

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412473

SHERRY L. ST. CIN, EMPLOYEE	CLAIMANT
NORTHEAST ARKANSAS TURRET PRESS WORK, EMPLOYER	RESPONDENT
FirstCOMP INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 14 , 2005

Hearing before Chief Administrative Law Judge David Greenbaum on September 9, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Kenneth A. Olsen, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted September 9, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on July 20, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employee/employer/carrier relationship existed at all relevant times; that the claimant's average weekly wage was \$434.00 per week;

and that the respondents had controverted the claim in its entirety.

By agreement of the parties, the sole issue presented for determination was whether the claimant's alleged brachial plexopathy injury arose out of and during the course of her employment with Northeast Arkansas Turret Press Work.

Claimant contended, in summary, that she sustained a gradual onset, right shoulder injury which she maintained was the result of repetitive work activities, as well as due to the operation of faulty equipment; that respondents should be held responsible for all medical and related treatment for her alleged shoulder injury, together with continued, reasonably necessary medical treatment, while pointing out that she was not making a claim for any bilateral carpal tunnel syndrome.

The respondents contended that the claimant's symptoms and injury pre-existed her employment and were unrelated to her employment activities. At the conclusion of the hearing, respondents clarified its contentions, maintaining that the medical evidence did not support a brachial plexopathy injury, specifically that the claimant's job duties did not include rapid and repetitive motion; that there was no medical evidence supported by objective findings, but, rather, only subjective complaints of the claimant for which a diagnosis was based and that the alleged injury was not the major cause of the claimant's disability and need for treatment.

Further, the record clearly reflects that the claimant has on numerous occasions been advised of her right to legal representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without

approval of this Commission; that these were normally awarded only out of benefits obtained in her behalf and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised that she had the burden of proving her claim; that she was only entitled to one hearing; and that for any reason, if she was unsuccessful, she could not request a second hearing, maintaining that the reason for the failure to prove the claim was lack of legal representation. The claimant elected to proceed in her own behalf.

The claimant testified in her own behalf. Anthony Gibson was called as a witness for the respondents. The record is composed solely of the transcript of the September 9, 2005, hearing containing a joint medical exhibit consisting of thirty (30) pages.

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby

accepted as fact.

3. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a brachial plexopathy injury which arose out of and during the course of her employment which has been established by medical evidence supported by objective findings as required under the workers' compensation law.

DISCUSSION

_____The record in this case is replete with inconsistencies and contradictions. The claim turns entirely upon the credibility of the claimant. A claimant's testimony is never considered uncontroverted. In fact, the testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

Further, the medical evidence reflects objective findings of a possible carpal tunnel injury which the claimant was not making a claim for benefits. Rather, the claimant contended that she sustained a right shoulder injury. As will be reflected further below, there is no medical evidence supported by objective findings to prove a right shoulder injury.

In the present claim, the claimant does not contend that her injury was caused by a specific incident and identifiable by time and place of occurrence.

Instead, she contends that she sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

A review of the medical evidence reflects that the claimant first sought medical treatment on July 20, 2004, when she was examined and treated by Dr. Suzanne J. Moore, a general practitioner with a specialty in internal medicine. The history and physical contained in Dr. Moore's report reflects that the claimant made multiple complaints at the time of her initial visit, including poor sleep, hot flashes, irritability, depression with suicidality, fatigue, and numbness and tingling in both arms. The claimant's chief concern on July 20, 2004, was her irritability. Although

the claimant maintained that she provided Dr. Moore with a history of a work-related injury, none is contained in Dr. Moore's report. Dr. Moore did refer the claimant to Dr. Cauli to evaluate the upper extremity, bilateral neuropathic-sounding complaints of pain. (Tr.19)(Jt. Ex. A, pp.1-3)

The claimant was next examined and evaluated by Dr. Mario Cauli, a neurologist. Dr. Cauli's history and physical reflects that the claimant had been complaining of numbness in both hands, as well as pain in both wrists for the past two (2) years. The claimant apparently also complained of neck pain, radiating to the right shoulder and low back, radiating to both hips. Dr. Cauli's history is of special interest because the claimant's complaints pre-dated her employment with the respondent. The claimant had only been working for the employer herein for one year. Dr. Cauli diagnosed possible right carpal tunnel syndrome and left ulnar neuropathy and recommended nerve conduction studies. (Jt. Ex. A, pp.4-5)

Nerve conduction studies were performed on July 26, 2004. The claimant returned to Dr. Cauli on August 12, 2004. His report of said date is the first to relate the claimant's complaints to her occupation. Based upon the diagnostic studies, Dr. Cauli diagnosed mild bilateral carpal tunnel syndrome for which he previously prescribed wrist splinting. Dr. Cauli also pointed out that the claimant's clinical findings and complaints of symptoms suggested brachial plexus traumatic traction injury on the right for which he treated the claimant with medication and referred her for occupational therapy; however, it is apparent from Dr. Cauli's report that this

assessment is based solely upon the claimant's subjective complaints without any objective medical findings as required under our amended Act. In fact, the only medical evidence supported by objective findings involved the claimant's hands and wrists which were not the subject of the within claim. (Jt. Ex. A, pp.6-8)

The record reflects that the claimant continued working at all relevant times and that she filed her claim for medical treatment under the employer's group health insurance. The claimant was subsequently laid-off as the result of a general plant lay-off, after which she drew unemployment compensation. During the claimant's lay-off, she lost her health insurance coverage and subsequently filed the within claim under workers' compensation. The claimant drew unemployment compensation during the general lay-off. At the time of the within hearing, the claimant was working for another employer.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has

met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

As previously noted, the medical evidence indicates that the claimant's complaints pre-dated her employment with the employer herein. Further, although the record contains medical evidence to support a possible carpal tunnel injury, there is no medical evidence supported by objective measurable findings to prove a brachial plexopathy injury. If a claimant fails to establish, by a preponderance of the evidence, any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claimant and compensation must be denied.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she is entitled to any compensation benefits. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge