

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305030

BRENDA J. HOLDER, EMPLOYEE	CLAIMANT
COLSON CASTER CORPORATION, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 30, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on October 8, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Ralph Theodor Stricker, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Richard A. Lusby, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 8, 2004, to determine whether the claimant sustained compensable injuries within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on September 8, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to a significant modification concerning the claim for indemnity benefits reflected further below. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant times; that the claimant's average weekly wage was sufficient to entitle her to temporary total disability benefits at the rate of \$287.00 per week in the event that her claim was found compensable; and that this claim had been controverted in its entirety for purposes of attorney's fees.

By agreement of the parties, the primary issue presented for determination concerned compensability. If answered affirmatively, claimant's entitlement to associated benefits must be addressed.

At the prehearing conference, the claimant contended, in summary, that she sustained gradual onset, bilateral upper extremity injuries which arose out of and during the course of her employment; that she was entitled to temporary total disability benefits beginning the date she last worked on June 10, 2003, and continuing through an undetermined date; that respondents should be held responsible for any outstanding medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded. At the hearing, the claimant withdrew her claim for temporary total disability. It was pointed out that the claimant last worked for the employer herein on June 10, 2003, at which time she was terminated for refusing to sign a document in her position as a union steward. The claimant's termination resulted in a grievance procedure. Immediately prior to the hearing, the claimant prevailed in her

grievance and was awarded full wages beginning the date of her termination and continuing through the date of the within hearing. The claimant's employment status was reinstated contemporaneous with the hearing which caused the claimant to dismiss her claim for temporary total disability. (Tr.5-8, 25-27, 44-47)

The respondents contended that the claimant did not sustain a compensable injury either as the result of a specific incident or the result of gradual onset injuries related to her employment. Specifically, respondents maintained that the claimant's work activities did not involve rapid repetitive motion, and, further, that there was no medical evidence supported by objective findings to support the claim.

In addition to the claimant, Barbara F. Kiter and Joyce Holst were called as corroborating witnesses for the claimant. Darrell Pickney was called as a witness by the respondents. The record is composed of the transcript of the October 8, 2004, hearing containing several exhibits, together with the evidentiary deposition of Dr. Henry F. Stroope, introduced as "Joint Exhibit B" and retained in the Commission file in bound form.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in

accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove that she sustained gradual onset, upper extremity injuries which arose out of and during the course of her employment as the result of repetitive work activities, established by medical evidence, supported by objective findings which was the major cause of her disability or need for treatment as alleged in the within claim.
4. Respondents have controverted the immediate claim in its entirety.
5. The parties have failed to join all prior claims involving the principals herein to the immediate claim. Accordingly, claimant's entitlement to additional benefits related to any other claims must, by necessity, be reserved.

DISCUSSION

\_\_\_\_\_The record in this claim is extremely confusing. This, in part, is related to the fact that the claimant has been an employee of Colson Caster for almost twenty (20) years, during which she has reported other injuries which were not joined as part of the within claim. The Commission file reflects that claimant's

attorney filed a Commission Form AR-C dated May 21, 2003, claiming a gradual onset injury to the claimant's left wrist, left elbow, right wrist, and right elbow due to repetitive motions involving claimant's work. The claim was for both **initial** benefits, as well as **additional** benefits. In response to the claim, the third-party administrator for the employer filed Commission Forms AR-1, AR-2, and WCC Form N. The Form N filed by the claimant, *pro se*, reflected a date of accident as December 20, 2002, involving the right elbow with notification to the employer on January 2, 2003. Said forms were filed subsequent to the filing of claimant's claim form, at which time respondents took the position that the bilateral upper extremity injuries were not related to the claimant's employment with the respondent. Respondents' attorney erroneously identified the Commission Form N as the AR-C at the hearing. These filings are incorporated by reference only and made a part of the record herein to clarify the confusing record. (Tr.7)

The claimant began working for the respondents on or about 1984. She left respondents' employment briefly in 1991 and returned the same year. She then worked continuously for the respondents from 1991 until her termination on June 10, 2003. As reflected above, the claimant was terminated as the result of some union disagreement and her employment reinstated following a grievance procedure which was resolved immediately prior to the hearing. There was no claim for temporary total disability as a result of the immediate

claims for gradual onset, bilateral upper extremity injuries.

The record did reflect that the claimant sustained a prior work-related injury with the respondents herein in 1997, specifically, an injury involving her left thumb on March 14, 1997. The record reflects that the claimant underwent a surgical procedure on her left thumb in 1997, performed by Dr. Henry F. Stroope, an orthopedic surgeon in Jonesboro, Arkansas. The record reflects that the claimant has continued to experience problems with her left thumb since 1997. Dr. Stroope has remained the claimant's primary care physician for her admitted left thumb injury. At the hearing, the claimant requested additional medical treatment, specifically, treatment for both her left and right elbow, as well as treatment for the left thumb. Despite the AR-C filing, there was no claim involving the left or right wrists. As reflected by the findings and conclusions, aforementioned, I find that the claimant cannot prove cumulative trauma or gradual onset injuries arising out of and during the course of her employment which were caused by rapid repetitive motion and supported by objective medical evidence which culminated in her need for treatment and/or disability in 2003 as claimed. However, as will be set out further below, the record does reflect that the claimant has, at all times since 1997, required reasonably necessary follow-up treatment related to the March 14, 1997, prior injury which, for some unexplained reason, was never joined as part of the immediate claim. It is unclear whether respondents have any valid defenses to

the claim for additional benefits related to the prior injury since it was not joined. Accordingly, by necessity, additional benefits related to AWCC claim #E706156 is reserved.

In the present claim, the claimant does not contend that her injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, the claimant contends that she sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

The test for determining whether any injury is caused by rapid repetitive

motion is two-pronged: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. *Malone vs. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the “repetitive element” of rapid repetitive motion. *Malone*, citing *Baysinger vs. Air Systems, Inc.*, 55 Ark. App. 174, 934 S.W.2d 230 (1996). However, proof of rapid repetitive motion is not required when a claimant contends that she sustained a compensable carpal tunnel syndrome injury. *Kildow vs. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998).

Respondents raise two (2) specific defenses to the immediate claim. Respondents contend that the claimant’s work activities do not involve rapid repetitive activities, and, further, that there is no medial evidence supported by objective findings to establish the claim.

As previously noted, the claimant has been employed by the respondents for almost twenty (20) years. Her primary job title was a packer/material handler, her job duties including making cardboard boxes, as well as crates and then packing them with various parts and materials. In addition to the claimant, she called two (2) corroborating witnesses who also performed the same job to establish that the work activities involved rapid repetitive movement. Rather than conduct an exhaustive analysis of the testimony of the various witnesses, suffice it to say that I found it extremely difficult to conceptualize the work

activities. I feel compelled to point out that Barbara F. Kiter, one of the claimant's corroborating witnesses, also filed a workers' compensation claim for a gradual onset injury which was accepted as compensable and benefits paid which may or may not be relevant to the within claim because the nature of said injury was not explored by either party. As reflected above, a carpal tunnel injury does not require proof of rapid repetitive motion. The claimant's claim does not involve a carpal tunnel syndrome and, therefore, proof of rapid repetitive motion is required. Acceptance of another claim is not binding on this claim. Despite the lack of a video tape actually depicting the job activities, I find that a preponderance of the credible evidence reflects that the claimant's work activities did involve rapid repetitive activities. However, the immediate claim must be denied because there is no medical evidence supported by objective findings as required by Ark. Code Ann. §11-9-102(4)(D) and Ark. Code Ann. §11-9-102(16) to prove any injury.

The claimant has alleged gradual onset, bilateral upper extremity injuries and has offered medical evidence in support of her claim attempting to establish injuries to both the left and right elbow, as well as the left thumb. The claimant's primary treating physician has been Dr. Henry F. Stroope, an orthopedic surgeon in Jonesboro, Arkansas. The claimant was initially seen by Dr. Stroope on October 3, 2002, with a chief complaint of left sided elbow pain. Dr. Stroope diagnosed medial epicondylitis which he stated was probably

job-related, secondary to repetitive work duties and lifting activities. Dr. Stroope injected the claimant's elbow with some Depo-Medrol and Lidocaine and also advised the claimant to consider wearing a tennis elbow type strap. The report introduced reflects that Dr. Stroope treated the symptoms while permitting the claimant to continue working. There was no objective findings of injury contained in the report. (Jt. Ex. A, p.3)

The claimant subsequently returned to Dr. Stroope with complaints of pain in both elbows, as well as left thumb pain. As previously noted, and, as will be set out further below, Dr. Stroope had been treating the claimant since April, 1997, for an injury to her left hand and left thumb which occurred on or about March 14, 1997. The left thumb injury involves a prior workers' compensation claim. In fact, it appears that the claimant had been treated regularly by Dr. Stroope for the left thumb injury at all times since April, 1997. It has only been since October, 2002, that Dr. Stroope began treating the claimant for her alleged bilateral medial epicondylitis while offering continued treatment for the prior thumb injury. While there is medical evidence supported by objective findings to support a left thumb injury, the follow-up medical care related to both elbow s fails to be supported by objective medical findings. (Jt. Ex. A, pp.4-9)

The evidentiary deposition of Dr. Stroope was taken August 4, 2004, and introduced as "Joint Exhibit B." A review of Dr. Stroope's deposition is

extremely illuminating. Specifically, his deposition supports the findings of fact and conclusions of law , aforementioned, while, at the same time, revealing that the only injury that the claimant has established, to date, relates to the March 14, 1997, injury to her left hand and left thumb. Portions of said deposition are set out below:

BY MR. STRICKER:

Q You had an opportunity to see Brenda Holder?

A Yes.

Q How was it that you came to seeing Ms. Holder?

A She came to see me, I believe, in April 28<sup>th</sup> as a patient – well, let me see. I'll have to refer to my notes. April the 28<sup>th</sup> of 1997.

Q That was quite a few years ago, and you've treated her over a period of time. In '97, what complaints did she have, first of all?

A She came in complaining of left-thumb pain and gave the history of pulling on a wrench at work and injured her thumb and had pain ever since. Went to see her family doctor and her family doctor tried a couple of things and then referred her to me.

Q Okay. Does she continue to have difficulty with this left thumb?

A Yes. The last time I saw her she was still complaining of left thumb pain.

Q And did you attribute this injury to her work?

A I did based on her history and work habits.

Q At a subsequent time, did you see her? Did you continue to treat her?

A Oh, yes. The last time I saw her was in looks like of '04.

Q And over the years did the problem with the left thumb – was that a consistent issue?

A Yes.

Q Did it deteriorate over the years from what it was when you first saw her?

A Yes. When I initially saw her, she had some swelling around the carpal metacarpal joint, basil joint of her thumb on the left. Eventually developed a ganglion cyst. That was excised. She initially did okay with that but then never really got asymptomatic and just progressively through the years has gotten worse.

Q Did you attribute the progress in the problem to her continued work?

A Yes, I believe so.

Q Okay. At this point today, when is she as far as that left-thumb problem?

A Well, she has gone on to ultimately arthritis in the carpal metacarpal basil joint of the thumb, which is the exact same area where she has always complained.

Q Is there any treatment that you would recommend for this problem?

A There are several different options. One is continued non-surgical management. However, that seems to have almost run its course now where she continues to complain, so one could offer surgical treatments and those are fibrous arthroplasty of the CMC joint of the thumb or even an implant-type replacement procedure for that.

Q What do you recommend?

A Uh, I'm no expert in hand surgery, and I have limited experience in those kinds of things. I think the standard of care really is a fibrous arthroplasty.

Q Would you recommend that she be referred to a hand surgeon for evaluation and treatment?

A I think that would probably be in her best interest, because I think that all of the non-surgical things have essentially been tried, and she continues to

pain. So I would recommend that she would consider the fibrous arthroplasty.

Q To make it clear, she had first difficulty in 1997, and she continued to have this problem – continued to progress downwardly over the years due to her work in your opinion?

A In my opinion, yes. (Jt. Ex. B, pp.4-7) (Emphasis supplied)

\* \* \* \* \*

BY MR. LUSBY:

Q Doctor, I'll say for the record that my name is Richard Lusby, and I represent Ms. Holder's former employer, Colson. I want to kind of walk through some of the issues that we've got in front of us today. One thing before we get into the meat of the coconut, so to speak, that you may be to help us with is I'm looking at the sequence of office notes. Am I understanding correctly that you saw her in October of 2002 and then your next visit was April 29, 2003? I'm asking that question doctor because your office staff was kind enough to give us a more thorough complete copy of your notes, and in the packet they gave me unless I have missed one or misplaced one that seems to be the sequence of events there.

A Did you say October of '02 and then the next one was April of '03?

Q Yes.

A Yes, that's the sequence that I have.

Q Okay. The reason that I'm asking that question, doctor, is looking at your note of April 29, '03, the initial phrase is "Ms. Holder is seen in follow-up for epicondylitis of the right-elbow and left-thumb pain", which suggests she had been seen previously for right-pain, but then when we go back to see the time that you saw her immediately previous to that is the October 3, '02 pain. She presents that day with left-sided elbow pain; is that correct?

A I believe I was incorrect when I said that, because if I go back and look through these, the sequence should be – no, you're correct. I've got 1-28-03, 10-03–no, wait a minute.

Q Yeah, we skipped –

A We skipped one.

Q We skipped 1-28-03. Okay.

A We sure did. We skipped 1-28-03.

Q Okay. Again, going back to the note dated 1-28-03, which is the time you saw her before April 29, '03, correct?

A That's correct.

Q If we go to that one, her complaint is of which elbow?

A She was complaining of right-elbow pain on April the 29<sup>th</sup> and left-thumb pain.

Q Right. But on January 28, 2003, is my question, which elbow?

A Oh, I'm sorry. Left elbow at that time.

Q And October 3, 2002, which elbow?

A Left elbow.

Q Okay. And before that it takes us back to August of 2002 where her complaints focused on her thumb; is that correct?

A What date again?

Q August 6, 2002.

A That's correct.

Q So the first mention anywhere of any elbow complaints is October 3<sup>rd</sup> of 2002?

A Let me double check.

Q Okay.

A That seems to be date that I have, yes.

Q Okay. So the first mention of elbow pain is October 3<sup>rd</sup> of 2002. The next mention is in the next visit of January 28<sup>th</sup> of 2003; is that correct?

A That's correct.

Q And on both of those visits, she was complaining of left-elbow pain?

A Correct.

Q There is no condition that she had complaints in October of 2002 or January of 2003 with her right elbow?

A That's correct.

Q And am I correct in assuming, Doctor, that if she had come in complaining of both left-elbow pain and right-elbow pain in October of 2002 or January of 2003 that's the kind of history that would have been important to report?

A Yes.

Q And there is no reference in October 2002 or January 2003 of right-elbow pain?

A Not in my notes, not. (Jt. Ex. B, pp.12-15)

Dr. Stroope was also questioned by both parties concerning his diagnosis of medial epicondylitis and whether or not there was any objective findings of same. Although Dr. Stroope's testimony vacillated, his deposition confirmed his earlier reports which lacked any objective findings.

BY MR. STRICKER:

Q As you might guess, Richard is representing the Respondent, Colson Caster, and I'm representing Ms. Holder. The legislature has attempted to eliminate all doubt in medical diagnosis here. Is that a possibility?

MR. LUSBY: I'm going to object to the form of that question. That's not what the legislature has done. The legislature has sought to inject

some scientific basis for uttering causation opinions in matters that involve the transfer of property.

BY MR. STRICKER:

Q At any rate, is that reasonably possible that even in the medical field they can eliminate and make everything totally objective?

A I don't believe so.

Q The legislature requires, however, an objective medical testing in order to find that there is a work-related injury. When you examined Ms. Holder in addition to her subjective, which they consider to be to – her complaints of pain to be subjective, did you feel the joints like, for example, her elbow? Did you feel her elbow to determine if there was tenderness there?

A Yes.

Q Swelling?

A Yes.

Q Was there swelling in the joint?

A There was some swelling, yes, over the area of tenderness.

Q And, also, does the body tend to emit more heat in areas of pain?

A If there is an area of inflammation, it does.

Q Okay. Did you detect when you examined her an inflammation?

A I don't recall if I specifically documented that in the notes or note, but, certainly, if I believe they have medial epicondylitis, typically, they will have some slight increased warmth, swelling, and point tenderness in the area.

Q Okay.

MR. STRICKER: I believe that's all the questions I have.

EXAMINATION

BY MR. LUSBY:

Q Doctor, is there any reference to a finding of swelling in any of your notes regarding either the left or the right elbow of Ms. Holder?

A I don't believe that there is any reference in my notes. It's just something that I know to look for.

Q And other things that you know to look for, for example, would be point tenderness; is that correct?

A Correct.

Q But point tenderness requires a response from the patient; correct?

A Yes.

Q Well, for example, in the October 3<sup>rd</sup> of 2002 note, you made reference to swelling, but what you refer to there was that there wasn't any swelling that you detected, anyway, no obvious area of swelling?

A What date?

Q October 3<sup>rd</sup> of 2002.

A Yes, you're correct.

Q So then when you saw her again on January 28<sup>th</sup> of 2003 there is reference to the tenderness, but there is no reference to finding any swelling, is there?

A Not in the note, no.

Q And, in fact, the only time we see swelling mentioned in one of your notes is to note that there is no swelling?

A According to the notes, that's correct.

Q And do you recall when you said to Mr. Stricker earlier that you thought that you recall there being swelling, do you remember which elbow it was?

A I don't.

Q How many patients over the course of the last two years have you seen with epicondylitis-type complaints?

A Oh, gosh, a significant number. I would say 100 or more.

Q To be fair, Dr. Stroope, can you really sit here today and say with no reference whatsoever in two-year old notes that Ms. Holder had swelling in either of her elbows?

A I really don't recall.

Q Okay. (Jt. Ex. B, pp.23-26)

The claimant must prove that her injury was "the result of an accidental injury that arose in the course of employment, and that it grew out of, or resulted from, the employment." *Cook vs. Aluminum Co. of America*, 35 Ark. App. 16, 21, 811 S.W.2d 329, 332 (1991); *See also*, Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2002). Objective findings are those findings which cannot come under the voluntary control of the patient/claimant. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2002). Complaints of pain, *per se*, may not be considered by the physician, the administrative law judge, the Commission, or the Courts. Ark. Code Ann. §11-9-102(16)(A)(ii)(Repl. 2002).

Under our workers' compensation law, an employer takes the employee as he finds her, and employment circumstances that aggravate pre-existing

conditions are compensable. *Heritage Baptist Temple vs. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. *Oliver vs. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. *Crudup vs. Regalware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). An aggravation, being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Ins. Co. vs. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996); *Ford vs. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Under our law, since an employer takes an employee as he finds them, a pre-existing disease or infirmity does not disqualify a claim if the employment circumstances aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *Jim Walter Homes vs. Beard*, 82 Ark. App. 607 120 S.W.3d 160 (2003). Furthermore, if the claimant can prove that an injury occurred, major cause is not necessary to establish compensability. *Williams vs. L & W Janitorial, Inc.*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (February 4, 2004).

The record reflects that the claimant was actually seen by a hand specialist, Dr. Michael M. Moore, on June 12, 2000, for a second opinion. Again, I feel compelled to point out that Dr. Moore evaluated the claimant for

her 1997, admitted injury rather than the immediate claim. A portion of his report states:

It is my opinion Ms. Holder has degenerative arthritis of the left thumb basilar joint. Degenerative arthritis of the basilar joint is not usually considered a work-related medical condition. I am not aware of any scientific or medical literature which relates repetitive gripping, pinching, or lifting to the onset of degenerative arthritis of the basilar joint. It is my opinion Ms. Holder is a legitimate patient. It is likely the work she performs is exacerbating the symptoms associated with the left thumb degenerative arthritis. (Jt. Ex. A, p.2)

Respondents have controverted the immediate claim in its entirety. Likewise, it appears, based upon an April 7, 2003, report, that respondents have also controverted additional benefits related to the March 14, 1997, injury; however, that claim was not the subject of the within hearing, and, must by necessity, be reserved. (Cl. Ex. 1)

Any aggravation of a pre-existing condition occurred as a result of the March 17, 1997, injury rather than any new injury or aggravations. While the claimant's work activities after 1997 caused her to have recurrences of symptoms and required additional medical treatment, she did not prove any new injuries. Entitlement to additional benefits related to prior claims have been reserved.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d

111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she sustained gradual onset, bilateral upper extremity injuries which arose out of and during the course of her employment, entitling her to benefits for the immediate claim. Accordingly, the within claim is hereby, respectfully denied and dismissed.

Claimant's entitlement to additional benefits related to her prior, admitted injury, AWCC claim #E706156, has been reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge