

BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

ORDER FILED

September 26, 2023

**WORKERS'
COMPENSATION COMMISSION**

RICKEY J GOURLEY II)
Claimant)
)
)
CITY OF NORMAN)
Employer-Respondent)
)
)
CITY OF NORMAN)
Insurer)

Commission File No.

CM3-2022-06328E

Claimant's Social Security

Number: xxx-x9-1762

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

Hearing before Administrative Law Judge JOHN L BLODGETT on September 21, 2023, in OKLAHOMA CITY, Oklahoma.

Claimant appeared in person, and by counsel, JOHN R COLBERT.

Respondent and insurance carrier appeared by counsel, JEANNE SNIDER.

I. FACTS AND STIPULATIONS

Claimant filed his Employee's First Notice of Claim for Compensation (CC-Form-3) on October 14, 2022, alleging injuries to his left shoulder and left upper arm, with a date of injury of August 18, 2022. According to his CC-Form-3, Claimant was injured while lifting a coin cart off a tailgate. Claimant now requests a finding of compensable injury 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 August 18, 2022. Claimant requests an award of permanent partial disability benefits for his injuries to the left shoulder and left arm.

Respondent admits the Commission has jurisdiction to consider Claimant's cause of action. Respondent admits Claimant was its employee on August 18, 2022. Respondent admits Claimant did sustain a compensable injury to his left shoulder, the major cause of which was a single incident accident arising out of the course and scope of his employment, with a date of injury of August 18, 2022. Respondent denies Claimant sustained a compensable injury to his left arm. Respondent admits Claimant received medical treatment for his left shoulder. Respondent denies the nature and extent of Claimant's permanent partial disability for his injury to the left shoulder. Respondent denies Claimant is entitled to any permanent partial disability benefits for his denied injury to the left arm.

The parties stipulate and agree Claimant's rate for permanent partial disability benefits is \$360.00 per week. The parties stipulate and agree the date of accrual for permanent partial disability benefits is April 3, 2023.

With the contested issues framed, the case was fully submitted on September 21, 2023. The record consists of the testimony of Claimant, the May 10, 2023 medical report of Dr. Lonnie Litchfield

(Claimant Exhibit #1), historical medical records of Norman Regional Occupational Medicine, HPI Community Hospital, Dr. Joshua Wilson, Physical Therapy Central, and Norman Regional Health System (Claimant Exhibit #2), and the July 11, 2023 medical report of Dr. William Jones (Respondent Exhibit #1).

II. DISCUSSION

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 having 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 thirty-six (36) years old, and was a credible witness. Claimant was employed by Respondent as a maintenance worker. Claimant has been employed by Respondent for approximately eight (8) years. One of Claimant's job duties required him to collect money from parking meters. On August 18, 2022, Claimant was lifting a cart filled with coins off a tailgate, when he experienced a sudden onset of pain in his left shoulder. Claimant reported the incident. He was referred to Norman Regional Occupational Medicine for evaluation and treatment.

Claimant was evaluated at Norman Regional Occupational Medicine on August 18, 2022. Claimant reported he had injured his left shoulder after lifting a coin box out of the bed of a truck. Claimant denied any prior injuries to his left shoulder. An x-ray of Claimant's left shoulder revealed no acute fractures, dislocations, or subluxations. Claimant was diagnosed with a left shoulder strain. He was provided a sling and instructed to return for re-evaluation. Claimant returned to Norman Regional Occupational Medicine on August 22, 2022. Claimant continued to report pain in his left shoulder. He also complained that he could not lift his left shoulder above his head. Claimant reported considerable discomfort with any movement. Claimant was again diagnosed with a left shoulder strain. Claimant was referred for an MRI.

Claimant did undergo an MRI of his left shoulder on August 29, 2022 at HPI Community Hospital. The MRI revealed bursal sided fiber fraying and edema of the supraspinatus and infraspinatus tendons, with low grade supraspinatus insertional tendinosis, as well as circumferential labral degeneration and free edge blunting, along with chronic appearing tearing and scarring of the anterior inferior labrum. Claimant returned to Norman Regional Occupational Medicine on August 31, 2022. After reviewing the MRI, it was recommended that Claimant be referred to an orthopedic surgeon for further evaluation and treatment.

Claimant was then referred to Dr. Joshua Wilson, an orthopedic specialist. Dr. Wilson evaluated Claimant on September 7, 2022. Claimant reported he injured his left shoulder at work while lifting a heavy box on August 18, 2022. Following that incident, Claimant noted weakness and stiffness of his left shoulder. Claimant denied any radiculopathy type symptoms radiating down his arm in to the digits or any numbness or tingling. Claimant did report pain in his left shoulder, which radiated to his left elbow. Dr. Wilson reviewed Claimant's MRI. It was his opinion that the diagnostic imaging showed rotator cuff tendinitis and partial-thickness bursal sided tearing of the supraspinatus tendon, with degenerative fraying of the labrum. Dr. Wilson diagnosed Claimant with bursitis of the left shoulder, bicipital tendinitis of the left shoulder, adhesive capsulitis of the left shoulder, and an incomplete rotator cuff tear or rupture of the left shoulder. Dr. Wilson provided a steroid injection for Claimant's left shoulder, and recommended formal physical therapy.

Claimant returned to Dr. Wilson on October 5, 2022. Claimant reported minimal relief with the steroid injection. Claimant also reported that he felt worse after participating in physical therapy. Given Claimant's failure to improve with conservative treatment, Dr. Wilson recommended surgery. Dr. Wilson took Claimant to surgery on October 14, 2022. The procedures performed included left shoulder arthroscopic extensive debridement, arthroscopic distal clavicle excision, and open subpectoral biceps tenodesis.

Postoperatively, Claimant continued under Dr. Wilson's care. Claimant participated in additional physical therapy. Dr. Wilson ultimately released Claimant at maximum medical improvement on April 3, 2023. Dr. Wilson released Claimant to return to work without restrictions. Dr. Wilson was of the opinion Claimant did not require continuing medical treatment, and did not require vocational rehabilitation.

Claimant has returned to work for Respondent. Although he was released without restrictions, and he did not ask for any modifications in his work activities upon his return to work, Claimant explained that he does still have some limitations and he is assisted by his coworkers in some of his work's required physical activities. For example, Claimant no longer collects money from parking meters, and when overhead work is required, Claimant's coworkers will usually do that work.

Claimant does have continued complains in his left shoulder. He complains that he has popping and grinding in his left shoulder. He complains that it is difficult for him to reach over his head with his left arm, and difficult to reach behind his back, or straight out from his body with his left arm. Claimant complains that he does experience some pain in his left shoulder. If his left shoulder is at rest, it is not painful. However, if he moves or performs physical activities with his left arm, his left shoulder will be painful. Claimant explained that his discomfort increases based upon his level of activity. Claimant complains that he is not able to assist his children in sports activities because of his left shoulder complaints. Claimant also complains that he can no longer perform his wood working side business because of left shoulder discomfort.

Claimant submitted the May 10, 2023 medical report of Dr. Lonnie Litchfield in support of his request for benefits. Dr. Litchfield is of the opinion Claimant injured his left shoulder in the August 18, 2022 work accident. As a result of his August 18, 2022 injury to the left shoulder, Dr. Litchfield is of the opinion Claimant has sustained a 12% permanent partial impairment to his left shoulder due to decreased range of motion, plus an additional 25% permanent partial impairment to the left shoulder as a result of distal clavicle excision, rotator cuff tear, labral tear, and a biceps tendon tear, for a total of 37% permanent partial impairment to the left shoulder. Although Dr. Litchfield's report does not describe an injury to Claimant's left arm, and Dr. Litchfield does not indicate Claimant's August 18, 2022 work accident was the major cause of an injury to Claimant's left arm, Dr. Litchfield is nevertheless of the opinion Claimant sustained a 15% permanent partial impairment to his left arm due to the biceps tenodesis procedure.

Respondent submitted the July 11, 2023 medical report of Dr. William Jones in support of its denial. Dr. Jones is of the opinion Claimant sustained an 8% permanent partial impairment to the whole man due to his August 18, 2022 injury to the left shoulder. Dr. Jones is of the opinion Claimant sustained no (0%) permanent partial impairment to his left arm from the August 18, 2022 work accident. Dr. Jones notes the biceps tendonitis in Claimant's left shoulder joint was already accounted for in his

left shoulder impairment.

III. FINDINGS AND CONCLUSIONS

The Commission, having reviewed the medical reports submitted by the parties, having heard the testimony of Claimant and observed his demeanor, having considered the evidence and records on file, and being duly advised in the premises, FINDS AND ORDERS AS FOLLOWS:

1. That Claimant sustained a compensable injury to his LEFT SHOULDER, 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 August 18, 2022.
2. That Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his left arm, the major cause of which arose out of the course and scope of his employment with Respondent. Claimant has failed to provide medical evidence supported by objective findings of an injury to his left arm. As such, Claimant's request for a finding of compensable injury to his left arm, and award of permanent partial disability benefits for the left arm, is DENIED and DISMISSED.
3. That Claimant's rate for permanent partial disability is adjudicated at \$360.00.
4. That as a result of said injury, Claimant has sustained 15% Permanent Partial Disability to the RIGHT SHOULDER. At Claimant's rate of compensation, this is equal to an award of \$19,440.00, which shall be paid to Claimant weekly at the rate of \$360.00 commencing April 3, 2023, until the entire award is paid in full. All accrued amounts shall be paid in lump sum.
5. Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82.
6. That 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.
7. 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 \$145.80, representing three-fourths of one percent of the total workers' compensation losses ordered herein, excluding medical payments and temporary total disability compensation.
8. Pursuant to 85A O.S., §122(B)(2), Respondent, if OWN RISK, shall pay a workers' compensation assessment in the amount of \$388.80 to the Oklahoma Tax Commission, representing two percent (2%) of the permanent disability benefits herein.
9. 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 \$583.20, representing (3%) of the Claimant's permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by Respondent.

IT IS SO ORDERED.

DONE this 22nd day of SEPTEMBER, 2023.

BY ORDER OF:



JOHN L BLODGETT
ADMINISTRATIVE LAW JUDGE

mp/CRichardson

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

Claimant's Attorney: JOHN R COLBERT
415 NW 11 STREET
OKLAHOMA CITY, OK 73103

Respondent's 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
September 26, 2023

