

**BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION**

**ORDER FILED**  
**January 8, 2024**

WORKERS'  
COMPENSATION COMMISSION

RICHARD L CARMICHAEL )  
Claimant ) Commission File No.  
 ) CM3-2022-00963T  
G T BYNUM CO LLC )  
Employer-Respondent ) Claimant's Social Security  
 ) Number: xxx-x8-7159  
OLD GLORY INSURANCE CO )  
Insurer )

**ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

This matter comes before the Commission on Claimant's request for review of the Administrative Law Judge ("ALJ") decision entered on March 29, 2023. After hearing oral arguments and deliberating, the Commission took preliminary action to reverse the denial of temporary total disability ("TTD") benefits. The Commission adopted the following order as proposed on January 8, 2024.

**BACKGROUND**

Claimant alleged a single event injury to the neck, right shoulder, right arm, and chest while working for Respondent on December 21, 2020.<sup>1</sup> At hearing, he sought a finding of compensable injuries to the neck, right shoulder, right arm, right hand, and a consequential injury to the right hip due to a bone graft. He requested authorization for medical treatment or change of treating physician for the right shoulder, right arm, and right hand. He also sought payment of temporary total disability benefits ("TTD") for the period from July 28, 2022 to January 23, 2023. Respondent admitted compensable injuries to the neck and right hip but denied Claimant's request for additional medical treatment and TTD.

On December 21, 2020, Claimant was pulling on a 60-inch pipe wrench when he felt a pop in his arm. Claimant continued working. On December 29, 2020, Respondent sent Claimant to Concentra. Claimant complained of pain in his right shoulder, right arm, right hand, and neck after pulling on a pipe wrench the week before. Concentra diagnosed strains of the right shoulder and right elbow.

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<sup>1</sup> Claimant also alleged injuries to the right arm, right hand, chest, and thoracic spine. Issues of compensability to those body parts, rate of compensation, under/overpayment of TTD, and permanent disability are reserved for future hearing.

Next, Respondent sent Claimant to Dr. Morris for right shoulder treatment. After reviewing the MRI results, Dr. Morris opined that Claimant's complaints stemmed from a herniated disk at C6-C7 and referred him to a neurosurgeon. Claimant then saw Dr. Craven, who recommended no treatment and referred him back to Dr. Morris.

On July 27, 2021, Dr. Morris diagnosed a work-related injury to the right shoulder but found "all of his symptoms appear to be neck and upper back related."<sup>2</sup> Respondent then designated Dr. Hendricks to treat his neck. On December 30, 2021, Dr. Hendricks performed a cervical fusion surgery at C5-6 and C6-7. Claimant reported his shoulder was doing well after the surgery but continued experiencing numbness that radiated from his right shoulder to his right hand.<sup>3</sup> On March 25, 2022, he complained of transient numbness in his right shoulder. On May 6, 2022, Dr. Hendricks kept him off work and ordered additional physical therapy. On June 3, 2022, he reported that his shoulder was doing well. A few days later, he developed pain on the left side of his neck and upper back. Dr. Hendricks ordered a CAT scan and cervical MRI. On June 20, 2022, Claimant complained of stabbing pain in his neck and numbness in his right arm. Dr. Hendricks kept him off work and ordered updated EMGs. On July 11, 2022, Dr. Hendricks released Claimant at maximum medical improvement with no work restrictions with respect to the neck. Dr. Hendricks also referred him to an orthopedic surgeon for treatment to the right shoulder and right hand. Respondent refused to authorize the referral. The Commission then appointed Dr. Chalkin to determine causation and the need for treatment to Claimant's shoulder.

Dr. Chalkin, the Commission-appointed independent medical examiner ("CIME"), disagreed with Dr. Morris' interpretation of Claimant's initial MRI. In Dr. Chalkin's opinion, the 2021 MRI revealed "a full thickness tear of the supraspinatus at the anterior most fibers of the supraspinatus at the rotator cuff cable."<sup>4</sup> Dr. Chalkin's physical examination revealed "profound wrist drop" and other signs of rotator cuff injury. On January 6, 2023, Dr. Chalkin reviewed the updated MRI results and diagnosed a partial thickness rotator cuff tear caused by Claimant's original work-related accident. He recommended conservative treatment, including cortisone injections and physical therapy. On January 24, 2023, Dr. Chalkin noted Respondent had authorized treatment for Claimant's right shoulder and right hand. At

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2 Clmt. Ex. 3, Dr. Morris, Jul. 27, 2021.

3 Clmt. Ex. 7, Dr. Hendricks, Mar. 26, 2022.

4 Comm'n. Ex. 1, Dr. Chalkin, Nov. 30, 2022.

that time, he placed Claimant on a 20-pound lifting restriction and Respondent recommenced TTD benefits.

On March 29, 2023, the ALJ entered an order finding Claimant sustained compensable injuries to his neck, right shoulder, and consequential right hip. The ALJ noted Claimant "has not been able to work because of his continued problems with the right shoulder" following his neck surgery.<sup>5</sup> However, the ALJ denied Claimant's request for TTD from July 28, 2022 through January 23, 2023 because he "was not under any active medical treatment nor under any work restrictions during said period."<sup>6</sup>

### STANDARD OF REVIEW

After hearing arguments, the Commission may reverse or modify an ALJ's decision only if it determines that the decision was against the clear weight of the evidence or contrary to law.<sup>7</sup>

### ANALYSIS

In the instant case, Claimant asserts the ALJ erred in denying TTD because he was not under active medical treatment or under work restrictions from a treating physician. The purpose of TTD is "to replace wages lost during the healing period."<sup>8</sup> Pursuant to 85A O.S. § 45(A), a claimant is entitled to TTD while "temporarily unable to perform his or her job or any alternative work offered by the employer[.]" To establish entitlement to TTD benefits, a claimant must prove both (1) physical incapacity and (2) the inability to earn wages.<sup>9</sup> Physical incapacity must be established by medical evidence documenting loss of function, while the inability to earn wages is "normally demonstrated by nonmedical evidence touching upon claimant's employment situation."<sup>10</sup> Whether an injured worker is entitled to temporary total disability compensation is a question of fact.<sup>11</sup>

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5 ALJ Order at 2.

6 ALJ Order at 4.

7 85A O.S. § 78(A).

8 *Gray v. Natkin Contracting*, 2001 OK 73, ¶ 13, 44 P.3d 547, 550 (footnote omitted).

9 *Id.*

10 *Id.* at ¶ 14-15.

11 *Gray v. Natkin Contracting*, 2001 OK 73, ¶ 11, 44 P.3d 547, 550 (footnote omitted).

Between July 28, 2022 and January 23, 2023, Claimant did not receive medical treatment because Respondent refused to authorize the treating physician's referral to a hand and shoulder specialist. However, medical records show that Claimant suffered from a significant loss of right shoulder function both before and during the time period at issue. In May 2022, Claimant reported that he might not be capable of returning to work because his job was physically demanding.<sup>12</sup> In June 2022, Dr. Hendricks ordered a new EMG study because Claimant complained of numbness and tingling in his arm. When the EMG ruled out radiculopathy from the neck, Dr. Hendricks referred him to a shoulder specialist "to ensure that his current right shoulder pain has not been caused by any intra articular shoulder pathology."<sup>13</sup>

Dr. Hendricks' concerns about Claimant's shoulder were later substantiated by Dr. Chalkin, the CIME. On November 30, 2022, Dr. Chalkin's physical examination revealed "profound wrist drop, Jobe sign and signs of a rotator cuff injury."<sup>14</sup> He disagreed with the initial treating physician's opinion that Claimant did not have a significant shoulder injury in 2021. Unlike Dr. Morris, Dr. Chalkin found the MRI of January 29, 2021 showed "a full thickness tear of supraspinatus at the anterior most fibers of the supraspinatus at the rotator cuff."<sup>15</sup> After reviewing updated MRI results, Dr. Chalkin diagnosed a partial-thickness cuff tear and recommended conservative treatment. On January 23, 2023, Dr. Chalkin noted the insurance company had authorized him to treat the right shoulder and placed Claimant on a 20-pound lifting restriction.

After thoroughly reviewing the record, we find Claimant complained of symptoms in his right shoulder and right hand since his work accident in 2020. Claimant's medical expert, Dr. Trinidad, found him temporarily totally disabled during the period at issue.<sup>16</sup> Although no treating physician had him on restrictions before Respondent authorized Dr. Chalkin to treat his shoulder, there is no evidence his condition improved during that time. For these reasons, we find a preponderance of the evidence established that Claimant was entitled to TTD benefits from July 28, 2022 to January 23, 2023.

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12 Clmt. Ex. 7, Dr. Hendricks report, Mar. 26, 2022.

13 Clmt. Ex. 7, Dr. Hendricks report, Jul. 11, 2022.

14 Comm'n. Ex. 1, Dr. Chalkin, Nov. 30, 2022.

15 *Id.*

16 Clmt. Ex. 1, Dr. Trinidad, Aug. 25, 2022 (finding Claimant TTD from May 17, 2022 to present and continuing).

**ORDER**

For the reasons above, we find the ALJ's denial of TTD was against the clear weight of the evidence. Accordingly, the portion of the order denying TTD is hereby **VACATED** and the matter is **REMANDED** for entry an order awarding TTD benefits from July 28, 2022 to January 23, 2023. The remainder of the ALJ's decision is **AFFIRMED** as we find it neither contrary to law nor against the clear weight of the evidence.

**IT IS SO ORDERED.**

DONE this 5th day of JANUARY, 2024.

BY ORDER OF:



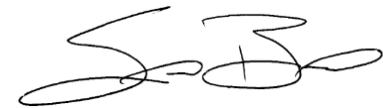
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COMMISSIONER JORDAN K RUSSELL



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COMMISSIONER MEGAN B TILLY



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COMMISSIONER SCOTT BIGGS

Affirming : Russell, Jordan K, Tilly, Megan B, Biggs, Scott

mp/AWatkins

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

Claimant's Attorney:       ARTHUR H. ADAMS  
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  TULSA, OK 74146

Respondent's Attorney:    CATHY C. BARNUM  
  PO BOX 720298  
  NORMAN, OK 73070-0298

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  
January 8, 2024

