

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F409556 (2/21/04) & F 409557 (9/29/03)

HERMAN HAMPTON, EMPLOYEE	CLAIMANT
CRANE CO. - KEMLITE, EMPLOYER	RESPONDENT
AMERICAN INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 28, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 4, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE TODD WILLIAMS, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Ft. Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claims to determine the claimant's entitlement to workers' compensation benefits.

On November 23, 2004, a pre-hearing conference was conducted in these claims, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Herman Hampton, the claimant; John Rowell; Antwaun Sanders; and Tony Hanusowski, coupled with medical reports and other documents comprise the record in

these claims.

DISCUSSION

Herman L. Hampton, the claimant, with a date of birth of May 4, 1964, commenced his employment with respondent on January 28, 2002. Claimant's highest level of education includes two and one-half (2 ½) years of college. Prior to becoming an employee of respondents claimant discharged duties at the facility of respondents from July 2001, as an employee of StaffMark, a temporary employment agency.

It is undisputed that claimant had previously suffered injuries to his shoulders for which he had undergone surgeries. A review of claimant's prior medical history reflects an onset of bilateral shoulder complaints growing out of his employment with the Sanitation Department of the city of Jonesboro in July 1992. Further, the medical reflects that claimant underwent two (2) surgeries on his right shoulder, August and September 1996, and one surgery relative to the left shoulder in December 1997. (JX. #1, p. 87-95).

Following claimant's December 1997, left rotator cuff repair surgery under the care of Dr. Henry F. Stroope, a Jonesboro orthopedic surgeon, he remained off work until June 9, 1998, when released to restricted duties. As of July 21, 1998, claimant was released to return to activities as tolerated.(JX. #1, p. 97). There is no evidence in the record to reflect that claimant again sought medical treatment relative to shoulders complaints following the July 21, 1998, release until March 8, 1999. Claimant received medical treatment for a diagnosed spur in the left shoulder in March and April 1999. During a April 22, 1999, visit, claimant was released to return to activities as tolerated, and to be seen on an as needed basis. (JX. #1, p. 98-99).

On August 31, 1999, claimant returned to Dr. Stroope in follow-up for his left rotator cuff

repair. X-ray examination of claimant's left shoulder disclosed some heterotopic ossification along the acromioclavicular ligament which was bigger than it was during the prior April 1999, visit. Dr. Stroope attributed the afore as the source of the claimant's left shoulder pain. As a consequence, Dr. Stroope recommended an open anterior acromioplasty to resect his heterotopic ossification and a distal clavicle excision. The August 31, 1999, chart note concluded:

At this point Mr. Herman Hampton does not wish to have surgery right now and will call and let me know when he wishes to have surgery and I would like to see him back in a month just to see how he is doing and he will consider scheduling surgery at that point. (JX. #1, p. 100).

Claimant was seen by Dr. Stroope on October 5, 1999, pursuant to the August 31, 1999, chart note. After reciting the results of his examination of the claimant during the October 5, 1999, visit, the clinic note reflects:

At this point, Mr. Hampton doesn't really want anything done to his shoulder despite having x-rays previously which showed heterotopic anterior acromial spurring subsequent to his previous open anterior acromioplasty.

As long as he is asymptomatic with this and is functioning well, then nothing need to be done. If, however, in the future he develops some anterior acromial pain or pain with overhead use of his arm, I would recommend a repeat open anterior acromioplasty. I will see him on an as needed basis. (JX. #1, p. 101).

There is no evidence in the record to reflect that claimant sought or required medical treatment relative to either his left or right shoulder subsequent to the October 5, 1999, visit to Dr. Stroope until September 2003.

While employed by Best Diversified claimant suffered a fracture to a finger while discharging employment duties which required medical treatment on September 28, 2000. (JX.

#1, p. 102-103). Dr. Michael Lack served as the treating physician for employees of Best Diversified relative to work related injuries, and, as such provided medical treatment to the claimant for the injuries sustained in the employment of same. From January 2, 2001, through March 29, 2001, claimant treated with Dr. Lack for complaints relative to his left wrist. During the initial January 2, 2001, visit, the office note of Dr. Lack recites the following history of the claimant's complaint:

“States L wrist has been hurting - 1 month. Can't really think of a specific injury. His job requires his to push conveyors on the skid. Doesn't know if that caused it or not. One day his wrist just started hurting.” (JX. #1, p. 104).

Although the records of Dr. Lack placed restrictions of “no repetitive tight gripping with hand or wrist movement”, during the final visit of March 29, 2001, the work-relatedness of the claimant's left wrist complaints was “undetermined”. (JX. #1, p. 104-116a). Claimant noted that the pain experienced relative to his left wrist during his employment with Best Diversified was located on the outer of his left wrist/hand along the area of his little finger. (CX. #2).

The credible testimony of the claimant reflects that at the time he commenced his employment with respondents he did not experience any limitation/restrictions relative to either his shoulders or left wrist. From July 2001, until January 2002, claimant discharged duties at the facility of respondent as an employee of StaffMark. Claimant's testimony reflects that during the afore he consistently inquired of supervisory personnel of respondents regarding the availability of employment with same. As previously noted, there is no medical evidence in the record to reflect that claimant sought or required medical treatment relative to either his left wrist or either shoulder subsequent to March 29, 2001. Claimant's testimony reflects that he lifted weights,

hunted, fished and played football as recreational activities during his employment by respondents.

Claimant actually commenced discharging duties at the facility of respondent in July 2001, as an employee of a temporary agency, StaffMark. Claimant discharged the duties of a front utility. Claimant explained the duties of “front utility”:

When you come in you come in at the front of the line.
You do what your lead man or inspector whatever they ask you
To do. You cut tubes or run the coiler or do cut downs. It
varies. (T. 57).

Claimant performed the job as a front utility just over a year. In January 2002, when he became an employee of respondents, claimant continued to perform the job of front utility until a job called “extra man” opened in the back.

Claimant performed the “extra man” job and later became an impregnator. In describing the job duties of an impregnator claimant testified:

Really you inject gel coat and resin and everything into,
you make it with the glass and then you’ve got to watch the line,
it’s really kind of complicated to explain, the work you do back
there. (T. 58).

Claimant denies that he encountered any trouble with either his shoulders or wrist while performing the jobs.

In the spring of 2003 claimant became a feed inspector. Claimant’s testimony reflects that he performed the feed inspector job for several months before he was hurt on September 29, 2003. Claimant’s description of the job duties of a feed inspector reflects:

Basically you watched the panels, looked for defects of
anything that you find that’s wrong with the panel, you mark it
with stickers and then you have to do a lot of writing. You do a

lot of writing. That's basically all you do, you know, you watch the panel. And then you and the paint inspector you decide if it's A grade, a good panel or a B grade, bad panel.(T. 60).

Claimant performed other tasks as a feed inspector to include "rolling the film":

Okay. Rolling the film, it happens, it depends. If the line walks the line goes down, so you roll film until you get it clear or until you get the soft gel coat and then you cut that and I pull it off the line and put it on the floor and we start breaking the panel, throwing it in a dumpster behind us. Then when we get it soft enough to where we can roll it up again, we roll it up until we get clear film and we holler in the back and tell them we've got clear film, to cut the line off before it starts pumping gel coat.

* * *

Yes. First you get the hard panels when the line goes down mostly from the oven. From the back to the front is 300 feet. So, you've got hard panels from there all the way up. From there after they may be soft because they've got to turn their pumps and stuff off because it's liquid and gas coming down.

* * *

Sometimes more. It depends on what you're working with. You know, if you're running a lot of pieces during the day you may find that some of them may be an eighth over so that means you can't use it or, you know, it may be a defect. (T. 60-62).

Claimant provided testimony relative to the speed with which he rolled the film. While confirming that the line usually runs at 23 linear feet per minute. Claimant's testimony further reflects, regarding the job task:

And that's pretty fast. You may not realize how fast that is but that's pretty fast. So, I'm standing right to left, my right shoulder pointing toward the machine so I'm flipping left to right.

* * *

This is how fast we're doing (indicating), the same speed I'm doing it. Sometimes, you know, when it's slower you will be flipping and we'll sit for a second and flip it and then you get it so big where he'll say let's go ahead and cut it so we reach across halfway and cut it with a knife, both of us cut it with a knife and pull it to my side and pull it to the floor and throw it in the dumpster and then we start right back over again. (T. 73-74).

Claimant is 6'2 ½ " tall and weighs approximately 265 pounds. Regarding the nature and extent of his complaints relative to his shoulders, in addition to his testimony, claimant presents the testimony of Antwaun Sanders and John Rowell. During the pertinent time period, claimant was a B inspector. The credible testimony of the claimant reflects that while placing a core tube on the coiler he felt a "pop" in his left shoulder as well as a pulling sensation in the right shoulder. Claimant present credible testimony of the maneuver utilized by him in placing the core tube on the coiler alone. Claimant acknowledge that the job task of placing the core tube was a two-person job, however maintains that is routinely performed by one individual when pressed for time and a lack of available assistance.

Claimant was lifting a core tube that was 100" long and 20" in diameter, weighing between 78 and 80 pounds, at the time he suffered his injury. Claimant's testimony reflects that due to his height, the manner in which he replaced the core tube was to lean it forward so that he could get his foot under it, raise it up over head, and shove it onto the core. At the time of his injury, claimant noted that when he raised the tube overhead he momentarily lost his balance, and that while adjusting the tube he experienced the pop in his left shoulder and the downward pulling sensation in the right shoulder. (T. 67-68) Claimant successfully place the core tube, and afterward reported the incident to his supervisor, Mr. Antwaun Sanders, the lead operator.

The testimony of the claimant reflects that after notifying Mr. Sanders of his accident, the production supervisor, Mr. John Rowell, was summoned. Claimant's testimony reflects that upon Mr. Rowell's arrival he relayed the accident to same. Claimant noted that Mr. Rowell carried a small notepad in his pocket on which he recorded the incident and later entered the information in the larger log maintained by respondents for documenting injuries. Claimant

acknowledged that he informed both Mr. Sanders and Mr. Rowell that while he felt that he had injured his shoulders he was not experiencing pain. Claimant completed his shift on the date of the occurrence. Claimant noted that he did not begin to experience pain in his shoulders and left wrist until after he had arrived home, showered and was attempting to lay down.

Claimant's testimony reflects that when he reported for work during his next scheduled shift, he informed the production supervisor, John Rowell, that his shoulders and left wrists were hurting as a result of his accident involving the core tube. Claimant's testimony reflects that he complained to the lead man, Antwuan Sanders, as well as to Mr. Rowell. Claimant continued to discharge his regular job duties while complaining of pain and the need for medical treatment.

The testimony of Mr. Antwaun Sanders reflects that during the September 2003, time period he performed the job duties as lead operation, and as such was claimant's supervisor. Mr. Sanders testified that on or about September 29, 2003, claimant reported to him that he had an accident/incident while replacing a core tube in which he injured his shoulders. Mr. Sanders' testimony reflects that the production supervisor, John Rowell, was notified of the claimant's complaint. Thereafter, Mr. Sanders provided testimony regarding claimant's complaints of shoulder pain and left wrist pain and swelling, as well as claimant's efforts to obtain medical treatment for his complaints.

Mr. Sanders noted that claimant was working with another employee, Chris Baker, at the time of the September 2003, incident. The testimony in the record reflects that Mr. Baker, who is no longer employed by respondent and has moved out of the area, witnessed the claimant's accident and confirmed the event during the investigation by supervisory personnel of respondents. Mr. Sanders specifically testified that he observed swelling in the claimant's left

wrist in addition to claimant's appearance of pain and discomfort in the shoulders, all associated with the September 2003, incident.

Mr. John Rowell, production supervisor for respondent, testified that in September 2003, he was notified to the claimant's shoulder complaint attributed to lifting a core tube. Mr. Rowell was informed of the claimant's complaint by the lead man, Mr. Antwaun Sanders. Mr. Rowell acknowledged that prior to September 2003, claimant had performed his job duties without complaints or restrictions relative to his shoulders. Mr. Rowell further testified that when he discussed the claimant's September 29, 2003, incident, claimant appeared to be is some discomfort. Mr. Rowell asserts that he recorded the incident in the log book of respondents the day following the incident.

Mr. Rowell testified that a First Report of Accident/Injury was not completed until claimant was referred for medical treatment. As a consequence of the afore, while the document completed by Mr. Rowell relative to the September 29, 2003, incident reflects as the date of the report "09/29/03", since arrangements were not made for claimant to receive medical treatment until February 2004, the date is not accurate. (CX. #1)

Mr. Rowell's testimony reflects that at the time he investigated the September 29, 2003, incident involving the claimant, the accident was witnessed by Chris Baker, a co-worker of the claimant who confirmed the claimant's account of the incident, lifting the core tube. On February 21, 2004, claimant reported another work incident involving the left wrist. Claimant was working with Myron Prunty at the time of the February 21, 2004, incident. The testimony in the record reflects that claimant and Mr. Prunty were working together when claimant's left wrist got pinned.

Claimant's testimony reflects that in November 2003, he complained to Mr. Rowell that he was in need of medical treatment for both his shoulders and left wrist, attributable to the September 29, 2003, accident. Claimant was encouraged to wait until after the holidays before obtaining medical treatment. Claimant's testimony reflects that several days to a week prior to a scheduled February 2, 2004, appointment with Dr. Michael Lack, respondents' designated medical provider, he was informed by Tom Waleszonia, the human resource manager at the time, of the scheduled appointment. During the February 2, 2004, visit to Dr. Lack claimant relayed complaints regarding his left wrist, as well as both shoulders, which he attributed to September 29, 2003, accident in the employment of respondents. Further, claimant was provided medical treatment by Dr. Lack for complaints relative to his left wrist and shoulders commencing with the February 2, 2004, visit. Claimant was provided a splint for his left wrist pursuant to the directions of Dr. Lack. Claimant continued discharging employment duties following the February 2, 2004, visit to Dr. Lack.. Claimant wore the brace/splint on his left wrist as he continued to discharge employment duties subsequent to February 2, 2004.

On February 21, 2004, claimant suffered an injury to his left wrist while discharging employment duties. At the time of the February 21, 2004, incident claimant was working with Myron Prunty and was in the process of changing the core tube out of the oven. Regarding the mechanics of the accident, claimant's testimony reflects:

The guy on the other side of the line let go of his end too soon and my side dropped on my wrist and pinned my wrist between this little bead that you sit the bar in between.

* * *

It had my hand in a weird position that come down on top of it so me and Myron had both, you know, reached in with

both hands. Well, Myron one hand, took both hands and picked it up so I could get my wrist out of it.

* * *

It hurt it pretty bad. I had th brace on. (T. 81).

Following the February 21, 2004, incident, the injury was reported to John Rowell, who on February 23, 2004, completed a First Report of Accident/Injury Form. (CX. #1). Claimant continued working following both incidents and did not miss any time from work. Claimant explained that in his continuing to work he tried to do as little lifting as possible. Claimant denied doing any further lifting of the core tubes following the February 21, 2004, accident.

Claimant continued to see Dr. Lack following the February 21, 2004, incident. Claimant noted that while respondents paid for or authorized several visits for medical treatment relative to his shoulders and wrist, there came a point they refused to authorized or pay for the treatment. After initially declining of to file his claim for medical treatment with his group health care provider, claimant eventually relented. Claimant explained that his refusal to file the claim with the group health care provider grew out of the fact that the injury and need for medical treatment was the product of work-related injuries.

The first physician to see the claimant following the February 21, 2004, left wrist accident was Dr. Lack, the company doctor, on March 15, 2004. Because the claimant had been previously seen and treated by Dr. Lack for his left wrist complaints in conjunction with his shoulder complaints growing out of the September 29, 2003, work accident, the March 15, 2004, visit was identified as “F/U L wrist pain”. The office not reflects the entry, with respect to the claimant’s complaint, “less swelling and pain over the extensor tendons”. The assessment of

claimant's complaint, as reflected in the March 15, 2004, report of Dr. Lack, is "DeQuervan's tenosynovitis, left wrist", which was the same assessment during the prior February 16, 2004, visit. (JX. #1, p. 128-130). Further, the medical reflects that during the February 16, 2004, visit of the claimant for his complaints of bilateral shoulder and left wrist pain, Dr. Lack recommended a orthopedic referral. (JX. #1, p. 127).

On March 25, 2004, claimant was seen at the emergency room of Regional Medical Center of NEA for complaints relative to his left wrist. Claimant related his need for treatment to an on the job injury in February 2004. The emergency room records reflect that claimant was directed to follow-up with Dr. Lack, and that claimant "may need injection(s) and orthopedic referral". (JX. #1, p. 131).

On March 26, 2004, claimant was again seen by Dr. Lack pursuant to the directions of the emergency physician relative to his left wrist complaint. Following his examination of the claimant, Dr. Lack noted in his March 26, 2004, report:

I do not think this condition will get better without an orthopedic evaluation and injection of thumb. Numbness in fingers probably second problem and not related to tenosynovitis. Pt may have CTS, however, treatment NASID and not pinch grip. Pt cannot perform these movement with splint. (JX. #1, p. 137).

The March 26, 2004, of Dr. Lack does reflect that the claimant's problem was work related. Restrictions of the claimant's employment activities included "no repetitive tight gripping with hand or wrist, wear splint/brace at work". The report also reflects a referral to an orthopedist, Dr. Spencer Guinn. (JX. #1, p. 137).

The medical in the record reflects that claimant was seen by Dr. Spencer H. Guinn, a Jonesboro orthopedic physician, on April 5, 2004, pursuant to the referral of Dr. Lack.

Claimant's chief complaints at the time of the April 5, 2004, visit to Dr. Guinn were bilateral shoulder pain, left wrist pain, and left hand numbness. Following his examination of the claimant and review of diagnostic studies, to include x-ray, Dr. Guinn's assessment of the claimant's complaint included: bilateral shoulder AC degenerative joint disease with subacromial impingement and rotator cuff tendonitis status-post open rotator cuff repair; De Quervain's left wrist; and probable left carpal tunnel syndrome. Medical treatment provided to the claimant by Dr. Guinn included injections in both shoulders, scapular and rotator cuff strengthening programs, medication (Bextra), a splint, and arranging an EMG nerve conduction studies.(JX. #1, p. 144-145).

On April 14, 2004, claimant underwent electrodiagnostic studies under the direction of Dr. Terence P. Braden at the request of Dr. Guinn, which disclosed no evidence of median nerve entrapment at the wrist, arm, and no radial sensory injury. (JX. #1, p. 142).

Claimant was seen in follow-up by Dr. Guinn on May 18, 2004. In his office note relative to the May 18, 2004, visit, Dr. Guinn observed:

Mr. Hampton reports that he continues with significant pain in his shoulders and in his wrist. Didn't receive really any relief from the injections. He has been wearing his splint and doing his therapy. He states he can't sleep. Physical exam is essentially without change. I had a very lengthy discussion with his about continuing non-operative versus operative treatment. He wants to go ahead and proceed with surgery. His EMG results were also reviewed with him about possible carpal tunnel and they were normal. We are going to get him set up for a left shoulder open distal clavicle resection, acromioplasty, and possible rotator cuff repair, plus an open left de Quervan's release. (JX. #1, p. 145).

On June 16, 2004, Dr. Guinn met with Ms. Kathy Ray, a medical management coordinator

assigned to the claimant's claim, and reviewed the claimant's past medical history. At the conclusion of the meeting Dr. Guinn noted that he would meet with the claimant again to get a better picture of the time frame of the claimant's prior injuries relative to his employment with respondents and the current injuries. (JX. #1, p. 146).

Pursuant to the above, on June 23, 2004, Dr. Guinn met with the claimant. After reciting the claimant's current complaints, the June 23, 2004, office of note of Dr. Guinn reflects:

. . . We reviewed at length his prior surgeries, as well as his his prior work and his current work. He states he did very well with both shoulders after his surgery and he was doing well until he took his current job. Before he injured these at work, he was able to play basketball, hunt, fish, etc., and seems to be quite active. He also did not have any of his de Quervain's symptoms before his new job. I think it is quite clear from discussing with him that the shoulders and the left wrist are related to his activities at work and we will be back in contact with his case manager to discuss this in further details. (JX. #1, p. 146).

On July 27, 2004, was seen by Dr. Mark S. Harriman, a Memphis orthopedic surgeon.

Dr. Harriman's report relative to his evaluation of the claimant reflects that he was asked to do an independent medical examination. In addition to noting the claimant's employment history with respondent, the report further reflects:

. . . . He has been with them about three years. He is here for my evaluation concerning compensability for injuries that he alleges he has sustained at work. I have reviewed records from treating physicians, including Dr. Guinn in Jonesboro. This gentleman does have a past history of shoulder problems bilaterally. In 1993 he underwent arthroscopy of the right shoulder and later an open rotator cuff repair. In 1995 he underwent an open rotator cuff repair of the left shoulder. He said He did very well following these surgeries and up until his recent injuries at work, he was playing basketball on a regular basis without any difficulties.

* * *

IMPRESSION: It is my opinion that this man has bilateral shoulder impingement syndrome and possible rotator cuff tears. I believe that both shoulders are due to his work environment and due to the work that he was performing around September 2003. I do not believe that his old shoulder surgeries have any significant bearing on his current symptoms. In addition, I think he has work related de Quervain's of the left wrist. (JX. #1, p. 148-149).

On September 23, 2004, claimant underwent surgeries on his left wrist and left shoulder under the care of Dr. Guinn. Claimant returned to the employment of respondents on or about January 4, 2005. The cost of the procedures was filed with the claimant's group health care provider. Claimant asserts entitlement to temporary total disability and medical benefits relative to the injuries of September 29, 2003, and February 21, 2004.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers Compensation Commission has jurisdiction of these claims.
2. At all times pertinent, the relationship of employee-employer-carrier existed among the parties.
3. At all times pertinent to these claims, the claimant earned an average weekly wage of \$523.00, which would entitle him to weekly compensation benefits of \$349.00/262.00, for temporary total/permanent partial disability.
4. On or about September 29, 2003, the claimant sustained injuries to both shoulders and his left wrist arising out of and in the course of his employment.

5. On February 21, 2004, the claimant sustained an injury to his left wrist arising out of and in the course of his employment.

6. The claimant was temporarily totally disabled for the period September 23, 2004, and continuing through January 4, 2005.

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injuries of September 29, 2003, and February 21, 2004.

8. The respondents have controverted the payment of these claims in their entirety.

CONCLUSION

Claimant asserts that he suffered two (2) specific incident injuries within the course and scope of his employment with respondents, September 29, 2003, and February 21, 2004, which required medical treatment and rendered him totally incapacitated from engaging in gainful employment from September 23, 2004, through January 4, 2005. Claimant seeks corresponding temporary total and medical benefits relative to the afore as well as controverted attorney fees. Respondents deny compensability of the claims.

The present claims are governed by the provisions of Act 796 of 1993, in that claimant seeks workers' compensation benefits for injuries having been sustained subsequent to the effective date of the afore provisions. The claimant has the burden of proving the compensability of his claim by a preponderance of the evidence. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). An accidental injury is caused by a specific incident, identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4) (A) (i) (Supp. 2001). In order for an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that the injury caused physical harm to the body; that the injury arose out of

and in the course of employment; and that the injury required medical services or resulted in disability or death. Further, the claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. § 11-9-102 (4) (D). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Mullican*, 58 Ark App. 275, 950 S.W.2d 472 (1997).

It is undisputed that claimant had suffered prior injuries to both shoulders for which he had undergone surgeries before his employment by respondents. There is no evidence in the record to reflect that claimant was experiencing difficulties or limitations performing his assigned job duties in the employment of respondents prior to September 29, 2003. Claimant commenced his employment with respondents in January 2002. Further, the credible evidence in the record that reflects that claimant engaged in an active physical recreational lifestyle after recovering from his last left shoulder surgery, for which he last he was seen on October 5, 1999.

There is not a dispute regarding the claimant's job duties during his employment with respondents. Among the job tasks performed by the claimant was the activity of rolling/flipping film. Claimant began performing the duties of a feed inspector in the spring of 2003. Rolling the film entailed rapid repetitive motion. Claimant did not experience symptoms relative to the left wrist until after the September 29, 2003, bilateral shoulder injury. Diagnostic studies disclosed the De Quervain's tenosynovitis. Dr. Mark S. Harriman opined in his July 27, 2004, report that the claimant's de Quervain's was work related.

The credible evidence in the record preponderates that on or about September 29, 2003, while discharging employment duties for respondents, claimant suffered a specific incident injury

to both shoulders while lifting a core tube. The accident with was witnessed by a co-worker and reported to appropriate supervisory personnel of respondents. Claimant's immediate supervisor, Antwaun Sanders, also observed swelling in the claimant's left wrist. Further, Mr. Sanders corroborated claimant's testimony with respect to the reporting of the September 29, 2003, accidental shoulder injuries to the production supervisor of respondent-employer, John Rowell. The mechanics of the claimant's September 29, 2003, injuries are not disputed. The evidence preponderates that while the injury was initially recorded in a pocket-size note book of Mr. Rowell on the dated of the reporting, it was not transferred to the log book of respondent by Mr. Rowell until some time later. An incident/accident report was not completed by Mr. Rowell until arrangements were made for the claimant to obtain medical treatment by respondents in February 2004.

There is no prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). The claimant must only prove that the occurrence of the injury is capable of being identified. *Id.* In the present claim, the evidence preponderates that claimant sustained his bilateral shoulder injuries on September 29, 2003. Further, in addition to the documented reporting of the September 2003, injury, claimant has been consistent in the history of his injury provided to his treating and/or examining physicians.

The evidence discloses that Dr. Guinn, the claimant's treating physician relative to the compensable injuries of September 29, 2003, had access to the claimant's prior pertinent medical records, and concluded the claimant's need for medical treatment, to include the surgeries to the left shoulder and left wrist, was the product of claimant's employment activities of September

29, 2003. Respondents secured the services of Dr. Mark S. Harriman, a Memphis orthopedic surgeon, to address the compensability of the claimant's bilateral shoulder injuries and left wrist complaint. Dr. Harriman also concluded that the claimant's injuries and need for medical treatment grew out of claimant's employment with respondents.

The claimant has sustained his burden of proof by a preponderance of the evidence that he suffered bilateral shoulder injuries as well as work related de Quervain's tenosynovitis of the left wrist arising out of and in the course of his employment. Respondents have controverted the compensability of the claimant's injuries. Claimant was rendered temporarily totally disabled for a period of fourteen weeks and six days as a result of his injuries and surgeries relative to the compensable injuries. Claimant was released to return to work on January 4, 2005, following his September 23, 2004, surgeries. (JX. #1, p. 155).

The parties stipulated that during the period that claimant was off work recovering from his September 23, 2004, surgeries, he received a total gross amount of \$4,280.60, leave, vacation, holiday and short term disability benefits. Ark. Code Ann. § 11-9-411, provides

- (a) Any benefits payable to an injured worker under this chapter shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the injured workers has previously received for the same medical services or period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract.

Clearly those benefits paid to the claimant pursuant to short term disability program of respondents are subject to the provisions of Ark. Code Ann. § 11-9-411 (a). However, those benefits comprising the total gross amount of \$4,280.60, which are the product of leave, vacation

and holiday pay are not subject to the afore provision. *Dollarway School District v. Barbara Lovelace*, ____ Ark. App. ____, ____ S.W.3d ____ (February 23, 2005).

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at the week compensation benefit rate of \$349.00, for the period beginning September 23, 2004, and continuing through January 4, 2005, as a result of the claimant's compensable bilateral shoulder injury of September 29, 2003, and left wrist injury of February 21, 2004. Said sums accrued shall be paid in lump without discount. Respondents may claim credit pursuant to Ark. Code Ann. § 11-9-411(a) for short term disability benefits paid to the claimant during the afore period.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses, to included medical related travel, growing out of the claimant's compensable injuries of September 29, 2003, and February 21, 2004.

Respondents are further ordered and directed to reimburse the group health care carrier for sums expended on behalf of the claimant relative to the compensable injuries of September 29, 2003, and February 21, 2004.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted portion of this award relative to the indemnity benefits, pursuant to Ark. Code Ann. § 11-9-715, §11-9-801, and WCC Rule 10. The claimant's portion the controverted attorney fee shall be withheld from and paid out of indemnity benefits and remitted by respondent, directly to claimant's attorney.

This award shall bear interest at the legal rate, pursuant to Ark. Code Ann. § 11-9-809,

until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge

CONCLUSIONS