

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401766

KELLY HONEYSUCKLE

CLAIMANT

CITY OF FAYETTEVILLE

RESPONDENT

MUNICIPAL LEAGUE WC TRUST,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in  
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by KEITH WREN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 14, 2005, in Springdale, Arkansas. A pre-hearing order had been entered in this case on December 27, 2004. 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. At the commencement of the hearing, the claimant withdrew his request for temporary total disability benefits. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

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

1. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$ 357.00 for total disability and \$268.00 for permanent partial disability.
3. The claimant sustained a compensable injury to his right elbow.
4. The medical expenses have been paid through May 12, 2004.

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's left shoulder difficulties represent a compensable consequence of the claimant's compensable right elbow injury.
2. The claimant's entitlement to the payment of medical expenses, by and at the direction of Dr. Sites on and after October 21, 2004.
3. Appropriate attorney's fees.

In regard to these issues, the claimant contends:

"Claimant was injured on January 30-31, 2004. He had repetitious motion in swinging a sledge hammer on a daily basis due to his job which required driving metal stakes in to the ground in order to set forms for sidewalks and driveways. This daily activity caused him to develop pain in his arm."

In regard to these issues, the respondents contend:

"Respondents contend claimant did not sustain a compensable injury."

## DISCUSSION

\_\_\_\_\_ At this point, I would take the opportunity to note that the medical indexes for both parties erroneously identify the handwritten reports of Dr. Stevan Van Ore as being records from the Lowell Medical Clinic. Dr. Van Ore is in no way associated with the Lowell Medical Clinic, but in fact maintains his own family medical clinic, known as Med Chek First. According to the claimant's testimony, Dr. Van Ore was his regular family physician at the time of his admittedly compensable right elbow injury.

### I. COMPENSABILITY OF THE CLAIMANT'S LEFT SHOULDER DIFFICULTIES

The claimant contends that he has sustained a physical injury or damage to his left shoulder as a "compensable consequence" of his admittedly compensable right elbow injury. The burden rests upon the claimant to prove this allegation.

In order to meet his burden, the claimant must not only show that he has

sustained a physical injury or damage to his left shoulder as a natural and probable consequence of his admittedly compensable right elbow injury. He must further prove that this left shoulder injury or damage satisfies all of the other statutory elements for a "compensable injury" provided by the Act. After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove that his alleged difficulties with his left shoulder represent a "compensable" consequence of his admittedly compensable right elbow injury.

First, the only evidence to prove the actual existence of any physical injury or damage to the claimant's left shoulder is his own subjective complaints of pain or discomfort in this area. There is no evidence of any "objective findings" to support the existence of such an injury. There is no indication of radiographic abnormalities involving his left shoulder. There is no mention on physical examinations of any swelling, lack of passive range of motion, effusion of the joint, crepitus, or any other objective abnormality. Thus, the claimant has failed to show that his alleged left shoulder difficulties would satisfy the statutory elements of compensability contained in Ark. Code Ann. §11-9-102(4)(D).

Secondly, the only direct evidence presented by the claimant to prove that his left shoulder difficulties were a natural and probable consequence of his compensable right elbow injury is his own testimony. In his testimony, the claimant stated that he had never experienced any difficulties with his left shoulder, prior to the admittedly compensable injury to his right elbow. He further testified that his left shoulder difficulties only appeared when he began to rely more on the use of his left arm to perform both his employment duties and the day to day activities of life, due to the effects of his compensable right elbow injury. He stated that he has continuously experienced difficulties with his left shoulder thereafter. It was his testimony that he advised Dr. Sites of his left shoulder difficulties on his first visit (March 17,

2004) and continued to advise him of such difficulties on every subsequent visit thereafter. The claimant conceded that he did not mention any difficulties with his left shoulder, when he completed the employee's first report of injury to the respondent. He explained this failure as being due to the fact that his shoulder "wasn't injured at that time." A copy of the employee's first report of injury was not introduced, making it impossible to determine when this form was completed. However, by February 16, 2004, the respondent clearly had knowledge or notice of the claimant's compensable right elbow injury and had referred the claimant to the Arkansas Occupational Health Clinic of the Lowell Medical Center, the company physicians. The claimant also conceded that in March of 2004, he was involved in a motor vehicle accident, but denied that it caused any injury to his left shoulder or had any effect on his left shoulder complaints. Finally, the claimant conceded that he had received three felony convictions in 2001 for forgery and obtaining prescriptions of drugs by fraud.

The claimant's testimony, concerning the onset of his left shoulder difficulties, is not supported by all the other evidence presented. There is no mention of any left shoulder complaints in the reports and records of Dr. Van Ore between December 17, 2003 and June 11, 2004. Although Dr. Van Ore does note complaints involving the claimant's right shoulder, the first mention of any difficulties involving his left shoulder is not found until Dr. Van Ore's report of June 11, 2004. This would be over six months following the onset of the claimant's right elbow difficulties and four months following his termination by the respondent. According to the claimant's testimony, for the majority of this period he had not performed any employment activities or any activities requiring extensive use of either upper extremity.

The records and reports of the Lowell Medical Clinic also failed to note any complaints involving the claimant's left shoulder, either at the time of his initial

evaluation on February 16, 2004, or at any time thereafter. The same is true for the physical therapy records. The respondent's witnesses, who were both in supervisory positions over the claimant during his employment with the respondent, testified that the claimant made no complaint of any left shoulder difficulties to them at any time.

There is no mention in the initial report of Dr. Sites (dated March 17, 2004) of any complaints or difficulties involving the claimant's left shoulder. Somewhat contrary to the claimant's testimony, the records of Dr. Sites show a relatively rapid improvement in the claimant's right elbow difficulties. The physical therapy records indicate that the claimant was essentially "pain free" in regard to his right elbow and was discharged from further physical therapy on April 28, 2004. In his visit on May 12, 2004, Dr. Sites noted that the claimant's right elbow was doing better and he released him from further care with no residual impairment. However, he did indicate that the claimant should permanently avoid doing repetitive type work with his right upper extremity. The first record in Dr. Sites' reports of any mention of difficulties involving the claimant's left shoulder is contained in his report of October 21, 2004. At that time, Dr. Sites merely noted that the claimant was also complaining of some left shoulder pain. No onset date is indicated and Dr. Sites in no way attributes these new complaints to the effects of the claimant's right elbow epicondylitis.

After consideration of all the evidence, it is my opinion that the greater weight of the credible evidence fails to show a reasonably close temporal relationship between the onset of any symptoms involving the claimant's left shoulder and any excessive use of his left arm due to the effects of his admittedly compensable right elbow injury. When the claimant first complained of difficulties in this area, his symptoms with his right elbow had significantly resolved and the restrictions on the use of his right arm had been substantially reduced. Clearly, there could be any number of reasons for the claimant's alleged discomfort in his left shoulder. This

would be particularly true in light of the fact that there is no medical evidence establishing any particular physical cause or etiology for this discomfort and no objective findings to even substantiate its actual presence. Therefore, I find that the claimant has failed to prove by the greater weight of the credible evidence that his alleged difficulties with his left shoulder are the natural and probable result of his compensable right elbow injury.

In summary, I find that the claimant has failed to prove that his compensable right elbow injury has resulted in any compensable consequence or complication involving his left shoulder. Thus, he would not be entitled to any benefits under the Act for his alleged left shoulder difficulties. Any claim for benefits attributable to these difficulties must be denied and dismissed.

## II. ADDITIONAL MEDICAL SERVICES

The final issue concerns the claimant's entitlement to additional medical services by and at the direction of Dr. Sites that were provided on and after October 21, 2004. In order to be entitled to such benefits, the claimant must prove that the medical services in question represent "reasonably necessary medical services" for his compensable injury. For the reasons stated in the foregoing section of this Opinion, any medical services provided for the claimant's left shoulder difficulties would not represent reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508. However, the reports of Dr. Sites indicate that the services he provided to the claimant, on and after October 21, 2004, were directed primarily (if not solely) toward chronic difficulties involving the claimant's right elbow.

In order to represent "reasonably necessary medical services," these medical services must still be necessitated by or connected with the claimant's initial compensable right elbow injury. The medical evidence shows that this compensable

right elbow injury was in the form of lateral epicondylitis. There is no evidence that the claimant had previously suffered from epicondylitis of his right elbow or experienced any difficulties with his right elbow prior to his admittedly compensable injury. As noted by Dr. Sites, in his report of April 7, 2004, this type of injury "can be slow to heal." Although Dr. Sites notes, in his report of May 12, 2004, that the claimant's compensable right elbow injury is doing better, he does not conclude that the claimant's compensable right elbow injury had entirely resolved. In fact, during this visit he noted the continuation of some mild complaints. When the claimant returned to Dr. Sites, on October 21, 2004, he was experiencing essentially the same difficulties with his right elbow that he exhibited in March and April of 2004. Dr. Sites physical examination was also essentially identical to his prior examinations made during March and April of 2004. Dr. Sites' diagnosis of the etiology of the claimant's complaints continued to remain that of left epicondylitis. There is no credible evidence that the claimant experienced any new or subsequent injury to his right elbow.

In a narrative report of December 9, 2004, Dr. Sites opines:

"This (lateral epicondylitis) is a condition which often times is chronic and can be very difficult to eradicate. Most patients will get better over 12-24 months. Approximately 5% may require operative treatment. Repeated intermittent cortisone injections can be helpful as well."

Curiously, Dr. Sites goes on to note that approval had been obtained from the workers' compensation for such a cortisone injection, and that one had been given on that date.

After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence establishes that the medical services provided to the claimant Dr. Terry Sites, on and after October 21, 2004, were

necessitated by or connected with the claimant's compensable right elbow injury. These services also had a reasonable expectation of accomplishing the purpose or goal for which they were intended (i.e. resolving the flare-up in the claimant's symptomology). Therefore, these medical services represent "reasonably necessary medical services" within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of such services, subject to the Commission's medical fee schedule.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The claimant sustained a compensable injury to his right elbow, in the form of lateral epicondylitis.
4. The claimant has failed to prove that any difficulties which he has allegedly experienced with his left shoulder represent a compensable consequence of his compensable right elbow injury. Specifically, he has failed to prove by medical evidence, supported by objective findings, the actual existence of any physical injury or damage to his left shoulder and has further failed to prove that these alleged difficulties would be the natural and probable consequence of the compensable injury to his right elbow.
5. The claimant would not be entitled to any benefits provided by the Act for the alleged difficulties involving his left shoulder.
6. The medical services provided the claimant by Dr. Terry Sites for his continued right elbow difficulties, on and after October 21, 2004,

represent reasonably necessary medical services for the claimant's compensable right elbow injury. Pursuant to Ark. Code Ann. §11-9-508, the expense of these services are the liability of the respondents herein, subject to the medical fee schedule established by this Commission.

7. The respondents have denied that any alleged difficulties with the claimant's left shoulder represent a compensable consequence of his admittedly compensable right elbow injury and controvert the claimant's entitlement to any benefits attributable to these difficulties. The respondents also controvert the claimant's entitlement to any additional medical services by and at the direction of Dr. Sites after May 12, 2004.
8. As no controverted benefits have been awarded which are payable directly to the claimant, no controverted attorney's fee can be awarded at this time.

#### ORDER

The respondents shall be liable for the expense of medical services provided to the claimant for his compensable right elbow injury by Dr. Terry Sites on and after October 21, 2004. This liability is subject to the medical fee schedule established by this Commission.

For the reasons heretofore set forth in this Opinion, any and all claims for benefits attributable to the alleged difficulties with the claimant's left shoulder must be and hereby are denied and dismissed.

For the reasons heretofore stated in this Opinion, no controverted attorney's fee can be awarded to the claimant's attorney at this time.

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.

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MICHAEL L. ELLIG  
Administrative Law Judge