

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502203

MARGARET SMITH	CLAIMANT
CONAGRA FOODS	RESPONDENT
CRAWFORD & COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 7, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 6, 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 May 20, 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 January 5, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$227.00 temporary total disability and \$170.00 for permanent partial disability.

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

1. Compensability of the claimant's right wrist injury.
2. Related medical.
3. The claimant's entitlement to temporary total disability from February 25, 2005, to April 1, 2005.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that her right wrist was injured on January 5, 2005, when she was pulling turkeys off a belt. Her left shoulder and neck were injured on January 10, 2005, when she was lifting and throwing turkeys.

In regard to the foregoing issues the respondents contend that the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act. Initial medical treatment in the amount of \$417.28 was paid on this claim, but after the initial diagnosis, this claim was controverted.

The documentary evidence consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted documentary medical records marked Respondents' Exhibit No. 1 and non medical marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she went to work for the respondent early in 2005 in netting and bagging. The claimant explained that her job involved pulling the turkeys off a moving belt, placing them on a scale, then lining the turkey up and pushing it through a tube, holding the tube secure with one arm and pushing with her left arm. The claimant testified that all this time you still are lining up turkeys getting ready to put them on the scale and push them on down the line. The claimant testified that when the netting comes off the tubing she then would have to disconnect the tubing and grab another tub underneath the counter and place it on top and secure it down and began the weighing and pushing process all over again. The claimant testified there are also tags that have to be firmly placed on top of the turkey so that the instructions for the buyer will be there when they open the netting. The claimant testified that the procedure is such that there is always suppose to be a turkey ready to be weighed. The claimant testified that another job she did was called tying off, explaining that once the turkey is pushed through the tube, you catch it at the other end and securely push it away with your right-hand squeezing with your left hand onto the netting pushing the turkey for a tight fit and pull it through the tie-off. The claimant testified that there is also a weight ticket that is coming down that you have to tear off and put in the machine so it can be clamped down onto the netting. The claimant testified that you pull the netting secure with your left-hand holding firmly with

your right and rap it around for the tie off and then she would push a stamp button that clamps off the tie net and puts on the pricing and the weight of the turkey. The claimant testified that there cannot be any slack in the netting and it must be very tight when you push it away because if it is not it has to be sent to rework. The claimant testified that she would rotate between these two jobs every two hours. The claimant testified that she was expected to bag at least seven turkeys per minute and that she had never done this type of work before she went to work for the respondent.

The claimant testified that on January 5, 2005, which was the second night that she worked for the respondent, she was pulling turkeys incorrectly off the belt. The claimant testified that she did not know that she was doing it incorrectly, therefore, she was lifting the turkeys rather than scooping them off the belt. The claimant testified that she was also learning her instructions as to tying off and at that time she strained her right wrist muscle but was unaware of it at the time. The claimant testified that the temperature where she was working is freezing and that she did not have a chance to look at her wrist until she got home that evening. The claimant testified that when she got home that night she noticed that her right arm was swollen and when she reported to work for her next shift she first went to the nurse's station to report her injury. The claimant stated that her arm was obviously larger, inflamed and swollen. The claimant testified that the nurse put ice on her arm and told her that on her breaks to come

and put ice on her arm which she did and it helped. The claimant testified that after she asked to be seen by a doctor, the respondents made an appointment for her. The claimant testified that she continued to work for the respondent up until she was seen by the doctor and that the respondent tried to work with her to accommodate her wrist problems. The claimant testified that she was switched to do the job in a different direction but that eventually this failed to help and she asked to be able to switch back and forth which the respondent would not accommodate. The claimant testified that during this period of time her shoulder and arm were in excruciating pain and she was having problems sleeping. The claimant testified that when she was seen by the doctor he gave her an injection in her right wrist and also gave her some pills for inflammation. The claimant testified that the doctor placed her on light duty and she made the respondent aware of this restriction by turning in paperwork from the doctor directly to the nurse's station. The claimant testified that after she was seen by the doctor her job was changed to working on the rework table. The claimant explained that at the rework table they are to take the turkeys out of the bags and take the giblets out and put them in a cart to be reworked. The claimant testified that she worked at this job for a couple of days and then she was transferred to evest. The claimant testified that the job in evest involved plucking feathers out of a turkey's rear end and any other loose feathers remaining on the turkey. The claimant explained that this basically was overhead work for her because she is 5'3" and she

would have to hold her arms up and use her right hand to pull the feathers out of the turkey. The claimant testified that she did this job her whole shift except during her breaks. The claimant testified that she asked to see the doctor again but was refused since the respondents contended that her problems were associated with her neck and not job related. The claimant testified that her last paycheck was dated February 25, 2005. The claimant testified that at that time she had been released by the doctor to return to regular duty but the respondent dismissed her due to what they considered a pre-existing condition and did not want to make it worse if she continued working for them. The claimant testified that she had never been treated for her neck or left shoulder or received treatment for either one of these nor taken medications for them before her injury. The claimant testified that the treatment administered to her by the doctor did help her situation in that the inflammation went down and the shot he gave her diminished the squeaking in her wrist.

On cross examination, the claimant testified that she was forty-five years old. The claimant testified that she has completed the tenth grade and is working on her GED. The claimant testified that currently she is working at Lowe's and began working for them on April 1, 2005, as a cashier's attendant. The claimant agreed that Lowe's has not made any modifications for her work and she is doing whatever the other cashiers are doing. The claimant testified that for three months prior to going to work for the respondent she was unemployed. The claimant agreed that the first

day that she was employed by the respondent she went through an orientation and was given a tour of the facility. The claimant also agreed that she began to actually handle birds and work on the second day that she was employed. The claimant testified that she worked what is called the graveyard shift starting her shift at 11:00 p.m. and finishing up the next morning at around 6:00 a.m. The claimant testified that on her third day of work she went to the nurse's station and showed them her wrists. The claimant agreed that when she first reported her injury on her third day of employment, she did not ask to be seen by a doctor. The claimant testified that she was treated conservatively by the plant nurse with ice packs and she was taking Ibuprofen. The claimant testified that prior to being seen by the doctor, she did work in supply for a period of time. The claimant testified that after she was seen by the doctor she was given restrictions and her job was changed to working on the rework table. The claimant testified that after she complained about this work, she was then moved to evest. The claimant testified that when she was told that there was no jobs for her, no one told her that she was to call in and check on a daily basis to see if there was any job available.

On redirect examination, the claimant testified that when she met with Bob Riley she asked him why it took so long for her to be seen by a doctor. The claimant testified that she showed him her arm and when it squeaked his reaction was one of surprise. On recross examination, the claimant testified that while she was on

restricted duty, she went into the nurse's station each day to sign a document indicating how her restricted duty was coming along.

Bryan Carson testified for the respondents stating that he had worked for the respondent for two but had worked for the respondent some years earlier. Mr. Carson testified that he is a supervisor on the third shift packing and was acquainted with the claimant and her workers' compensation claim. Mr. Carson testified that he was the claimant's supervisor and was aware of the various jobs that were done in the packing department on third shift. Mr. Carson testified that he would see the claimant every day but the claimant's training was done by Jacqueline Torres. Mr. Carson explained that the turkeys go through a bagging process prior to moving into the netting area where the claimant worked. Mr. Carson explained that the claimant's job was that of a pusher in that after the bird was weighed it was pushed through a slide then through a tube which was covered with netting. This witness testified that to keep the tube lubricated ice is used to make pushing the birds easier. Mr. Carson testified that pushing the bird through the tube is not a tight fit so very little exertion is required. This witness testified that there is also no reason for a person to be picking up a bird and placing it on the scales since there is a slide they can use to get the bird onto the scales. Mr. Carson testified that the next job is that of netting which is on the other side of the tube from the pusher. Mr. Carson testified that when the bird comes off the scales there is a tag printed off which goes into the machine and as the bird comes through the net,

the worker will put the loop into the machine and they will pull it and then they will turn their hand over to form a loop and then push the trigger button with their thumb which clamps the clips onto the net. Mr. Carson testified that the machine cuts the netting to get it ready for the next bird. Mr. Carson agreed that most of this job is automated. This witness testified that for a person in training there is no quota and the claimant was never told that she was required to do seven birds per minute. Mr. Carson did state that after a person comes off their training period, then there will be a standard set which they are expected to meet. Mr. Carson testified that based on the claimant's restrictions, he placed her on the rework table. This witness explained that on rework the turkeys have not yet been netted but are in the shrink wrap bag and all they have to do is take the bag off the turkey and put it back on the line. Again, Mr. Carson testified that there is no quota to be met on the rework table. Mr. Carson testified that when the claimant came to him and reported that her wrist was hurting her, he sent her to the nurse's station.

On cross examination, Mr. Carson testified that in bagging the turkeys range from six to twenty-four pounds in weight. When asked, Mr. Carson testified that one thing he does tell new hires is that they have no requirements on the amount of birds they are to do but he does tell them what is expected of them after their training period is over. Mr. Carson testified that training periods vary from five days to sometimes ten days. When talking

about the netting job Mr. Carson testified that two hands are required to do this job.

On redirect examination, Mr. Carson agreed that the three jobs, bagging, pushing and netting, are rotated within an individual's shift so that they can all do the various jobs. Mr. Carson testified that several size bags are used depending on the size turkey which they are running but regardless the bag is bigger than the turkey. On recross examination, Mr. Carson explained that the rework table is just that, it is a table not a machine. Mr. Carson again explained that the sole job of the rework table is to take the plastic bag off of the turkey and put the turkey back on the line. Mr. Carson testified that typically one person works on the rework table but if they start getting behind then they will move another employee in to help. This witness stated that there is no rotation off the rework table. Mr. Carson did state that the person working on the rework table would fix what was wrong with the turkey if possible and then put them back on the line for the baggers to rebag.

Jacqueline Torres testified that she has been working for the respondent for approximately two years and is a production trainer. Ms. Torres testified that she works the third shift. Ms. Torres testified that she was the trainer for the claimant and trained her to bag, net and push. Ms. Torres explained that the training period involves a five-day ramp in explaining that on the second day the employee works they work on a two-hour rotation from each job, on the third day they work on a four-hour rotation for each

job and on the fourth day they go on a six-hour rotation and then on the fifth day it is eight hours on their primary job. Ms. Torres testified that the first day the claimant worked for the respondent she did not work on the line at all but did paperwork, went through an orientation, watched videos, filled out forms and went on a plant tour. Ms. Torres testified that on the second day of employment the claimant would have begun her day doing hand exercises for about ten to fifteen minutes. Ms. Torres testified that then she takes them out on the line and gets them dressed and then personally takes them to their first job and shows them what the job is and how to do it. Ms. Torres testified that the claimant would have started her day doing bagging for two hours, then net for two hours and then push for two hours. Ms. Torres testified that since netting and pushing is a two-person job usually she leaves them there for four hours and that every time the tub is out of net, they rotate. Ms. Torres testified that there are two thirty minute breaks throughout the entire shift but there is no lunch hour or lunch thirty minutes to speak of. Ms. Torres testified that the claimant's primary job was that of netting and pusher. Ms. Torres explained that once the claimant has completed the five-day training program, she would work a full eight hours at one job. Ms. Torres testified that there is no quota or standard for a trainee but after a person has finished their training program and worked a week or two they are expected to do six to eight birds a minute. Ms. Torres testified that for trainees she checks on them for a period of ten to fifteen days.

This witness testified that the claimant has never come to her personally with complaints about her wrist but she was aware that she had made such complaints to other people. Ms. Torres testified that after the claimant was placed on restrictive duty it was part of her job to check on the claimant. Ms. Torres explained that whatever the plant nurse instructs them to do in accordance with the employees restrictions she would follow. Ms. Torres explained that if she is instructed to rotate a person every three hours she rotates them every three hours but if they are instructed to rotate them every hour she rotates them every hour, just whatever the nurse's instructions are. Ms. Torres testified that the claimant while on restricted duty worked on the rework table, in the supply room and pinning feathers. This witness testified that the claimant did not make any complaints to her while working on the rework table. Ms. Torres testified that the claimant also did pinning or pulling feathers from the turkey's rear end. This witness testified that the birds come down at a level of about five feet and that the employee would either use their fingers or a pinning knife to pull or grab the feathers. Ms. Torres testified that the claimant never expressed any complaints to her while pulling feathers nor did she ever complain to her about working outside of her restrictions.

On cross examination, Ms. Torres testified that her job was to train a person good enough so that they can do their job and met their quota or expectation at the end of their training period. Ms. Torres testified that records are not kept as to how fast each

employee does their job. Ms. Torres testified that when doing the pinning job stools or risers are provided to the employees so that they would not have to look up or look down in order to do this particular job. This witness testified that these stands are made of metal and they can be anywhere from a foot to a few inches in height depending on the height of the employee.

On redirect examination, Mr. Torres testified that the claimant never complained to her about having to reach up while doing the pinning job nor did she observe the claimant having to reach up more than would be normal to do this job. Ms. Torres testified that after the claimant reported her injury the plant nurse put her on restrictions of rotating her job every three hours.

Bob Riley testified that he had been working for the respondent for over six years and is currently their human resource manager. Mr. Riley testified that he was familiar with the claimant's workers' compensation claim. Mr. Riley testified that at some point the claimant was informed that there were no jobs available within her restrictions but that she was informed to call in on a regular basis to see if there were job openings that she would be able to perform. Mr. Riley indicated that the claimant never called in. Mr. Riley testified that he and the claimant discussed the possibility of her drawing unemployment but since she was on a leave of absence he did not think that this would work. Mr. Riley testified that he also suggested that she check with the

security people to see if they needed help in the security service. Mr. Riley stated again that he never heard back from the claimant.

On cross examination, Mr. Riley stated that when the claimant was released by the doctor to return to full duty, she was still making complaints of pain and still complaining that she could not do the job. Mr. Riley testified that the claimant told him that she had been involved in a motor vehicle accident in California and had problems resulting from that accident. Mr. Riley testified that the claimant was complaining of pain in her neck and shoulders and she could not do certain jobs. This witness testified that he again told the claimant to call in because jobs are opening up all the time and when one came open that she could do they would move her into that slot. Mr. Riley testified that the injury which she complained about occurring while working for the respondent was to her wrist and at the time she was let go she told him that her wrist was fine. Mr. Riley testified that the claimant was not actually terminated until two to three weeks after she had been sent home. This witness stated that they did not hear anything from the claimant so they assumed that she had found another job. Through a series of questions in redirect examination and recross examination, Mr. Riley stated that when the claimant was released to full duty as to her wrist if she had not been complaining of neck and shoulder problems she would have been put back at her regular job.

Jim Gilbert testified that he was the health and safety manager for the respondent and had been employed with the

respondent for eight years. Mr. Gilbert testified that his job works directly with the training program and the various trainers report directly to him. Mr. Gilbert testified that he was aware that the claimant was put on a three-hour rotation prior to her being sent to the doctor. Mr. Gilbert testified that once an employee is given restrictions from the doctor those restrictions are provided to the plant nurse and that the employee's supervisor is then made aware of the restrictions. Mr. Gilbert testified that when a person is on restrictions, they are to come to the nurse's station each day and document if they are working within those restrictions. This witness testified that the claimant, while under restrictions by her doctor, was assigned to picking pin feathers, working in the supply room as well as working at the rework table. Mr. Gilbert testified that to his knowledge the claimant never complained about having to work outside of her restrictions but that she kept complaining that she could not do whatever job the respondents would assign her. Mr. Gilbert testified that he was present at two or three meetings with the claimant and Bobby Riley. This witness testified that he and Mr. Riley tried several times to find jobs suitable for the claimant but each time she would say that it hurt her shoulder, hurt her neck or hurt her wrist. Mr. Gilbert testified that he was present when Mr. Riley told the claimant to go home and to call him everyday to see if they could find her a job. Mr. Gilbert testified that a trainee does not have a quota but that their training progress is documented.

On cross examination, Mr. Gilbert stated that he heard from both the plant doctor, Dr. Ledbetter, as well as from the claimant about problems to her neck and shoulder. Mr. Gilbert testified that he had several conversations with the claimant asking her if she knew any job in the plant that she would be able to perform and that she would never answer him directly. Mr. Gilbert testified that all the claimant would say was that she could not sleep at night.

On rebuttal the claimant testified that after she got the release from her doctor she reported to work for her regular schedule. The claimant testified that she clocked in, changed into her appropriate work clothing and went to her work area. The claimant testified that someone told her to stand beside the office and wait for her supervisor. The claimant testified that when her supervisor and a coordinator approached her they told her that she was not suppose to have come in that shift but was to show up the next morning and report to human resources. The claimant testified that in 1988 she was involved in a motor vehicle accident but was not hospitalized nor did she have ongoing medical treatment as a result of this accident. The claimant testified that she had no injuries as a result of her motor vehicle accident. The claimant testified that she has never had any problems with her neck or shoulder prior to working for the respondent. The claimant testified that when she was on three hour rotation after being placed on restrictions by the plant nurse she continued doing the bagging, pushing and netting jobs. The claimant testified that one

of the machines had broken down and she was having to transfer turkeys to a functioning table. The claimant testified that for a while she had some help with this job but soon was doing this all by herself and it was at this time that she began to have problems with her left shoulder. The claimant testified that she was never told that she should call in every day to see if there was a job available for her after she was sent home.

On cross examination, the claimant testified that before she was released to regular duty she had worked in the supply room and felt as if she was efficient in handling this job.

The medical records set forth that the claimant was seen on January 20, 2005, by Dr. Ledbetter with complaints of right wrist pain in left scapular area from netting. In Dr. Ledbetter's notes he indicates that the claimant's arm pain started on January 4, 2005, and the shoulder pain started on January 10, 2005. Dr. Ledbetter writes that the claimant reports pain from her left shoulder that goes down into her arm with some numbness and tingling. Upon examination Dr. Ledbetter writes that the claimant's right forearm reveals DeQuervain's disease noting that there is a wet leather squeaking to the right forearm with extension of the thumb and extension of the wrist. X-rays of the claimant's neck reveal severe cervical spondylosis at C3-4, C4-5, C5-6 with a large posterior bony bar. The claimant was diagnosed with DeQuervain's disease of her right forearm as well as cervical spondylosis which was pre-existing. Conservative treatment and medications were prescribed as well as restrictions for her work.

The claimant was next seen by Dr. Ledbetter on February 3, 2005, noting that she is post two weeks an injection to her wrist and she is improved with full range of motion and no abnormalities. Dr. Ledbetter also notes that the claimant was pushing some three hundred turkeys lifting them up over the line and this caused her some shoulder pain further noting that she is not having too much pain at present. Dr. Ledbetter notes that he has reviewed the claimant's severe cervical spondylosis noting that this was a pre-existing condition. Dr. Ledbetter writes that as far as the claimant's wrist is concerned she can return to regular duty with no restrictions. There is a medical report shown at Claimant's Exhibit No. 1, page 4, indicating that the claimant was reporting on February 21, 2005, numbing in her left arm and hand with pain and shoulder blade muscle and top of shoulder with stiffness in her neck. This form sets forth that these symptoms began after moving turkeys with only her left arm. There is a notation on page five of Claimant's Exhibit No. 1 that the patient is complaining of neck and shoulder pain, noting that in the tissue section it sets forth spasm.

After a complete review of this entire record, I find that the claimant sustained a temporary aggravation to her right wrist while working for the respondent on January 3 and a temporary aggravation to her left shoulder on January 10. The claimant has testified as have the respondents witness that the work required of the claimant was very hand intensive. As to the shoulder complaints the claimant testified to lifting three hundred turkeys with one arm resulting

in shoulder pain. Both of these problems resolved back to their pre-injury status as of February 3 when the claimant was released by Dr. Ledbetter to return to full duty work. Dr. Ledbetter, in his initial visit with the claimant on January 20, notes that the claimant has DeQuervain's noting a wet leather squeaking sound over the claimant's right forearm. X-rays taken of the claimant's neck reveal severe cervical spondylosis at several levels and Dr. Ledbetter notes that this is a pre-existing condition not brought on by the work for the respondent. I find, therefore, that the claimant is entitled to medical treatment for her temporary aggravations up until February 3 when she was released to full duty by Dr. Ledbetter. I do not find that the claimant is entitled to any temporary total disability. The claimant was released to full duty responsibilities on February 3, 2005, and even her own testimony is that she was able and willing to work subsequent to her full release. The claimant has testified that she began working for Lowe's on April 1, 2005, with no restrictions and no limitations with her work.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On January 5, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$227.00 temporary total disability and \$170.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a temporary aggravation to her right wrist on January 3, 2005, and a temporary aggravation to her left shoulder on January 10, 2005. See discussion above.

5. The respondents should pay for medical treatment for this claimant's temporary aggravations resulting from her work from January 20, 2005, through February 3, 2005.

6. That the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a temporary aggravation to her right wrist and to her left shoulder while working for the respondent. The respondents, therefore, should pay for the medical treatment for this claimant's temporary aggravations resulting from her work from January 20, 2005, through February 3, 2005.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE