

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F313423 (12/15/03); F404779 (5/27/03) & F306027 (1/10/03)

ETHEL JONES, EMPLOYEE

CLAIMANT

SANYO MANUFACTURING CO., EMPLOYER

RESPONDENT

MITSUI SUMITOMO INS. CO., CARRIER

RESPONDENT

OPINION FILED MAY 16, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 13, 2005, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT J. DONOVAN, Attorney at Law, Marianna, 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 March 22, 2005, a pre-hearing conference was conducted in these claim, from which a Pre-hearing Order of 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 the issues. Claimant withdrew her claimant for benefits relative to the December 15, 2003, claimed head injury, WCC #F313423. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Ethel Jones, the claimant, and Charlotte Gibson, coupled with medical

reports and other documents comprise the record in these claims.

DISCUSSION

Ethel Mae Jones, the claimant, with a date of birth of November 22, 1949, has an eighth grade education. Claimant commenced her employment with respondents on August 28, 1970, and remained continuously so employed until December 1987, at which time there was a reduction in force and she was laid-off. In 1994, claimant returned to the employment, and remain so to date.

During the course of her employment with respondents claimant has performed a variety of jobs. Respondents is a manufacturer of televisions. Claimant acknowledged that prior to 1987 lay-off she had experienced complaints of pain in her wrists, however she did not obtain medical treatment relative to same. Claimant attributed to afore complaints to her employment activities with respondents. Upon returning to the employment of respondents in 1994, claimant was assigned to different job duties. Claimant discharged her job duties from an assembly line commencing in 2001.

The testimony in the record reflects that the claimant's job duties on the assembly line are hand-intensive. Among her responsibilities on the assembly line is a 4-spot cut in the chassis board, inserting wires in the component of the television tube, removing the cabinet.

On January 10, 2003, while sitting at her work-station on the assembly line discharging assigned job duties, claimant suffered an injury to her shoulder and neck when she was jammed into the assembly line by a parts hamper from behind. Claimant's testimony reflects that she had to be assisted by co-workers and supervisors in being extricated from between the assembly line and the parts hamper. The injury was reported to appropriate supervisory personnel and claimant was directed to the plant nurse, Ms. Charlotte Gibson. Claimant was referred by the plant nurse

to Dr. Sudhir Kumar, the respondents' designated medical provider.

The January 10, 2003, office note of Dr. Kumar reflects a history of the claimant's work-related injury. Claimant registered complaints of pain in left shoulder, left arm and scapular pain, all attributed to the January 10, 2003, work accident, at the time of her visit to Dr. Kumar. Dr. Kumar noted on examining the claimant during the visit, "mild tenderness in the LT periheral scapular area", and assessed her complain as left shoulder scapular pain, for which she was Vicoprofen and directed to return for follow care on Monday. (CX. #2, p.1).

The medical in the record reflects that when claimant was seen on Monday, January 13, 2003, by Dr. Kumar relative to the January 10, 2003, accident, his examination of her disclosed the presence of spasm in the left infrascapular/suprascapular area, and as assessment of left scapular and left neck pain. The January 13, 2003, office note of Dr. Kumar reflects that while the claimant had been give a prescription for Vicoprofen during the previous visit, she could not fill it and had continued to hurt. Claimant was directed to continue to remain off work both Monday and Tuesday, January 13, and January 14, 2003, and to return to work on Wednesday, January 15, 2003. (CX. #2, p. 2).

The medical reflects that the claimant was again seen by Dr. Kumar on Wednesday, January 15, 2003, relative to her complaints of left shoulder and neck pain growing out of the January 10, 2003, accident. During the January 15, 2003, visit, claimant underwent an injection of methylprednisolone in the left bicipital tendon by Dr. Kumar. Dr. Kumar assessed the claimant complaint as bicipital tendonitis in the left shoulder during the January 15, 2003, visit. Claimant was provided a prescription of Celebrex by Dr. Kumar and directed to remain off work the remainder of the week. Claimant was directed to followup with Dr. Kumar on January 20,

2003, at which time a decision would be made relative to releasing her to return to work. (CX. #2, p. 3).

On January 20, 2003, claimant was seen in followup of her January 10, 2003, compensable injury by Dr. Kumar. After examining the claimant, Dr. Kumar released her to return to work on January 21, 2003, with no restrictions. Claimant was directed to continue her Celebrex and to follow-up on a prn basis. (CX. #2, p. 4).

The medical in the record reflects that claimant returned to Dr. Kumar on January 24, 2003, with complaints relative to her neck and shoulder growing out of the January 10, 2003, compensable accident. The January 24, 2003, office note of Dr. Kumar reflects, in pertinent part, "LT supracapular/infrascapular ares tender. Spasm felt." (CX. #2, p. 5). The January 24, 2003, office note reflects that claimant was provided 15 samples of Skelaxin, setup for physical therapy at the hospital for ultrasound treatment on the neck muscles; allowed to return to regular work; and directed to follow-up in ten days. (CX. #2, p. 5).

The medical in the record does reflect that the claimant received some physical therapy at Baptist Memorial Hospital in Forrest City pursuant to the prescription of Dr. Kumar relative to the January 10, 2003, accident. The physical therapy progress notes reflect that the claimant received therapy on February 20, 2003, however a February 28, 2003, entry noted that she had been unable to attend sessions due to snow and ice. (CX. #2, p. 11).

The credible testimony of the claimant reflects that she continued to experience complaints of pain in her shoulder and neck, to include pain and muscle spasms, following the January 10, 2003, accident. Claimant added that when requested to return to Dr. Kumar for medical treatment relative to the complaints, the plant nurse informed her that she could not.

Claimant acknowledge that during her continuous period of employment by respondent since 1994, there have short period of lay-off. Claimant denies that she had been involved in a motor vehicle accident, or that the complaints of neck and shoulder pain are the products of any accident other than that of January 10, 2003, in the employment of respondents.

The testimony of Ms. Charlotte Gibson, the plant nurse of respondents, reflects that she has held the position for five years. Ms. Gibson testified that in March 2003, claimant was laid-off for several weeks, and that she did not return to Dr. Kumar or physical therapy while on lay-off status or following her return to work. Ms. Gibson's testimony reflects that claimant returned to work for respondents following her March 2003, lay-off on March 31, 2003, and worked continuously until June 4, 2003, when she took medical leave. Ms. Gibson testified that claimant remained on medical leave from June 4, 2003, until August 20, 2003.

While Ms. Gibson acknowledged that claimant requested to return to Dr. Kumar, she maintains that the request was not made until 2004. At one point Ms. Gibson asserted that claimant's request to return to Dr. Kumar was denied because claimant was already seeing Dr. James F. Franks, claimant's primary care physician, at the time. At another juncture Ms. Gibson asserted, with respect to the claimant's request to return to Dr. Kumar, that she informed claimant that since a year had passed, the earlier claim had been closed and she would have to open a new claim. Ms. Gibson initially testified that since the claimant could not identify incident of injury a claim was not filed on her behalf when she requested to return to Dr. Kumar. Ms. Gibson testified at another juncture that she had contacted the insurance carrier and been informed that claimant's prior claim was closed since it had been more than a year since she had had medical treatment. At one point Ms. Gibson maintained that at the time of claimant's

request to return to Dr. Kumar, respondents had change their treating physician to Dr. Banaji.

Ms. Gibson acknowledged that at the time claimant requested to return to Dr. Kumar, claimant relayed that the need for treatment was the January 10, 2003, accident. Ms. Gibson's testimony reflects that claimant's complaints, during the time she requested to return to Dr. Kumar, was reduced to medical care authorization of February 3, 2004, which was in the claimant's own hand writing. (RX. #1, p.11).

Claimant's testimony reflects that her complaints relative to her hands and wrist progressively worsen as she discharge her employment duties to the point that she reported it to her supervisor and was directed to the plant nurse. Claimant's complaints included pain, numbness and loss of grip strength. Indeed, the credible testimony of the claimant reflects that it was at the point that she was dropping pieces that she had cut while discharging her employment duties which prompted her to seek treatment. Prior to seeking medical treatment claimant had worked while coping with the symptoms.

The authorization for medical care completed by the claimant relative to the May 2003, complaints reflects a description of her injury. As noted above, Ms. Gibson, the plant nurse, relayed that the description of the injury is in the employee's own words and handwriting. The description of her injury, as provided by the claimant reflects:

c/o pain in left side of neck, shoulder, arm and both side of hips.
Picks up chassie and set in the cabinets. (RX. #1, p. 6).

The bottom portion of the Authorization For Medical Care form is completed by the physician to whom the employee is referred. In the instant claim, with respect to the claimant's May 22, 2003, claim, claimant was referred to Dr. Sudesh Banaji, Forrest City internist, who diagnosed

claimant's complaints as "tendinitis and myalgia both hands, shoulders", for which Skelaxin and Naprosyn were prescribed. (RX. #1, p. 6).

The May 27, 2003, narrative report of Dr. Banaji relative to the claimant's visit of the same day reflects, in pertinent part:

This is a 53 YO BF who works on the chassis, picking up several times a day and laying them on the table. This is a Workman's Comp from Sanyo. She has seen Dr. Kumar and Dr. Franks for pain in the wrists, arms, shoulders, and back. She says everything from her waist up hurts. She has not had any deformities or falls. She has also had a MVA recently, which has really made her Sx worse. She uses a crepe bandage by herself on both her wrists. This apparently makes her feel better. She denies any significant swelling at this time.

* * *

IMPRESSION: 1. Chronic tendinitis and myalgia from repetitive motion at work.

PLAN: 1. Give her Naprosyn 500 mg bid. 2. Skelaxin 800 mg tid.
3. I don't think she needs the crepe bandage. 4. She will F/U W/me if not better in 2-3 WK. I have not scheduled her for any appointment at this time. (RX. #1, p. 7).

On May 28, 2003, claimant was again seen by Dr. Banaji. The office note of the May 28, 2003, visit, reflects in pertinent part:

This 53 YO BF was here yesterday for Workman's Comp and pain in her elbows and in her shoulder. She went to work today and C/O severe pain in the elbow areas. She was unable to work. She was sent back for eval. Denies any injury. She denies any swelling, but C/O pain and weakness in her forearm and arm muscles.

* * *

A: 1. Myalgia and arthraigia. Rule out connective tissue disorder and rheumatoid arthritis.

P: 1. Give her Depo-Medrol 80 mg IM.

2. Did an arthritis panel.
3. She will F/U W/me if not better in 1WK.
4. She will cont to take Skelaxin and Naprosyn. (RX. #1, p. 8)

The testimony of the claimant reflects that she was referred by Dr. Banaji to a physician in Jonesboro, Dr. Randy D. Roberts, a rheumatologist, who prescribed medication. Claimant's testimony reflects that she was asked to produce her health insurance card at the office of the Jonesboro physician. Claimant resisted filing the claim for her medical treatment by the Jonesboro physician with her health care provider because she attributed her complaints to her employment duties with respondents. Claimant subsequently acquiesced and filed the claim with her health care carrier.

Claimant noted that Dr. Roberts prescribed a number pills which rendered her incapable of functioning. Claimant was on medical leave from June 4, 2003, until August 20, 2003. Claimant ceased traveling to Jonesboro for treatment with Dr. Roberts when he failed to respond to her inquiries about her condition.

Claimant also sought treatment under the care of Dr. David Thrash, a Forrest City chiropractic physician, for complaints relative to her hands and wrist. Claimant received chiropractic treatment for several weeks for the numbness and pain in her hands and wrist. The treatment did not afford long-term relief.

The claimant's testimony reflects that she continues to see her primary care physician, Dr. James F. Franks, for complaints relative to her neck, shoulder, arms, wrists and hands, which she attributed to her employment duties. Claimant also sees Dr. Franks for other health care needs. Claimant continues to discharge employment duties with respondents. Claimant maintains that while she continues to have symptoms, she needs to continue working in order to retain her job.

Claimant credibly testified that she takes prescription medication during the week and the same aids her in her ability to continue working, however she avoids taking same on the weekend so that it will be effective when she resumes work during the week.

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

FINDINGS

1. The Arkansas Workers' Compensation Commission had jurisdiction of these claims.

2. At all times pertinent the relationship of employee-employer-carrier existed among the parties.

3. On January 10, 2003, the claimant sustained an injury to her neck, upper back, and shoulder arising out of and in the course of her employment.

4. The claimant has failed sustain her burden of proof by a preponderance of the evidence that she suffered a compensable injury in the form of rapid repetitive motion injuries to both upper extremities within the course and scope of her employment with respondents in May 2003.

5. The claimant is entitled to a change of treating physician relative to her January 10, 2003, compensable injury pursuant to Ark. Code. Ann. §11-9-514, in accordance with *Collins v. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W.3d 204 (2002).

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's compensable injury of January 10, 2003.

7. The respondents have controverted the claimant's entitlement to a change of treating physician relative to her January 10, 2003, compensable injury, as well as the payment of medical benefits subsequent to February 28, 2003.

CONCLUSIONS

Claimant is best described as a long-term employee of respondents, having initially commenced her employment with same on August 28, 1970. There is not a dispute regarding the compensability of the claimant's job duties or the existence of the employment relationship during the pertinent time frames of these claims. Claimant asserts having sustained three (3) injuries within the course and scope of her employment with respondents, and entitlement to corresponding workers' compensation benefits. Respondents acknowledge the compensability of one of the claims, however deny the compensability of two of the claims.

The present claims are governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provisions. At the commencement of the May 13, 2005, hearing claimant announced that she would not be pursuing a claim for benefits associated with the December 15, 2003, head injury because she had recovered from the injury and she did not have corroborating medical evidence. According, before the Commission at this juncture is a claim for a change of treating physician regarding the acknowledged January 10, 2003, compensable injury, and a claim for benefits relative to a May 2003, gradual onset upper extremity injury.

The compensability of the claimant's January 10, 2003, injury is not disputed. Claimant suffered injuries to her left shoulder, left arm, left scapular, and neck when lodged between her

work station/assembly line and a parts hamper. The injury was reported to appropriate supervisory personnel of respondents and claimant was referred to respondents' designated medical provider. Claimant was provided anti-inflammatory and pain medication and directed to remain off work. Claimant was later prescribed physical therapy in the treatment of compensable injury.

The credible testimony of the claimant reflects that she continued to experience complaints relative to her left shoulder, neck, and scapular area, all attributable to the January 10, 2003, injury following her return to work. Respondents offer that claimant was laid off from work for a period of two (2) weeks in March 2003, and that did not follow-up with the treating physician, Dr. Sudhir Kumar. Further, respondents maintain that claimant did not request to return to Dr. Kumar until January 2004, at which time the request was denied because of the amount of time that had elapsed since the last medical treatment. Additionally, respondents maintain that at the time of the claimant's request to return to Dr. Kumar that had been a change in respondents' designated treating physician.

The credibility of the explanations offered by respondents to deny claimant access to additional medical treatment relative to the January 10, 2003, is not supported by the evidence in the record. By respondents' own account, at the time claimant requested to return to Dr. Kumar she attributed the need for medical treatment to the injuries suffered in the January 10, 2003, compensable accident. The evidence preponderates that claimant continued to complaint of symptoms of pain in her left shoulder, left scapular, left arm, and neck following the occurrence of the January 10, 2003, compensable injury. Claimant last received medical treatment pursuant to the direction of Dr. Kumar relative to the January 10, 2003, injury when she received physical

therapy at Baptist Memorial Hospital in Forrest City on February 28, 2003.

In May 2003, claimant reported complaints of pain, weakness, and numbness in both wrists attributable to her employment duties on the assembly line. In completing the Authorization For Medical Care document mandated by respondent-employer, in addition to her wrist complaints, claimant recorded complaints of pain in her shoulder and neck. Respondent received the document and was aware of the nature of claimant's January 10, 2003, injury and symptoms.

Claimant sustained a compensable injury on January 10, 2003, for which she was provided medical treatment under the care of a physician selected by respondents. Claimant's request to return to the care of the treating physician selected by respondents was denied. Claimant has remained symptomatic since sustaining her January 10, 2003, compensable injury. Pursuant to Ark. Code Ann. §11-9-514 (a) (3) (ii), and in accordance with *Collins v. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W.3d 204, claimant has an absolute one-time right to a change of physician. Respondents have controverted the claimant's entitlement to a one-time change of treating physician.

The claimant's May 2003, upper extremity complaints, which she attributes to her employment activities with respondents, was assessed by Dr. Banaji, respondents' designated medical provider, as chronic tendinitis and myalgia from repetitive motion at work. In order to prove a rapid repetitive motion injury, claimant must prove by a preponderance of the evidence that the injury arose out of and in the course of her employment; caused internal or external physical harm to the body requiring medical services; was caused by rapid repetitive motion, and was the major cause of the disability or need for treatment. *High Capacity Products v. Moore*,

61 Ark. App. 1, 962 S.W.2d 831 (1998).

In the instant claim, while the evidence preponderates that the claimant was seen by respondents' designated medical provider on at least two occasions following her May 22, 2003, reporting of her upper extremity complaints which she attributed to her employment activities, she was ultimately referred to a Jonesboro rheumatologist, for further treatment. Claimant was on medical leave following the referral to the Jonesboro physician and treated with medication, from June 4, 2003, through August 20, 2003. The record is devoid of any medical reports of Dr. Randy D. Roberts, the Jonesboro rheumatologist. While the claimant's job duties entailed repetitive motion, there is a lack of evidence regarding the rapidness of the job activities. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained a compensable rapid repetitive motion injury in her employment respondents in May 2003, pursuant to Ark. Code Ann. §11-9-102 (4)(A)(ii)(a).

AWARD

Respondents are herein ordered and directed to pay the cost associated with the claimant's one-time change of treating physician relative to her compensable injury of January 10, 2003, pursuant to Ark. Code Ann. §11-9-514 (a)(3)(ii).

Claimant's attorney, the Honorable Kenneth A. Olsen, is herein awarded an attorney fee in the amount of \$200.00, pursuant to Ark. Code Ann. §11-9-715 (c)(1), to paid by respondents.

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

