

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413061

JEANNE CUMPTON	CLAIMANT
GEORGIA PACIFIC CORPORATION, SELF INSURED	RESPONDENT
SEDGWICK JAMES MANAGEMENT	RESPONDENT

OPINION FILED OCTOBER 25, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by REX CHRONISTER, Attorney, Fort Smith, Arkansas.

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 26, 2005, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on May 19, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced that they could agree on the appropriate compensation rates and these specific amounts were noted in the pre-hearing order. A copy of the pre-hearing order with these notations made thereon, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 9, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$378.00 for

total disability and \$284.00 for permanent partial disability.

3. The claim is now controverted in its entirety.

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

1. whether the claimant sustained a compensable injury to her right shoulder on March 9, 2004.
2. The claimant's entitlement to the payment of medical expenses including recommended surgery.

In regard to these issues, the claimant contends:

"Claimant contends that she injured her arm while lifting a gate and is in need of ongoing medical treatment possibly to include surgery."

In regard to these issues, the respondents contend:

"Respondents contend that claimant is not entitled to the requested benefits. While claimant may be able to establish that an incident occurred while working for the respondent-employer which arose out of and in the course of her employment with the respondent-employer on or about 3-9-04, this incident did not result in objective findings of any injury to her right shoulder, but merely signs of a pre-existing degenerative condition. Respondents respectfully reserve the right to supplement this response upon the completion of discovery."

DISCUSSION

_____The first issue to be addressed in this case is the question of whether the claimant sustained a "compensable injury" to her right shoulder on March 9, 2004. The burden rests upon the claimant to prove all of the facts necessary to establish a "compensable injury" on that date.

First, Ark. Code Ann. §11-9-102(4)(D) requires the claimant must first prove by medical evidence, which is supported by “objective findings,” the actual existence of the physical injury or condition alleged to be compensable. The medical evidence presented by the claimant in this case is sufficient to satisfy this requirement. The presence of a physical injury to the claimant’s shoulder has been diagnosed by Dr. Allen Lukasek (the company physician), Dr. Stephen Heim (an orthopaedic surgeon), and Dr. R. Doug Foster (an orthopaedic surgeon, who evaluated the claimant at the respondents’ request). The medical evidence further shows the presence of objective abnormalities on radiographic findings and MRI studies to support this diagnosis. Therefore, the claimant has satisfied the statutory requirements for a “compensable injury” as set out in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that this medically established and objectively documented physical injury to her right shoulder also satisfies the definitional requirements for a compensable injury found in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) That the physical injury or condition arose out of and occurred in the course of the employment;
- (2) That the physical injury or condition was caused by a specific incident;
- (3) That the physical injury or condition is identifiable by time and place of occurrence;
- (4) That the physical injury or condition resulted in internal or external physical harm to the

claimant's body;

- (5) That the physical injury or condition required medical services or resulted in disability.

As is usually the case, the only direct evidence presented by the claimant to prove the first three of these definitional requirements is her own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean that it is to be simply disregarded. If credible, the testimony of a party may be sufficient, in and of itself, to prove any fact that it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident and to further establish the existence of a close temporal relationship between such an incident and the onset of difficulties indicative of the occurrence of the physical injury.

The claimant testified that on March 9, 2004, she was proceeding to her assigned work station to begin her employment activities. In order to reach her assigned work station, she had to lift and hold up a "gate" or portion of the conveyor system. She testified that she lifted this "gate" with her right arm and immediately experienced a sudden onset of severe burning pain in her right shoulder. She further testified that Tammi Jones (Atwell) was with her at the time and that she advised Ms. Jones of the onset of her difficulties. It was her testimony that, once at her work station, her shoulder continued to burn and hurt every time she was required to reach for something. On her first break (approximately 8:30 a.m.), she went to the nurse's station and

reported the incident and her complaints to the company nurse. She was given Advil and returned to work. She testified that at approximately 3:30 p.m. on that date she filled out a safety report on the incident and gave it to her supervisor, Tommy Wagner.

It was the claimant's testimony that she continued to work, but also continued to experience difficulties with her shoulder for which she took over the counter medication. When her difficulties had not resolved some two to three weeks later, the respondents sent her to the company doctor, Dr. Allen Lukasek. She testified that, when the treatment by Dr. Lukasek did not resolve her difficulties, she consulted Dr. Stephen Heim, an orthopaedic surgeon. Dr. Heim had previously treated her for difficulties with her elbow. In October of 2004, she stated that Dr. Heim had recommended arthroscopic surgery. She stated that the respondents ultimately sent her to Dr. Doug Foster (also an orthopaedic surgeon) and that he, too, recommended the same surgical procedure. The claimant testified that although she has also continued working, she has continued to experience difficulties with her shoulder and desires the surgery recommended by Dr. Heim and Dr. Foster.

In her testimony, the claimant conceded that she was involved in a motor vehicle accident on February 15, 2005, when the vehicle in which she was riding was "rear ended." She stated that in this accident she sustained injuries to her low back and pain into her right hip and leg. She also described difficulties with her neck or cervical spine, which may have extended into her shoulders.

However, it was her testimony that this accident resulted in no increase or change in her right shoulder condition or difficulties. She stated that she did not recall whether she had advised Dr. Foster of this motor vehicle accident.

The claimant's testimony concerning the events occurring on March 9, 2004, and the onset of her right shoulder problems is corroborated by the testimony of Tammi Jones, a co-employee. Since the respondents have not bothered to offer any records in their possession to the contrary (concerning the claimant's reporting of this incident and filling out the appropriate paper work on the same date), it would appear that such evidence would also corroborate the claimant's testimony. The medical histories of the onset of her difficulties (as related to all her treating physicians and to Dr. Foster) corresponds to the history and description given by the claimant at the hearing.

The medical evidence shows that the type of injury diagnosed and the objective defects noted on the radiographic studies are consistent with the trauma or mechanism of injury described by the claimant as occurring on March 9, 2004. While the radiographic studies and the reports of Dr. Lukasek refer to degenerative changes of the AC joint of the shoulder, all of the physicians appear to attribute the onset of and continuation of the claimant's symptoms to an injury produced by the incident of March 9, 2004. The mere fact that the claimant may have had some pre-existing degenerative changes does not preclude her from having a compensable injury. Clearly, an aggravation of a pre-existing

condition may also represent a compensable injury.

It is interesting to note that the respondents' expert, Dr. Foster, is adamant in his opinion concerning the existence of a causal relationship between the claimant's current right shoulder difficulties with her need for the recommended medical treatment and the employment related incident of March 9, 2004. In his report of June 17, 2005, he states:

"(My) impression at this time is underlying rotator cuff teninopathy exacerbated by an on-the-job injury. In my opinion, this is work related. This is based on the patient's history and symptomology as well as my medical opinion that there are subclinical rotator cuff tears that can be linear or not complete that can develop after a trauma (in this situation) and result with persistent symptomology needing treatment. In my opinion, this is Ms. Cumpton's problem. If she has exacerbation of an underlying problem, it is clearly the result of an on-the-job injury that now needs treatment."

The medical evidence presented concerning the claimant's subsequent motor vehicle accident also effectively corroborates the claimant's testimony that this accident had no effect on her right shoulder difficulties. A handwritten progress note, by a Dr. Ted Hood of the Pro-Med Clinic in Van Buren, records the following history:

"Car wreck 2/15/05. Hit from behind, right knee pain-into shoulder, chest pain, right leg pain-radiating into foot."

However, this same report makes a diagnosis of only injuries in the form of cervicalgia-right hip to radiation. In his more legible type written note of that same date, Dr. Hood stated:

"Chief complaint: Neck and right leg pain."

History of present illness: Ms. Jeanne Cumpton is a 48 year old female who was involved in a motor vehicle accident on 2-15-05 as she was hit from behind. Please note that her vehicle was one of three vehicles involved in the motor vehicle accident, and hers was the lead vehicle. She was a restrained passenger in the front seat. Her vehicle was able to be driven away from the scene. There was no deployment of air bags. She comes in for evaluation of this problem. "

In his physical examination, he only noted that "when the claimant turns her head towards the left, she experiences pain along the superior border of her right trapezius." He also recorded complaints of some discomfort in her chest, but with no localizing point tenderness. Finally, he observed tenderness to palpitation lateral to the right sacral area. His diagnosis is again given as "cervicalgia and right hip pain status post MVA." No mention is made that he observed any particular difficulties involving the claimant's right shoulder and no injury to this area was diagnosed. A subsequent report by the physical therapist, dated March 8, 2005, also fails to note that the claimant was experiencing any difficulties with her right shoulder as a result of the motor vehicle accident.

Finally, the record shows that the claimant has a rather lengthy period of employment for this respondent. The claimant has worked for the respondent since she was approximately 21 years old, a period consisting of some 17 years. The evidence further reveals the claimant to be well motivated. She has continued to maintain regular full-time employment with the respondent, even though she has continued to experience difficulties with her shoulder and has

continued to be in need of appropriate medical treatment.

After consideration of all the evidence presented, I find the claimant's testimony to be credible and to accurately depict the circumstances and events that occurred on March 9, 2004, and her condition involving her shoulder both before and after that date. Thus, the claimant has proven the occurrence of a specific employment related incident on March 9, 2004, and the contemporaneous initial onset of her difficulties indicative of a physical injury to her right shoulder. The evidence further shows that the specific incident or accident described by the claimant could have reasonably produced the diagnosed or medically established injury to her right shoulder. There is no evidence of any other reasonable explanation that would explain the presence of this injury. This is sufficient to prove the existence of a causal relationship between the described specific employment related incident of March 9, 2004 and the medically established and objectively documented physical injury to her right shoulder. Thus, she has satisfied the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

The medical evidence presented clearly proves the two remaining requirements of Ark. Code Ann. §11-9-102(4)(A)(i). All of the physicians, who have seen the claimant for her right shoulder difficulties, have diagnosed a physical injury that produced some degree of internal physical harm to the claimant's body. This internal physical damage is further shown by the objective radiographic studies and MRI scan. It is also the clear

opinion of all these physicians that the claimant's difficulties with her right shoulder has required medical treatment. In fact, it is the opinion of both the orthopaedic experts that further medical treatment for the claimant's compensable injury continues to be required.

In summary, I find that the claimant has proven by the greater weight of the credible evidence that she sustained a compensable injury to her right shoulder on March 9, 2004. Thus, it becomes necessary to determine the nature and extent of benefits to which the claimant is entitled for this compensable injury.

Clearly, the claimant would be entitled to reasonably necessary medical services for this compensable injury, Ark. Code Ann. §11-9-508. However, the burden rests upon the claimant to prove that the medically services provided and recommended actually constitute such "reasonably necessary medical services." Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The record reveals that the medical services provided the claimant for her right shoulder difficulties by and at the direction of Dr. Allen Lukasek, Dr. Heim, and Dr. Foster were all necessitated by or connected with the claimant's compensable injury. All of these services were directed toward the accurate diagnosis of the nature and extent of this injury, the treatment of the underlying physical damage caused by the compensable injury, or

the alleviation of the symptoms this compensable injury produced. All of the services provided by these physicians were of a type and nature commonly recognized by the general medical community as being appropriate to accomplish these purposes.

The medical services recommended by Dr. Heim and Dr. Foster (exploratory and corrective arthroscopy) are also services necessitated by and connected with the claimant's compensable injury. This type of procedure is commonly employed in both the diagnosis and treatment of injuries such as that sustained by the claimant. It is clearly the expert opinions of Dr. Heim and Dr. Foster that these services have a reasonable expectation of its desired purposes. Both of these physicians are orthopaedic surgeons with substantial expertise in the area of medicine associated with the diagnosis and treatment of injuries involving the shoulder. It cannot be presumed that they would recommend any procedure that would be inappropriate or unnecessary.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that the medical services provided her for her right shoulder difficulties (beginning on March 31, 2004), by and at the direction of Dr. Allen Lukasek, Dr. Stephen Heim, and Dr. Robert Foster constitute reasonably necessary medical services for her compensable injury. It is my further opinion that the greater weight of the credible evidence establishes that the arthroscopic procedure recommended by Dr. Heim and Dr. Foster also constitutes reasonably necessary medical services for the claimant's

compensable right shoulder injury. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services. However, this liability is subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 9, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On March 9, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$378.00 for total disability and \$284.00 for permanent partial disability, when and if such benefits become appropriate.
4. On March 9, 2004, the claimant sustained a compensable injury to her right shoulder. Specifically, the claimant has proven that on that date she sustained a physical injury to her right shoulder that is established by the medical evidence, that is supported by "objective findings," that arose out of and occurred in the course of her employment with this respondent, that was caused by a specific incident, that is identifiable by time and place of occurrence, that caused internal physical harm to this portion of her body, and that required medical services.
5. The medical services provided to the claimant by and at

the direction of Dr. Allen Lukasek, Dr. Stephen Heim, and Dr. Robert Foster all constitute reasonably necessary medical services for the claimant's compensable injury. The arthroscopic procedure and additional treatment recommended by Dr. Heim and Dr. Foster also constitutes reasonably necessary medical services for the claimant's compensable injury.

6. The respondents have denied the occurrence of any compensable injury to the claimant's right shoulder and have controverted this claim in its entirety.
7. As no controverted benefits have herein been awarded to the claimant, no fee can be awarded to the claimant's attorney, at this time.

ORDER

The respondents are liable for the expense of the medical services provided to the claimant for her right shoulder difficulties by and at the direction of Dr. Lukasek, Dr. Heim, and Dr. Foster. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

