

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211857

ANTHONY QUENGA, EMPLOYEE

CLAIMANT

HOME DEPOT USA, INC., EMPLOYER

RESPONDENT

**AMERICAN HOME ASSURANCE COMPANY/
SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED DECEMBER 3, 2003

Hearing before Administrative Law Judge Dail Stiles on October 30, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Kenneth A. Olsen, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Marvin "Chip" Leibovich, Jr., Attorney at Law, Little Rock, Arkansas, and Ms. Christine Cryer, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 30, 2003, to determine the compensability of a claimed left shoulder injury on June 25, 2002.

It was stipulated that the claimant sustained a compensable injury on June 25, 2002, in which he suffered injuries to his right shoulder. It was stipulated that the claimant's weekly indemnity rates are \$360.00 for temporary total disability and \$270.00 for permanent partial disability. The only issue to be addressed from the October 30, 2003 hearing, is the compensability of a claimed left shoulder injury.

The claimant contends that his left shoulder, as well as his right shoulder, was injured in the compensable injury of June 25, 2002.

The respondents contend that the claimant did not injure his left shoulder in the incident of June 25, 2002, when he sustained injuries to his right shoulder.

STATEMENT OF THE CASE

The claimant had some materials stacked on a four-wheeled cart and was to undertake setting up a display. The claimant said he had some metal beams which were approximately nine and a half feet long and five to six inches in diameter stacked a couple of feet above the top of the cart. The claimant stated that on June 25, 2002, as he was attempting to pull one of the beams from the stack, it caused the loaded cart to topple over toward him. The claimant said that he used both hands to push away the cart and load to keep it from falling on him. The claimant said he experienced immediate pain in his upper torso and in both arms.

The claimant was first treated at the emergency room at St. Vincent's in Little Rock and was referred to and seen the next day by Dr. Larry Nguyen. Dr. Nguyen became the claimant's primary treating physician and performed surgery to correct a rotator cuff tear on the right. The claimant was released to modified duty in January of 2003.

The claimant stated that he had complained of left shoulder problems to Dr. Nguyen almost immediately after the accident.

Dr. Nguyen's deposition was taken on September 2, 2003, and was introduced into evidence. Dr. Nguyen said that his office notes indicated that the claimant first made complaint to him of left shoulder difficulties around the middle of October of 2002. Dr. Nguyen said that the complaints of the left shoulder were very similar to the complaints claimant was making relative to his right shoulder.

Dr. Nguyen ordered an MRI of the claimant's left shoulder, and the MRI, combined with plain x-rays, demonstrated that the claimant had had a rotator cuff tear on the left.

Dr. Nguyen was of the opinion that the claimant's June 25, 2002 injury was the principle cause of the claimant's rotator cuff tear on the left. Dr. Nguyen stated in his deposition that he felt that the injury of June 25, 2002, was most likely the cause of the claimant's rotator cuff tear on the left and stated:

Q. And I believe you responded affirmatively?

A. I said within probability, probably.

Q. Probably?

A. Yes.

Q. What do mean probably?

A. More than 50 percent.

Dr. Nguyen went on to say in that deposition that it was his opinion that the June 25, 2002 injury was the most likely cause of the claimant's left rotator cuff tear, or that he had a tear pre-existing June 25, 2002, but that it was causing no difficulty and would have been aggravated by the June 25, 2002 injury. At the close of Dr. Nguyen's deposition, he was asked by Mr. Olsen, attorney for the claimant, the following:

Q. You've given the opinion that you believe that the work injury of June 26th either caused the need for surgery in the left shoulder or combined with a pre-existing condition to cause the need for surgery?

A. Yes.

Q. Do you stand by that opinion?

A. Yes.

FINDINGS OF FACT

I. The claimant sustained a compensable injury to his left shoulder on June 25, 2002, as well as his right. The injuries to both his right and left shoulder arose out of and during the course and scope of his employment.

2. The respondents have controverted any benefits, both indemnity and medical, associated with the claimant's injury to his left shoulder on June 25, 2002.

DISCUSSION

In order to show that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must meet the requirements of Ark. Code Ann. §11-9-102(5)(A)(i) (Cumm. Supp. 1993), which are as follows:

(1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (See, A.C.A. §11-9-102(5)(A)(i) (Cumm. Supp. 1993); A.C.A. §11-9-102(5)(E)(i) (Cumm. Supp. 1993); See also, A.C.A. §11-9-401(a)(1) (Cumm. Supp. 1993));

(2) Proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death (See, A.C.A. §11-9-102(5)(A)(i) (Cumm. Supp. 1993));

(3) Medical evidence supported by objective findings, as defined in A.C.A. §11-9-102 (16), establishing the injury (See, A.C.A. §11-9-102(5)(D) (Cumm. Supp. 1993));

(4) Proof by a preponderance of the evidence that the injury was caused by specific incident and is identifiable by time and place of occurrence (See, A.C.A. §11-9-102(5)(A)(i) (Cumm. Supp. 1993));

The claimant in this case has satisfied the requirements to show that he sustained a specific injury arising out of and during the course and scope of his employment on June 25, 2002.

Medical Evidence

This case reduces itself to whether the medical evidence rendered by Dr. Nguyen meets the requisite definiteness required to meet the claimant's burden to prove causation. While the Court has stated that opinions based upon "could," "may," or "possibly" lack definiteness required to meet the claimant's burden to

prove causation. In this case Dr. Nguyen has stated that the June 25, 2002 injury, in his opinion, constituted more than 50 percent of the cause of the claimant's left shoulder injury. In addition Dr. Nguyen said that the June 25, 2002 injury, in his opinion, either caused the need for surgery or had aggravated an underlying pre-existing condition which created the need for surgery. It is this examiner's opinion that the medical opinions expressed by Dr. Nguyen, the claimant's primary treating physician in this matter, meet the definiteness required for medical opinions. See Ark. Code Ann. §11-9-102(16)(B) and Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000).

The issue of attorney's fees on benefits associated with the claimant's left shoulder injury are held in abeyance at this time.

AWARD

Respondents are directed to pay benefits associated with the claimant's left shoulder injury, which arose out of and during the course and scope of his employment on June 25, 2002.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge