis shown in the claimant's cervical spine beginning December 23, 2008 was causally related to the October 21, 2008 accidental injury to the claimant's left shoulder and left knee. The instant case is distinguishable from *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). In *Estridge*, the Supreme Court of Arkansas reversed the Full Commission's finding that the claimant did not prove he sustained a compensable injury to his back. The Court in *Estridge* noted that the claimant had been diagnosed with a back strain following a specific incident, and that the claimant's treating physician had found straightening of the curve in the claimant's spine. The Court in *Estridge* held that the claimant's straightened lumbar spine was objective

medical evidence establishing a compensable injury. *Id* at 282.

In the present matter, the claimant was not diagnosed with neck strain or a cervical injury following the October 21, 2008 compensable accident. The claimant was instead assessed with limb pain and pain in his shoulder region. The claimant after the injury did not report pain in his neck, and none of the initial treatment records indicated that the claimant had injured his neck or cervical spine. Dr. Gaston reported left shoulder pain on November 12, 2008. Dr. McBride reported left shoulder pain on December 23, 2008. There is no probative evidence of record demonstrating that the kyphosis in the instant claimant's cervical spine was causally related to the accident occurring on October 21, 2008. Nor is there any probative evidence of record demonstrating that the "loss of the normal curvature" shown on the January 15, 2009 cervical MRI was causally related to the October 21, 2008 accidental injury to the claimant's left shoulder and left knee. We recognize Dr. McBride's notation on January 23, 2009, "pre-existing cervical multi-level spondylosis with kyphosis rendered symptomatic by injury." An aggravation is a new

injury resulting from an independent incident and, being a new injury with an independent cause, must meet the requirements for a compensable injury. *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (2006), citing *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Again, the evidence in the present matter does not establish a causal connection between the kyphotic abnormality in the claimant's cervical spine and the accident occurring October 21, 2008.

Additionally, the Full Commission recognizes the interpreting physician's notation regarding the January 15, 2009 cervical MRI, "I suspect there is some spasm associated with this degenerative change causing the reverse curvature changes." It is well-established that muscle spasms constitute objective medical findings as required by the statute. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). In the present matter, the interpreting physician did not report that he observed muscle spasms, only that he suspected some spasm which was "associated with degenerative change." The evidence in the present matter does not demonstrate any reports of muscle spasm detected by any treating physician after the October

21, 2008 accidental injury. Even if there were reports of muscle spasm following the accident, which the record does not show, we note the physical therapist's September 2002 report of "significant reduction of muscle spasms throughout the cervical paraspinal musculature." There is no probative evidence before the Commission demonstrating that the claimant suffered from muscle spasms in his neck or cervical spine as a result of the October 21, 2008 accidental injury.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine. The claimant did not prove by a preponderance of the evidence that he sustained an accidental injury causing internal or external physical harm to his neck. The claimant did not prove that he sustained an injury to his neck or cervical spine which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that he sustained an injury to his neck as a result of the specific incident occurring on October 21, 2008. The claimant did not establish a compensable injury to his neck or cervical spine by medical evidence supported by objective findings. We therefore

reverse the administrative law judge's finding that the claimant proved he sustained a compensable injury to his neck.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). 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).

An administrative law judge found in the present matter, "7. Claimant has proven by a preponderance of the evidence his entitlement to additional reasonable and necessary medical treatment of his neck - to include another cervical MRI." The Full Commission has found *supra* that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine. We therefore do not affirm the

administrative law judge's finding that the claimant proved he was entitled to additional medical treatment for his neck.

The administrative law judge also found, "9. Claimant has proven by a preponderance of the evidence his entitlement to additional reasonable and necessary treatment of his left shoulder." The Full Commission does not affirm this finding. An x-ray of the claimant's left shoulder was done in April 1997, with the impression, "1. Old trauma with asymmetrical healing of the clavicle and irregular lucency of the inferior rim of the glenoid, but no acute fracture or dislocation is appreciated at this time." The respondents accepted a compensable injury to the claimant's left shoulder occurring on October 21, 2008. The claimant testified that he slipped, fell, and landed on his left shoulder. The claimant was treated conservatively and was assessed with "Pain in joint, shoulder region." An x-ray of the claimant's left shoulder was taken on October 23, 2008, with the impression, "No acute fracture or dislocation. Old clavicle fracture and degenerative change is noted." The October 23, 2008 x-ray therefore did not indicate that the claimant sustained any structural damage to his left

shoulder as a result of the October 21, 2008 accidental injury.

Dr. Gaston began treating the claimant's left shoulder in November 2008. Dr. Gaston arranged an MRI of the claimant's left shoulder. An MRI taken December 12, 2008 showed "paralabral cysts," abnormalities in the glenoid labrum, and mild degenerative changes in the acromioclavicular joint. An orthopedic consultation was recommended, and Dr. McBride began treating the claimant in December 2008. Dr. McBride noted on December 23, 2008 that an MRI revealed "no evidence of rotator cuff tears. He does have degenerative changes noted in the glenohumeral joint as well as the AC joint. In addition, there is a ganglion type of cyst in the superior aspect of the glenoid extending beneath the supraspinatus muscle. This is likely from degenerative changes in the glenohumeral joint." Dr. McBride assessed "Left shoulder pain following an injury as well as ulnar neuritis symptoms. There is nothing on the studies that suggest an acute injury although he may have had an exacerbation of preexisting problems with this injury." Dr. McBride's assessment did not include a recommendation for surgery.

The claimant continued to follow up with Dr. Gaston and Dr. McBride. The record indicates that the Commission granted the claimant a change of physician to Dr. Chakales. Dr. Chakales examined the claimant on May 27, 2009 and June 29, 2009. When a claimant has exercised his statutory right to a one-time change of physician, the respondents must pay for the initial visit to the new physician in order to fulfill their obligation to provide adequate medical services. See *Wal-Mart Stores, Inc., supra*. The colloquy reflected in the hearing transcript indicates that the respondents in the present matter have paid for both of the claimant's visits with Dr. Chakales. In any event, Dr. Chakales' treatment recommendations include another MRI of the claimant's left shoulder. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, we assign greater weight to the treatment recommendations of Dr. Gaston and Dr. McBride, who have reviewed the results of post-injury diagnostic testing, which testing included a left-shoulder x-ray, an MRI, and an EMG. Neither Dr. Gaston nor Dr. McBride have recommended

additional diagnostic testing. The Full Commission finds that the claimant did not prove additional treatment as recommended by Dr. Chakales was reasonably necessary in connection with the compensable injury to the claimant's left shoulder.

C. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages, whereas temporary partial disability is that period within the healing period in which the employee suffers only a decrease in his capacity to earn the wages he was receiving at the time of the injury. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The healing period ends when the employee is as far restored as the permanent character of his injury will permit; if the underlying condition causing the disability has become stable and if nothing further in the way of

treatment will improve that condition, the healing period has ended. *Luten v. Xpress Boats & Backtrack Trailers*, 103 Ark. App. 24, 285 S.W.3d 710 (2008). Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Id.* The determination of when the healing period has ended is a question of fact for the Commission. *Hughes School Dist. v. Bain*, 2010 Ark. App. 204 (March 3, 2010).

An administrative law judge found in the present matter, "12. Claimant has proven by a preponderance of the evidence that he is entitled to temporary partial disability benefits from March 16, 2009 to June 29, 2009." The Full Commission affirms this finding as modified.

The claimant testified that he sustained an accidental injury on October 21, 2008, injuring his left knee and shoulder. The respondents accepted compensability of injuries to the claimant's left knee and shoulder and the respondents accepted liability for medical treatment. The claimant received temporary total disability benefits from December 23, 2008 until January 7, 2009. Dr. McBride assigned work restrictions on March 3, 2009. The claimant

testified that the respondent-employer did not have restricted work available, and the claimant testified that he was sent home. The claimant received additional temporary total disability benefits beginning March 3, 2009. We note that Dr. McBride recommended physical therapy for the claimant's left knee on March 13, 2009. The record therefore indicates that the claimant remained within a healing period for his compensable left knee injury as of March 13, 2009.

The claimant testified that his temporary total disability benefits stopped on March 16, 2009. However, the claimant's testimony indicated that he was not totally incapacitated from earning wages, because the claimant was able to work as a part-time process server for the county sheriff's office. A Functional Capacity Evaluation on June 3, 2009 indicated that the claimant could perform light work duty. Dr. McBride opined on June 15, 2009 that there was no indication for surgery to the claimant's right knee. Dr. McBride pronounced maximum medical improvement with zero anatomical impairment. Dr. McBride did not recommend any further treatment for the claimant's left shoulder. We find that the claimant reached the end of the healing period for

his compensable injuries no later than June 15, 2009. Temporary total disability cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The Full Commission finds that the claimant proved he was entitled to temporary partial disability benefits from March 16, 2009 through June 15, 2009. We affirm as modified the administrative law judge's award of temporary partial disability.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained a compensable injury to his neck or cervical spine. The claimant did not prove that he was entitled to any additional medical treatment, and the claimant did not prove he was entitled to Dr. Chakales' treatment recommendations. The claimant proved that he was entitled to mileage reimbursement for the medical treatment provided, including the two office visits with Dr. Chakales accepted and paid for by the respondents. The claimant did not prove he was entitled to additional medical treatment for his left shoulder. The claimant proved he was entitled to temporary partial disability benefits from March 16, 2009 through June

15, 2009. The Full Commission therefore reverses the administrative law judge's decision in part, and we affirm in part as modified.

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

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

Commissioner McKinney concurs in part and dissents in part.

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CONCURRING DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck or cervical spine and the finding that the claimant failed to prove he was entitled to additional medical treatment for his left shoulder. However,

I must respectfully dissent from the majority award of temporary partial disability benefits from March 16, 2009 through June 15, 2009. In my opinion, the claimant has failed to meet his burden of proof.

Temporary partial disability benefits are closely related to temporary total disability benefits. Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages; whereas, temporary partial disability is that period within the healing period in which the employee suffers only a decrease in his capacity to earn wages he was receiving at the time of the injury. Ark. State Hwy. & Trans. Dept. v. Breshears, 272 Ark. 244, 246-247, 613 S.W. 2d 392, 393 (1981). A claim for temporary partial disability benefits is included as alternative relief where a claim that seeks temporary total disability benefits. Palazzolo v. Nelms Chevrolet, 46 Ark. App. 130, 135, 877 S.W. 2d 938, 941 (1994). Nevertheless, the claimant must still meet his burden of proof.

In my opinion, the claimant is not entitled to any temporary total or temporary partial disability benefits for the period from March 16, 2009 through June 29, 2009. The

evidence demonstrates that the claimant was able to perform work for the Sheriff's department as a process server during this period of time. Therefore, he was not totally incapacitated from earning wages. Further, the claimant's inability to work is the direct result of his long-standing degenerative problems in his left shoulder and cervical spine. These are not compensable injuries. As noted by Dr. Gaston, the problems with his cervical spine is what is preventing the claimant from performing work. Simply put, the claimant's inability to work is the direct result of non-compensable degenerative problems which the respondents are not responsible for. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's award of temporary partial disability benefits.

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KAREN H. MCKINNEY, Commissioner

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

**CONCURRING AND DISSENTING OPINION**

After my de novo review of the entire record, I concur, in part, but must respectfully dissent, in part,

from the majority opinion. I agree with the majority opinion that the claimant proved his entitlement to temporary partial disability benefits from March 16, 2009 through June 15, 2009. However, I find that the claimant did prove that he sustained a compensable injury to his cervical spine and that he is entitled to additional medical treatment for his left shoulder.

#### TESTIMONY

The claimant testified that he was employed by the respondent-employer for more than twenty-five years until his injury in October 2008, as a shop foreman. This was a physically intensive job. In October 2008, his general state of health was good, and he could do all aspects of his job without difficulty. He had pre-existing conditions, but he was not limited by them.

The claimant testified that on October 21, 2008, he was carrying a large sheet of steel up an inclined parking lot, when his feet slipped out from under him. He landed on his left knee and shoulder, and the sheet of steel landed on his head. He felt immediate discomfort, mainly to his left shoulder and knee. He stayed on the ground and then was assisted up to his feet. He reported to his

supervisor. He encountered resistance to the filing of a workers' compensation claim, but his employer apparently paid for his first doctor visit.

The claimant experienced pain in his left knee and left shoulder, numbness in his fingertips, and pain which had started "up into" his neck. This pain limited his ability to work. His health problems, including his neck, shoulder and knee, "increased tremendously" during the time he returned to work until March 3.

After his October 21, 2008 injury, he was initially treated for a left knee problem and a left shoulder problem. For his left shoulder problem, he received an injection, x-rays and an MRI. Dr. McBride said that the MRI showed mild degenerative changes of the shoulder joint. He did not do another one. The claimant was still having problems with his left shoulder. After his initial injury, he complained of left shoulder pain and knee pain. He had not had previous problems or medical treatment with his left knee or shoulder. His complaints after October 21, 2008 were new.

He had continuing problems with his left knee, left shoulder and his neck and nerves. His neck, from

between his shoulders to the base of his head, was bothering him. He had neck pain all the time. It developed shortly after the October 21, 2008 fall. The steel he was carrying at the time of his accident hit the top of his head, and "it was like a whiplash, it just took some time." After the sheet metal fell on his head, he started feeling discomfort in his neck in a few days. He told Dr. McBride about it, who did the x-rays and MRI of his neck, in December 2008. Dr. McBride released him in January with no impairment. He returned to Dr. McBride again, who released him with restricted duty after some additional testing.

The claimant received a change of physician to Dr. Chakales, who is an orthopedic doctor. He saw Dr. Chakales twice, and he wanted to continue to treat with him.

At the time of his hearing, the claimant had a lot of pain from his neck. He could not return to work because of his shoulder, knee, neck and nerves. One was not more of a problem than the others. Mainly, he could not stand very long, because of pain in his leg and knee. He never had left knee pain before. He also was incapable of lifting or lifting over his head, because of his left shoulder. He had a continuous burning in his neck. If he could get the rest

of his problems resolved, he could probably return to work with the neck problems.

#### MEDICAL RECORDS

In 1994, the claimant fell from a horse and presented to the emergency room. The diagnosis was blunt head trauma. The X-ray of cervical spine showed obvious old post-traumatic change. In August 2002, the claimant was referred to physical therapy for his cervical arthritis, which did not limit his activities. An MRI showed severe degenerative change through the cervical spine, but no disk herniation. In 2006, the claimant was seen for arthralgias, right shoulder and knee pain, neck pain and mild hypertension. The doctor observed cervical spasm.

In 1997, the claimant was diagnosed with left shoulder bursitis, which he attributed to heavy lifting at work. The diagnosis was left shoulder bursitis. An x-ray showed old trauma with asymmetrical healing of the clavicle.

The claimant saw Dr. Hodges on October 23, 2008 with complaints of left shoulder and left knee pain due to his fall on October 21. X-rays showed an old clavicle fracture and degenerative changes.

The claimant presented to Dr. Gaston on November 12, 2008 with worsening shoulder pain and range of motion from his accident. On December 9, 2008, the claimant reported to Dr. Gaston with unimproved left shoulder pain from his injury in October. The claimant underwent an MRI of his left shoulder on December 12, 2008, which showed:

Multiple abnormal paralabral cysts along the superior and posterior glenoid labrum. The anterior and superior glenoid labrum is abnormal concerning for labral injury, especially posteriorly. There is degenerative change of the glenohumeral joint and glenoid labrum. Orthopedic consultation is recommended. Mild degenerative changes of the acromioclavicular joint.

On December 23, 2008, Dr. McBride saw the claimant. He prepared a document giving a diagnosis of left arm pain and ordering an MRI of his cervical spine and a nerve conduction study of his left arm and the ulnar nerve at the elbow. At that visit, the claimant recounted his October 21 injury. On x-ray, a previous completed healed clavicle fracture was observed, which the claimant related to an event at age 16. There were degenerative changes at the AC joint and at the glenohumeral joint, with inferior osteophytes. Also revealed were cervical degenerative disc disease at C5-6 and C6-7 with kyphosis. At these levels,

anterior and posterior osteophytes were noted. The left shoulder MRI showed no cuff tears, but degenerative changes in the glenohumeral and AC joints. There was a ganglion cyst in the shoulder, too. Dr. McBride assessed "left shoulder pain following an injury as well as ulnar neuritis symptoms. There is nothing on the studies that suggest [sic] an acute injury although he may have had an exacerbation of preexisting problems with this injury." He planned a cervical MRI and EMG testing.

On January 15, 2009, Dr. McBride ordered a cervical MRI for the claimant's left arm pain and numbness. The MRI showed:

There is loss of the normal curvature with actually reversal of the curvature. There is disc space narrowing at the C4-C5, C5-C6, and C6-C7 levels with bony spurs present. The cord itself is intact, but the bony spurs and reversal of the curvature cause some effacement of the cerebrospinal fluid anterior to the cord and actually some very minimal indentation of the cord at the C5-C6 and C6-C7 levels, but I do not see edema in the cord. The patient has a rather small cord, as well as a small central canal. No compression fractures are noted. No frankly herniated nucleus pulposus is noted. I suspect there is some spasm associated with this degenerative change causing the reverse curvature changes.

On January 23, 2009, Dr. McBride prescribed a home cervical traction unit for cervicalgia. On that date, he returned the claimant to full duty, with a working diagnosis of left shoulder pain. Dr. McBride performed a left shoulder injection. The claimant had presented with pain in his left shoulder, which was worsening, and cervical spine pain, which had not changed over time. Dr. McBride observed crepitus at the glenohumeral joint in his left shoulder, and he injected Lidocaine there. The cervical MRI showed kyphosis and diffuse degenerative disc changes at multiple levels. The diagnosis was pre-existing degenerative joint disease left shoulder rendered symptomatic by injury, and pre-existing cervical multi-level spondylosis with kyphosis rendered symptomatic by injury. Cervical traction was planned.

The claimant saw Dr. Gaston on February 12, 2009, with left shoulder, neck, and left knee pain.

On March 3, 2009, Dr. McBride returned the claimant to work with restrictions, including no bending, stooping, climbing stairs, kneeling, squatting or overhead lifting. The working diagnosis was bilateral shoulder and knee pain.

On March 12, 2009, Dr. Tucker wrote that the claimant required care for chronic job-induced arthralgias, with a diagnosis of osteoarthritis of shoulder region. On March 13, 2009, Dr. Tucker wrote that the claimant had chronic job-induced arthralgias, with a diagnosis of osteoarthrosis of the shoulder region, shoulder pain, chronic pain syndrome, and contributing stress. "His injuries are consistent with a fall he had last year on the job and his injuries are consistent with chronic daily trauma from on the job duties."

On April 2, 2009, Dr. Gaston wrote that the claimant had an injury at work on October 21, 2008, and had diagnoses including cervicalgia, shoulder pain, and knee pain. Dr. Gaston stated that the "patient likely had some pre-existing degenerative changes ... of the shoulders given his history of a physically intensive occupation." Further treatment included pain management and possible referral for further orthopedic evaluation. His restrictions included avoiding climbing and stairs whenever possible, looking upward or reaching above his head.

The claimant saw Dr. Chakales on May 27, 2009, reporting his October injury. He had pain in his neck, left

shoulder and left knee, and bilateral arm numbness and weakness and left leg weakness. Dr. Chakales wanted a new EMG of his neck and both arms and a cervical epidural injection. He recommended arthroscopy of the left shoulder. His diagnoses were cervical spine injury with reversal of the cervical lordosis, residuals of an injury to the left shoulder with rotator cuff involvement with impingement syndrome and possible left knee internal derangement.

On June 3, 2009 the claimant underwent a functional capacity evaluation, in which he gave valid effort. He demonstrated very low strength. His abilities were assessed as follows:

Reaching: Limited to no overhead. Other reaching is not restricted.  
Squatting: Very occasional. Partial ROM secondary to right and left knee pain and strength.  
Bending: Occasional  
Sitting: Not restricted.  
Standing: One hour and can be resumed following positional changes.  
Walking: Moderate distances  
Stair climbing: very occasional  
Balance: Protective heights  
Crawling: Not recommended.  
Occasional material handling:  
    Torso/Leg Lift: 30 pounds  
    Carrying: 30 pounds  
    Lifting to shoulder level: 30 pounds  
    Overhead lifting: Negligible weights  
Frequent Material Handling: Not tested as the client does not qualify for frequent lifting, secondary to results of repetitive motion tests.

Work Speed: Good approach to tasks  
Work level: Light.

On June 28, the claimant saw Dr. Chakales who  
stated:

From my standpoint, I think we are dealing with a gentleman who has a potential cervical disc syndrome, as well as problems with the left shoulder rotator cuff and left knee problems. Most likely, he needs to have a current MRI of the cervical spine, left shoulder and left knee. I would recommend an EMG of his neck and both arms be repeated.... At this time he is temporarily totally disabled and has been disabled since his date of injury.

On August 11, 2009, the claimant saw Dr. Tucker, who wrote that the claimant's injuries "are consistent with a fall he had last year on the job and his injuries are consistent with chronic daily trauma from on the job duties."

#### ANALYSIS

#### CERVICAL INJURY

I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable cervical injury at the time of his October 21, 2008 work-related accident. Whether he had pre-existing conditions or not, he was asymptomatic prior to the accident and able to perform in a highly physically demanding job,

but he was symptomatic after the accident and no longer able to perform. This claim is similar to the claim in Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167(2000), in that the claimant undisputedly suffered a compensable injury and in that there is a dispute as to whether there is a causal connection between the injury and the medical treatment. As the court in Estridge explained, the claimant does not have to prove that the injury is the major cause of the need for treatment in the case of an accidental injury. Ark. Code Ann. § 11-9-102(4) (A) (i). As in Estridge, the accident either caused or precipitated the need for medical treatment of the claimant's cervical spine.

A causal connection is established when the compensable injury is found to be "a factor" in the resulting need for medical treatment, even though the compensable injury is not the major cause of the disability or need for treatment. Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004).

The claimant had a history of cervical spine and left shoulder issues. However, the claimant credibly testified that at the time of his injury, he was asymptomatic in his neck and left shoulder and that he was

not limited in his work by his neck or left shoulder. The records show that in the two years prior to the accident, the claimant did not present with cervical spine complaints. The records also show that the claimant had not presented with left shoulder complaints since 1997, more than 10 years prior to the accident. The claimant was seen regularly for other problems during the years preceding his accident. This is highly probative evidence of the causal connection between the claimant's October 2008 injury and his neck and left shoulder problems.

The claimant testified that his neck problems did not start immediately at the time of his fall. His neck symptoms developed over time, so that in December 2008, he complained about his neck to Dr. McBride. Dr. McBride was concerned enough about the neck symptoms to order an MRI. At that time, Dr. McBride recognized the likelihood that the claimant's fall had "exacerbated" his pre-existing cervical condition. There is a connecting in time between the cervical symptoms and the injury.

The October injury and the claimant's cervical problems are also consistent with one another. In January 2009, Dr. McBride's diagnosis was "pre-existing cervical

multi-level spondylosis with kyphosis rendered symptomatic by injury." In March and again in August, Dr. Tucker opined that his symptoms were causally related to the October injury. In June, Dr. Chakales related the symptoms to the October event.

The record contains many examples of objective findings of injury, including the degenerative changes in the claimant's cervical spine and the reversal of the cervical lordotic curve impacting the claimant's spinal fluid and cord.

The claimant presented sufficient evidence to support the finding that he sustained a cervical injury at the time of his October 2008 accident, for which he should be entitled to medical and indemnity benefits.

#### ADDITIONAL MEDICAL TREATMENT FOR LEFT SHOULDER

Under Arkansas workers' compensation law, the employer takes the employee as he is found, and circumstances which aggravate preexisting conditions are compensable. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W. 2d 664 (1990). Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark Code Ann. Sec. 11-9-

508(a) (Supp. 2005). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). 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). 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. A causal connection is established when the compensable injury is found to be "a factor" in the resulting need for medical treatment, even though the compensable injury is not the major cause of the disability or need for treatment. Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004).

Dr. McBride, Dr. Tucker and Dr. Chakales related the accident to the left shoulder symptoms. The claimant

was not symptomatic prior to the accident, and there is no question of the compensability of the left shoulder injury. The claimant's left shoulder problems have not resolved since the date of his injury, but have actually worsened. He was not released to full duty for his shoulder, after the abortive attempt to return to work in January 2009. A portion of his restrictions are directly related to his shoulder. Dr. Chakales felt that his symptoms could relate to rotator cuff involvement, but that he had impingement syndrome requiring further care. I find that the claimant proved his entitlement to additional medical treatment of his left shoulder.

#### CONCLUSION

After my de novo review of the entire record, I concur, in part, but must respectfully dissent, in part, from the majority opinion. I agree with the majority opinion that the claimant proved his entitlement to temporary partial disability benefits from March 16, 2009 through June 15, 2009. However, I find that the claimant did prove that he sustained a compensable injury to his cervical spine and that he is entitled to additional medical treatment for his left shoulder.

For the foregoing reasons, I respectfully concur,  
in part, and dissent, in part.

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PHILIP A. HOOD, Commissioner