

BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

ORDER FILED
September 21, 2023

WORKERS'
COMPENSATION COMMISSION

SEAN MICHAEL TUSCHMANN)
Claimant)
)
CITY OF NORMAN)
Employer-Respondent)
)
CITY OF NORMAN)
Insurer)

ORDER DETERMINING COMPENSABILITY AND AWARDED PERMANENT PARTIAL DISABILITY BENEFITS

Hearing before Administrative Law Judge P BLAIR MCMILLIN on September 19, 2023, in OKLAHOMA CITY, Oklahoma.

Claimant appeared by counsel, EMILY BISCONI for JOSEPH C BISCONI II.

Respondent and insurance carrier appeared by counsel, JEANNE SNIDER.

I. FACTS AND STIPULATIONS

Claimant seeks a finding of compensable work-related injury to the LEFT SHOULDER and LEFT ARM (ELBOW) (direct and consequential) and LEFT HAND (direct and consequential) on February 25, 2022 and an award of permanent partial disability therefor. Respondent stipulates to jurisdictional issues and admits compensable work-related injury to the LEFT SHOULDER only and denies compensability to the LEFT ARM (ELBOW) and LEFT HAND. The parties are in agreement that the rate for permanent partial disability can be adjudicated at \$360.00 and that the accrual date for permanent partial disability is August 27, 2022.

Claimant requests the reservation of any issues arising under 85A O.S. §50(f) as a result of his LEFT SHOULDER surgery.

II. DISCUSSION

While employed as a patrol lieutenant, Claimant slipped and fell on in the parking lot on February 25, 2022. He alleges injuries to the left shoulder, left arm/elbow, and left hand as a result of that fall. Claimant also alleges consequential injuries to the left arm/elbow and left hand as a result of overuse and post-operative physical therapy to his left shoulder. Respondent only admits an injury to the left shoulder as a result of the February 25, 2022 accident. Respondent provided Claimant medical treatment with Norman Regional Hospital emergency room and Dr. Mark Moses for his left shoulder (Claimant's Exhibit No. 2).

Immediately following his accident, Claimant reported left shoulder pain and difficulty extending his arm after falling onto his lateral anterior shoulder per the ER record. Dr. Moses provided treatment

for Claimant's left shoulder to include physical therapy, medications, activity modifications, and arthroscopic surgery. The operative report reflects a full-thickness tear of the supraspinatus and most of the infraspinatus tendons along with significant erythematous changes of the rotator cuff. Dr. Moses also noted in his report that Claimant required a complex surgical reconstruction of his shoulder.

Following his left shoulder surgery, Claimant was in a sling for six weeks. Claimant began physical therapy four weeks after surgery and progressed to active strengthening at the six weeks. Except for the May 26, 2022 record, the physical therapy notes only reflect complaints to the left shoulder (Claimant's Exhibit No. 2). Claimant acknowledged at hearing that the physical therapist only treated his left shoulder. However, Claimant advised his therapist that his elbow hurt more than his shoulder as a result of his home exercises on May 26, 2022. Likewise, Claimant reported discomfort in his left elbow to Dr. Moses on June 15, 2022. At his July 13, 2022, Dr. Moses noted Claimant's ongoing symptoms of carpal tunnel syndrome and tennis elbow. Dr. Moses stated that he was unsure whether those complaints were related to Claimant's rehabilitation efforts. Claimant was released at maximum medical improvement (MMI) without restrictions on his left shoulder on August 24, 2022. Claimant initially returned to work on a light duty basis for Respondent in June of 2022. He returned to work full duty for Respondent as a patrol lieutenant in August of 2022.

Claimant testified that he has symptoms in his left shoulder, arm, and hand after his fall on February 25, 2022. Following his shoulder surgery, Claimant's left arm and left hand symptoms worsened. He developed pain in his left elbow and tingling in his pinky and ring fingers of his left hand. At the time he was released by Dr. Moses for his left shoulder, Claimant testified that he developed numbness and tingling into his left thumb as well. The numbness and tingling originate in the left elbow and travel on either side of his left arm into his thumb and last two fingers. Claimant is a left side sleeper and now has difficulty maintaining that position throughout the night. He has stiffness, popping, grinding, catching and pain in his left shoulder. Claimant's left shoulder easily fatigues, particularly with activity. He has altered his workouts to accommodate for his left shoulder limitations. Claimant acknowledged that he is able to perform all of his required job duties as a police officer. Claimant is right hand dominant. Claimant occasionally takes over-the-counter ibuprofen and testified that his daily level pain fluctuates with his activities.

Claimant submitted the February 24, 2023 report of Dr. Lance Rosson who found direct injuries to his left shoulder, left arm/elbow and left hand as well as consequential injuries due to physical therapy and overcompensation for his shoulder injury for the latter two body parts (Claimant's Exhibit No. 1). Dr. Rosson provided impairment ratings as follows: 27% permanent partial impairment (PPI) to the whole man (left shoulder); 18% PPI left arm/elbow; and 17% left hand.

Respondent submitted the June 5, 2023 report of Dr. William Jones who found no evidence of injury or permanent impairment to the left arm/elbow and left hand (Respondent's Exhibit No. 1). He opined that Claimant sustained 9% PPI to the whole man as a result of his compensable left shoulder injury. He found no impairment to the left arm or left hand based on normal physical examination and normal range of motion of those body parts.

After assigning weight and credibility to all evidence submitted, I find that Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to the left shoulder on February 25, 2022 and compensable consequential injuries to the left arm/elbow and left hand. I am most persuaded by Claimant's credible testimony and the opinion of Dr. Rosson as to causation of his

left arm/elbow and left hand complaints and note that those body parts were not mentioned in the historical medical records until after Claimant's surgery. As such, I am not persuaded that Claimant sustained a direct injury to the left arm/elbow or left hand. Based on Claimant's testimony, the treating medical records and the rating medical reports offered, I find Claimant has sustained 16% permanent partial disability to the left shoulder, 1% permanent partial disability to the left arm/elbow and 0% permanent partial disability to the left hand as a result of his compensable injury and is entitled to compensation as set forth below.

III. FINDINGS AND CONCLUSIONS

The Commission, having considered the evidence and records on file, and being duly advised in the premises, FINDS AND ORDERS AS FOLLOWS:

1. That on February 25, 2022, Claimant sustained compensable work-related injury to the LEFT SHOULDER and LEFT ARM (ELBOW).
2. That Claimant's rate for permanent partial disability is adjudicated at \$360.00.
3. That as a result of said injury, Claimant has sustained 16% Permanent Partial Disability to the LEFT SHOULDER and 1% Permanent Partial Disability to the LEFT ARM (ELBOW) and 0% Permanent Partial Disability to the LEFT HAND. At Claimant's rate of compensation, this is equal to an award of \$21,726.00, which shall be paid to Claimant weekly at the rate of \$360.00 commencing August 27, 2022, until the entire award is paid in full.
4. That the issue of whether Claimant's retained hardware in the left shoulder constitutes a medical device pursuant to Title 85A O.S. §50(f) is RESERVED for future hearing.
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 \$162.95, 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 \$434.52 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 \$651.78, 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 20th day of SEPTEMBER, 2023.

BY ORDER OF:



P BLAIR MCMILLIN
ADMINISTRATIVE LAW JUDGE

km/SCox

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: 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 21, 2023

