

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F102335

LUIS ANDRADE, Employee	CLAIMANT
LA-Z-BOY CHAIR COMPANY, Employer	RESPONDENT
CRAWFORD & COMPANY, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

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

STATEMENT OF THE CASE

On August 23, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 1, 2006, and a pre-hearing order was filed on March 2, 2006. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties at all relevant times.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$281.00 for temporary total disability benefits and \$211.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left shoulder due to rapid repetitive work.
2. Medical.

3. Attorney fee.
4. Statute of limitations.

The claimant contends that his left shoulder was injured due to rapid and repetitive work and that he is entitled to medical related to the left shoulder and an attorney fee.

The respondents contend claimant did not sustain a compensable injury to his left shoulder. Medical documentation has not connected the claimant's problems with his left shoulder to the compensable injury. Additionally, respondents assert that the statute of limitations has run with regard to any left shoulder injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 1, 2006, and contained in a pre-hearing order filed March 2, 2006, are hereby accepted as fact.

2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left shoulder while working for the respondent. Specifically, claimant has failed to offer any objective findings establishing an injury as required by Arkansas law.

FACTUAL BACKGROUND

The claimant is a very nice 39-year-old man who began working for the respondent in 1998 as a framer. Claimant's job duties as a framer required him to assemble parts which were used in the manufacture of sofas and recliners. In order to perform this job

it was necessary for claimant to use an air gun and a resister. Claimant testified that he was responsible for assembling some 30 to 50 pieces an hour and that he worked from nine to twelve hours per day.

In October 2000 the claimant began having problems with his right arm and shoulder. Claimant reported those problems to the respondent and he was sent for medical treatment. Claimant initially was treated conservatively with injections and physical therapy. However, claimant subsequently underwent three separate surgical procedures involving his right shoulder. For claimant's right shoulder condition he has primarily been treated by Dr. Tomlinson and Dr. Arnold. In addition, claimant has also been evaluated by Dr. Mitchell.

While claimant was receiving medical treatment for his right shoulder he at some point was placed on another job which required him to cut cotton with a saw and put cotton in pieces that went in the sides of seats for the framers. Claimant testified that in order to perform this job he had to use a machine which pressed cotton into bales. Claimant testified that he performed this job with his left hand because he was unable to use his right arm. Indeed, the medical records reflect that claimant was limited to work with his left arm on several occasions.

Claimant testified that after his initial surgery he returned to work for respondent for a three or four month period of time and performed various jobs which lasted either half a day or one day. These jobs included the making of signs, the making of payroll cards, and working in the office.

Claimant testified that while he was performing the job of making the bales with cotton he began to also have trouble with his left shoulder. Claimant testified that he has seen Dr. Arnold for treatment of his left shoulder as well as his right shoulder condition.

The respondent accepted claimant's right shoulder injury as compensable and paid compensation benefits. Claimant now contends that he has also suffered a compensable

injury to his left shoulder due to the rapid repetitive work he was performing for the respondent. Claimant seeks payment of medical benefits and a controverted attorney fee.

ADJUDICATION

Claimant does not contend that he suffered a compensable injury to the left shoulder as a result of a specific incident identifiable by time and place of occurrence; instead, claimant contends that he suffered a compensable injury to his left shoulder in the form of a gradual onset injury resulting from rapid repetitive motion required by his employment with the respondent. A claimant requesting benefits for a gradual onset injury must prove by a preponderance of the evidence: (1) the injury arose out of and in the course of his employment; (2) the injury required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for medical treatment. *Freeman v. Con-Agra Foods*, 344 Ark. 296, 40 S.W. 2d 760 (2001); *Wal-Mart Stores, Inc. v. Leach*, 74 Ark. App. 231, 48 S.W. 2d 540 (2001). In addition, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). Objective findings are defined in Ark. Code Ann. §11-9-102(16) as findings which cannot come under the voluntary control of the patient.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left shoulder while employed by the respondent. While I find that claimant's testimony is credible and also note that claimant's authorized treating physician, Dr. Arnold, has opined that claimant's left shoulder problem was most likely due to overuse syndrome, the claimant's credible testimony and the opinion of his treating physician are not sufficient in and of themselves to prove compensability. Under Arkansas law, there must also be objective

evidence of an injury. In this particular case, problems with the claimant's left shoulder are not mentioned in the medical reports until Dr. Arnold's report of December 3, 2004, at which time he notes claimant is having some increased shoulder pain in the left shoulder. In a letter dated April 18, 2006, Dr. Arnold reiterated that claimant first complained of left shoulder pain in December 2004. However, neither Dr. Arnold's medical report nor his letter indicate any objective findings establishing an injury to claimant's left shoulder. Indeed, while Dr. Arnold notes the claimant's complaints of left shoulder pain as well as his opinion with regard to causation, Dr. Arnold's medical reports make no mention of any testing or any other objective findings which would satisfy the statutory requirement.

In summary, in order to prove compensability of an injury under Arkansas law, there must be objective medical evidence establishing an injury. In this particular case, there are no objective medical findings establishing an injury to the claimant's left shoulder. Absent objective medical findings establishing an injury, a compensable injury cannot be proven under Arkansas law.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left shoulder as a result of his job activities with the respondent. Specifically, there are no objective medical findings establishing an injury as required by Arkansas Workers' Compensation law. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE