

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F501093

DELANO BEAN, Employee	CLAIMANT
GRAPHIC PACKAGING INTERNATIONAL, INC., Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JUNE 27, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES R. FILYAW, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 13, 2005, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on March 23, 2005, and a pre-hearing order was filed on March 24, 2005. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant was earning an average weekly wage of \$440.00 which would entitle her to compensation at the weekly rates of \$293.00 for temporary total disability benefits and \$220.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right shoulder and wrist.
2. Related medical.

3. Temporary total disability benefits from September 2004 through a date yet to be determined.

4. Attorney fee.

At the time of the hearing the parties clarified that the issue to be litigated involves claimant's left shoulder, not her right shoulder. In addition, claimant also alleges compensable injuries to both wrists.

The claimant contends that the injuries to her shoulder and wrists arose out of and in the course of her employment, and that she is entitled to medical benefits, temporary total disability benefits, and an attorney fee.

The respondents contend the claimant did not sustain compensable injuries which arose out of and in the course of her employment with Graphic Packaging International Corporation.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 23, 2005, and contained in a pre-hearing order filed March 24, 2005, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left shoulder while employed by respondent.

### FACTUAL BACKGROUND

The claimant is a 60-year-old woman who testified that she believes she went to work for the respondent in 1984. Claimant has worked in various departments for the respondent with her last job as a feeder/tender in the finishing department. Claimant's job duties included taking flat cartons off a skid and feeding them into a machine where they were folded and glued. Claimant would perform this duty for approximately one hour before switching positions to the other end of the machine where cartons came out and were picked up.

Claimant testified that approximately one year before August 2004 she began noticing numbness in her hands. Claimant did not seek any medical treatment for her condition until she saw her family physician, Dr. Rebecca Floyd, on August 31, 2004. Dr. Floyd ordered a nerve conduction test and prescribed claimant splints. A nerve conduction subsequently revealed bilateral carpal tunnel syndrome.

Claimant did not return to work for the respondent subsequent to her treatment with Dr. Floyd. However, claimant's failure to return to work was due to other non-work related conditions including depression and a diagnosis of osteoporosis.

In December 2004 the claimant sought medical treatment from Dr. Griffin for a history of left shoulder complaints. Claimant underwent an MRI scan of the left shoulder which revealed degenerative changes and a small amount of fluid in the subacromial bursa which was read as compatible with bursitis or tendinitis. Claimant was eventually referred to Dr. Bolyard who diagnosed claimant's condition as left shoulder adhesive capsulitis/frozen shoulder. Dr. Bolyard recommended conservative treatment but it was claimant's testimony at the hearing that she underwent surgery on her left shoulder the week prior to the hearing of June 13, 2005.

Claimant has filed this claim contending that her bilateral carpal tunnel syndrome and left shoulder condition are compensable injuries as a result of her employment with

the respondent. She seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

#### CARPAL TUNNEL.

Claimant contends that her bilateral carpal tunnel syndrome is causally related to her employment with the respondent. A.C.A. §11-9-102(4)(A) defines “compensable injury”:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

If a claimant is diagnosed as suffering from carpal tunnel syndrome, it is not necessary for the claimant to prove that their job duties involved rapid repetitive motion. *Kildow v. Baldwin Piano and Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, the compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(B). Furthermore, the burden of proof shall be by a preponderance of the evidence and the condition is compensable only if the alleged compensable injury is the major cause of the disability or need for medical treatment. A.C.A. §11-9-104(4)(E)(ii).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is a compensable injury.

First, claimant did testify that she noticed numbness in both of her hands

approximately one year prior to August 2004. However, claimant testified that she noticed this condition both at work and away from work. Furthermore, although Dr. Floyd's office notes of August 31, 2004 and the follow-up visit of September 14, 2004 mention carpal tunnel syndrome, the medical reports do not link claimant's carpal tunnel syndrome to her employment with the respondent. In fact, Dr. Floyd is the only physician who has treated claimant's bilateral carpal tunnel syndrome and she has not opined that it is causally related to claimant's employment with the respondent.

While it is not necessary for the claimant to offer a medical opinion from a doctor establishing causation, the fact that no such opinion exists may be considered along with the remaining evidence in determining whether a claimant has met their burden of proving a causal connection by a preponderance of the evidence.

In this particular case, the claimant seems to attribute her bilateral carpal tunnel syndrome to her employment with the respondent simply because she performed a job which required the use of her hands. Although claimant did notice problems with her hands while performing this work, claimant also stated that she noticed problems with her hands when she was not at work. Claimant also admitted that she did not report any problems with her hands to the respondent until after she had received medical treatment. Finally, the medical evidence does not link claimant's carpal tunnel syndrome to her employment with the respondent.

Accordingly, for the foregoing reasons, I find that claimant has simply failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is causally related to her employment with the respondent.

#### LEFT SHOULDER INJURY.

Claimant also contends that she suffered a compensable injury to her left shoulder as a result of her job activities with the respondent. Claimant's claim is not for a specific

injury identifiable by time and place of occurrence but rather is a claim for a gradual onset injury resulting from job duties over a period of time. In order to prove a gradual onset injury, claimant has the burden of proving by a preponderance of the evidence: (1) that she sustained an injury which arose out of and in the course of her employment; (2) that caused internal or external harm to the body which resulted in disability or the need for medical treatment; (3) that was caused by rapid repetitive motion; (4) that the injury was the major cause of the disability or need for treatment; and (5) must establish the injury by medical evidence supported by objective findings. A.C.A. §11-9-102.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left shoulder while employed by the respondent.

While claimant contends that she was having problems with her left shoulder at the time of her initial visit to Dr. Floyd for her hands on August 31, 2004, Dr. Floyd's medical reports do not contain a notation of any left shoulder complaints. In fact, the first medical record submitted into evidence mentioning left shoulder complaints is Dr. Griffin's medical report of December 2, 2004. At that time the claimant reported an eight-month history of left shoulder pain but denied any injuries. Dr. Griffin assessed claimant as suffering from impingement syndrome and ordered an MRI scan. Following the MRI scan claimant was eventually referred to Dr. Bolyard. Dr. Bolyard's report of February 17, 2005 indicates that claimant gave a history of no inciting event as causing her left shoulder problems.

Significantly, the first recorded complaints of left shoulder pain did not occur until December 2004, more than three months after claimant last worked for the respondent. Furthermore, claimant admitted that she was not sure if she ever reported a left shoulder problem to the respondent. Claimant admitted at the hearing that she did not tell anyone at respondent that her problems with the left shoulder were caused by work and indeed

admitted that she did not know the cause of her left shoulder problem. As with claimant's bilateral carpal tunnel syndrome, no treating physician has opined that claimant's left shoulder condition is causally related to her employment with the respondent.

In summary, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her left shoulder injury is causally related to her employment with the respondent. Here, the medical records do not reveal any left shoulder complaints until more than three months after claimant last worked for the respondent. By claimant's own admission, she did not report any left shoulder problems to the respondent and admittedly does not know the cause of her left shoulder injury. Given all this evidence, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left shoulder.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered compensable injuries in the form of bilateral carpal tunnel syndrome or an injury to her left shoulder while employed by the respondent. Therefore, claimant's claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE