

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209153/F302825/F302826

JENNY AVERY

CLAIMANT

FRANKLIN ELECTRIC COMPANY

RESPONDENT

HELMSMAN MANAGEMENT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 30, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claims on August 25, 2003, in Springdale, Arkansas. Although these claims involve three separate alleged compensable injuries (one involving the claimant's cervical spine and two involving her right shoulder), both parties requested that these claims be consolidated for hearing.

A pre-hearing order was entered in regard to these claims on May 12, 2003. This pre-hearing order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. There has been no request for any changes in this pre-hearing order by either of the parties. A copy of this pre-hearing order was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, including May 1, 2002, December 10, 2002, and December 17, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. On all relevant dates, the appropriate weekly compensation rates are \$349.00 for total disability and \$262.00 for permanent partial disability.
3. All claims have been controverted in their entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury the neck on May 1, 2002.
2. Whether the claimant sustained a compensable injury to her right shoulder on December 10, 2002.
3. Whether the claimant sustained a compensable injury to her right shoulder on December 17, 2002
4. The claimant's entitlement to the payment of medical expenses, temporary total disability from December 18, 2002 through a ate yet to be entitled, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant was injured on May 1, 2002, as a result of a rapid, repetitive, specific incident of assembling products manufactured by the respondent. Specifically, her injury was identifiable by time and place of occurrence , in that it occurred as a result of her reaching from her left to right and then back to her left with her arms and then shoving the trays consisting of ten motors weighing as little as ten pounds and as much as a 200 horse power motor (exact weight unknown), but which has four times the horse power as does the smaller ten power motor. In any event, she does this continually, constantly, rapidly, and repetitively. Therefore, her injury is rapid and repetitive to the extent that it requires the motion required of her and is specific in that this is exactly what she was doing on May 1, 2002."

"Clamant was injured on December 10, 2002, when she hurt her shoulder. The claimant was performing work reaching from her left to her right and then back with her left hand and using her arms constantly and continually shoving trays consisting of ten motors weighing as little as ten pounds and as much as a 200 horse power motor (exact weight unknown), but which has four times the horse power as does the smaller ten power motor when she injured her shoulder. This injury is specific and certain, because it is identifiable in time and place of occurrence. In any event, she does this continually, constantly, rapidly, and repetitively. She suffered an aggravation of the right shoulder injury of December 10, 2002 when she injured her shoulder on December 17, 2002."

In regard to these issues, the respondents contend:

“The respondents will contend that the claimant did not sustain a compensable injury to her neck, cervical spine, shoulders, upper extremities, or hands which arose out of and in the course of her employment with the respondent employer.”

## DISCUSSION

### I. ALLEGED COMPENSABLE CERVICAL INJURY OF MAY 1, 2002

The first issue to be addressed concerns the question of whether the claimant sustained a “compensable injury” to her neck or cervical spine on or about May 1, 2002. The burden rests upon the claimant to prove this alleged compensable injury. In order to meet this burden, the claimant must establish by the greater weight of the credible evidence the existence of a physical injury to her neck or cervical spine that satisfies all of the statutory requirements for a “compensable injury” provided by the Act. The first of these requirements are contained in Ark. Code Ann. §11-9-102(4)(D). In order to constitute a “compensable injury” under the provisions of this subsection, the claimant must prove, by medical evidence, the actual existence of the physical injury or condition alleged to be compensable. Further, the actual existence of this physical injury or condition must be based upon or supported by “objective findings” (i.e. findings that are beyond the claimant’s voluntary control).

After consideration of all the evidence presented, it is my opinion that the claimant has presented sufficient expert medical evidence to establish the actual existence of a physical injury or condition involving her neck or cervical spine. This injury or condition is in the form of defects involving a C5-6 and C6-7 intervertebral discs. The actual presence of this physical injury or condition is based upon and supported by purely objective findings noted on repeated MRI studies.

The claimant must next prove that this medically established objectively documented physical injury or condition to her cervical spine satisfies all of the definitional requirements for one of the categories of “compensable injuries” contained in the various

subdivisions of Ark. Code Ann. §11-9-102(4)(A). There are two potentially applicable subdivisions. These are Ark. Code Ann. §11-9-102(4)(A)(i) and §11-9-102(4)(A)(ii)(a). Ark. Code Ann. §11-9-102(4)(A)(ii)(b) would not be applicable, as the involved injuries or conditions affect the claimant's neck or cervical spine and not her "back", as that term has been defined by applicable case law.

Under both of these subdivisions, the claimant must prove the existence of a causal relationship between her medically established and objectively documented physical injury or condition and her employment, (i.e. that the injury or condition arose out of and occurred in the course of the employment). In order for her medically established cervical difficulties to constitute a "compensable injury", as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i), she must prove that this employment related cause was a "specific incident". In order for her medically established cervical injury or condition to constitute a "compensable injury" within the definition of Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the employment related cause must be in the form of "rapid repetitive motion" of the affected portion of the claimant's body.

In the present case, the only direct evidence presented by the claimant to prove the existence of a causal relationship between her employment and the medically established objectively documented injury or condition involving her neck or cervical spine, is her own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be simply disregarded. If credible, the testimony of a party may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident. It would also be legally competent to prove the type of motion of the various parts of her body that was required by her assigned employment activities. Finally, her testimony would be legally competent to prove the temporal relationship between any specific employment related incident or her employment related

activities in general, and the onset of her cervical symptoms or any increase or change in these symptoms. The credibility of the claimant's testimony in regard to these factors is to be considered in light of all the evidence presented.

The medical evidence reveals the claimant first sought medical treatment for symptoms and complaints involving her neck or cervical spine in February of 2001. On February 23, 2001, the claimant consulted Dr. Vance B. Stock, a general practitioner, and her family physician with various complaints, including headache and neck stiffness. At that time, the claimant gave no history of these complaints being associated with any specific employment related event, any type of employment related activity, or her employment in general. A cervical MRI study was performed, at the request of Dr. Stock, on May 1, 2001. This study was interpreted by the radiologist as revealing abnormalities, which he classified as herniated nucleus pulposus, at C5-6 and C6-7 on the left. The claimant continued to be treated by Dr. Stock for a multitude of complaints, including chronic headache and chronic neck pain, through at least August of 2001. Throughout this period of time, Dr. Stock does not record that the claimant related any history of any specific employment incident, any particular type of employment activity, or her employment activity in general as precipitating or having any effect on these complaints.

The claimant testified that after she was advised of the presence of the cervical defects at C5-6 and C6-7, she somehow concluded that these were work related. However, she does not explain why this information alone caused her to reach this conclusion. She also testified that she advised her supervisor and the safety team director of her cervical complaints and her belief that they were work related. However, at that time she clearly filed no claim and continued to perform her same employment duties. More importantly, she appears to have failed to advise Dr. Stock of her opinion that these complaints were somehow work related.

She testified that in June of 2001, she was referred by Dr. Stock to Dr. Vincent

Runnels, a neurosurgeon, for evaluation and treatment of her chronic neck complaints. She also testified that she informed Dr. Runnels of the employment activities she was performing at the time of the onset of these complaints. The records of Dr. Stock indicate that the claimant may have missed up to two weeks of work as a result of her cervical complaints in June of 2001. However, they do not indicate a referral to Dr. Runnels. More curiously, no reports or records of Dr. Runnels from this period have been tendered.

On or about May 1, 2002, the claimant does appear to have made some mention of work related neck or cervical pain to the respondent. The medical record indicates that on May 1, 2002, the claimant was seen at the respondent's plant by the respondent's company physician, Dr. Rebecca Lewis. In her report of that date, Dr. Lewis records a history of neck pain since approximately April 15, 2002. However, she does not record any history of these complaints being associated with a specific employment related incident or any particular employment activity. She does note that the claimant has been using some type of cream for these complaints, which she was provided by Dr. David Bright (a podiatrist, who was treating the claimant for unrelated foot problems). Again, no reports or records of Dr. Bright from this period have been introduced. On physical examination, Dr. Lewis did note the presence of mild muscle spasms over the inferior aspect of the claimant's cervical spine.

The claimant was again seen by Dr. Lewis, at the respondent's plant, on May 15, 2002. At that time, Dr. Lewis notes continued complaints of neck pain that began on or about April 15, 2002. She also records the following information provided by the claimant"

"The patient claims that she can't help but think that her work is causing her neck pain due to sitting in a position with a flexed neck or day looking down to do her job. However, she reports no specific injury or onset with her work and the patient (incidentally) did not mention any relationship to work or any injury on May 1, 2002, when I did see her then."

In her assessment of the claimant's complaints, Dr. Lewis opines that the claimant is experiencing cervical spine pain "with no history of relationship to injury at work and no

clear indication of any significant aggravation by work". She referred the claimant back to her regular physician (Dr. Stock) to handle her complaints and advised the claimant that this was not necessarily work related. She also advised the claimant that medication she was taking for other complaints could actually cause increased muscle tone or stiffness in her neck.

On May 17, 2002, the claimant returned to Dr. Stock for treatment of her neck or cervical symptoms. At that time, Dr. Stocks notes the following history:

"This (the claimant's neck discomfort) has gotten worse in the last month. She states that she is working more overtime hours. She works with her head having to be looking down through the day. Pain increasing in intensity at night. Sometimes her arms go to sleep. No numbness or weakness in her upper extremities."

At that point, Dr. Stock scheduled the claimant for a repeat MRI study. He also apparently returned her to the care of Dr. Runnels, but again no reports and records from Dr. Runnels from this period have been introduced.

The MRI study recommended by Dr. Stock was ultimately performed on May 20, 2002. This study showed defects involving the same areas of the claimant's cervical spine as those revealed in the prior MRI study of May 1, 2001.

At some point in July of 2002, the claimant took a medical leave of absence from work and did not return to work until October of 2002. The actual reason for this leave of absence is unclear and it must be noted that during this same period of time the claimant was receiving extensive medical treatment for significant non employment related difficulties involving her lower extremities, including reflex sympathetic dystrophy (RSD) or regional pain syndrome (RPS). The medical evidence during this period mentions significant testing treatment directed toward both the claimant's non employment related conditions with her lower extremities and treatment directed toward her cervical complaints. These include a nerve conduction/EMG of the claimant's right upper extremity, performed at the request of Dr. Runnels on September 5, 2002, and mentions in the medical records

of Dr. Stock dated September 17, 2002, that the claimant continued to see Dr. Runnels for her neck or cervical complaints. In this note, Dr. Stock states:

“She has not been working for two months because of difficulties with HNP’s, reflex sympathetic dystrophy, and chronic pain. She is having difficulties with Franklin and not wanting to file with workman’s comp and she has gone through quite a lot of anxiety and stress about that.”

Shortly after the claimant’s return to work in October of 2002, she was again seen by Dr. Stock for a generalized increase in all of her difficulties, including her neck or cervical spine, and the appearance of even new complaints involving her lower back. However, there is no history of any specific employment related incident or any type of employment activity as playing a causal role in the change in her symptoms. In his report of that date, Dr. Stock notes:

“Jenny returns to the clinic. She is not doing well at all. She is having tremendous amounts of stress and anxiety regarding her work. There is some difficulty with some shoe requirements involving a steel toed shoe or a cap. She is not able to tolerate this evidently because of her RSD difficulties, and they told her they were going to fire her or that she couldn’t come back to work. I am a little uncertain about what they did actually say to her. She relates this to me after she has gone back to work. She has started having more neck discomfort on the left side and also on the right side, some low back discomfort and of course her foot is bothering her more since she has gone back.”

On that date, Dr. Stock excused the claimant from work for two weeks based upon her anxiety.

On December 3, 2002, the claimant was evaluated by Dr. Allan S. Fielding, a neurosurgeon, at the request of her attorney. At that time, Dr. Fielding recorded the following history:

“In May of last year, she developed pain in the back of the neck spreading up into her hip. The primary problem at that time is that of headache. She saw her primary care physician. An MRI scan of the neck and brain was likewise performed. She tells me by report even though I do not have the films present that the scan of the brain was normal. Her cervical scan showed disc abnormalities at C5-6 and C6-7. She

continued to work and continued to have neck pain and pain at the base of her skull. She had her second scan performed in May of this year, again, showing disc abnormalities at C5-6 and C6-7. In January of this year, her work had mandatory overtime, working sixty hours per week. She tells me that she worsened at that time. She took a leave of absence and was off work from 7-9-02 and recently returned to work in October. She continues to have primarily upper neck and posterior head pain. She intermittently has numbness and tingling in her hands. She has intermittent stinging discomfort over the right shoulder. Her neck pain is described as an ache. This is mostly on the left side. She has no true radicular complaints, however. “

However, in this report, Dr. Fielding records no history of any specific employment related accident or event or any particular employment activity playing a causal role in the onset, continuation, or progression of the claimant’s cervical difficulties. After a review of the MRI study performed on May 20, 2002, Dr. Fielding concluded that this study showed only disc bulges at C5-6 and C6-7, which were primarily degenerative in nature. He also noted that there was no clinically significant cord or nerve root compression, that it was impossible for him to state with any certainty whether or not these discs were related to the claimant’s pain (as opposed to mere incidental findings), but he recommended only conservative treatment modalities. Finally, he stated:

“As regards the work related nature of this particular problem, I do not see a clear cut connection between her work, work activities, and these abnormalities.”

It was shortly after this report that the claimant allegedly experienced the specific employment related incident on December 10, 2002. Although the claimant contends that she sustained a separate injury to her right shoulder in this specific employment related incident, she also appears to contend that this incident acted to aggravated her cervical difficulties. In her testimony, the claimant describes this specific incident as a sudden and immediate onset of symptoms involving her right shoulder and a possible increase in her neck or cervical symptoms, when she was pushing a specific group of trays (each containing ten motors) down a roller line.

The first physician the claimant consulted, following this incident, was Dr. David Brown. Dr. Brown appears a curious choice, as he had last seen the claimant on September 5, 2002, when he performed a nerve conduction study on the claimant's right upper extremity at the request of Dr. Runnels. In fact, it appears that prior to the visit on December 12, 2002, his only involvement with the claimant had been to perform various neurological testing recommended by the physician and treatment for her reflex sympathetic dystrophy or her complex regional pain syndrome involving her lower extremity. Yet, the claimant selected Dr. Brown over Dr. Runnels, Dr. Stock, and Dr. Lewis, all of whom had previously treated the claimant for her neck or cervical complaints and her upper extremity complaints.

In his evaluation report of December 12, 2002, Dr. Brown records that the claimant is experiencing a lot of bilateral hand numbness, left greater than right, and a lot of discomfort and burning sensation just medial and superior to her right scapula with a crawling sensation under her shoulder blade. However, he does not record any history that these complaints were precipitated or caused by any specific employment related incident, such as that described by the claimant in her testimony. In fact, he records no history of any increase in difficulties on December 10, 2002. He merely notes a history that these symptoms have become worse since the claimant returned to work for the respondent in October. He does record the following information from the claimant:

"The patient states that he is not able to function. She is going to have to quit her job or hopefully get off on worker's comp. She thinks it is an injury because of the twisting type motions that she does at work. The patient did produce a report of her cervical spine which she had degenerative disc disease and bulging disc at C5-6 and C6-7. She thinks this may be the cause of her problems."

On physical examination, Dr. Brown notes no objective findings involving the claimant's right shoulder area or the hands, including swelling, discoloration, atrophy, etc. He did perform a repeat MRI on the claimant, which revealed findings essentially the same

as those demonstrated by the previous study on May 20, 2002.

Apparently, the claimant requested from Dr. Brown a slip taking her off work. However, Dr. Brown refused this request and released the claimant to return to modified duty.

The claimant was next seen, at the respondent's request, by Dr. Lewis. This evaluation took place on December 16, 2003. The form AR-3, completed on that date, lists a date of injury as December 10, 2002. However, neither the AR-3 nor the narrative report of Dr. Lewis bearing the same date contain any history that the claimant's difficulties were precipitated or caused by any specific employment related incident, such as the claimant describes in her testimony. The narrative report records the following:

"This patient presents today with chief complaint of right shoulder strain as well as bilateral hand pain and numbness that began approximately four months ago. She had seen her doctor and a CAT-scan (actually an MRI) was done, which was suggestive of herniated nucleus pulposus at C5, C6, C7 diagnosed on May 20, 2002. This patient states that on October 12, 2002, that she reported this at work that her job was aggravating this. She states that she was reaching from the left to the right and then back to the left with her arms and then shoving trays with ten motors backwards with her left hand. She states that she does this all night long and she faces forward while the parts are behind her. She complains of right shoulder burning and bilateral hand numbness since then. She also complains of needles and pin sensation in her hands with loss of grip strength. Dr. Lewis also notes that her physical examination revealed some paravertebral spasm in the suboccipital radiating to the suprascapular area of the right shoulder and some mild swelling in the area of the right posterior shoulder. However, the remainder of the evaluation was normal."

It is important to note that both in her testimony and in the description noted by Dr. Lewis of her normal employment activities, the claimant pushes the trays of motors down the roller line with her left hand and arm. While it is possible that such an action could produce trauma to the claimant's neck or cervical spine, it would appear impossible that such an action would produce trauma to the claimant's right shoulder.

Dr. Lewis also refused to take the claimant off work and returned her to limited or

light duty. It was the following day, December 17, 2002, that the claimant contends that she experienced the second of her employment related specific incident injuries. In her testimony, the claimant stated that her right shoulder and neck symptoms increased during her shift on December 17, 2002. She also testified that she also began experiencing difficulties with her left shoulder and that one of her thumbs “locked up on her”. She attributes all this to her modified employment activities that required her to use a scraper to scrape old paint and adhesive from motor trays. Again, while it would be possible that such an activity would result in stress and trauma on the claimant’s hands and wrists, it is difficult to conceive how this activity would result in any stress and trauma on the claimant’s neck or right shoulder or produce any physical injury to this portion of her body.

At the request of Dr. Lewis, an evaluation and neurological testing was performed on the claimant’s right upper extremities by Dr. Miles Johnson, a neurologist. This evaluation took place on December 31, 2002. Dr. Johnson’s report of that date indicates that his physical examination was essentially negative and that the electrodiagnostic studies performed on the claimant’s upper extremities and cervical paraspinal musculature showed no evidence of any radiculopathy, plexopathy, generalized peripheral neuropathy, or peripheral nerve entrapment syndrome or injury.

On January 2, 2003, the claimant returned for follow up by Dr. Lewis. At that time, Dr. Lewis notes the following:

“The patient presents today for follow up of bilateral hand and arm pain and pain radiating up into her shoulders that she had complained of while doing her regular job at Franklin Electric. We had scheduled her for EMG testing with Dr. Miles Johnson. We did review the results of this normal study with her today in great length. The patient was on some restricted duty at Franklin Electric which included scraping in a repetitive fashion and did state that this was on a non quoted duty; however, she does state that she did sustain reinjury to her neck and the right and left shoulders as well as pain into both forearms and hands”.

On this visit, the only objective abnormalities noted on physical examination was

some paravertebral muscle spasm about the vertebral prominence of C7. All other aspects of the examination were normal. At that time, Dr. Lewis released the claimant to return to work for the respondent, but at an even more restricted capacity. She states:

“We will allow her to return to some restricted duty of sitting in a break room or her choice of sorting parts that are less than one ounce in weight in a non fast, non repetitive measure. Certainly, this should not injure her or worsen her condition. Apparently the restricted duty that she had been on did worsen her condition and I am very attuned to accommodating the needs of this employee.”

Apparently, the claimant was not pleased with the light duty release by Dr. Lewis.

In a subsequent report to the respondent, Dr. Lewis states:

“During a phone conversation with Jenny today, she did complain about being returned back to duty of sitting in the break room at work. She states that she has sustained a catastrophic element that is preventing her from working whatsoever. I did explain to her that originally I placed her off work for two weeks; however, because she can return to a job of sitting in the break room and does not have any medical criteria for restricting her from duty, her company is requesting her to come back at least do a sitting, no work, or minimal work, non repetitive job. The patient does seem unhappy with this and states that she doesn't trust any doctor. She states that Franklin Electric has finally gotten to me and she will communicate only through her attorney and no one else. The patient was very upset and agitated when she hung up the phone.”

However, the claimant did return to see Dr. Lewis on January 17, 2003. At the conclusion of this visit, the claimant apparently appropriated her entire file from Dr. Lewis, without permission and over the objections of Dr. Lewis' staff. Ultimately, all of these records appear to have been retrieved by Dr. Lewis.

At approximately this same time, other events occurred involving Dr. Runnels. Apparently, some time in early January of 2003, the claimant presented the respondents with a medical authorization to be off work. This authorization was purportedly signed by Dr. Luke Knox, a neurosurgeon and associate of Dr. Runnels in the Northwest Arkansas Neurosurgery Clinic. When the respondents sought confirmation of this authorization, they

received the following response from the Northwest Arkansas Neurosurgery Clinic:

“Thank you for asking for a clarification regarding Jenny Avery’s authorization to be off work. It is my understanding that Jenny has given you an authorization signed by Dr. Luke Knox, when in fact; Dr. Runnels examined Jenny. We have deemed this to be a clerical or patient error, and will be calling Jenny to inform her of our findings.

I have spoken with Dr. Runnels, who stated that he did not give Jenny authorization to be off work for five to six weeks. The dictation associated with that office visit does not state that Jenny is to be off work. There is no copy of this authorization in the patient’s medical record. Dr. Runnels states that Ms. Avery is expected to return to work, and that the previous work restrictions given to Jenny are appropriate.”

When Dr. Runnels was subsequently contacted by the claimant, he provided the following rather cryptic response:

“I, frankly, in truth, do not remember from day to day patient’s individually although I do remember your case since your reflex sympathetic dystrophy was of concern. However, I do not remember if I took you off work or not. However, in reviewing this in my own mind, I think I might well have taken you off work as it does not seem to accomplish much sitting in the break room. I would be willing to say that I did take you off work. If they ask me to swear if I absolutely remembered doing it, I do not, but I cannot envision how you would have gotten the report had I not done so. So, if this will help you any, you can take this letter and show it to your employer and perhaps they will rehire you.” (The claimant was terminated by the respondent on the basis that she had provided them with a false medical report taking her off work).”

However, it is obviously rather dubious that this off work slip was actually signed by or at the direction of either Dr. Runnels or Dr. Knox.

The February 7, 2003 report of Dr. Runnels is enlightening in the fact that it is the only medical evidence presented which contains his diagnosis of the claimant’s cervical problems. It appears from this report that he has diagnosed the claimant’s cervical difficulties as a spondylosis at C5-6 and C6-7. At one point, he thought he observed an “inversion of the right radial reflex”, indicative of a C5-6 defect. At that time, he recommended the neurological evaluation and testing performed by Dr. Brown in

September of 2002, which was not indicative of any neurological deficit. He also notes that on subsequent examination there was no inversion of the right radial reflex or any other neurological deficit. His final diagnosis of the etiology of the claimant's neck or cervical complaints appears to be arthritis at the C5-6 and C6-7 levels.

The claimant has continued under treatment for her myriad difficulties, including her complaints with her neck or cervical spine, her hands, her arms, and her shoulders. The latest treatment, in the form of chronic pain management with rather significant doses of narcotics (primarily Oxycontin), appears to be providing some success.

After consideration of all the evidence presented, I find that the claimant has failed to prove by the greater weight of the credible evidence the existence of any causal relationship between any medically established and objectively documented physical injury or condition involving her neck and cervical spine, and any "specific incident", as that term is used in the Act. The only events described in the record, which could arguably be considered an employment related "specific incident" are the alleged events of December 10 and December 17, 2002. However, as previously indicated, the only evidence presented to establish the occurrence of these events is the claimant's own testimony. It is my finding that the claimant's testimony is not sufficiently credible to prove the occurrence of these alleged events. However, even had the claimant proved the occurrence of these two events, it is my further opinion that the greater weight of the credible evidence fails to establish the existence of any causal relationship between these events and any medically established and objectively documented physical injury or condition involving her neck or cervical spine. Thus, the claimant has failed to prove that her medically established and objectively documented physical injuries or conditions involving her neck or cervical spine satisfy the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

After consideration of all the evidence presented, I also find that the claimant has

failed to prove by the greater weight of the credible evidence the existence of any causal relationship between her medically established and objectively documented physical injuries or conditions involving her neck or cervical spine and any employment related “rapid repetitive motion” involving this portion of her anatomy. All of the evidence presented, including the claimant’s own testimony, fails to show that her employment required any rapid repetitive motion of this portion of her body. Even if the claimant’s prolonged maintaining of her neck in a bent forward posture to perform her assigned employment tasks, over time, played some causal or contributory role in her neck or cervical condition (as the claimant appears to sincerely believe), such activity would not satisfy the “rapid repetitive motion” requirement of Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Thus, it cannot constitute a “compensable injury” within the definition of this subsection.

In summary, I find that the claimant has failed to prove by the greater weight of the credible evidence that she sustained a “compensable injury” to her neck or cervical spine during her employment with this respondent. As a result, no benefits can be awarded for any difficulties attributable to such an injury.

## II. ALLEGED COMPENSABLE RIGHT SHOULDER INJURIES OF DECEMBER 10 AND DECEMBER 17, 2002

The next issue to be addressed concerns the question of whether the claimant sustained a compensable injury to her right shoulder on December 10, 2002 or December 17, 2002. Again, the burden rests upon the claimant to prove the facts necessary to establish these alleged “compensable injuries”. In order to meet this burden, the claimant must prove that these alleged compensable injuries satisfy all of the requirements of both Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(A)(i).

Ark. Code Ann. §11-9-102(4)(D) requires that the claimant prove by medical evidence the actual existence of a physical injury or condition to her right shoulder (the physical injury or condition alleged to be compensable). The claimant must further prove

that the actual existence of this physical injury or condition is supported by “objective findings” or findings beyond the claimant’s voluntary control.

The medical evidence contains a paucity of information concerning the diagnosis of any physical injury or condition involving the claimant’s right shoulder, itself. Both before and after the alleged employment related incidents on December 10 and December 17, 2002, the claimant’s right upper extremity complaints, including her right shoulder, have been attributed to possible radicular complaints or referred pain from her cervical defects. However, multiple nerve conduction studies have repeatedly failed to show any neurological dysfunction involving the claimant’s right upper extremity, including a cervical radiculopathy. In his report of February 3, 2003, Dr. Regan Gallaher, a neurosurgeon, recommends an MRI of the claimant’s right shoulder to determine if she is suffering from some type of “structural problem” in this area. The claimant testified that this MRI study was subsequently carried out by Dr. B. Raye Mitchell (curiously, Dr. Mitchell is an orthopaedic surgeon and is not known to perform MRI’s). However, no report or record from Dr. Mitchell or any other physician setting out the results of this study have been introduced. In his report of March 7, 2003, Dr. Gallaher notes that the claimant has undergone a right shoulder injection by Dr. Mitchell. But again, no actual reports or records from Dr. Mitchell have been introduced. In this same report, Dr. Gallaher also mentions that the claimant’s “problems” include “right shoulder abnormalities”. However, he does not state the basis for this conclusion, nor does he state what these abnormalities actually are.

The only medical diagnosis of a physical condition or injury actually involving the claimant’s right shoulder is found in the medical report of Dr. Lewis, dated December 16, 2002. In this report Dr. Lewis diagnoses the presence of a “right shoulder strain”. The results of her physical examination, contained in this same report set out “objective findings” to support this diagnosis. These objective findings take the form of muscle

spasms, radiating into the suprascapular area of the claimant's right shoulder and "mild swelling in the area of the right posterior shoulder". Curiously, on Dr. Lewis' examination of the claimant, following the second alleged incident on December 17, 2002, these abnormalities were no longer present.

However, after consideration of all the evidence presented, it is my opinion that the claimant has "established" by medical evidence, supported by objective findings, a physical injury or condition involving her right shoulder, in the form of a musculoskeletal strain. In regard to this physical injury or condition, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D).

Next, it becomes necessary to determine if this medically established and objectively documented physical injury or condition satisfies the definitional requirements for a "compensable injury" contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) That the physical injury or condition arose out of and occurred in the course of the claimant's employment;
- (2) That the physical injury or condition was caused by a specific incident;
- (3) That the physical injury or condition is identifiable by time and place of occurrence;
- (4) That the physical injury or condition caused internal or external physical harm to the claimant's body;
- (5) That the physical injury or condition required medical services or resulted in disability.

In order to meet the first three of these requirements, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between this medically established objectively documented condition and either one or both of the alleged specific employment related incidents on December 10, 2002, and December 17, 2002. As previously noted, the only direct evidence presented by the claimant to prove the actual occurrence of these two specific incidents and a causal relationship between them

and any medically established and objectively documented physical injury to her right shoulder, is her own testimony.

Again, after consideration of all the evidence presented, it is my opinion that the claimant's testimony is not sufficiently credible to prove the occurrence of a physical injury to the claimant's right shoulder as the result of a specific incident on either December 10, 2002 or December 17, 2002. The greater weight of the credible evidence fails to establish the occurrence of any physical injury to the claimant's right shoulder in December of 2002.

Although the claimant concedes on cross examination that she was experiencing difficulties with her right shoulder and right upper extremity prior to the occurrence of these alleged specific employment related incidents, she stated that the symptoms and complaints she experienced after these incidents were "different" than the previous ones. However, the medical evidence shows otherwise. In his report of December 3, 2002, Dr. Fielding describes symptoms which would appear to be identical with those which the claimant was voicing after the two alleged incidents. In his report of February 7, 2003, Dr. Runnels notes that when he saw the claimant on January 3, 2003, she was "still having numbness and burning in the right triceps" which would imply that these symptoms were present at least at the time of his last evaluation of the claimant on October 6, 2002, and possibly as early as September of 2002, when he ordered nerve conduction studies of the claimant's right upper extremity by Dr. Brown. When she had been evaluated by Dr. Brown on December 12, 2002, he recorded a history that the claimant's "burning" and "crawling type" sensation in the right shoulder area "has been worse since being at work". This would clearly imply that these symptoms had been present prior to her return to work in October of 2002. Although it does indicate these symptoms had worsened since her return in October of 2002, it does not record any history that these symptoms had worsened contemporaneously with a specific incident on December 10, 2002. The records and reports of Dr. Lewis also indicate that the "burning" sensation of the claimant's right

shoulder had been present since at least October 12, 2002. There is no history of any increase in these symptoms following any specific incident on December 10, 2002. In fact, as previously noted, the reports of Dr. Lewis contain no history of any singular precipitating incident or event on that date, such as that described by the claimant in her testimony.

As also previously noted, the evidence shows that the specific employment act or event, described by the claimant as occurring on December 10, 2002 (the shoving of multiple trays of motors down the roller line), would have been performed by the claimant by her left hand and arm. It is difficult to conceive how this act or event could have produced any trauma and resulting injury involving the claimant's right shoulder.

In her testimony, the claimant does not indicate that she experienced any change in the nature of her symptoms, following the alleged December 17, 2002, specific incident. It is her testimony that these symptoms increased in magnitude. Again, however, the activity described by the claimant as producing this increase in the magnitude of her symptoms using hand scraper to remove old paint and adhesive from motor trays, would not be logically expected to result in any trauma or physical injury to the claimant's right shoulder. While the reports and records of Dr. Lewis do record a reported aggravation or increase in the claimant's right shoulder pain after "scraping at work", the claimant's physical examination on January 2, 2003, showed obvious improvement from that noted prior to the alleged specific employment related incident of December 17, 2002. The medical evidence slow fails to show any objective evidence of increased physical injury or damage to the claimant's right shoulder following the alleged specific employment related incident on December 17, 2002. As previously noted, the muscle spasm and swelling, noted by Dr. Lewis in her physical examination on December 16, 2002, had disappeared by the time of her evaluation on January 3, 2003. Repeated physical examinations of the claimant by a multitude of physicians subsequent to that date, have also failed to note any objective findings to support a continued physical injury to this portion of the claimant's

body.

In summary, the claimant has failed to prove that she sustained a physical injury to her right shoulder, particularly one in the form of a strain, as the result of any specific employment related incident on December 10, 2002, or December 17, 2002. She alleges no other specific employment related incidents as the cause of any physical injury to her right shoulder. Therefore, the claimant has failed to prove the occurrence of an employment related physical injury to her right shoulder that was caused by a specific incident and is identifiable by time and place of occurrence. Her failure to prove these necessary requirements of Ark. Code Ann. §11-9-102(4)(A)(i) prevents a finding that she sustained a “compensable injury” to her right shoulder, within the meaning of this subsection. As a result, she will not be entitled to any benefits under the Act for her alleged right shoulder injury.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including May 1, 2002, December 10, 2002, and December 17, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$349.00 for total disability and \$262.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove the occurrence of a “compensable injury” to her neck or cervical spine on May 1, 2002, or any other date. Specifically, she has failed to prove the occurrence of a physical injury to her neck or cervical spine that was caused by a specific incident on May 1, 2002 (or any other date) and has further failed to prove by the greater weight of the

credible evidence the occurrence of a physical injury to her neck or cervical spine that was caused by “rapid repetitive motion” of this portion of her anatomy that was required by her employment.

5. The claimant has failed to prove by the greater weight of the credible evidence the occurrence of a “compensable injury” to her right shoulder on December 10, 2002 or December 17, 2002. Specifically, she has failed to prove the occurrence of a physical injury to her right shoulder that was caused by a specific incident on either December 10, 2002 or December 17, 2002.
6. The respondents have denied the occurrence of any compensable injury to the claimant’s neck or cervical spine and any compensable injury to her right shoulder, as the result of a specific incident on December 10, 2002 or December 17, 2002.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss all of the above styled claims in their entirety.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge