

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
AWCC NO. F202279**

**CALVIN DANIEL, EMPLOYEE**

**CLAIMANT**

**VS.**

**MILBANKS MANUFACTURING CO., INC, EMPLOYER**

**RESPONDENT**

**THE TRAVELERS, CARRIER**

**RESPONDENT**

**OPINION FILED AUGUST 22, 2003**

Hearing held July 17, 2003, in El Dorado, Arkansas, before *ADMINISTRATIVE LAW JUDGE KAREN McKINNEY*.

Claimant is represented by Mr. Philip M. Wilson, Attorney at Law, 124 W. Capital Avenue, Suite 1630, Little Rock, Arkansas 72201.

Respondents are represented by Mr. Robert Montgomery, Attorney at Law, #319, 17200 Chanal Parkway, Suite 300, Little Rock, Arkansas 72223

**STATEMENT OF THE CASE**

The above-styled claim came on for a hearing in El Dorado, Arkansas, on July 17, 2003. A prehearing telephone conference was held on this claim on May 19, 2003, with a Prehearing Conference Order filed on that same date. The Prehearing Conference Order was marked as Commission's Exhibit No. 1, and introduced into evidence without objection. Pursuant to the Prehearing Conference Order, the parties agreed upon the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
2. The employee-employer-carrier relationship existed between the parties on or about November 12, 2001;
3. Claimant earned an average weekly wage of \$412.80;

4. Claimant underwent surgery and was off work 18 weeks and was assigned a seven percent anatomical impairment rating to the body as a whole.

At the beginning of the hearing the parties agreed to limit the issue to whether claimant sustained a compensable injury for which he is entitled to 18 weeks of temporary total disability benefits, and an attorney's fee. All other issues are specifically reserved.

With regard to this issue, claimant contends that he sustained a compensable injury on or about November 12, 2001, while hanging parts on the paint line. Claimant saw several doctors and ultimately came under the care of Dr. Gati. Claimant contends that he reported the injury and it was logged in on the accident report. Respondents contend that the claimant did not sustain a compensable injury while in their employ.

From a review of the record as a whole, to include the medical reports, documents, and all other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. § 11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the prehearing telephone conference conducted on May 19, 2003, and contained in the Prehearing Order filed on that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his left shoulder in November of 2001.
3. Respondents have controverted this claim in its entirety.

**CONCLUSION**

Claimant was employed by respondent employer to hang parts on and take parts off the paint line. Claimant testified that his shoulder popped on November 12, 2001, around 6:00 p.m. when he was hanging parts on the line. According to the claimant, he reported this incident to his supervisor, Don Finch, who then recorded it on the Accident Log. Claimant testified that after several months when nothing happened, he again reported the incident to his new supervisor, Scott Daniel. After reporting the incident to Mr. Daniel, claimant was called in to the personnel office where he completed a Form AR-N, and was given short disability paperwork.

Claimant was eventually diagnosed with left shoulder impingement syndrome for which he underwent surgery in April of 2002. Claimant missed 18 weeks of work for which he received short term disability benefits. Claimant has returned to work for respondent-employer and continues to work on the paint line.

With regard to his alleged injury, claimant specifically testified on cross-examination:

Well, I was hanging on the paint line when my shoulder popped. It got sort of numb and I couldn't hardly use it anymore, and that's when I went to Mr. Finch and told him what had happened. From that point on I started having trouble out of it and couldn't hardly use it.

When asked to tell exactly what he reported to Mr. Finch, claimant testified:

I explained to Mr. Finch that my shoulder had popped, and that something had happened to it, that something was wrong. I couldn't hardly use it. He came back to where I was at and had a log sheet, and had me explain to him what had happened, and I signed my name to it. That was all I heard from him.

The Log of Occupational Injuries and Illnesses introduced into evidence contains a record of injuries and illnesses from November 5, 2001, through December 12, 2001. This document does not contain a record of an injury or illness reported by the claimant on November 12, 2001. However, this document does contain a record of claimant reporting shoulder pain at 7:00 p.m. on November 27, 2001. This exhibit does not display all the information contained on the original document as the far right hand side of the page is cut off. Nevertheless, it confirms that the claimant reported shoulder pain to his supervisor and that this complaint was recorded on November 27, 2001.

After reviewing the Log of Occupational Injuries and Illnesses which records claimant's complaint of shoulder pain on November 27, 2001, claimant testified on

rebuttal that he recalled reporting the incident to Mr. Finch on November 12, 2001, because "I had written it down." When claimant's own attorney asked him about the November 27<sup>th</sup> entry, claimant agreed with his attorney that possibly the first notification was not recorded, and there was possibly a second notification that was recorded.

The medical records reveal that the claimant has sought medical treatment for left shoulder pain in the past. Specifically, claimant testified that the pain in 2000 was different than the pain .

On cross-examination claimant confirmed that he was off work with a medical excuse for several days prior to returning to work on November 12, 2001. Claimant testified that he had been to the doctor for shoulder and neck pain. When asked about the August 14, 2000, medical report wherein claimant sought medical treatment for complaints of left chest and shoulder pain for several weeks, claimant testified that his complaints at that time did not have anything to do with work, and that his pain was different, more of a cramping at that time. Likewise, when asked why he sought medical treatment for his shoulder pain on November 6, 2001, claimant testified that his pain at that time was not job related.

The November 6, 2001, medical record from Dr. Antoon reveals initial complaints of athlete's foot, nail fungus, and left shoulder pain. Dr. Antoon recorded an additional complaint of neck, as well as, shoulder pain. Dr. Antoon noted marked spasm in claimant's left lateral neck and left trapezius muscles, for which he

prescribed medication, physical therapy, and rest from work until November 12, 2001. The prescription for physical therapy contains a diagnosis of “Muscle strain Lt shouder C-spine.”

The next medical report in the record is from a clinic visit on December 19, 2001, for a follow-up on claimant’s left shoulder complaints. Again, Dr. Antoon noted muscle spasm in claimant’s left shoulder.

After an MRI and an additional round of physical therapy, Dr. Antoon eventually referred the claimant to Dr. Kenneth Gati, an orthopedic surgeon. Dr. Gati diagnosed claimant with an impingement syndrome and ultimately performed surgery on claimant’s shoulder.

The first notation in the medical records regarding an injury at work is contained in the clinic note from claimant’s January 21, 2002, visit with Dr. Antoon. This notation provides; “states he hurt it Nov. 11<sup>th</sup> while @ work.” During his visit with Dr. Gati on February 19, 2002, claimant provided the following history:

Mr. Daniel comes in today to clinic for evaluation of his left shoulder and neck. He is a 39-year-old right hand dominant male who reportedly injured his shoulder back on November 11<sup>th</sup> or 12<sup>th</sup> at work. He reports that he was doing some lifting where he was supposed to have some help but did it on his own and since then, he has had pain in his shoulder and neck...

Don Finch, claimant’s supervisor, testified regarding claimant’s complaint of shoulder pain. In this regard, Mr. Finch testified that the claimant had been complaining of pain in his shoulder and that the claimant told Mr. Finch that he had

been diagnosed with pleurisy in his shoulder. Mr. Finch did not recall the claimant ever reporting that he had been working and his shoulder popped. When asked about the Log of Occupational Injuries and Illnesses, Mr. Finch testified that he recorded claimant's complaint of pain in the log, because the complaint was made while the claimant was at work. In this regard, Mr. Finch testified:

"Q. [Mr. Wilson] And you're saying that he reported something, you put it on a log that says, "Log of Occupational Injuries and Illnesses" and you're here under oath today saying that he didn't say it was an occupational injury or illness, is that what you're telling us?

"A. [Mr. Finch] He said that he had pain in his shoulder.

"Q. Okay. Well, why would you put it on an accident log if he wasn't reporting an accident?

"A. That's what we're required to do.

"Q. Okay. That's what I'm asking you here. This is an accident log. If somebody comes in and says, "I have laryngitis," do you put in on the accident log?

"A. No. sir.

"Q. That's what you did in this case, is that right?

"A. As far as this shoulder pain goes, yes.

"Q. And he was working at the time, is that correct?

"A. Yes, sir.

"Q. You don't remember him saying anything about his shoulder popping?

"A. No, sir, I don't." [T36-37]

The claimant's injury occurred after July 1, 1993, thus, this claim is governed by the provisions of Act 796 of 1993. The Full Commission has held that in order to establish compensability of an injury, a claimant must satisfy all the requirements set forth in Ark. Code Ann. § 11-9-102 as amended by Act 796. Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995 (E317744). When a claimant alleges that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence (1) the injury arose out of and in the course of his employment; and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. See Ark. Code Ann. § 11-9-102(4)(A)(i) and § 11-9-102(4)(E)(i) (Repl. 2002). He must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See Ark. Code Ann. § 11-9-102(4)(A)(i). Moreover, the claimant must establish (4) that the compensable injury is supported by 'objective findings' as defined in § 11-9-102(16)." Ark. Code Ann. § 11-9-102(4)(D); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 31 Ark. App. 804, 20 S.W.3d 900 (2000). If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish

the compensability of the claim, and compensation must be denied. Jerry D. Reed, supra.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Co., 48 Ark. App. 227, 894 S.W.2d 603 (1995). A claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985). Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In my opinion, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his shoulder which arose out of his employment. Claimant adamantly states that he injured his shoulder on November 12, 2001, when his shoulder popped while lifting at work and that he reported it to Mr. Finch on that date, despite the fact that the Log of Occupational Injuries and Illnesses does not contain an entry for a complaint made by the claimant that date. Moreover, the medical records reveal that the claimant was seen in the doctor's office on November 6, 2001, which complaints of pain in his left shoulder. Dr. Antoon diagnosed claimant with a muscle strain and prescribed physical therapy at that time. This same complaint and diagnosis continued even

after claimant's alleged injury on November 12, 2001. Claimant testified that he reported the popping incident to his supervisor, however claimant's supervisor did not recall the claimant ever reporting in injury or incident related to work. Furthermore, the history of a work related injury as found in the medical records did not appear until two and half months after the injury alleged occurred. Finally, the history of injury which was recorded by Dr. Gati's office is not consistent with the claimant's testimony of a specific incident wherein claimant's shoulder popped from a specific lifting incident. Accordingly, when I weigh all the evidence, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained a specific incident injury to his shoulder on November 12, 2001, which arose out of his employment.

**AWARD**

Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury which arose out of and in the course of his employment. Therefore, this claim is hereby denied and dismissed.

**IT IS SO ORDERED.**

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**HON. KAREN McKINNEY**  
Administrative Law Judge