

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
with Supplemental Opinion)

Injury No.: 17-006238

Employee: Keavin Edwards
Employer: Dairy Farmers of America, Inc.
Insurer: Self-Insured

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480, RSMo. Having reviewed the evidence, read the parties' briefs, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090, RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Employee's Credibility

The administrative law judge implied that she did not find employee's testimony credible with the following language:

[Employee] has stated that once he recovered from the surgery [for his preexisting injury,] he had no problem with his left shoulder until his recent injury occurring on January 30, 2017. There is a medical record, however, that disagrees with that assertion, as discussed below.

Award, p. 5.

Having reviewed the record, we expressly find not credible or persuasive claimant's testimony that he had no pain or issues with his left shoulder during the time after his recovery from his November 25, 2008 surgery until the January 30, 2017 injury.

We also find persuasive the assessment by Dr. John Putnam that the January 30, 2017 incident did not create a new compensable injury, but aggravated "a preexisting problem. In fact, the history, physical examination, MRI, operative report and review of medical records indicate the pathology is gradual deterioration caused by aging, hereditary, previous trauma and normal activities." *Transcript*, p. 1379

We further find persuasive the opinion of Dr. Ted Lennard that employee's 35% permanent partial disability in his left shoulder resulted only from (1) employee's preexisting left shoulder condition and (2) employee's degenerative arthritis; the permanent partial disability did not result from the January 30, 2017 injury.

Accordingly, employee did not meet his burden to establish a compensable work injury related to the January 30, 2017 incident.

Employee: Keavin Edwards

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Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Victorine R. Mahon is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 23rd day of March 2021.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



R. Cornejo

Robert W. Cornejo, Chairman

Reid Forrester

Reid K. Forrester, Member

DISSENTING OPINION FILED

Shalonn K. Curls, Member

Attest:

Danella M. Haysman

Secretary

Employee: Keavin Edwards

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

I find employee credible that on January 30, 2017, he felt a pop or pull in his left shoulder while handling a 130 lb. steel plate. From that point on, employee experienced sharp pain in his left shoulder and restricted movement. The pain kept employee awake at night.

I also find credible that employee did not have any issues with his left shoulder from when he fully recovered from his preexisting left shoulder injury in 2008 until the January 30, 2017 injury. Up until the January 30, 2017 injury, employee was able to handle heavy items on a regular basis. It was only after the January 30, 2017 injury that employee could no longer use his left arm.

I find that there is a compensable injury. I find persuasive the opinion of Dr. Mitchell Mullins that the January 30, 2017 injury was the prevailing factor that caused employee's medical condition and a 40% permanent partial disability in employee's left shoulder. Furthermore, Dr. Mullins determined employee to be temporarily and totally disabled from August 1, 2017 through October 1, 2017.

I also find that employer should be liable for employee's July 31, 2017 total shoulder replacement surgery. Even if the January 30, 2017 injury alone might not have required a total shoulder replacement, employee's shoulder was of such condition that a complete shoulder replacement was necessary to cure and relieve the effects of the January 30, 2017 injury. In this respect, this matter is similar to *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 518 (Mo. App. 2011). In *Tillotson*, the employee had a total knee replacement because it was the medical treatment required to cure and relieve the effects of a compensable torn lateral meniscus in light of employee's other non-compensable conditions; anything short of a total knee replacement was insufficient.

Similarly, here, due to the condition of the employee's left shoulder from a preexisting compensable injury and from osteoarthritis, anything less than a total shoulder replacement would have been insufficient after the January 30, 2017 injury. A total shoulder replacement was therefore reasonably required to cure and relieve the effects of the January 30, 2017 injury. Therefore, following the *Tillotson*, decision, I conclude that employer should be liable for the 2017 total shoulder arthroplasty.

In conclusion, I find that employee suffered a compensable injury on January 30, 2017. I conclude that employer is liable for employee's 40% permanent partial disability; temporary total disability from August 1, 2017 through October 1, 2017; and past medical expenses, including the cost of the July 31, 2017 total left shoulder replacement.

I would reverse the administrative law judge's award denying benefits from employer. Because the Commission majority has decided otherwise, I respectfully dissent.


Shalonn K. Curls, Member

FINAL AWARD

Employee: Keavin Edwards

Injury No. 17-006238

Dependents: N/A

Employer: Dairy Farmers of America

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Self-insured; ESIS (TPA)

Hearing Date: February 10, 2020

Checked by: VRM/ps

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? There was an incident but not an accident resulting in an acute injury requiring treatment.
4. Date of accident or onset of occupational disease: January 30, 2017.
5. State location where accident occurred or occupational disease was contracted: Cabool, Texas County, Missouri. Parties agree to proper venue in West Plains, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease was contracted: While rolling a heavy plate, Claimant felt a pull in his shoulder.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Alleged left shoulder.
14. Nature and extent of any permanent disability: Not applicable.
15. Compensation paid to date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$1,099.14.
19. Weekly compensation rate: \$732.80 (temporary total); \$477.33 (permanent partial).
20. Method wages computation: By agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: N/A.

TOTAL: NONE.

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Keavin Edwards

Injury No. 17-006238

Dependents: N/A

Employer: Dairy Farmers of America

Additional Party: N/A

Insurer: Self-insured; ESIS (TPA)

Hearing Date: February 10, 2020

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: VRM/ps

INTRODUCTION

Claimant Keavin M. Edwards appeared in person and with his attorney, Justin Nelson, for a final hearing. Attorney Timothy Lutz appeared on behalf of the self-insured employer, Dairy Farmers of America and its third party administrator, ESIS. The parties agreed to certain facts and narrowed the issues, as follows:

STIPULATIONS

1. Dairy Farmers of America is an employer operating under and subject to the Missouri Worker's Compensation Law during all relevant times, and was self-insured with ESIS operating as the third party administrator.
2. On the alleged date of injury, January 30, 2017, Claimant was an employee of the employer and subject to the Missouri Worker's Compensation Law.
3. Venue is appropriate in West Plains, Missouri.
4. There is no challenge to jurisdiction.
5. Notice of an alleged injury was timely provided to Employer.
6. The claim for compensation were filed within the time prescribed by § 287.430 RSMo.
7. Claimant's average weekly wage was \$1,099.14, yielding a compensation rate of \$732.80 for temporary total disability and \$477.33 for permanent partial disability.
8. Employer has paid \$5,058.26 in medical benefits with \$372.30 in medical mileage.
9. Employer has paid no temporary total disability.
10. Past medical expenses claimed, if case is compensable, equals \$53,480.04.

ISSUES

1. Did Claimant sustain an accident that arose out of and in the course of employment with Employer?
2. Is the alleged injury to the left shoulder medically and causally related to the work for Employer?
3. Is Employer liable for \$53,480.04 in past medical expenses?
4. Is Claimant entitled to 10 weeks temporary total disability beginning August 1, 2017?
5. Is Claimant's Attorney entitled to a fee of 25 percent of any amounts recovered?

EXHIBITS¹

The following exhibits were offered and admitted:

Claimant's Exhibits

1. Deposition - Dr. Mitchell Mullins, with exhibits
2. Medical records - Cox Medical Center
3. Medical records - Cox Medical Center
4. Medical records - Willow Springs Healthcare
5. Medical records - Ozark Anesthesia
6. Billing records - Cox Health (admitted over objection)²
7. Notes

Employer's Exhibits

- A. Report of Injury
- B. Claim for Compensation
- C. Answer
- D. Wage Statement
- E. Deposition - Claimant
- F. Deposition - Dr. Ted Lennard
- G. Notice of Submission of the Medical Report of Dr. Ted Lennard
- H. Notice of Submission of the Medical Report of Dr. John Putnam
- I. Rating - Dr. Christopher Miller
- J. Prior Settlement Agreement and 2008 Claim for Compensation
- K. Denial letter

¹ Any marks or highlighting in the exhibits were present at the time of their admission. Any objections contained in depositions are overruled unless specifically addressed in this Award.

² Parties subsequently reached an agreement as to the amount of outstanding medical bills that would be due if the case was determined to be compensable.

FINDINGS OF FACT

Claimant Keavin Edwards is a 58-year-old married man who resides in Willow Springs Missouri. He completed high school but has no other formal education. He holds certifications to work with ammonia and bore in his job at Dairy Farmers of America. In his time away from his job, Claimant has a small farm operation in which he feeds animals, and lifts feed and hay. He hunts and enjoys fishing. He also has performed maintenance for his family's antique business.

Pre-existing Injury

Claimant has a prior history of a Worker's Compensation injury to his left shoulder. Dr. Chris Miller on November 25, 2008, performed on Claimant an arthroscopic repair of a SLAP tear, repair of an anterior Bankart tear, subacromial decompression and distal clavicle excision. Claimant has stated that once he recovered from the surgery he had no problem with his left shoulder until his recent injury occurring on January 30, 2017. There is a medical record, however, that disagrees with that assertion, as discussed below.

Injury of January 30, 2017

On January 30, 2017, Claimant was intending to remove a seal from a 130-pound metal plate that attaches to a gearbox. As he was rolling one side of the plate to knee height to lean it against a forklift, he felt something pull in his left shoulder. Claimant described the sensation "like a knife stuck in it." (Ex. E). Claimant reported the incident to Employer's safety manager and returned to his job. Although his shoulder still was hurting, he was able to complete his duties with the aid of coworkers. Shortly thereafter, Employer arranged a medical examination for Claimant with a health care professional in Springfield, Missouri. The initial diagnosis was a *strain* of the muscles and tendons of the rotator cuff of the left shoulder. The physician ordered conservative care and diagnostic studies. Dr. Stephen Wong authored the radiology report of the MR arthrogram performed on February 13, 2017. His impressions were, as follows:

Impression:

1. Severe degenerative change of the glenohumeral joint.
2. Small, moderate – grade articular surface tear at the insertion of the infraspinatus.
Mild infraspinatus and supraspinatus tendinopathy. No high – grade or full – thickness rotator cuff tear.
3. Diffuse degeneration, fraying and tearing of the labrum.
4. Mild intraarticular long head of the biceps tendinopathy.

(Ex. 2). Following the MR arthrogram, Claimant was referred to an orthopedic surgeon.

Dr. John Putnam

Claimant saw Dr. John Putnam, an orthopedic surgeon in Springfield, Missouri, on March 3, 2017. In that visit, Dr. Putnam examined Claimant's shoulder and reviewed the diagnostic studies. Dr. Putnam concluded that the pathology was a gradual deterioration caused by aging, hereditary, previous trauma and normal activities regardless of the alleged work injury. Dr. Putnam said in his report that the radiograph "confirms end-stage tricompartmental osteoarthritis with bone-on-bone findings and sclerotic changes on

both sides at the glenohumeral joint.” (Ex. H). Dr. Putnam concluded that any need for additional treatment was unrelated to the work incident:

Regardless of injury sustained 1/30/2017, any future treatment to the left shoulder would “reasonably flow” from documented osteoarthritis. I do think the patient will eventually need a total shoulder arthroplasty procedure and in my opinion this is not the responsibility of workman’s compensation.

(Ex. H). Upon receiving Dr. Putnam’s opinion, Employer sent Claimant a denial letter on March 20, 2017.

Claimant thereafter saw Dr. Hubbard who performed a left shoulder Celestone injection. Claimant next went to Dr. William Wester on June 29, 2017. Dr. Wester’s report of Claimant’s initial office visit on June 29, 2017, does not suggest that Claimant’s shoulder pain is work related, nor does it suggest that Claimant was asymptomatic prior to a work incident. Dr. Wester reported as follows:

History of Present Illness

56-year-old male presents complaining of left shoulder pain, growing significantly worse over the last several months. He has a history of a SLAP tear in 2008. Chris Miller had repaired that. He had done well up until about a year ago when he began having stiffness and pain in the shoulder. It has progressed markedly, and it has reached a point now where he has significant restriction of mobility, as well as pain with mobility and pain at night. He has significant limitations with his occupation.

(Ex. G, p. 125). The medical record of this initial visit between Claimant and Dr. Wester was completed just *five months* after the work incident on January 30, 2017. Dr. Wester went on to perform the total arthroplasty. He released Claimant from active care on January 18, 2018, to perform activities as tolerated with a 40-pound lifting restriction.

Dr. Ted Lennard holds a specialty certification with the American Board of Physical Medicine and Rehabilitation. He examined Claimant at the request of Employer on February 20, 2019. Based on Claimant’s history, examination, and a review of the medical records, Dr. Lennard concluded that the work incident on January 30, 2017, was not the prevailing factor in the onset of the left shoulder osteoarthritis ultimately requiring a left total shoulder replacement. Dr. Lennard said the treatment for the left shoulder pain after January 30, 2017, did not flow from the work event. Dr. Lennard emphasized that Mr. Edwards’ left shoulder MR arthrogram performed on February 14, 2017, which was 2 weeks after the work event, revealed severe osteoarthritis in the shoulder joint and no evidence of an acute rotator cuff tear. He noted that the left shoulder radiographs on June 29, 2017, revealed severe osteoarthritis of the left shoulder, complete loss of the joint space, subchondral sclerosis and osteophyte formation, all of which Dr. Lennard said takes years to develop, and are known to cause progressive stiffness, pain, and weakness.

Dr. Lennard rated the left shoulder at 35 percent to the left upper extremity at the 232-week level, of which 17.5 percent could be attributable to a pre-existing left shoulder condition requiring surgical treatment in 2008, and the remaining amount was referable to degenerative arthritis requiring the total shoulder arthroplasty on August 1, 2017.

Dr. Mitchell Mullins is board certified in emergency medicine and is a certified life care planner. He examined Claimant on October 15, 2018, at the request of Claimant’s attorney. Dr. Mullins determined that the diagnosis from the present injury was 1) rotator cuff tear, infraspinatus with infraspinatus

tendinopathy left shoulder; 2) osteoarthritis left shoulder; and 3) status post total shoulder arthroplasty July 31, 2017. Dr. Mullins opined that the accident on January 30, 2017 work incident was the prevailing factor causing the rotator cuff tear in the left shoulder resulting in the care which included the total shoulder arthroplasty. While he admitted that the injury did not cause all of the degenerative changes in the left shoulder, he believed that the work over the previous 15 years *contributed* to the arthritis. He opined that the caused a tear to the rotator cuff which then became a symptomatic left shoulder, which in turn resulted in the care provided and flowed from the January 30, 2017 injury. Mr. Mullins testified, as follows:

Q. And would it be accurate again, just so I'm understanding, if he is not presenting with any pain and he's not going to the doctor with any pain prior to this January 30 injury, then we can say that the January 30 injury, whatever happens treatment wise after that, we can say that January 30 injury is the cause. Is that accurate?

MR. NAGRICH: Same objection [Object to the form. It's leading and its already been answered].

THE WITNESS:

A. Yes, and I -- besides the fact that we have objective evidence of an injury.

(Ex. 1, 19).

Dr. Mullins rated the left shoulder due to the injury on January 30, 2017, to be 40 percent. He opined that Claimant had been temporarily and totally disabled from August 1, 2017 through October 1, 2017. He recommended no further care for the shoulder other than monitoring by his surgeon. On cross-examination, Dr. Mullins admitted that most shoulder replacements are due to degeneration and not necessarily traumatic. He admitted that he did not review the actual MRI but read the report which revealed severe degenerative changes in the left shoulder.

Credibility Findings

Having reviewed the whole record, I find that the opinions of Dr. Ted Lennard and that of Dr. John Putnam - the only orthopedic surgeon to render an opinion in this case - to be credible and more persuasive than the causation opinion of Dr. Mitchell Mullins.

CONCLUSIONS OF LAW

Section 287.020.2 RSMo, defines accident as an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable merely because the work incident was a triggering or precipitating factor. Rather, for an injury to be compensable under the Missouri Workers' Compensation Law, it must occur in the course of the individual's employment. An injury arises out of the course and scope of employment when a) it is reasonably apparent that the accident is the prevailing factor in causing the injury, and b) the injury does not come from a hazard or risk unrelated to employment to which workers would have been equally exposed in normal nonemployment life. § 287.020.3(2) (a) and (b) RSMo; *Wilkins v. Piramal Glass USA, Inc.*, 540 S.W.3d 891, 895 (Mo. App. E.D. 2018). The prevailing factor means the primary factor in relation to any other factor. *Id.* The determination of whether an accident is "the prevailing factor" is inherently a factual one. *Malam v. State*

of Missouri, 492 S.W.3d 926 (Mo. banc 2016). It long has been held that a Claimant in a workers' compensation case has the burden to prove all essential elements of his claim. *Royal v. Advantica Rest. Grp., Inc.*, 194 S.W.3d 371, 376 (Mo. App. W.D. 2006). Medical causation not within the common knowledge of a lay person must be established by scientific or medical evidence showing the relationship between the complained-of condition and the asserted cause. *Gordon v. City of Ellisville*, 268 S.W.3d 454, 461 (Mo. App. E.D. 2008).

As noted in the above Findings of Fact, Dr. Mullins agreed in deposition that if Claimant was asymptomatic prior to the January 30, 2017, then whatever treatment occurred thereafter, coupled with the objective evidence, demonstrated that the January 30th injury was the cause. The problem is that the medical record of Dr. Wester suggests that Claimant was symptomatic prior to the work incident on January 30, 2017. Moreover, Dr. Mullins appears to rely heavily on chronology, but in a case requiring medical expertise, the mere chronology between an event and the complained of condition is not substantial evidence of causation. *Royal v. Advantica Rest. Grp., Inc.*, 194 S.W.3d at 377. Further, even if the MR Arthrogram showed a tear in the shoulder, such fact does not mean it occurred from acute trauma as opposed to degeneration. Neither Dr. Lennard nor Dr. Putnam, an orthopedic surgeon who actually reviewed the MR Arthrogram, found any acute injury involving the left shoulder on January 30, 2017. The evidence of severe osteoarthritis and degeneration, however, is overwhelming.

This case is distinguishable from *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511 (Mo. App. W.D. 2011), in which the parties stipulated that Claimant had sustained an acute lateral meniscus injury as a result of a work related accident which meniscus injury required treatment. A menisectomy, however, would have been futile in resolving the injured employee's medical condition because of advanced arthritis. A total knee replacement was the only appropriate option. The case turned on whether Claimant needed to prove that the compensable injury (meniscal tear) was the prevailing factor necessitating the knee replacement. The Court disagreed with that approach and indicated that the injured worker need only prove that the treatment was reasonably required to cure and relieve her from the effects of the compensable injury.

Unlike *Tillotson*, there is no agreement among the experts that Claimant's alleged work injury even required treatment. Relying on the credible opinions of Dr. Lennard and Dr. Putnam, I find and conclude that the incident on January 30, 2017, was not the prevailing factor in causing both the resulting medical condition and disability. The treatment to the left shoulder by Dr. Wester - left shoulder arthroplasty - did not flow from any injury occurring on January 30, 2017. Claimant has not sustained his burden in proving the essential elements of his claim. Benefits are denied. In light of this determination, I do not address any of the other issues.

I certify that on 4-23-20,
I delivered a copy of the foregoing award
to the parties to the case. A complete
record of the method of delivery and date
of service upon each party is retained with
the executed award in the Division's case file.

By MP



Victorine R. Mahon

Victorine R. Mahon
Chief Administrative Law Judge
Division of Workers' Compensation