

**BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION**

**ORDER FILED**

**February 3, 2023**

**WORKERS'  
COMPENSATION COMMISSION**

JERRY WAYNE YOUNTS	)	
Claimant	)	Commission File No.
	)	CM3-2020-06911F
CITY OF NORMAN	)	
Employer-Respondent	)	Claimant's Social Security
	)	Number: xxx-xx-1837
CITY OF NORMAN (OWN RISK)	)	
Insurer	)	

**ORDER DETERMINING COMPENSABILITY AND  
AWARDING PERMANENT PARTIAL DISABILITY BENEFITS**

Hearing before Administrative Law Judge JOHN L BLODGETT on January 30, 2023, in OKLAHOMA CITY, Oklahoma.

Claimant appeared in person and by counsel, EMILY J BISCONI FOR JOSEPH C BISCONI II.

Respondent and insurance carrier appeared by counsel, ASSISTANT CITY ATTORNEY JEANNE SNIDER.

**I. FACTS AND STIPULATIONS**

Claimant filed his Employee's First Notice of Claim for Compensation (CC-Form-3) on December 3, 2020, alleging injury to his left shoulder and neck, with a date of injury of January 1, 2020. According to his CC-Form-3, Claimant was injured while picking up wood. Claimant now requests a finding of compensable injury to his neck, left shoulder, and left arm, the major cause of which was a single incident accident arising out of the course and scope of his employment with Respondent, with a date of injury of January 1, 2020. Claimant requests an award of permanent partial disability benefits for his neck, left shoulder, and left arm. Claimant also requests an award of continuing medical maintenance for his left shoulder and left arm. Claimant requests ongoing service of a medical device, pursuant to 85A O.S. §50(F), for medical hardware which was used to repair Claimant's left shoulder and left arm injuries. Claimant also requests maintenance of a prosthetic device, pursuant to 85A O.S. §114, for a prosthetic device which was used to repair Claimant's left shoulder injury. Finally, Claimant requests the issue of mileage reimbursement be reserved for future determination.

Respondent admits the Commission has jurisdiction to consider Claimant's cause of action. Respondent admits Claimant was its employee on January 1, 2020, and continues to be its employee, presently. Respondent admits Claimant did sustain compensable injuries to his left shoulder and left arm on January 1, 2020. Respondent admits Claimant was provided medical treatment and temporary total disability benefits for his left shoulder and left arm injuries. Respondent denies the nature and extent of permanent partial disability for Claimant's left shoulder and left arm injuries. Respondent denies Claimant sustained a compensable injury to his neck. Respondent denies Claimant received any medical treatment for his neck. Respondent denies Claimant is entitled to permanent partial disability benefits for his denied injury to the neck. Respondent further denies Claimant is entitled to permanent

partial disability benefits for his alleged injury to the neck, as Respondent denies Claimant received any medical treatment for his neck. Respondent objects to Claimant's request for service / maintenance of a medical device and prosthetic joint.

The parties stipulate and agree the rate for permanent partial disability benefits is \$350.00 per week. The parties agree the date of accrual for permanent partial disability benefits is January 29, 2022.

A CC-Form-A Order for Change of Treating Physician was entered on February 25, 2021. With said order, Respondent admitted Claimant sustained a compensable injury to his left shoulder, arising out of and in the course of his employment, with a date of injury of January 1, 2020. Dr. James Bond was designated as Claimant's treating physician for his left shoulder injury.

With the contested issues framed, the case was fully submitted on January 30, 2023. The record consists of the testimony of Claimant, the July 6, 2022 medical report of Dr. Lance E. Rosson (Claimant Exhibit #1), historical medical records of Dr. James Bond and Dr. David Bobb (Claimant Exhibit #2), the October 12, 2022 medical report of Dr. William Jones (Respondent Exhibit #1), and historical medical records of Josie Dean, PA-C and Hillarie Kessler, PA-C (Respondent Exhibit #2).

## **II. STIPULATIONS**

The following stipulations were submitted by the parties and are hereby accepted as fact:

1. That the Oklahoma Workers' Compensation Commission has jurisdiction.
2. That Claimant was an employee of CITY OF NORMAN on January 1, 2020.
3. That Respondent had an OWN RISK policy of workers' compensation insurance on January 1, 2020.
4. That Claimant sustained compensable injuries to his LEFT SHOULDER and LEFT ARM, the major cause of which was a single incident accident arising out of the course and scope of his employment with Respondent, with a date of injury of January 1, 2020.
5. That Claimant has received medical treatment for his LEFT SHOULDER and LEFT ARM.
6. That Claimant reported his injury and filed his claim for compensation (CC-Form-3) timely.
7. That Claimant's rate of compensation is \$350.00 for permanent partial disability.
8. That the date of accrual for permanent partial disability benefits is January 29, 2022.

## **III. FINDINGS AND CONCLUSIONS**

From a review of the record as a whole, including the medical reports submitted by the parties, and having heard the testimony of Claimant and observed his demeanor, and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with 85A O.S. §72:

Claimant is sixty-three (63) years old, and was a credible witness. Claimant has been employed by Respondent for approximately thirty (30) years. On January 1, 2020, Claimant was working to move a tree which had fallen in the street. He was moving the tree so it could be hauled away. While moving the tree, Claimant felt a pop in his left shoulder and left arm. Claimant reported this incident to his supervisor, and an incident report was prepared. (The incident report was not presented for the

Commission's review.) Claimant thought his left shoulder and left arm would improve with time. However, when he did not improve, Claimant was referred for medical treatment.

Claimant was evaluated by Dr. David Bobb, an orthopedic specialist, on February 20, 2020. Claimant reported left shoulder pain. X-rays taken by Dr. Bobb's clinic revealed arthritic changes. An MRI was also reviewed, which showed advanced osteoarthritis, but also advanced impingement with acromioclavicular involvement, and a diffuse labral tear with a SLAP component. Dr. Bobb took Claimant to surgery on March 6, 2020. The surgical procedures included arthroscopic extensive debridement of the glenohumeral joint of the left shoulder, including debridement of a chronic tear of the anterior, superior, and posterior labrum, as well as debridement of nontraumatic, incomplete tearing of the left rotator cuff and separate debridement of chronic sprain of the coracohumeral ligament complex, arthroscopic biceps tenodesis of the left shoulder, arthroscopic distal clavicle resection, and arthroscopic acromioplasty. The biceps tenodesis procedure required a screw to complete the procedure. Postoperatively, Claimant continued under Dr. Bobb's care. Claimant participated in physical therapy. (Claimant Exhibit #2)

Claimant testified that after several months of therapy, his left shoulder became very painful. Dr. Bobb's April 23, 2020 report indicates Claimant had a painful episode of physical therapy which irritated his left shoulder arthritis. In his June 15, 2020 report, Dr. Bobb noted Claimant's pain had improved, and he only experienced pain with overhead activity and with reaching. Claimant reported continued pain with overhead activity and reaching on July 13, 2020. Dr. Bobb ultimately released Claimant at maximum medical improvement, with no restrictions, on August 10, 2020. (Claimant Exhibit #2)

As set forth above, the parties entered a CC-Form-A Order for Change of Treating Physician on February 25, 2021. Claimant was evaluated by Josie Dean, PA-C, the physician's assistant for Dr. James Bond, on March 31, 2021. Claimant reported he had injured his left shoulder at work after moving trees. Claimant reported he had surgery with Dr. Bobb, and was progressing until he was participating in physical therapy and had an increase in left shoulder pain. PA-C Dean was of the opinion Claimant's main problem was arthritis in his left shoulder joint. PA-C Dean was of the opinion Claimant's arthritis was aggravated by the January 1, 2020 work incident. Claimant was referred for an ultrasound guided intraarticular shoulder injection. It was noted that Claimant may require total shoulder arthroplasty in the future. Dr. Boehm did perform an ultrasound guided injection in Claimant's left shoulder on April 26, 2021. (Claimant Exhibit #2)

Claimant was re-evaluated by PA-C Dean on June 2, 2021. Claimant reported that his pain was improved after Dr. Boehm's injection, but he had continued complaints. Dr. Bond recommended Claimant proceed with left shoulder total arthroplasty. Dr. Bond took Claimant to surgery on August 17, 2021. Surgery included left shoulder total arthroplasty. Claimant was re-evaluated by PA-C Dean on September 30, 2021. Claimant reported his pain was much improved. Claimant was referred for physical therapy. Claimant returned to PA-C Dean on October 28, 2021. He reported that his pain and range of motion were improved after physical therapy. Claimant was re-evaluated by PA-C Dean on December 30, 2021. Claimant reported some stiffness, but improved pain and range of motion. Claimant returned to PA-C Dean several times in early 2022. Claimant was last evaluated by Hillarie Kessler, PA-C on May 19, 2022. Claimant reported some continued stiffness, but overall, he was improved. Claimant reported he had returned to work on a full duty basis. Claimant reported that his pain and range of motion were improved. Claimant was released at maximum medical improvement,

with instructions to return on a yearly basis for x-rays. (Claimant Exhibit #2,

Claimant has returned to work for Respondent, and is working, presently. Claimant is working his same job, earning the same pay as he did prior to his injuries. However, he does have some continued complaints. Claimant experiences a dull pain in his left shoulder all the time, with increased pain when the weather is cold. He complains that occasionally he experiences a sharp stabbing pain in his left shoulder. Claimant also sometimes feels pain which runs from his left shoulder down into his left arm. Occasionally, Claimant's left shoulder is tight. Claimant experiences difficulty raising his left arm above shoulder level, and has difficulty reaching behind his back. Claimant is able to do everything he did before his work injury, but it is more difficult and occasionally more painful to do. It is difficult for Claimant to get dressed and to do things about his house, but he does still do them. Claimant will do things with his right arm now, instead of his left. Claimant is right handed. Claimant's left arm feels weaker since his work accident. Claimant had no complaints regarding his neck at trial. Claimant denied any prior injuries to his neck, left shoulder, and left arm, and no evidence to the contrary was submitted for the Commission's consideration.

Claimant submitted the July 6, 2022 medical report of Dr. Lance E. Rosson in support of his request for benefits. Dr. Rosson notes Claimant was injured on January 1, 2020 while lifting a log from a tree that had fallen. According to Dr. Rosson's report, Claimant experienced pain in his left shoulder and arm and up into his neck. Claimant was sent for medical treatment. An MRI of Claimant's left shoulder revealed bicipital tendonitis as well as rotator cuff tear and labral tear. Surgery was recommended and performed on March 6, 2020. Included in the surgery was a biceps tenodesis procedure, which involved an implanted medical device; an Arthrex 8x23-mm bicomposite screw. Postoperatively Claimant was sent for physical therapy. Claimant's pain worsened with physical therapy. Claimant was ultimately released but had continued complaints. He went to his primary care physician, who sent Claimant for an updated left shoulder MRI. Claimant then came under the care of Dr. Bond, who recommended an injection before recommending surgery. Dr. Bond took Claimant to surgery on August 18, 2021, to include total shoulder arthroplasty. Postoperatively, Claimant followed up with Dr. Bond with ongoing medications and physical therapy. He was ultimately released on May 19, 2022. Dr. Rosson is of the opinion Claimant sustained injury to his left shoulder and arm, which required surgery. Dr. Rosson is also of the opinion Claimant sustained an injury to his neck, to include chronic musculoligamentous injury with residual neurosensory injury. It is Dr. Rosson's opinion that the accident on January 1, 2020 is the major cause of Claimant's injuries and ongoing complaints to his left shoulder, left arm, and neck. Dr. Rosson is of the opinion Claimant has a 3% permanent partial impairment to his neck, a 35% permanent partial disability to the left shoulder, and a 30% permanent partial impairment to the left arm. Dr. Rosson recommends that Claimant receive continuing medical maintenance in the nature of prescription medications. He also recommends that Claimant be allowed maintenance of a medical device, for the screw which was implanted as part of Dr. Bobb's biceps tenodesis procedure, as well as maintenance of a prosthetic device, for the total shoulder arthroplasty which was performed by Dr. Bond. (Claimant Exhibit #1)

Respondent submitted the October 12, 2022 medical report of Dr. William Jones in support of its denial of benefits. Dr. Jones noted Claimant allegedly strained his neck and injured his left shoulder on January 1, 2020 while working for Respondent. Dr. Jones noted Claimant was evaluated at Norman Occupational Medicine Clinic on January 17, 2020 with complaints of pain and rigidity in the left shoulder, but no complaints or problems with the neck or left arm. Claimant then came under the care of Dr. Bobb, who performed surgery on March 6, 2020. Claimant continued to treat with Dr. Bobb, but

had continued shoulder complaints. Claimant then came under the care of Dr. Bond, who recommended additional surgery; total shoulder arthroplasty. Dr. Bond took Claimant to surgery on August 17, 2021. Claimant continued to treat with Dr. Bond until he was released at maximum medical improvement on May 19, 2022. Claimant has since returned to work for Respondent. Dr. Jones is of the opinion Claimant has no impairment for his alleged injury to the neck. Dr. Jones indicates Claimant did not receive any treatment and there are no objective findings of injury. Dr. Jones is of the opinion Claimant sustained a 14% permanent partial impairment as a result of his left shoulder injury. Dr. Jones is of the opinion Claimant sustained no impairment to his left arm. (Respondent Exhibit #1)

Respondent admits Claimant sustained compensable injuries to his left shoulder and left arm in the January 1, 2020 incident. At issue is whether Claimant also sustained an injury to his neck, and the nature and extent of Claimant's permanent partial disability for his January 1, 2020 injuries. The injured employee shall prove by a preponderance of the evidence that he has suffered a compensable injury. 85A O.S. §2(9)(d). "Compensable injury" means damage or harm to the physical structure of the body, of which the major cause is an accident arising out of the course and scope of employment. 85A O.S. §2(9)(a). A compensable injury shall be established by medical evidence supported by objective findings. 85A O.S. §2(9)(c). Objective findings are those findings which cannot come under the voluntary control of the patient. 85A O.S. §2(31)(a)(1). An employee who suffers a compensable injury shall be entitled to receive compensation as prescribed in the Administrative Workers' Compensation Act. If it is determined that a compensable injury did not occur, the employee shall not be entitled to compensation. 85A O.S. §2(9)(f).

After assigning weight and credibility to all of the evidence submitted for the Commission's consideration, I am most persuaded by Dr. Jones' medical report, as it is most consistent with the findings of fact set forth herein. I am not persuaded by Dr. Rosson's report concerning Claimant's alleged neck injury, as there is no indication that Claimant reported neck complaints to any of his treating physicians. Furthermore, there is no objective evidence of an injury to Claimant's neck. Claimant denied any neck complaints at trial. As such, Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck in the January 1, 2020 work incident. Even if Claimant had proven a compensable injury to his neck, no evidence was submitted to indicate Claimant received any treatment for his neck. Although Claimant alleges he received physical therapy for his neck, no corroborating medical reports were submitted in that regard. As such, even if Claimant did sustain a compensable injury to his neck, he has sustained no impairment or disability to his neck.

With regard to Claimant's request for continuing medical maintenance, when Claimant was last evaluated by his treating physician, it was recommended that Claimant return on an annual basis for x-rays. Based upon PA-C Kessler's May 19, 2022 report, the Commission finds Claimant is entitled continued medical maintenance, in the form of annual x-rays of his left shoulder, with Dr. James Bond. With regard to the hardware which was implanted in Claimant's left arm (biceps) and the prosthetic joint hardware which was implanted in Claimant's left shoulder, there is no indication that these medical devices / prosthetics require any type of maintenance or service at this time. The Commission cannot, at this time, award a benefit and/or medical treatment which no physician has recommended. The issues of ongoing service of a medical device pursuant to 85A O.S. §50(F), and repair or replacement of a prosthetic device pursuant to 85A O.S. §114, are therefore reserved for future determination.

#### **IV. ORDER**

Having reviewed the medical reports submitted by the parties, having heard the testimony of Claimant and observed his demeanor, and other matters properly before the Commission, and being well and fully advised in the premises, I find and hereby order that:

1. Claimant sustained compensable injuries to his LEFT SHOULDER and LEFT ARM, the major cause of which was a single incident accident arising out of the course and scope of his employment with Respondent, with a date of injury of January 1, 2020.
2. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck, the major cause of which arose out of the course and scope of his employment with Respondent. As such, Claimant's request for a finding of compensable injury and award of permanent partial disability benefits for his alleged injury to the neck is DENIED and DISMISSED.
3. Claimant's rate for permanent partial disability is adjudicated to be \$350.00.
4. As a result of said compensable injuries, claimant has sustained 28% Permanent Partial Disability to the LEFT SHOULDER and 3% Permanent Partial Disability to the LEFT ARM. At claimant's rate of compensation, this is equal to an award of \$38,167.50, which shall be paid to claimant weekly at the rate of \$350.00 commencing January 29, 2022, until the entire award is paid in full.
5. Respondent shall provide continuing medical maintenance for Claimant's left shoulder and left arm, in the form of annual x-rays, with Dr. James Bond.
6. Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82.
7. Pursuant to Title 85A O.S., §118, a final award fee of one hundred forty dollars (\$140.00) is taxed as a cost in this matter, and shall be paid by Respondent to the Workers' Compensation Commission if not previously paid.
8. Pursuant to 40 O.S., §418, the Respondent-Insurer shall pay to the Oklahoma Tax Commission the Special Occupational Health and Safety tax in the amount of \$286.26, representing three-fourths of one percent of the total workers' compensation losses ordered herein, excluding medical payments and temporary total disability compensation.
9. Pursuant to 85A O.S., §122(B)(2), Respondent, if OWN RISK, shall pay a workers' compensation assessment in the amount of \$763.35 to the Oklahoma Tax Commission, representing two percent (2%) of the permanent disability benefits herein.
10. Pursuant to 85A O.S. § 31(7), for injuries occurring on or after July 1, 2019, a Multiple Injury Trust Fund assessment in the amount of \$1,145.03, representing (3%) of the Claimant's permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent.

**IT IS SO ORDERED.**

DONE this 1st day of FEBRUARY, 2023.

BY ORDER OF:



JOHN L BLODGETT  
ADMINISTRATIVE LAW JUDGE

RM/CRichardson

A copy of this order was sent by electronic mail or registered mail on this file stamped date to:

Claimant's Attorney: JOSEPH C BISCONI II  
105 N HUDSON AVE STE 100  
OKLAHOMA CITY, OK 73102-4801

Respondent's Attorney: ASSISTANT CITY ATTORNEY JEANNE SNIDER  
PO BOX 370  
NORMAN, OK 73070

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this Commission on this date.



Norma McRae  
Commission Clerk  
February 3, 2023

