

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F110118 & F212662

ALICE NOBLES, EMPLOYEE

CLAIMANT

AMTRAN,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JULY 15, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Little Rock, Pulaski County, Arkansas.

The claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by J. Matthew Mauldin, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on April 11, 2003. A prehearing conference was conducted on February 12, 2003, and a prehearing order was filed on April 12, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employee/self-insured-employer relationship existed on December 18, 2000;
2. The claimant sustained an admittedly compensable injury to her left shoulder on December 18, 2002;
3. On December 18, 2002, the claimant was earning an average weekly wage of \$562.00, which entitled her to a

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total disability compensation rate of #375.00 and to a partial disability compensation rate of \$281.00.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant is entitled to compensation for a permanent physical impairment to her left shoulder in an amount equal to 6% to the body as a whole;
2. Whether the respondents are liable for a penalty for a late payment of benefits.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. The preponderance of the evidence establishes that the claimant is entitled to compensation for a 6% permanent physical impairment to the body as a whole, resulting from the compensable injury to her shoulder;
4. The preponderance of the evidence fails to show that the respondents are liable for a late payment penalty;
5. The respondents controverted the claimant's entitlement to

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compensation for a permanent physical impairment.

DISCUSSION

The claimant was employed by the respondent employer as a line worker, and her job required her to use a torque gun that hung from the ceiling to install parts on automotive chasses. On December 18, 2000, the gun slipped off of a brake she was working on and her hand hit the trigger and activated the gun. As a result, her shoulder was jerked, and she began to experience pain and swelling.

The claimant reported this incident to the respondent employer, and she was sent to Dr. Stephen Long, the company physician. Dr. Long caused a MRI to be performed, which showed hypertrophic changes of the AC joint with bone marrow edema in the adjacent acromion and clavicle. Based on these findings, Dr. Long referred the claimant to Dr. Benjamin Dodge, an orthopedic surgeon. Dr. Dodge first saw the claimant on March 1, 2001, and his report indicates that he suspected a left shoulder impingement but that he wanted to rule out a rotator cuff tear. After additional testing, Dr. Dodge opined that the claimant sustained a left shoulder impingement with a left shoulder acromioclavicular joint degenerative changes. The claimant was placed on light duty and treated conservatively at that time. However, her complaints continued, and Dr. Dodge ultimately recommended an acromioplasty with a distal clavicle

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resection.

The claimant ultimately came under the care of Dr. David Collins, an orthopedic surgeon. After examining the claimant on August 6, 2001, Dr. Collins opined that she suffered from an AC arthrosis sprain with internal derangement. He ordered a triple phase bone scan, which was positive, and he also recommended the surgery which was performed on August 29, 2001. Dr. Collins opined that she would sustain a 6% permanent physical impairment to the body as a whole as a result of this surgery. After the surgery, he again opined that she sustained a 6% permanent physical impairment to the body as a whole, and he stated that his rating was based on the AMA Guides to the Evaluation of Permanent Impairment.

After the surgery, the claimant continued to experience problems with her left shoulder, and she was seen by Dr. William Ackerman, a pain specialist. Dr. Ackerman first saw the claimant on September 17, 2001, and caused tests to be performed to rule out reflex sympathetic dystrophy. Dr. Ackerman determined that the claimant did not have reflex sympathetic dystrophy, although he indicates at some point that the results were somewhat consistent with the condition. The tests did reveal significant inflammation, for which she was treated.

Injured workers bear the burden of proving by a preponderance of the

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evidence that they are entitled to an award for a permanent physical impairment. Therefore, when considering claims for permanent physical impairments, the Commission must impartially weigh all of the evidence in the record to determine whether the preponderance of the evidence establishes that the worker sustained a permanent physical impairment as a result of a compensable injury. *Crow v. Weyerhaeuser Co.*, 46 Ark. App. 295, 880 S.W.2d 320 (1994). See also, *Maria Jacobs v. Simmons Industries*, Full Workers' Compensation Commission, opinion filed August 19, 1997 (Claim No. E410386). Physical impairments occur when an anatomical, physiological, or psychological abnormality permanently limits the ability of the worker to effectively use part of the body or the body as a whole. Consequently, an injured worker must prove that the work-related injury resulted in a physical or psychological abnormality which limits the ability of the worker to effectively use part of the body or the body as a whole. Therefore, in considering such claims, the Commission must first determine whether the evidence shows the presence of an abnormality which could reasonably be expected to produce the permanent physical impairment alleged by the injured worker. *Crow*, supra.

With regard to this determination, Ark. Code Ann. § 11-9-704(c)(1) (Cumm. Supp. 1997) provides that "[a]ny determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings." Act 796 of 1993 amended the Arkansas Workers' Compensation Law to define objective finding as "those findings which cannot come under the voluntary

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control of the patient." Ark. Code Ann. § 11-9-102(16) (Cumm. Supp. 1997). In addition, as amended by Act 796, medical providers, administrative law judges, and this Commission cannot consider complaints of pain when determining physical or anatomical impairment. Id. Furthermore, the amended law provides that, "for the purpose of making physical or anatomical impairment ratings to the spine, straight-leg raising tests or range-of-motion tests shall not be considered objective findings."

In the present claim, I find that a preponderance of the evidence establishes that the claimant sustained a 6% permanent physical impairment to the body as a whole as a result of the compensable injury to her shoulder. In this regard, the preponderance of the evidence establishes that the claimant's compensable injury are the major cause of her shoulder problems. In this regard, there is no evidence indicating that the claimant previously suffered from any problems with her shoulder, and Dr. Collins has opined that her current problems are caused by her work related injury. Moreover, the claimant's shoulder injury is demonstrated by objective medical findings. Finally, I note that Dr. Collin's rating is based on the AMA Guides. Accordingly, I find that the claimant is entitled to compensation for a 6% permanent physical impairment to the body as a whole.

However, I find that the claimant failed to prove by a preponderance of the evidence that the respondents are liable for a late payment penalty. While the respondents clearly controverted liability for a permanent physical impairment, there

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is no evidence suggesting that they are liable for a late payment penalty.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809 (Cumm. Supp. 1997).

IT IS SO ORDERED.

C. Michael White
Administrative Law Judge