

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501006

MARGARET WILLARD, EMPLOYEE	CLAIMANT
CENTOCO MANUFACTURING CORP., EMPLOYER	RESPONDENT
TRANSPORTATION INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED NOVEMBER 30, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on September 30, 2005, at Augusta, Woodruff County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury to her left shoulder as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on May 28, 2003 at which time the claimant sustained a compensable right shoulder injury at a compensation rate of \$276.00/\$207.00. The claimant returned to work and developed problems with her left shoulder on or about November 1, 2003, but this second claim, based on the AR-C filed June 15, 2005, was controverted.

The claimant contends she developed left shoulder symptoms as a compensable consequence of the original injury. Because she continued to work while her right shoulder was healing, she overused her left shoulder performing her job duties. The claimant seeks payment of medical

expenses and attorney's fees.

The respondents contend that the claimant has not sustained a compensable left shoulder injury. Alternatively, in the event of an award, they are not liable for benefits before they received notice of an injury pursuant to Ark. Code Ann. §11-9-701.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and attached exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant, who appeared to be sincere in her testimony and Sheila Milton, the Human Resource Manager who began work at Centoco after the claimant's injury. Ms. Milton testified she had assisted on the plant floor but had not actually operated the equipment the claimant was using at the time of her injury. Ms. Milton replaced Donna Carr, to whom the claimant reported her injury.

The claimant, age 57 (D.O.B. September 20, 1948) is small in stature. She has worked at Centoco since 1989 and continues to be employed there. She was in good health until she injured her right shoulder (a rotator cuff and biceps tear) on May 28th, 2003. She was off work for seven weeks before she returned in mid-September, 2003, with her right arm in a sling. She was assigned to work primarily on the hinge machine but one day a week she was required to work on the assembly line.

The hinge machine makes plastic hinges for toilet seat lids. The claimant operated three machines simultaneously, requiring cleaning every 10-15 minutes to ensure smooth running of the equipment. The hinges were deposited in a bin close to the floor. From a seated position, the claimant would bend over to retrieve the hinges, reach across her chest and drop them in a box. The boxes were then emptied into a bin. The boxes had to be emptied every five minutes.

The assembly line job consisted of cooling and finishing the molded plastic toilet seats. The seats (in sets of four) were suspended by hangers. The claimant was required to use a steel rod to beat the hangers out of the holes in the toilet seat. Once the seat was extricated from the hanger, it was carried to a table. The claimant used a knife to cut off excess plastic, shave off the edge on the

seat created by the molding process, and make sure the holes were not stopped up with plastic. Then the plastic seat was rubbed on carpet to smooth the surface before putting the seat back on the assembly line. The claimant described this as a “fast pace job.”

In mid-October, the claimant experienced left shoulder pain while performing the assembly line job. In late October, she reported the problem to Human Resource Manager, Donna Carr. Ms. Carr told her the condition was not work-related. The claimant told orthopaedic surgeon, Dr. Green about the problem during a regularly scheduled appointment on November 3, 2003 for follow-up on her right shoulder. Dr. Green performed an MRI scan, diagnosed a rotator cuff tear and recommended surgery which has not yet been performed.

The claimant has returned to work on the hinge machines. She stated her right shoulder had improved but is still weak from the surgery. Her left shoulder remains painful.

MEDICAL EVIDENCE

Medical records concerning the 2003 right shoulder injury attribute her condition to lifting, pulling and straining at her factory job, (see Family Practice Associates Reports). Ultimately, she was diagnosed with a rotator cuff tear and surgery was performed by Dr. Terry Green on August 7, 2003.

Dr. Green prescribed physical therapy and a sling and released the claimant for light duty (no pushing, pulling or lifting with the right arm, sedentary left-handed duty only) in reports dated August 27, 2003, September 10, 2003. Several follow-up reports indicate the claimant re-injured her right shoulder at work (see reports dated September 10, 2003 and October 13, 2003).

In a report dated November 3, 2003 the claimant reported left shoulder pain to Dr. Green. He prescribed physical therapy, a steroid injection and excused her from work. An MRI scan was performed on December 2, 2003 and the claimant was diagnosed with a tear of the left rotator cuff. Dr. Green recommended surgery in a report dated December 8, 2003 and continued her light duty status.

A letter from the employer dated December 16, 2003 pledged to provide the claimant with light duty. A Functional Capacity Evaluation (FCE) dated January 2, 2004, indicated the claimant was cooperative and put forth maximum effort. The therapist determined that the claimant was physically unable to return to her pre-injury job and recommended that she resume physical therapy to increase muscle strength and range of motion in her right shoulder.

Dr. Green saw the claimant again on January 7, 2004 and prescribed light duty:

It is unlikely that she will ever be fit to return to her normal work because of her bilateral shoulder injuries.

About the left shoulder – she states that when she was released to return to work with restricted activity on the right shoulder, the increased demands using the left shoulder started her left shoulder problem. I believe that is a credible assessment and it is a reasonable medical certainty that the left shoulder injury was work related because of the increased demands on the left side.

In a report dated May 3, 2004, Dr. Green reviewed a copy of the claimant's job description and assessed an 8% rating to the body as a whole for the right shoulder injury using the fifth Edition of the AMA Guidelines.

Follow-up reports (dated June 7, 2004, July 28, 2004, September 9, 2004, May 16, 2005, July 26, 2005, August 15, 2005) indicate the claimant's job duties continued to aggravate her condition.

FINDINGS AND CONCLUSIONS

The test for a compensable consequence is whether or not there is a causal connection between the compensable injury and a second medical condition. The existence of a causal connection is a question of fact for the Commission. Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001), Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

The evidence of record shows the claimant to be a credible witness who has complied with her doctor's orders, tried to perform light duty, and made a valid effort during the FCE. She performed a strenuous job which caused a right shoulder injury and when she returned to work, her reliance on her left arm caused a second injury to her left shoulder. This second injury was reported

to her employer in late October, 2003, and confirmed by her doctor. Therefore, I find the claimant has met her burden of proof.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during November, 2003 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$276.00/\$207.00.
2. The claimant has proven by a preponderance of the evidence of record that she injured her left shoulder as a compensable consequence of a May 28, 2003 right shoulder injury.
3. The respondents received notice of this injury as of October 31, 2003.
4. The respondents are liable for all reasonable and necessary medical expenses for her left shoulder injury to be paid within thirty days pursuant to Rule 30.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64

Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge