

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F403943**

**RICHARD D. HUGHEY**

**CLAIMANT**

**WOODMASTER BUILDING**

**RESPONDENT EMPLOYER**

**LIBERTY MUTUAL**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 4, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on November 17, 2004. A prehearing conference was held on September 8, 2004 and a prehearing order was filed on September 9, 2004. The prehearing order was introduced into evidence as Commission Exhibit No. 1 without objection.

At the prehearing conference, the parties agreed there was an employer-employee relationship on October 2, 2003.

The claimant contends that he sustained compensable injuries to both of his shoulders as a result of his work activities and he has incurred medical expenses.

The respondents contend that the claimant has not sustained compensable injuries to both of his shoulders. The injury is a gradual injury for which there is a different standard of proof.

Issues to be litigated:

1. Compensability of a gradual onset injury.
2. Medical benefits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on October 2, 2003.
2. The claimant has failed to prove by a preponderance of the evidence that he has sustained rapid repetitive shoulder injuries arising out of his employment.

**DISCUSSION**

The claimant, 41 years old, worked for the respondent employer as a subcontractor for about five years and then became an employee and worked about five months before his shoulder problems began. The claimant built storage buildings, custom cabins and the shop itself. The claimant moved to Arkansas from Texas and took an empty building and made a full blown production shop. The shop builds kits that are picked up by contract builders and taken to sites and assembled. These kits are storage buildings, cabins and other buildings.

According to the claimant, he spent the first three months after coming to

Arkansas, actually building a production center in the building itself. The claimant built the chop saw table, the rafter table, door table, door boxes and trim box, as well as various other construction. The claimant worked 8 to 15 hours per day. According to the claimant, his shoulder problems began about the time he finished building the production shop and starting the production. The claimant puts two to four kits together per day, which is repetitive and requires one to work with speed. If kits are not being put together, the claimant is sawing lumber and stocking the shop. These activities require lifting, using a nail gun, using a drill and a paint roller.

The claimant described his shoulders as being stiff and sore and hurting. According to the claimant, he asked his supervisor about seeing a doctor but he had to wait until his health insurance became available. MRI's revealed a tear in both shoulders with the left arm more severe than the right. The claimant had surgery on his left shoulder and had to be off work about four months with working only 15 hours per week doing paperwork and overseeing the kit production.

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(A), defines a "compensable injury as":

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

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

The test for determining whether an injury is caused by rapid repetitive motion is two pronged: (1) the tasks must be repetitive; and (2) the repetitive motion must be

rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998).

Multiple tasks involving different movements can be considered together to satisfy the “repetitive element” of rapid repetitive motion. *Malone*, citing *Baysinger v. Air Systems, Inc.*, 55 Ark. App. 174, 934 S.W.2d 230 (1996). However, proof of rapid repetitive motion is not required when a claimant contends that she sustained a compensable carpal tunnel syndrome injury. *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D); Ark. Code Ann. §11-9-102(16). Finally, the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4)(E)(ii); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998).

In the present case, the claimant sustained shoulder injuries as the result of gradual activities. In order for the claimant to prevail with a compensable gradual onset injury, he must prove his condition developed as the result of rapid repetitive activity. While the claimant was a very credible witness who described his work activities, it was very apparent the activities were repetitive; however, the rapid element was not as easily developed. The claimant testified that he had to work quickly in order to build the required number of kits per day and that he had to work rapidly to build the production center to produce the kits; however, the rapid portion of his work was not as easy to quantify. The claimant’s work was more construction rather than assembly line work. In cases where the court has held that the claimant’s work met the rapid

repetitive requirement, there has been some statistical data presented such as the data presented in *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). In *Estridge*, our Supreme Court agreed with the Commission that the claimant inspected approximately 6.5 parts per minute (96 parts every 15 minutes), and made two neck movements per part; therefore, claimant would engage in thirteen neck movements per minute and this was substantial evidence to support the rapid repetitive motion requirement was satisfied.

Also, in *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998), the claimant used an air gun to assemble blocks, with a quota goal of 1,000 units per day. She would hold the parts of the unit with her left hand and work the air gun with her right hand to attach two nuts to each block, averaging attachment of one nut every fifteen seconds. Her job required three maneuvers to be repeated in succession all day; assembling the separate parts, using the air-compressed equipment to attach the parts together with nuts, and throwing the units into a box. This was found to satisfy the rapid repetitive requirement.

While I found the claimant to be a very credible hard working individual who most likely did sustain his shoulder injuries in the course and scope of his employment, I am not able to find that the rapid repetitive requirement of the statute has been satisfied. Thus, I find the claimant has failed to prove by a preponderance of the evidence that he has sustained rapid repetitive shoulder injuries arising out of his employment.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that he has

sustained rapid repetitive shoulder injuries arising out of his employment. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**