

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F206837**

**DENNIS O. PLATT, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORPORATION, EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES,  
INC., INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 29, 2003**

Hearing before Administrative Law Judge ELIZABETH W. HOGAN on August 1, 2003, at Monticello, Drew County, Arkansas.

Claimant represented by the Honorable BILLY J. HUBBELL, Attorney-at-Law, Crossett, Arkansas.

Respondents represented by the Honorable MARK A. PEOPLES, Attorney-at-Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially, without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship during September and October 2001, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$233.00/\$175.00, in the event this claim is found to be compensable. The claimant has returned to work at wages commensurate to his pre-injury

earnings. Some medical expenses have been paid by the claimant's group insurance carrier, Blue Cross and disability benefits have been paid by Nelson Trust.

The claimant contends he injured his left shoulder on September 28, 2001. Surgery for a rotator cuff tear was performed by Dr. Bailey on November 19, 2001. The claimant seeks payment of medical expenses, temporary total disability benefits from October 28, 2001 to May 2, 2002, anatomical impairment of 10%, and attorney's fees.

The respondents contend the claimant did not sustain an injury arising out of and in the course of his employment. Alternatively, in the event of an Award, the respondents contend they would not be liable for expenses or benefits incurred prior to February 25, 2002 when they were given notice of a work-related injury by Form AR-N, pursuant to Ark. Code Ann. §11-9-701.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires contained in the August 1, 2003 hearing transcript; exhibits submitted in the May 2, 2003 hearing transcript before Judge Calaway; and the depositions of John D. Jackson and Kimberly Diane Johnson incorporated by reference.

The following witnesses testified at the hearing: the claimant, who seemed sincere in his testimony; his supervisor, Deotis Dickens and safety supervisor, John McQuilken.

The claimant, age 42 (D.O.B. 7-19-61), has worked for the respondent employer since May 15, 1991. He has had a workers' compensation claim in the past (Trp.15).

The claimant's job duties required him to feed a press with 30-40 pound sheets of plywood (Trp.5-6/13-14). On September 28, 2001, the claimant felt a pull in his left shoulder and a burning sensation. Within the hour, he informed his supervisor, Deotis Dickson, but he finished his shift and continued working four more weeks. His shoulder got progressively worse until he saw the doctor on October 28, 2001 and began missing time from work.

Once the claimant realized surgery was necessary, he spoke with Larry Livingston and Dail Martini on October 28 or October 29 and informed them he would probably be out 8 months recuperating from surgery. Mr. Martini told him to use his group insurance because they wouldn't submit it to workers' compensation unless he could tell them exactly when the injury happened. Blue Cross refused to pay for his surgery. He completed paperwork to apply for disability benefits through Nelson Trust because Kim Johnson told him that was the only way he would be paid. He was also told he would have to change the application to show a non-work related injury or it wouldn't be submitted, (Trp.9-12). The claimant complied out of financial necessity.

Jon McQuilken testified he first spoke with the claimant in February 2002. The claimant asked to file a claim and was given an AR-N to complete. Ordinarily, it is the supervisor's responsibility to report injuries to Mr. McQuilken.

The claimant's supervisor, Deotis Dickens, testified the claimant did not report a work-related injury to him but they did discuss the claimant's shoulder pain and the fact that he would be off work 6 - 8 months after surgery.

In her deposition, Kim Johnson testified she worked in Human Resources prior to her termination. She explained that if an employee applies for disability through Nelson Trust for a work-related injury, their application will be denied. Mr. Platt's application shows a box checked "yes" for a work-related injury which was crossed out, initialed, and then checked "no." The form was completed on November 8, 2001. The form is signed by the claimant, Dr. Bailey and human resource manager, Becky Culp. Ms. Johnson testified the claimant had applied for these benefits on several occasions although she could not recall any specifics. The claimant also completed an accident report form, AR-N on February 25, 2002 showing a left shoulder injury on September 28, 2001 feeding the #5 press on the glue line. The form also shows that the employer was notified of the accident on September 28, 2001.

In his deposition, John Jackson operator on the glue line, testified the claimant complained of shoulder pain to his supervisor, however, he emphasized eight times (in a fifteen page deposition lasting only twenty minutes) that the claimant never related the pain to an on-the-job injury. He denied being coached in his testimony or intimidated about losing his job, however, he commented, "I just didn't want my job to be in jeopardy because of the way things, the economy is right now, I didn't want Georgia-Pacific looking at me...no one else has told me anything. But I'm just trying to keep my job."

In his deposition, former human resource manager, Larry Livingston testified he met with the claimant on October 31, 2001. The claimant did not relate his shoulder injury to any on-the-job accident and he was never intimidated about filing a claim. The claimant told him of an incident two years earlier when a car fell on him, fracturing his back (not shoulder). He also told Mr. Livingston that "it started to hurt on the job and he did not tell anyone." Mr. Livingston offered the workers' compensation forms but the claimant declined. Mr. Livingston could not recall why the meeting was scheduled but conceded it could be caused by the fact that the claimant was claiming a work-related injury.

### **MEDICAL EVIDENCE**

Orthopedic surgeon, Dr. Myron Bailey, began treating the claimant on October 4, 2001 for left shoulder pain of unknown origin.

#### History of present illness:

This is a 40 year old gentleman who presents with a history of chronic, ongoing left shoulder pain. It has been present for at least two months, but worse for the past three weeks. He states that he cannot sleep at night and certainly cannot lay on this at night. He does not recall any popping, catching or injury.

After a positive MRI scan, surgery was performed on November 19, 2001, to correct a rotator cuff tear. In a report dated May 2, 2002, Dr. Bailey released the claimant to return to work.

#### Dr. Bailey's report of 4-30-03:

The patient did have a partial tear of his rotator cuff, secondary to some pre-existing problems such as acromioclavicular joint arthritis with an impingement. It would be my opinion that the patient does have impairment of the left shoulder and I would estimate it to be approximately 10% of the extremities as a whole or approximately 3% to the body as a whole.

Dr. Bailey, whose office is in Louisiana, makes no mention of the AMA Guidelines or which Edition was consulted, see Commission Rule 34, and although the claimant has contended he is entitled to a 10% rating, hip and shoulder injuries are considered injuries to the body as a whole, not injuries to the extremities. Milburn vs. Concrete Fabricators, 18 Ark. App. 23, 709 S.W.2d 822 (1986); Taylor vs. Pfeiffer Plumbing & Heating Co., 8 Ark. App. 144, 648 S.W.2d 526 (1983).

#### **FINDINGS AND CONCLUSIONS**

As this case arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith vs. Magnet Cove Barium Corp. 212 Ark. 491, 206 S.W.2d 442 (1947):

- (1) proof that the injury arose out of and in the course of employment;
- (2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability;
- (3) proof establishing the injury by objective medical evidence;
- (4) proof that the injury was caused by a specific incident identifiable by time and place of occurrence.

Failure to prove any one of these elements defeats the claim.

The evidence of record shows that the claimant's shoulder pain began in August, 2001, a month before the alleged injury at work. His symptoms worsened in September, causing him to seek treatment in October, 2001. The claimant gave

Dr. Bailey, a physician of his own choosing, no history of a work-related injury, specific incident or gradual job duties that caused his symptoms. Furthermore, the claimant's history of a specific incident on September 28, 2001 is not corroborated by co-workers or supervisors, including two persons who no longer work for the respondent employer.

Accordingly, I find the claimant failed to meet his burden of proving he sustained an injury arising out of and in the course of his employment

1. The Workers' Compensation Commission has jurisdiction of this claim, in which the relationship of employer-employee-carrier existed among the parties on September 28, 2001.

2. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical, bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

---

ELIZABETH W. HOGAN  
Administrative Law Judge