

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412576

RAMONA HARVELL	CLAIMANT
PSC INDUSTRIES, INC.	RESPONDENT
EMPLOYERS INS. CO. OF WAUSAU INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 15, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JOE BYARS, Attorney, Fort Smith, Arkansas.

Respondents represented by JEFFREY RICKARD, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 14, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 14, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 1, 2004, the relationship of employee-employer-carrier existed between the parties.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to her neck, head, shoulders and arms.

2. Related medical.

3. Temporary total disability from October 2, 2004, to a date to be determined.

4. Claimant's correct compensation rate.

5. Attorney's fees.

In regard to the foregoing issues the claimant contends that she suffered a compensable injury arising out of and in the course of her employment with the respondent. The respondent employer failed to pay temporary total disability from October 1, 2004, through a date yet to be determined. On October 1, 2004, the claimant was performing employment services for her employer and injured her neck, head, shoulders, as well as numbness in her arms and back, which constituted an accidental injury and the major cause of her temporary total disability and the need for additional medical treatment. The claimant's compensable injury is the major cause of her temporary and/or permanent disability and need for treatment. The claimant suffered an accidental injury arising out of and in the course of her employment with the respondent, PSC Fabricating, when her injuries occurred, as described in Ms. Harvell's medical records.

In regard to the foregoing issues the respondents contend that they have provided medical evaluation and treatment to the claimant while continuing our investigation into compensability. The respondents contend that the claimant is not entitled to temporary total disability benefits. Pursuant to Ark. Code Ann. §11-9-102(4)(B)(iv), the claimant did not sustain a compensable injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted joint medical records marked Joint Exhibit No. 1 and the respondents submitted non-medical records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she began working for the respondent in January 2004. The claimant testified that the respondent makes a plastic part, a gasket, which were then packed into boxes for shipping. The claimant testified that on October 1, 2004, she had been stacking boxes all day onto skids. The claimant explained that each skid was stacked to a height which was approximately one foot taller than she was and that the top layer of boxes the bottom of the box would be at about the level of her forehead. The claimant stated that it was almost at the end of her shift and that the last box that she was putting over her head, she heard a pop in her neck and it felt like she had been hit by a bolt of lightning. The claimant stated that she felt numbness and tingling in her arms and neck and that it kind of stunned her. The claimant testified that she was able to clean up her area and clock out. The claimant testified that she told some people in the check out line what had happened but she cannot remember their names and that at the time she thought she had just strained a muscle. The claimant testified that if she had seen her supervisor she would have reported it to her but that she did not see her. The claimant

testified that over the weekend she experienced pain in her head, shoulders and back with a lot of numbness and tingling. The claimant stated that she treated these symptoms with a heating pad, used BenGay as well as ice packs and tried to rest. The claimant testified that her daughter also gave her massages.

The claimant testified that she returned to work on Monday and reported her injury to her supervisor, Diana Hutchins. The claimant testified that she reported to Ms. Hutchins that she had hurt her neck the Friday before lifting a box over her head just before going home. The claimant stated that Ms. Hutchins is familiar with her job so she put her on light duty. The claimant testified that she was put on a job working at a table tearing gaskets apart. The claimant testified that the table she was working on was approximately chest level. The claimant testified that she did ask to see a doctor and was told that the supervisor would have to check into it because she was unsure about the rules. The claimant testified that she worked all week at this light duty job and that she continued having pain in her back, neck, shoulders and head. The claimant stated that on Friday she again asked Ms. Hutchins about seeing a doctor and Ms. Hutchins told her that she would have to get with Tommy and she would get back with her. The claimant stated that by now she was having tingling and numbness that went down her arms and into her fingers and that she had pain in her shoulders as well as being very stiff and miserable. The claimant testified that she began work on Monday at light duty but on Tuesday she again inquired of Ms. Hutchins about seeing a doctor

and was told that she had forgotten to speak to Tommy. The next day, Wednesday, the claimant testified that Ms. Hutchins reported that she had talked to Tommy and that he was having to check with corporate. The claimant testified that she was continuing to work light duty but was having difficulty performing the job. The claimant testified that on Friday she again asked if Tommy had talked with corporate and when she learned that he had not she demanded to see a doctor.

The claimant testified that on the following morning she was not able to go to work because she was in so much pain. The claimant testified that she went into work the next day to find out if they were going to send her to a doctor. The claimant testified that she worked until 9:00 at which time her pain was so bad she had to go to the emergency room. At the emergency room the claimant testified that she reported that she had hurt her neck at work lifting a box and that she was in a lot of pain with numbness and tingling in her arms. The claimant testified that the ER doctor recommended an MRI, prescribed medications and gave her a shot. The claimant testified that the day after her MRI she went in and spoke with Tommy Denham who had her fill out paperwork and that Mr. Denham made her an appointment to see the company doctor.

The claimant testified that the respondents sent her to Dr. Clark and that she saw him after she had already been to the ER and had her MRI. The claimant testified that she provided her records for Mr. Clark and that he issued work restrictions for her which were provided to the respondent. The claimant testified that she

began working at a table at a height of about chest high using her hands and arms putting parts together. The claimant testified that she had problems doing this job because she was having pain in her neck, shoulders and numbness into her hands. The claimant testified that there still were boxes that she ended up having to lift which were in excess of her weight restriction.

The claimant testified that Dr. Clark referred her to Dr. Sudbrink who placed other restrictions on her which she provided to the respondent verbally. The claimant testified that again the work that she was called upon to do were outside her restrictions which continued to cause her more problems. The claimant testified that she continued to report to her employer that her job requirements were beyond her restrictions and causing her problems but that no changes or modifications were made to her work. The claimant testified that she last worked for the respondent on November 29, 2004, and has not been employed since that date. The claimant explained that due to her physical problems and pain in her neck, numbness in her shoulders and pain and tingling in her hands and headaches, she is unable to be employed.

The claimant testified that in 1998 she had problems with her throat which caused her to be hoarse and have difficulty talking. The claimant testified that she was treated by Dr. Hunton for a mass in her neck which caused her pain at the time. The claimant further explained that she had a feeling of choking when she was swallowing food which is a much different feeling than what she is currently experiencing with her neck and shoulders. The claimant

testified that she also was treated by Dr. Robin Cox for this soft tissue mass in her neck.

The claimant testified that while working for the respondent she earned \$7.26 per hour and worked a forty-hour week on the average. The claimant testified that she has missed time off work but those were for personal matters such as surgery for her daughter and for her sister and once for a sinus infection. The claimant testified that from the time she began to work for the respondent in January 2004 until her injury she did not have any difficulty with her neck or shoulders.

On cross examination, the claimant agreed that in her deposition they discussed an incident where a cinder block fell and hit her on her left arm at home. The claimant also agreed that after she reported her injury to her supervisor, Ms. Hutchins, she went to see a doctor on her own at Sparks on October 19, 2004. The claimant stated that she would disagree with the Sparks' report which sets forth that her injury occurred at home. The claimant agreed that before October 1, 2004, she had received a couple of employee warnings for absences from the respondent. The claimant further agreed that on August 9, 2004, she was given a final notice that if she missed any more work she would be terminated. The claimant testified that she did not remember missing work on September 30 nor does she remember having a doctor's appointment that morning. The claimant identified her signature on the bottom of a vacation request leave form dated September 30, 2004, but stated that she does not have a copy of that absentee form in her

personal files. The claimant testified that she did not miss any work from the time she reported her injury to her supervisor until she first went to the doctor on October 19, 2004. The claimant agreed that her last day of work for the respondent was November 29, 2004, and that the reason for her leaving her job was because she was not able to do it any longer. The claimant agreed that no one with the respondent told her that she could not come to work but that she made that determination herself.

On redirect examination, the claimant stated that as to the absentee forms which are filled out and signed when she was to be absent or had been absent from work, she does not read these forms when they are presented to her by the respondent but just signs her name to them. The claimant testified that she does not believe that she missed the day before her injury.

The claimant's daughter, Ashley Davis, testified that she sees her mother everyday. This witness testified that in early October she recalls her mother coming home from work having neck problems. Ms. Davis testified that from January 2004 to October 2004 her mother did not have complaints of neck problems. This witness testified that after her mother reported to her that she had been injured at work, she had very limited activities during the weekend. This witness testified that she now has to assist her mother with various things due to her mother's limited ability to lift as she once did.

Deanna Hutchins testified that she was a supervisor for the respondent and was so employed on October 1, 2004. Ms. Hutchins

testified that sometime in October 2004 the claimant began to complain with problems in her neck and shoulder and asked to be moved off of her job but did not report a work related injury. Ms. Hutchins testified that if the claimant had reported a work related injury, she would have reported it to Tommy and he would have sent her to the doctor. This witness testified that when an employee sustains a work related injury, they typically have a drug test. Ms. Hutchins testified that work on the scrapping table which is where she moved the claimant after she complained with her neck and shoulders is considered to be light duty work. Ms. Hutchins testified that the boxes would weigh approximately five pounds because the product is real light weight foam. Ms. Hutchins testified that they have six scrapping tables of varying heights. This witness testified that the scrapping tables would be anywhere from chest high to waist high and that the claimant could have worked at any one of these table that she wanted to. Ms. Hutchins testified that it was approximately two to three weeks after the claimant asked to work light duty before she asked to be seen by a doctor. This witness testified that once the claimant reported a work related injury she went to Tommy and told him that the claimant had hurt her shoulder at work and needed to see a doctor. Ms. Hutchins testified that the claimant did not tell her that she needed to see a doctor before that time. Ms. Hutchins testified that the claimant was sent to the doctor that day and that she came back from the doctor with restrictions which the respondent accommodated. Ms. Hutchins explained that the absentee forms are

filled out from the time cards that the employees punch. Ms. Hutchins agreed that in the regular course of their business practices, these absentee sheets are always filled out each Friday. This witness testified that the claimant never did complain to her that the job she was working at the scrapping table did not meet her restrictions. This witness explained that if the claimant had made such a complaint, she would have gone to Tommy and they would have found something else for her to do. Ms. Hutchins testified that she recalls the claimant coming into work with a place on her arm that was bandaged and that she told her that a cinder block had fallen on her arm and that some of the cement had gotten into her arm and she was going to have to go to the doctor to get it out.

On cross examination, Ms. Hutchins testified that the claimant was a good worker, on time and diligent in performing her work responsibilities. Ms. Hutchins testified that when the claimant reported to her that her shoulder was bothering her and asked to be moved to another job she did not ask her what caused her problems and the claimant did not tell her what was the cause of her problems. Ms. Hutchins testified that after a couple of weeks of working at the scrapping table, she moved the claimant back to the assembly table and at that time she asked her how she hurt her shoulder and the claimant told her that she did not know. This witness testified that she put the claimant back on the regular assembly table for a week or so and then she reported that she had got hurt at work lifting boxes. This witness was asked if prior to October 1 if the claimant had exhibited any conduct that would lead

her to believe that she may be abusing drugs or any other substance and this witness responded, "No."

Leslie Trammell testified that she was a laborer for the respondent and worked across from the claimant. This witness testified that the claimant did tell her that she was having problems with her arm and shoulder hurting but did not state from what. Ms. Trammell testified that the claimant did not report this to her supervisor. Ms. Trammell testified that it was her opinion that the claimant did not report this as a work related injury because the claimant had expressed to her that she was fearful that her drug test would come up dirty. Ms. Trammell testified that the claimant continued to work for two or three weeks and when she reported her problem to her supervisor she was moved immediately to light duty. Ms. Trammell testified that the scrapping tables vary in height and that a worker basically can choose which table they wish to work at. This witness testified that the heaviest thing she would be required to lift while working on the scrapping table would probably be a couple to three pounds.

On cross examination, Ms. Trammell testified that she and the claimant worked very close together for several months. Ms. Trammell agreed that the claimant did complain about her arm hurting prior to October 2004. Ms. Trammell testified that the claimant had hurt her arm and had a big mark on it as well as having to have surgery to remove some of the cement from her arm. Ms. Trammell testified that she does not know an exact date when the claimant began complaining about her left arm, she just knows that once she

started complaining about her arm it was three or four weeks before she ever reported it to the supervisors and went to the doctor. Ms. Trameil testified that she and the claimant were friends and hung out together. This witness testified that the claimant basically would tell her everything that was going on. Ms. Trameil was asked if the claimant told her that she was hurt at work and this witness responded, "She said she didn't know how she got hurt."

On redirect examination, Ms. Trameil testified that the claimant had been making complaints about her arm for two or three or four weeks before she told her supervisor. This witness stated that they kept telling the claimant to tell Diana and she will move you immediately but that the claimant just waited for three or four weeks.

Angela Cummings testified that she was working for the respondent around October 1, 2004, and worked with the claimant. This witness testified that she remembers coming to work one day and the claimant telling her that she had hurt herself lifting a box at work. Ms. Cummings stated that she recalls the claimant being moved to light duty several weeks after she first started complaining about her shoulder. This witness testified that the claimant told her that she needed to wait to report her accident until she could pass the test. This witness testified that she was familiar with the work being done at the scrapping tables and stated that the lifting requirement would be no more than ten pounds. Ms. Cummings further stated that the scrapping tables vary

in height but they would be from about waist to chest high. Ms. Cummings testified that you can do the work at the scrapping tables any way that you want to even up close to your body if you need to but that there is no requirement for lifting above your head.

On cross examination, Ms. Cummings testified that she and the claimant worked side by side until the claimant was moved to the scrapping tables. This witness testified that she was absent one day and when she came back the claimant told her that she had hurt her shoulder the day that she was absent. Ms. Cummings testified that the claimant also had complaints about her neck after she told her that she had hurt her shoulder.

ON rebuttal, the claimant testified that she never made any statements to Ms. Trammell or Ms. Cummings about being concerned about taking a drug test. The claimant testified that she never did complain to these two witnesses about having shoulder problems before she reported it to her supervisor.

The medical records set forth that in 1998 the claimant was seen and treated for a mass in her neck as well as thyroid problems. An MRI of the claimant's cervical spine was done on May 15, 1998, which was within normal limits. From March 2000 through June 2000 the claimant was treated for complaints of low and mid back pain but reported no injury. On August 18, 2003, the claimant was seen at St. Edwards Mercy Medical Center as a result of a fall and injury to her right forearm and right hand. The claimant had follow up treatment for her right-hand problems at the Wister

Oklahoma Medical Center the following day and an x-ray of the claimant's hand was unremarkable.

The medical records related to this matter set forth that on October 19, 2004, the claimant was seen at the Sparks Emergency Room with complaints of neck and left shoulder pain, noting that she was injured three weeks ago while lifting. The ER notes indicate that this injury happened at home. An MRI of the claimant's cervical spine and left shoulder done on October 21, 2004, show that she has a small right para central herniated disc at C7 and that she has suspected mild tendinitis of the supraspinatus tendon with no definite tear identified. This MRI also indicates an incidental small bone cyst in the left humeral head. Dr. Robert Frazier writes on October 22, 2004, that he has discussed the claimant's MRI reports with her and has prescribed medications as well as a referral to a neurosurgeon for evaluation. On October 28, 2004, it is noted that the claimant should return to work with the following restrictions; no lifting over ten pounds, no pushing or pulling over ten pounds and no repetitive motions. Thus report indicates that the date of accident was October 15, 2004. The claimant was seen at the Sparks Emergency Room on November 10, 2004, for complaints of neck pain which radiates down into her back with numbness and tingling, noting that she hurt her neck at work about three weeks ago. Dr. David Wayne Sudbrink writes on November 15, 2004, that he has injected the claimant's shoulder but she is not experiencing any relief of her discomfort. The doctor writes that the claimant seems to have a bursitis

impingement type pattern of pain but does not respond to the injection. Dr. Sudbrink notes that the claimant's MRI does not really disclose any specific pathology as far as any other source of pain so it is possibly that the neck is her problem and a neurosurgical evaluation is appropriate. The doctor recommended restrictions of no working away from her body with her arms and that her work height should be waist high or lower. The claimant was seen at the Sparks Emergency Room on November 29, 2004, with complaints of neck pain. After medications were prescribed, the claimant was discharged.

After a complete review of the testimony and evidence, I find that the claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury to her neck and shoulder on or about October 1, 2004. The claimant has testified to a specific incident occurring on October 1, 2004, when lifting the very last box onto a skid at the very end of her work shift for the week. The claimant has testified that she reported a work related injury to her supervisor, Diana Hutchins, on the following Monday when she reported to work and that her supervisor put her on light duty at that time. Ms. Hutchins testified that the claimant did report that her shoulder was hurting and asked to be put on a lighter duty job which was done. Ms. Hutchins testified that several weeks later the claimant did report to her a work related injury at which time paperwork was filled out and she was sent to the company physician. When the claimant was first seen at the Sparks ER for complaints of her shoulder and neck on

October 19, 2004, it is noted that her injury occurred at home. A later medical report sets forth that the claimant reports that her injury happened on October 15, 2004. It is also noted that several of the witnesses have testified that the claimant did not report a work related injury to them but did have complaints about her neck and shoulder not knowing how her problems began. Therefore, I find that there is too much conflicting evidence on which to support a compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 1, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury on October 1, 2004, while working for the respondent. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury while working for the respondent on October 1, 2004. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE