

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F109456 & F109457

URADELL JOHNSON MCCAUSTLE, EMPLOYEE	CLAIMANT
LENNOX INDUSTRIES, INC., EMPLOYER	RESPONDENT
AMERICAN MOTORISTS INSURANCE, CARRIER	RESPONDENT

OPINION FILED JANUARY 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 17, 2003, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE ROBERT R. CORTINEZ, SR., Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, 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 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 on January 11, 2001 and August 14, 2001 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$345.00/\$259.00, in the event these claims are found to be compensable.

The claimant contends she sustained a gradual injury to her right shoulder (F109456), on January 11, 2001, as a result of her job duties, pulling on copper. The claimant seeks payment of medical expenses and attorney's fees. The claimant also contends she sustained a specific injury to her back (F109457), on August 14, 2001, when she was struck by a hoist and fell onto a rail. She seeks payment of medical expenses, temporary total disability benefits from August 15, 2001 to January 31, 2002, and attorney's fees.

The respondents contend the claimant did not sustain compensable injuries to either her shoulder or her back. Specifically, the respondents contend the claimant cannot meet her burden of proving a gradual shoulder injury under Ark. Code Ann. §11-9-102, regarding major cause or rapid and repetitive activity. The respondents further contend that even if the claimant fell on August 14, 2001, there is no causal connection between any accident at work and her present back condition.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript along with a videotape of the claimant's job duties and two depositions of the claimant, incorporated by reference.

The following witnesses testified at the hearing: the claimant, who was emotionally distraught throughout the hearing, and seven of her co-workers, Wes Brewer, Iona Cline, Branson Osby, Kenneth Page, Jennifer Bradley, Norm McDonald, Mary Johnson, and nurse, Kim Chastain, and Health and Safety Manager, Tom Spann. While I was impressed with the credibility of the co-workers' testimony, none of them witnessed the accident, they merely repeated what the claimant told them about her injuries. The witnesses were unsure about the dates of injury or the specifics of the accidents.

The claimant, age 52 (D.O.B. March 17, 1951), has a high school education and work experience as a machine operator. She has worked for the respondent-employer since 1991 making air conditioners and heaters.

The claimant's job duties require her to use a hoist to move heavy spools of copper, manually pull copper from the spool, and feed lightweight copper tubing into machines which cut, shape and bail the copper. She began work in the copper department in 1994.

The claimant testified she felt a pop and experienced a sharp pain in her arm in 1997, while manually pulling the copper from the spool. She reported the incident and was sent to the plant nurse. She was moved to the third shift for one year and her arm improved. Although the claimant was deposed on two occasions, she never mentioned this 1997 injury. The claimant further testified that when she resumed her job on January 11, 2001, she felt a pulling sensation and returned to the

nurse. She has seen numerous physicians for her shoulder and remains under the care of Dr. Daniels. An AR-N was completed on April 10, 2001 for the shoulder injury.

The claimant was injured again on August 14, 2001 loading a hoist with copper. The hoist knocked her backward into a railing, injuring her back. She reported the incident, went to the nurse, and was driven to the doctor by co-worker, Kenneth Page. Dr. Daniel excused her from work for six months and she drew short-term disability benefits (September 1, 2001 to January 31, 2002/\$230.00 monthly) after her workers' compensation claim was denied. An AR-N was completed on August 14, 2001 for the back injury. When the doctor released her for light duty, the employer returned her to the same machines and she remains under Dr. Daniel's care.

The claimant's health history includes an injury to her right shoulder in 1991 while working at Riceland, and a 1985 motor vehicle accident with neck and low back pain. The claimant was also hit in the right arm in the Lennox parking lot after work.

Nurse Kim Chastain verified that the claimant reported an August 2001 injury to her back about 9:00 A.M. when a hoist knocked her into a rail. She examined the claimant but found no redness or bruising. This correlates with Dr. Daniel's report of August 14, 2001 finding no specific injuries to the chest or extremities. The claimant was given Ibuprofen but returned later crying. An appointment was made with Dr. Daniel and workers' compensation paperwork completed. After August 2001, the claimant periodically returned to the nurse's station for ice packs, complaining of back and right shoulder pain. The workers' compensation claim was denied after the initial visit with Dr. Daniel and the claimant applied for short-term disability benefits.

Tom Spann, Health and Safety manager, explained the claimant's job duties as depicted on the videotape. The tape was made at the adjuster's request after the claimant made a claim for a gradual arm injury, however he does not recall a 2001 shoulder injury, and that was never investigated. It should be noted, however, that the video does not show the hoist or the task of pulling the copper from the spool. Mr. Spann's department investigated the claimant's back injury and concluded that the accident could not have happened in the manner she described. Although the hoist does swing, it is heavy and could not swing violently at the angle necessary to strike the claimant. The hoist was later changed not because it was unsafe, but to improve production.

MEDICAL EVIDENCE

The claimant was treated for right shoulder pain on January 11, 2001 which she attributed to the machine she used at Lennox. She was prescribed medication for muscle spasm.

She was off the machine that she uses at Lennox for over a year. Took cortisone shots in her shoulder and did well while she was off the machine. Now she's back on the machine. She's training other people to work the machine and now she's having pain again in the right shoulder. She's been on the machine since February of last year.... She did report this to her supervisor but was told it wasn't on the job related.

...it sounds like rotator cuff. A year ago she was off. She had physical therapy on her arm.... this has been a workman's comp issue because of the overuse syndrome of the right arm and shoulder.

...states this has been going on for about 5 yrs & is going to have to have surgery. (Emphasis added)

On June 15, 2001 the claimant was examined by Dr. Tad Pruitt. He diagnosed impingement syndrome in the right shoulder with degenerative changes in the cervical spine and myofascial pain in the neck, arm and shoulder based on x-rays and an MRI scan. The claimant reported a gradual history of shoulder pain over the last 10 years. Dr. Pruitt felt the impingement syndrome was objectively verified and primarily caused by her job. He prescribed injections, physical therapy and arthroscopy if her symptoms persisted.

On August 14, 2001, the claimant saw Dr. Daniels for a back injury caused when a hoist holding a heavy coil moved and pushed her into a barrier. Dr. Daniels prescribed medication and physical therapy. X-rays and a bone scan were negative.

The claimant saw Dr. Yeshwant Reddy in October, 2001 and was diagnosed with cervical and lumbar degenerative disc disease and symptomatic right supraspinatus tendonitis. An MRI of the lumbar spine conducted November 13, 2001 showed only degenerative changes. Dr. Reddy assessed the MRI as showing a mild disc bulge at L4-5 with no nerve root impingement. He prescribed epidural injections. The procedure report, dated November 19, 2001 shows the diagnosis of “lumbar degenerative disc disease with neural foraminal narrowing at L4-5 and L5-S1 causing right leg radicular pain.” Another procedure report dated January 17, 2002 shows a diagnosis of “degenerative disk disease” only with no mention of a disk problem.

Dr. Reddy released the claimant on January 24, 2002 with no restrictions, commenting “her symptoms are primarily due to lumbar and cervical degenerative disc disease. Dr. Reddy’s report of March 19, 2002 opines that her shoulder tendonitis is “definitely work-related.” He described her back pain as an aggravation of preexisting degenerative disc disease.

A letter dated June 25, 2002 documents the claimant’s hostility and verbal abuse of Dr. Reddy’s staff regarding delinquent bills. Dr. Reddy referred the claimant to Dr. David Collins in June, 2002. Dr. Reddy commented, “once again, I have reiterated to her that the low back and neck problems may not be related to her work” in a report dated July 23, 2002.

A repeat MRI of the claimant's shoulder on July 31, 2002 showed tendonitis, a cyst, and bursitis. Dr. Collins commented, "Her complaints of numbness and tingling are not likely to be intrinsic shoulder disease in origin." An arthrogram on August 10, 2002 was interpreted as negative and Dr. Collins prescribed physical therapy.

FINDINGS AND CONCLUSIONS

As this claim 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 v. Magnet Cove Barium Corporation, 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)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

The evidence of record shows the claimant was diagnosed with tendonitis of the right shoulder before she ever started working at Lennox. Her symptoms began while at Riceland Foods and continued for 5-10 years according to some records.

The claimant attributes her symptoms to a 1997 injury which she never mentioned during discovery, and a reinjury in January 2001 which was not reported until April, 2001. The claimant's job duties in the copper department (as depicted on the videotape) appear relatively easy for a factory job and while the duties are repetitive, they are certainly not the rapid pace usually associated with

assembly line work. The operator is basically feeding lightweight tubing into machinery (which sets the pace of production) and the operator can sit or stand and use foot controls.

Accordingly, I find the claimant has failed to prove that her job was both rapid and repetitive or that she sustained an injury which was the major cause of her need for treatment and disability.

The evidence of record also shows the claimant was diagnosed with degenerative disc disease of the lumbar spine. The reports are conflicting about the existence of a bulging disc, however Dr. Reddy attributes her symptoms to foraminal narrowing and degenerative disc disease, conditions that occur over time as part of the aging process. No one witnessed the claimant's accident and Mr. Spann's explanation about the hoist was persuasive.

Accordingly, I find that the claimant has failed to prove a specific back injury arising out of and in the course of her employment which produced internal physical harm.

1. The Workers' Compensation Commission has jurisdiction of these claims which arose on January 11, 2001 (gradual shoulder injury) and August 14, 2001 (specific back injury).
2. The claimant has failed to prove by a preponderance of the credible evidence of record that she sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.
3. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her 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