

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402608

JOYCE MASON, EMPLOYEE

CLAIMANT

IC CORPORATION,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED DECEMBER 16, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Conway, Faulkner County, Arkansas.

The claimant was represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

The respondent was represented by HONORABLE J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on October 20, 2004 in Conway, Arkansas. A prehearing order was entered in this case on July 23, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. Employee-employer-carrier relationship on the date of injury, January 2004, and at all pertinent times.

2. That this claim is controverted in its entirety.
3. The claimant's average weekly wage was \$685.15 which corresponds to the maximum compensation rates for 2004 of \$453.00 for TTD and \$340.00 for PPD if this claim is found compensable.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability of right knee injury with attendant medical expense and TTD from 1/23/2004 to 3/1/2004.
2. Controversion and attorneys' fees.

The record consists of the October 20, 2004 hearing transcript and the exhibits contained therein. In addition, I have supplemented the record by "blue-backing" Mr. Mauldin's October 22, 2004 post-hearing letter brief.

DISCUSSION

For the most part, the relevant facts are not in dispute. Ms. Mason has been employed at Amtran or by IC Corporation for approximately 16 years in the production of busses. In January of 2004, Ms. Mason began experiencing debilitation right knee pain while working in the "bus hospital." Her duties in the job required her to fix, replace or repair any defects written down on sheets

accompanying each bus, and to fix any additional defects which she observed herself. These repairs could require the use of a ladder, or could require crawling under the bus or at times crawling between bus seats. In addition, for each of the three to five buses which came through the bus hospital station each hour, Ms. Mason used a ladder to insert the left hand front light.

Ms. Mason initially presented to the company doctor, Dr. Long, for her knee problems. Dr. Long referred Ms. Mason to Dr. James Mulhollan. On January 23, 2004, Dr. Mulhollan recorded the following initial history in a letter to Dr. Long after talking with Ms. Mason:

I very carefully interrogated the patient regarding the onset of her trouble. She began to have trouble on January 5, while at work. The initial moment of onset occurred while she stood on the ladder, leaning forward. She told me that something happened to her knee. She felt discomfort while descending the ladder and thereafter associated with walking, pivoting and squatting. Her pain was medially under the patella. She told me that she was a "repair worker" and that her job required her to climb, crawl and more or less be "up and down all day." She had had some swelling. Apparently you treated her with Celebrex and some work restrictions. She had had difficulty sleeping.

After obtaining an MRI, Dr. Mulhollan performed an arthroscopic partial medial meniscectomy to repair a torn medial meniscus on January 28, 2004. The claimant's

attorney subsequently queried Dr. Mulhollan in relevant part as follows by letter dated July 7, 2004:

I would appreciate a note from you stating the history Ms. Mason gave you, and providing an explanation of the cause of her problems. If you can state the major cause (51% or more of the cause) of her knee problems are her employment activities, that would be most helpful.

Dr. Mulhollan responded by letter dated July 12, 2004:

I read your letter, I think the report I dictated on January 23 probably answers the issue about which you are inquiring.

That was what the patient told me. At the time of surgery, I found a medial meniscus tear. As you know, that is a traumatic lesion. I am afraid that is the sum of what I know. It was reported by me as a traumatic incident.

At the hearing, the claimant's attorney clarified that, while bracing her knee on a ladder while leaning may ultimately be what caused Ms. Mason to report her problems, she asserts that the major cause of her problems was having to go up and down ladders all day long in a rapid and repetitive fashion. [T. 39] The respondents' attorney acknowledged at the hearing that ascending or descending a ladder requires rapid and repetitive motion for the very short duration of time required to ascend or descend. [T. 38] However, as I understand the respondents' post-hearing brief, the respondents contend that the claimant has failed to show that her job duties, taken together, required rapid repetitive motion, and even if she had so proven, the

claimant has also failed to prove that climbing and descending a ladder caused the meniscal tear at issue since the claimant climbed a ladder with both legs but sustained a meniscal tear in only one knee.

In order to receive benefits for a gradual onset or a cumulative trauma injury, a claimant must prove by a preponderance of the evidence (1) that she sustained an injury arising out of and in the course of her employment; (2) that the injury caused external or internal physical harm to the body; (3) that the injury is supported by objective medical finding; (4) that the injury was caused by rapid repetitive motion; and (5) that the injury was the major cause of any disability or need for treatment.

Stevenson v. Frolic Footwear, 70 Ark. App. 383, 20 S.W.3d 413 (2000).

Here, the claimant has experienced a medial meniscus tear in the right knee. This injury is supported by objective medical findings including both MRI findings and Dr. Mulhollan's surgical observations.

With regard to the "major cause" requirement of Ark. Code Ann. § 11-9-102(4)(E)(ii) (Supp. 2003), I note that Dr. Mulhollan was queried as to whether the major cause of Ms. Mason's knee problems were her work activities. I note for the benefit of the parties that the Arkansas Court of

Appeals has previously rejected a similar interpretation of the major cause requirement of Section 102(4)(E)(ii). The claimant must instead establish that the alleged compensable injury is the major cause of her disability or need for medical treatment. Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998). In the present case, all of the reports of Dr. Long and Dr. Mulhollan and the letters of Dr. Mulhollan indicate to me that the medial meniscus tear was the major cause, and in fact the sole cause, of the surgery that Dr. Mulhollan performed and of the temporary disability that Ms. Mason experienced after surgery. Accord Steveson v. Frolic Footwear, 70 Ark. App. 383, 20 S.W.3d 413 (2000) [Major cause requirement satisfied where carpal tunnel syndrome was the only cause for the need for medical treatment for carpal tunnel syndrome].

As all parties apparently agree, the more difficult issues are (1) whether the claimant's testimony establishes by a preponderance of the evidence the "rapid repetitive motion" requirement of Ark. Code Ann. § 11-9-102(4)(A)(ii)(a)(Supp. 2003), and if so (2) whether the rapid repetitive motion that Ms. Mason performed caused her knee injury.

1. Rapid Repetitive Motion

The test for determining whether an 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 v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movement can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Malone, citing Baysinger v. Air Systems, Inc., 55 Ark. App. 174, 934 S.W.2d 230 (1996).

In assessing the Courts' interpretation of what is or is not a rapid task or set of tasks, I note that the Arkansas Court of Appeals at one time indicated that repetitive movements repeated once every fifteen seconds (i.e., four repetitions per minute) was "the most compelling case demonstrating rapid repetitive motion presented to this court to date." High Capacity Prods. v. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998). The Arkansas Supreme Court has held that repetitive neck movements performed once every twenty seconds (i.e., three repetitions per minute) also meet the rapidity requirement. Hapney v. Rheem Manufacturing Co., 342 Ark. 11, 26 S.W.3d 777 (2000). In fact, the Court of Appeals has held that a series of repetitive motions performed 115 to 120 times per day separated by periods of 1.5 minutes constitute rapid repetitive motion within the meaning of Act 796 of 1993. Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998).

In Lay v. United Parcel Service, 58 Ark. App. 35, 944 S.W.2d 867 (1997), however, the Court of Appeals declined to find that work duties satisfied the definition of rapid repetitive motion when the duties or tasks were separated by periods of several minutes or more.

On one occasion the Arkansas Court of Appeals has also indicated that the Commission must consider the positioning of the body part as well as the number of movements the claimant has to perform to determine whether the movement is rapid and repetitive. Patterson v. Frito Lay, Inc., 669 Ark. App. 159, 992 S.W.2d 130 (1999). In Patterson the claimant became a store representative for Frito Lay in 1994 and contended that she developed knee problems from being on her knees stocking shelves. In this regard, the claimant testified that she would make approximately 43 knee movements per minute while working seven to eight bags of chips per minute on the lower shelves. Patterson v. Frito Lay, Full Workers' Compensation Commission, Opinion filed May 29, 1998 (E503994). The claimant testified that she was on her knees working product on the lower shelves approximately 40% of her work day. Corroborating witnesses placed the percentage of time as low as 25% and as high as 30% - 50%. Id.

The Commission found that the claimant's work duties in Patterson did not meet the definition of rapid repetitive motion of the knees. The Commission noted that in addition to rotating and stocking product on the bottom shelves, the claimant was required to work the product on the upper shelves and displays, travel to four different stores each day, check the product in the back room with the store's inventory clerk, walk the stores to observe the product, retrieve any misplaced bags left around the stores by customers, and move product for stocking from the store's back room to the shelves and displays. Id.

Notwithstanding the variety of tasks that the claimant in Patterson performed that produced no arguable trauma to her knees, the Court of Appeals nevertheless reversed the Full Commission and found that the claimant satisfied the rapid repetitive motion requirement under circumstances where there was no real dispute that she engaged in rapid repetitive motion of her knees while stocking the lower shelves, and the various witnesses' testimony indicated that she performed this task between 25% and 50% of the work day. Patterson v. Frito Lay, 66 Ark. App. 159, 992 S.W.2d 130 (1999).

The facts in the present case appear to me somewhat analogous to Patterson in that both cases involve knee

injuries. Both cases involve body movements which rather clearly involved rapid repetitive motion of the knees while a specific work activity (stocking lower shelves versus ladder climbing) was being performed, and in both cases the rapid repetitive task was clearly only being performed throughout the day interspersed with other tasks that did not require rapid repetitive knee motion. Also, in the present case, as in Patterson, the precise amount of time each day that the claimant was engaged in her rapid repetitive knee motion is subject only to estimation since the number of times she climbed a ladder per bus could change for every bus depending on the number of defects on each bus.

The present case appears to be somewhat distinguishable from Patterson, however, because the claimant in Patterson engaged in more significant periods of stocking lower shelves where as the claimant in the present case only engaged in ascending or descending ladders as a brief activity incidental to her primary function of inserting lights or making repairs. In that respect, Ms. Mason's intermittent ladder climbing might arguably be more similar to the tasks discussed in Boyd, Hapney, Lay, and Moore.

In the present case, the claimant worked on three to five buses per hour, depending on the rate buses were being

produced. Although there was no evidence as to precisely how many steps Ms. Mason had to ascend or descend on each ladder, there was testimony that the step ladders were five to seven foot tall. Ms. Mason's various estimations ranged from climbing the ladder four times per bus to nine times per bus, and again this number could vary for every bus depending on the defects observed. Depending on the defects observed, Ms. Mason alternatively might have to ascend and descend the two or three steps to go into a bus or might have to crawl on her knees under a bus if no dolly was available.

By my calculations, Ms. Mason's ladder use might vary from a minimum of climbing a ladder approximately 12 times per hour (three buses per hour and four ladder trips per bus), or one round trip per five minutes, to a maximum of climbing a ladder approximately 45 times per hour (five buses per hour and nine ladder trips per bus), or approximately one round trip per minute. There is no dispute that each trip up and down the ladder required rapid repetitive motion, and consequently, I infer that each trip up and down the few steps of the ladders required only a few seconds per trip.

Using an average of four buses per hour and if the claimant averaged six ladder trips per bus, I note that she would engage in 24 ladder trips per hour, or less than one

ladder trip every two minutes. At that rate, she would either be ascending a ladder or descending a ladder slightly less than once per minute.

After comparing the facts of the present case to the facts of the prior cases discussed above, I find that a several second ladder ascension or descension performed less than once per minute does not render Ms. Mason's work duties, considered together, rapid and repetitive. Unlike Patterson, where the claimant apparently spent between 25% and 50% of her time engaged in a task requiring rapid repetitive knee motion, I conclude that, on average, Ms. Mason likely spent no more than 3 seconds per minute climbing up or down a ladder, and therefore spent roughly 5% of her work time engaged in rapid repetitive knee motion. I therefore find this case distinguishable from Patterson regarding the overall percentage of time that Ms. Mason spent engaged in stepping up or down a ladder.

In comparing the facts of this case to Moore, Hapney, Boyd, and Lay, I also conclude that engaging in only several seconds of ladder ascension or descension, separated by a period on the order of a minute or more, is more similar to the circumstances presented in Lay than the circumstances presented in Moore, Hapney or Boyd. I recognize that the claimant also engaged to some degree in rapid repetitive knee motion ascending and descending the bus steps, and in

crawling under buses when necessary. However, I am unable to either quantify or even roughly estimate the rate of these activities, and even if I were able to do so, I do not perceive that including time spent in these activities would render the claimant's job tasks, taken together, as engaging in rapid repetitive knee motion. Consequently, I find that the claimant has failed to prove that her job tasks, taken together, involved rapid repetitive knee motion.

On the other hand, I also note that making even three right leg steps per minute on a ladder, notwithstanding the small amount of time required to make those three steps, would appear to me to involve approximately the same number of rapid repetitive knee joint motions per minute (three motions per minute) that the Arkansas Supreme Court found "rapid" for neck motion in Hapney, supra. Therefore, I realize that the Commission or the Courts may ultimately reject my conclusions and determine that taking approximately several steps per minute on a ladder does in fact amount to rapid repetitive motion of the knee.

2. Injury Caused By Rapid Repetitive Motion

Even if the claimant had persuaded me that her work duties in the bus hospital, taken together, required rapid repetitive knee motion, I find that the claimant has failed to establish by a preponderance of the evidence that her

medial meniscus tear at issue was caused by rapid repetitive motion of the knee climbing a ladder, bus steps, or crawling under buses as she seems to assert.

In this regard, I note that Dr. Mulhollan is the only physician in this case to make any comments on the cause of the medial meniscus that he observed and repaired. I do not glean from Dr. Mulhollan's letters that he attributes this type of injury, or this particular injury, to either wear and tear, erosion of the meniscus, or weakening of the meniscus from climbing, stepping or crawling over time. While Dr. Mulhollan recorded a history of ongoing symptoms while engaging in these activities after Ms. Mason felt a problem start with her knee on January 5, 2004, I do not detect in Dr. Mulhollan's letters any indication that climbing, stepping or crawling before, on, or after January 5, 2004 caused the medial meniscus tear that he found and repaired. Dr. Mulhollan's somewhat confusing letter instead refers to a "traumatic incident", and however the term "traumatic incident" was supposed to relate to the facts in this case, his opinion would not seem to me to support a conclusion that the claimant's meniscal tear was a gradual onset injury caused by stepping and crawling as the claimant asserts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Employee-employer-carrier relationship on the date of injury, January 2004, and at all pertinent times.

2. That this claim is controverted in its entirety.

3. The claimant's average weekly wage was \$685.15 which corresponds to the maximum compensation rates of 2004 of \$453.00 for TTD and \$340.00 for PPD if his claim is found compensable.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable right knee injury. Specifically, the claimant has failed to establish that her work duties, considered together, constituted rapid repetitive motion. In addition, the claimant has failed to establish by a preponderance of the evidence that the medial meniscal tear at issue was caused gradually by the ladder climbing, bus steps, and crawling which she asserts constituted rapid repetitive motion.

ORDER

For the reasons discussed herein, this claim must be and hereby is denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge