

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801292

KIM GLADDEN, EMPLOYEE	CLAIMANT
GEORGIA-PACIFIC CORPORATION, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 7, 2011

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

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

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed and remanded for the Commission to determine whether the claimant suffered "an aggravation of his preexisting left shoulder injury." *Gladden v. Georgia Pacific Corp.*, CA10-462 (Dec. 8, 2010). Based on our *de novo* review of the entire record, and in accordance with the remand from the Court of Appeals, the Full Commission finds that the claimant did not prove he

sustained a compensable aggravation of a preexisting left shoulder injury.

I. HISTORY

The record indicates that Kim Wayne Gladden, now age 47, began treating with Dr. Kerry F. Pennington in February 2002: "Here with left shoulder pain. Has had multiple injuries from MVAs and motorcycle accidents. Has had a known right separated shoulder and his left shoulder now has begun to have diminished ROM....He does quite a bit of cable pulling at his job as a logtruck driver. He has had no recent injury, no joint warmth or swelling but he has had marked decreased overhead extensions of the arm....There is point tenderness in the left AC space with decreased ROM with inability to extend left arm above a 90 degree angle. There are intact reflexes, sensorium and strength."

Dr. Pennington assessed "DJD of the left shoulder with some tendinitis." Dr. Pennington noted following an x-ray of the claimant's left shoulder on February 11, 2002, "There is mild arthritis seen particularly in the AC joint area. There is some roughening of the glenoid fossa. I see no areas of fracture, dislocation, malalignment or bone destruction."

The claimant testified that he became employed as a millwright with the respondent-employer, Georgia-Pacific, in June 2004. Dr. Pennington saw the claimant in July 2005: "Right shoulder pain. He has had a first degree AC separation for the last 10 years after a motorcycle racing injury. Pain is worse in the right arm, but the left shoulder is also somewhat painful....There is extreme crepitus of both shoulders in the AC joint spaces, particularly the right arm."

Dr. Pennington assessed "DJD, both shoulders and knees; insomnia." An x-ray was done on July 15, 2005:

Both shoulders are viewed with and without weight bearing. The acromioclavicular joint on the right and left side both appear somewhat wide but there is no separation of the joint with weight bearing. The patient does not have any visible fractures or other pathology of the shoulders. IMPRESSION: THE ACROMIOCLAVICULAR JOINTS ARE SLIGHTLY WIDE IN APPEARANCE BUT THIS IS TRUE SYMMETRICALLY. THERE IS NO DISTRACTION OR DISPLACEMENT OF THE JOINTS WHEN WEIGHT BEARING IS UTILIZED. NO OTHER DEFINITE PATHOLOGY IS SEEN. NO DEFINITE SEPARATION IS CONFIRMED.

Dr. Pennington noted on July 28, 2005, "His [right shoulder] MRI shows a tendonosis with a full thickness tear of the distal and the supraspinatus tendon." Dr. John O. Lytle performed a rotator cuff repair of the claimant's right shoulder in September 2005.

The parties stipulated that the claimant sustained a compensable neck injury on December 12, 2007. The claimant testified, "I was changing a gear on a raw oil dry fuel live bottom screw, myself and one other employee. We took the taper lock out of the center of the gear, he handled it. I grabbed the gear, had oil all over my gloves, turned to sit it on the catwalk, slipped out of my gloves, bounced, I tried to catch it and it snatched me down to the catwalk, at which time I felt the pull in my upper back, neck and shoulders."

The record does not show that the claimant complained of any pain or symptoms in his left shoulder immediately followed the December 12, 2007 accident. Instead, an x-ray of the claimant's right shoulder was done on December 13, 2007, with the following impression: "Prominent inferior osteophyte mid clavicle. Degenerative changes of the AC joint. No definite evidence for acute findings."

An emergency physician's record dated December 13, 2007 indicated, "Pt states that he injured his R shoulder yesterday @ 1:00 p.m." The claimant was diagnosed with 1. R shoulder sprain. 2. Muscle Spasm. 3. Radiculopathy.

Dr. Michael D. Payne noted on December 18, 2007 that the claimant had injured his right shoulder at work five days earlier, and that the claimant had "jerked R arm" while lifting a heavy object. Dr. Payne's assessment was 1. R shoulder & neck strain. 2. Neuropathy.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on December 23, 2007. The Accident Information section of the Form AR-N indicated that the claimant had injured his right shoulder on December 12, 2007: "Lifting a gear that weighed app. 143 lbs. Attempted to set it on the cat walk and it slipped out of my hand. I attempted to catch it, it pulled me down to the cat walk that's when I felt something pull in my shoulder."

The record indicates that the claimant filled out a Patient History for Dr. Ethan J. Schock on January 17, 2008. The claimant indicated on the Patient History that he had injured his Shoulder on December 12, 2007, and that the "Right" and "Left" side were involved. The claimant indicated on a Pain Drawing Grid Assessment that he was suffering from "Ache" in the left and right shoulder. Dr. Schock reported on January 17, 2008:

He is referred for evaluation of his right shoulder....He injured his right shoulder

on December 12, 2007. This occurred when a gear weighing 140 pounds slipped from his hands. He tried to catch it, and had a traction type injury to his right shoulder....His initial symptoms following the injury was pain shooting from his shoulder towards his elbow and pain and numbness in his hand, especially the index and long finger....He has pain in the base of his neck, pain in his periscapular region, pain in the lateral aspect of his shoulder, radiating towards his elbow, but he denies any weakness in his shoulder....

Dr. Schock's impression was "Right shoulder tractional injury with subsequent shoulder pain and numbness in the hand." The record indicates that the claimant subsequently treated with a physical therapist for pain in the claimant's neck and right shoulder.

The claimant filled out a Health/Hand Information Sheet at a medical clinic on January 31, 2008. On this information sheet, the claimant described the December 12, 2007 accident and indicated that only his Right side was affected. Dr. Reginald J. Rutherford provided an EMG Report on January 31, 2008: "Mr. Gladden is seen for electrodiagnostic testing referable to complaint of numbness of the index and long fingers right hand. On examination there is normal strength and symmetrical reflexes both upper extremities....The nerve conduction study is normal. On electromyographic examination there is active denervation

right C7 myotome with chronic changes noted right triceps muscle. MRI study of the cervical spine is recommended."

The claimant wrote on a medical History Form dated February 15, 2008 that he was feeling pain in "both shoulders" as a result of the December 12, 2007 accident.

Dr. Tim Burson examined the claimant on April 1, 2008: "Mr. Gladden has had neck pain since December 12, 2007. He was lifting a heavy piece of equipment at work and felt pain in both shoulders....He most likely needs surgery which would be an anterior cervical discectomy at C6-C7."

Dr. Schock noted on May 1, 2008, "He is here for final consideration of his right shoulder as related to a work injury....Mr. Gladden is released from my care, as I do not think that he has a shoulder injury. I believe his symptoms are consistent with the findings of the cervical disk injury, and examination and radiological tests have shown the rotator cuff and shoulder to be intact."

Dr. Pennington saw the claimant on May 16, 2008:

Workman's comp visit. He was trying to catch a piece of equipment that was falling and developed sudden onset of numbness from the right elbow down, pain in the right shoulder and neck. He has been worked up by Dr. Schock. There is some question about whether he had a loose foreign body in his right shoulder.

He had previous rotator cuff repair on that shoulder. He does have a ruptured disk with right-sided impingement. He is also having pain in the left shoulder....

He has crepitus noted along the medial aspect of his clavicle with abduction of the shoulder. He has a plus/minus impingement on the right shoulder. He has a positive impingement on the left shoulder. I suspect his headaches are muscular from his neck.

Dr. Pennington assessed "Ruptured disk of C6-C7; Congenital spinal canal stenosis as well; Possible loose foreign body, right shoulder; Bilateral tendinitis of the shoulders." Dr. Burson performed an anterior cervical discectomy at C6-7 on September 12, 2008. The pre- and post-operative diagnosis was "C6-7 herniated nucleus pulposus." Dr. Burson noted on October 23, 2008 that the claimant complained of pain in both shoulders.

The claimant followed up with Dr. Pennington on November 4, 2008: "Having trouble with his shoulders. Not resting at night because of this. He is having significant discomfort with abduction; the left shoulder in particular....0: He has a positive impingement on the left side. He has tenderness in the trapezius bilaterally. There is less pain of the right shoulder." Dr. Pennington assessed "Tendinitis, left shoulder; DJD of the cervical spine with spasm."

Dr. Lytle examined the claimant on December 11, 2008:

Kim Gladden is a 44 years old male who complains of bilateral shoulder pain. The left side is worse. He was injured on 12/12/07. He removed a 140 pound gear from a piece of equipment and states that it slipped out of his hands bouncing to the catwalk where he was working. He grabbed a piece before it fell to the bottom level where people were walking and working. He states he then caught it and snatched him down to the catwalk....He has been recommended to have a functional capacity evaluation to evaluate his ability to return to work. He does not think he can do that because the pain in his shoulders....

Left shoulder: Inspection shows no obvious deformity, or atrophy of the supraspinatus, infraspinatus, or deltoid muscles....The rotator cuff is tender when palpated with the arm in extension. The AC joint is hypertrophied and tender.

Range of motion is good....Impingement tests cause increased pain. Cross-arm test is painful. Passive abduction with internal rotation causes pain from impingement....

X-RAY: AP/Y LT SHOULDER show hypertrophied and arthritis at the AC joint. There are chronic changes at the greater tuberosity....

Because of the persistence of his pain and changes in the shoulder joint and AC joint we will plan an MRI of the left shoulder for further evaluate (sic) the status of the rotator cuff and the AC joint. Will plan further management as indicated....

An MRI was taken on December 18, 2008, with the following impression, "Large full thickness tear of rotator cuff moderate degree traction surfaces. Degenerative

changes of chronic navicular joint with inferior hypertrophic bony changes."

The claimant followed up with Dr. Lytle on January 14, 2009:

He is here today to discuss the MRI of his left shoulder. The test done 12/18/08 show (sic) a full thickness tear of the rotator cuff on the left shoulder with significant retraction....

This is discussed at length. He has undergone rotator cuff surgery on the right side in the past. It is my opinion that this injury occurred at the time of his original injury in December of 2007. That is the time that symptoms began and he was relatively asymptomatic from that point.

We will plan a rotator cuff repair of the left shoulder has (sic) an outpatient in the near future. He understands and will have a minimum of 12 weeks Rehabilitation following that surgery....

The claimant participated in a Functional Capacity Evaluation on January 22, 2009: "Mr. Kim Gladden completed functional testing on this date with reliable results. Overall, Mr. Gladden demonstrated the ability to perform work within the MEDIUM Physical Demand Classification defined by the US Dept. of Labor's guidelines over the course of a normal workday with the limitations noted above."

Dr. Lytle performed surgery on January 29, 2009: "1) Arthroscopic debridement of the rotator cuff and anterior

labrum. 2) Distal clavicle resection. 3) Acromioplasty. 4) Rotator cuff repair left shoulder." The post-operative diagnosis was "Rotator cuff tear left shoulder, impingement left shoulder with hypertrophic arthritis at the AC joint."

Dr. Burson reported on February 10, 2009, "He had an anterior cervical diskectomy on September 12, 2008. He seems to be doing about the same. He has numbness and tingling in his hands. He complains of pain in his right hand in the index and middle finger....From our standpoint, he has reached maximum medical improvement....he qualifies for an impairment rating of 10% to the body as a whole. We will see him back p.r.n." The parties stipulated that the claimant reached maximum medical improvement for his compensable neck injury on February 10, 2009, and that the respondents paid a 10% anatomical impairment rating.

A pre-hearing order was filed on April 16, 2009. The claimant contended, among other things, that he sustained "compensable right shoulder and left shoulder injuries on December 12, 2007....Dr. Lytle has recommended surgery for the shoulder. The claimant contends that he is entitled to continued medical care and treatment from Dr. Lytle for the

right and left shoulder injuries sustained in the December 12, 2007 incident."

The respondents contended that the claimant had been provided all appropriate benefits to which he was entitled, and that the claimant's "December 2007 injury was to his cervical spine....the treatment the claimant is seeking for his shoulders is not reasonably necessary or causally related to his December 12, 2007 work-related injury....The respondents contend that the claimant's shoulder complaints are due to a pre-existing condition rather than due to the December 12, 2007 claim."

The parties agreed to litigate the following issues:

- 1) Compensability of left and right shoulder injuries by specific incident on December 12, 2007.
- 2) If compensability is overcome, the claimant's entitlement to additional medical treatment, and temporary total disability benefits from the date last paid to a date to be determined, and attorney's fees must be addressed.

The parties deposed Dr. Lytle on May 19, 2009. The respondents' attorney questioned Dr. Lytle:

Q. Did [the claimant] indicate that his shoulder complaints, both his right and his left shoulder started on December the 12th of 2007, or was that your impression?

A. Yes, it was my impression that the injury was the starting point of both of the problems....

Q. What were your findings from reviewing the films from the MRI?

A. That he had a full thickness tear of the rotator cuff with retraction of the supraspinatus tendon....I did not have any reason to doubt the history that was given me. And the mechanism of injury that he described to me of snatching a heavy weight is something that could cause a rotator cuff tear. And so in my opinion, I agreed that this was most likely due to his injury that he had described to me originally.

Q. Okay. Was there any way from the MRI film to show whether or not his could've possibly been from wear and tear versus an acute or a traumatic incident?

A. No, not really....

Q. Did he give you a history of having any kind of complaints or problems with his left shoulder before December the 12th of 2007?

A. No, that's one of the points that he was so rigorous about in saying, "My shoulder was fine."

Q. And so I take it that's why you gave the opinion, as you've stated here today in your report of January 28th, 2009, that the injury occurred at the time of the original injury in December of 2007?

A. Yes.

Q. What treatment have you provided for Mr. Gladden? I know he's had surgery, and I don't believe I have a copy of that report in my file.

A. On 1/29/09 he underwent arthroscopic debridement of the rotator cuff and the anterior labrum and a distal clavicle resection of acromion plasty (sic) and rotator cuff repair of the left shoulder.

Q. Did you find any degenerative process in the shoulder, left shoulder when you did the surgery on January 29, 2009?

A. Not specifically.

Q. What type of recovery has Mr. Gladden had since the surgery on January 29th?

A. Let me retract that one second and go back. He did have hypertrophy and arthritis at the AC joint, which again in a man that works is not an unusual finding. But that was part of his sequelae of symptoms.

Q. Okay.

A. So as specific as the way you asked the question about degenerative changes, yes, he had some arthritis changes at the AC joint. That is, I don't know exactly how to say that, but as you do rotator cuff surgery, you address that problem as part of the whole spectrum of care as part of the surgery....

Q. Based upon the records that we have for his treatment before December 12th, 2007 when he had the incident at Georgia Pacific, would that change your opinion as far as his report to you that his symptoms began as a result of the incident in December of 2007?

A. It is evidence that Mr. Gladden had some symptoms and problems with his shoulder before that time.

Q. So, again, you cannot state within a reasonable degree of medical certainty that the incident, or the injury, accident, that he had in December of 2007 was the reason for his surgery and treatment that you provided for him in December of 2008 and into 2009?

A. No, I cannot. That is correct....

The claimant's attorney questioned Dr. Lytle:

Q. You said earlier during direct examination that it's not uncommon for someone to have the rotator cuff tear like this and it would get masked by something else. Are you aware also that Mr. Gladden at this same time suffered a cervical injury which required surgery?

A. Yes.

Q. And is that possible that it masked it for the first couple of months until he -

A. That is possible. That is a reasonable assumption....

Q. As far as your understanding in having treated Mr. Gladden, do you see him as a straightforward, honest person?

A. I have no reason to doubt Mr. Gladden's history that he was injured. I think I have no reason to doubt that he was injured in an accident in 2007. I do believe there were probably some symptoms of his shoulder that preceded that that he may not have been forthright to me about.

Q. I guess, but do you believe the major reason for his surgery that you performed this year to his left shoulder, the major reason for it was that incident December the 12th of '07?

A. That was the history that he gave me. And like I stated, I had no reason to doubt his history, and I recorded it as he very explicitly stated to me....

Q. If the judge found out that actually he was complaining about his left shoulder since the incident of December the 12th, '07 through his wife's testimony and co-workers' testimony, even though in the medical records they weren't treating his right shoulder, would that change

your opinion that more likely than not his injury, his left shoulder condition was related to that incident?

A. I don't have any question that the incident of December of 2007 aggravated his shoulder. I do believe if he sustained a significant rotator cuff at that time that was acute, that he would have complained of pain and to see to that. If this was the same as it had been for a long time, I think his other injuries certainly took precedence. Did I answer your question?

Q. Yes, sir, you did. I was just trying to, then based on what you've seen and what you've been shown here today, do you have an opinion as to whether or not 51 percent of the more need for his treatment on his left shoulder is related to the December the 12th, '07 incident?

A. I'm not sure I can answer that with a reasonable degree of medical certainty, to use your terms.

The respondents' attorney re-examined Dr. Lytle:

Q. You indicated that you felt the December 2007 incident aggravated his left shoulder?

A. Yes.

Q. Are there any objective findings to show that the December 2007 incident aggravated his left shoulder?

A. Not other than when he came to me and had objective findings, and his subjective complaints were that he injured his shoulder in December of 2007.

Q. Okay. If he had aggravated his shoulder in December of 2007, would you have anticipated he would have reported that to the doctors that were

treating him between December 2007 and March 31st of 2008?

A. I would've expected that, yes....

After a hearing, an administrative law judge filed an opinion on September 4, 2009. The administrative law judge found that the claimant "failed to prove by a preponderance of the evidence that he sustained compensable injuries to his left or right shoulders by specific incident on December 12, 2007." The Full Commission affirmed and adopted the administrative law judge's decision in an opinion filed March 15, 2010. The Court of Appeals has reversed and remanded with directions to determine "whether, on December 12, 2007, Gladden suffered an aggravation of his pre-existing left-shoulder injury."

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(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 requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

In the present matter, the Court of Appeals has instructed the Commission to determine whether, on December 12, 2007, the claimant "suffered an aggravation of his preexisting left-shoulder injury." In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances which aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003), citing *Nashville Livestock Comm'n v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990). An aggravation of a preexisting non-compensable condition by a compensable injury is, itself, compensable. *Oliver v. Guardsmark, Inc.*, 68 Ark. App. 24, 3 S.W.3d 336

(1999). An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The burden of proof of a compensable injury shall be on the employee, and the 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).

The Full Commission finds that the instant claimant did not prove by a preponderance of the evidence that, on December 12, 2007, he suffered a compensable aggravation of a pre-existing left-shoulder injury. According to the record, the claimant first complained of left shoulder pain when he treated with Dr. Pennington in February 2002. Dr. Pennington assessed degenerative disc disease and tendinitis in the claimant's left shoulder. The claimant began working for the respondent-employer in June 2004, and the parties stipulated that the claimant sustained a compensable neck injury on December 12, 2007. The claimant testified that,

while trying to grab a falling gear on December 12, 2007, he was "snatched down" to a catwalk and felt an immediate "pull" in his upper back, neck, and shoulders. The claimant appears to argue in his brief to the Full Commission that he sustained a left rotator cuff tear on December 12, 2007.

It is within the Commission's discretion to determine the credibility of each witness and the weight to be given his testimony. *Johnson v. Hux*, 28 Ark. App. 187, 772 S.W.2d 362 (1989). The Commission may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Univ. of Ark. Med. Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997). In the present matter, the record does not corroborate the claimant's contention that he injured his left shoulder on December 12, 2007. The claimant informed an emergency physician on December 13, 2007 that he had injured his right shoulder at work the previous day. An x-ray of the claimant's right shoulder was done on December 13, 2007, and there was no indication that the claimant had injured his left shoulder. Dr. Payne reported on December 18, 2007 that the claimant had injured his right shoulder, not his left shoulder.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on December 23, 2007. The Accident Information section of the Form AR-N indicated that the claimant injured his right shoulder as the result of lifting and being pulled down by a heavy gear. There was no report of an injury or accident involving the claimant's left shoulder. When the claimant treated with Dr. Schock beginning January 17, 2008, the claimant essentially indicated that his right and left shoulders were hurting. Yet Dr. Schock expressly reported that the claimant had injured only his right shoulder on December 12, 2007. Dr. Shock's impression on January 17, 2008 was "Right shoulder injury with subsequent shoulder pain and numbness in the hand." The claimant indicated at Dr. Rutherford's clinic on January 31, 2008 that the claimant had injured his "Right side," not his left shoulder.

An MRI performed December 18, 2008 showed a full-thickness tear in the claimant's left shoulder. Dr. Lytle opined on January 14, 2009 that the left-shoulder injury "occurred at the time of his original injury in December 2007." Dr. Lytle subsequently performed a left rotator cuff repair. Nevertheless, the Full Commission must assign

minimal probative weight to Dr. Lytle's opinion regarding causation of the claimant's left shoulder condition, because Dr. Lytle's opinion was based on a history given by the claimant which was not credible. The record and evidence before the Commission does not demonstrate that the claimant injured his left shoulder on December 12, 2007. After Dr. Lytle was informed at deposition regarding the history of the claimant's left shoulder condition, Dr. Lytle testified that he could not state "within a reasonable degree of medical certainty" that the December 2007 accident was the cause of the surgery provided by Dr. Lytle. Nor does the record support a contention that the claimant's left shoulder condition was initially "masked" as a result of the claimant's compensable neck injury.

Based on our *de novo* review of the entire record, and in accordance with the remand from the Court of Appeals, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his left shoulder. The claimant did not prove that he sustained an accidental injury causing internal or external physical harm to his left shoulder. The claimant did not prove that he sustained an injury to

his left shoulder 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 a compensable injury to his left shoulder which was caused by a specific incident identifiable by time and place of occurrence on December 12, 2007. The claimant did not establish a compensable injury to his left shoulder by medical evidence supported by objective findings not within the claimant's voluntary control. The left rotator cuff tear shown on the December 18, 2008 MRI was not the causal result of the December 12, 2007 stipulated compensable neck injury. The claimant did not prove that he suffered a compensable aggravation of a preexisting left-shoulder injury.

The Full Commission therefore affirms an administrative law judge's finding that the claimant did not prove he sustained a compensable injury to his left shoulder. This claim is denied and dismissed.

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 has proved by a preponderance of the evidence that he sustained a compensable left shoulder aggravation injury during the December 12, 2007 incident and I would award benefits accordingly.

The claimant worked for the respondent as a millwright, maintaining all of the heavy equipment involved in the running of a mill. On December 12, 2007, the claimant was involved in a specific incident involving a gear weighing 134 pounds. The claimant described the incident as follows:

I was changing a gear on a raw oil dry fuel live bottom screw, myself and one other employee. We took the taper lock out of the center of the gear, he

handled it. I grabbed the gear, had oil all over my gloves, turned to sit it on the catwalk, slipped out of my gloves, bounced, I tried to catch it and it snatched me down to the catwalk, at which time I felt the pull in my upper back, neck, and shoulders.

The respondents have accepted a cervical injury resulting from this December 12, 2007 incident. While the claimant's initial treatment was for his neck and right shoulder, on January 17, 2008, less than one month after the injury, the claimant showed a problem with the left shoulder on Dr. Ethan Schock's patient history. While the claimant didn't receive any significant treatment to his left shoulder for several months after his initial visit with Dr. Schock, this was because the claimant was receiving more immediate treatment for his neck injury. When the claimant was ultimately given an MRI by Dr. John Lytle, the left shoulder showed a significant rotator cuff tear.

The majority has, again, denied the left shoulder injury. It is unclear, but the majority has denied the claim either on the theory that the injury didn't occur during the gear-catching incident because the claimant didn't report it immediately after the incident, or, on the theory that the claimant's injury is a pre-existing condition, which the

Court has already once remanded this claim back to the Commission to consider whether a pre-existing condition was aggravated by the gear-catching incident. Under either theory, the majority has not complied with the Court of Appeals mandate.

The majority states:

An MRI performed December 18, 2008, showed a full-thickness tear in the claimant's left shoulder. Dr. Lytle opined on January 14, 2009 that the left-shoulder injury "occurred at the time of his original injury in December 2007." Dr. Lytle subsequently performed a left rotator cuff repair. Nevertheless, the Full Commission must assign minimal probative weight to Dr. Lytle's opinion regarding causation of the claimant's left shoulder condition, because Dr. Lytle's opinion was based on a history given by the claimant which was not credible. The record and evidence before the Commission does not demonstrate that the claimant injured his left shoulder on December 12, 2007. After Dr. Lytle was informed at deposition regarding the history of the claimant's left shoulder condition, Dr. Lytle testified that he could not state "within a reasonable degree of medical certainty" that the December 2007 accident was the cause of the surgery provided to Dr. Lytle. Nor does the record support a contention that the claimant's left shoulder condition was initially "masked" as a result of the claimant's compensable neck injury.

There are several problematic conclusions contained in the majority's opinion. The Commission is obliged to make findings and conclusions with sufficient detail and particularity to allow the Court to decide whether its decision is in accordance with the law. Wright v. American Transportation, 18 Ark. App. 18, 709 S.W. 2d 107 (1986). See also Peters v. Doyle, 2009 Ark. App. 722.

The majority states:

Nevertheless, the Full Commission must assign minimal probative weight to Dr. Lytle's opinion regarding causation of the claimant's left shoulder condition, because Dr. Lytle's opinion was based on a history given by the claimant which was not credible.

It is unclear what portion of the history given by the claimant the majority is deeming not credible, but the majority seems to be asserting that the history is not credible because the claimant told the doctor it happened on December 12, 2007, during the gear-catching incident. This is the entire crux of the case. The claimant's history cannot be deemed "not credible" simply because he told the doctor about the gear-catching incident, which I would note, since the gear in question weighs 134 pounds, is exactly the type of incident that would aggravate a pre-existing

shoulder condition. I find the claimant to be an extremely credible witness.

The majority then goes on to state:

The record and evidence before the Commission does not demonstrate that the claimant injured his left shoulder on December 12, 2007.

Again, this is the entire crux of the case, yet the majority has given no analysis, no evidentiary support, and no findings of fact to support this statement. I submit that the majority has chosen to make a baseless conclusion rather than findings of fact followed by a conclusion, because the entire record supports a finding that the claimant sustained an aggravation injury to his left shoulder on December 12, 2007, during the gear catching incident.

In fact, Dr. Lytle stated:

I did not have any reason to doubt the history that was given me. And the mechanism of injury that he described to me of snatching a heavy weight is something that could cause a rotator cuff tear. And so in my opinion, I agreed that this was most likely due to his injury that he had described to me originally.

As to the issue of the injury being masked, which the majority states the record does not support, and for which there is some argument that the majority is actually denying this claim, Dr. Lytle testified:

Q: You said earlier during direct examination that it's not uncommon for someone to have the rotator cuff tear like this and it would get masked by something else. Are you aware also that Mr. Gladden at this same time suffered a cervical injury which required surgery?

A: Yes.

Q: And is that possible that it masked it for the first couple of months until he--

A: That is possible. That is a reasonable assumption.

The majority also makes a conclusion regarding the major cause of the claimant's shoulder surgery:¹

After Dr. Lytle was informed at deposition regarding the history of the claimant's left shoulder condition, Dr. Lytle testified that he could not state "within a reasonable degree of medical certainty" that the December 2007 accident was the cause of the surgery provided by Dr. Lytle.

¹I would note that major cause is not even the standard necessary for a claimant to receive reasonably necessary medical treatment. The compensable injury has to be a factor in the need for treatment. See Williams v. L & W Janitorial, Inc., 145 S.W. 3d 383, 145 S.W. 3d 383:

The majority has not complied with the Court of Appeals mandate. While the majority concludes, after making several other irrelevant conclusions, that the claimant did not sustain a compensable aggravation of a preexisting left shoulder injury, the majority has not actually made any findings of fact regarding aggravation. As to aggravation, the actual issue for which this case was remanded back to the Commission, Dr. Lytle stated: "I don't have any question that the incident of December of 2007 aggravated his shoulder."

Based on the claimant's credible testimony, the circumstances of the gear-catching incident, the medical record, and Dr. Lytle's credible testimony, I find that the claimant sustained a compensable aggravation injury on December 12, 2007.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner