

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600229

SANTOS BARRERA	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 21, 2006

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 August 22, 2006, 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 March 27, 2006. 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 October 19, 2005, the relationship of employee-employer-carrier existed between the parties.

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

1. Compensability of the claimant's shoulder, elbow and wrist injuries on or about July 2005.

2. Related medical.

3. Temporary total disability from October 19, 2005, to a date to be determined.

4. Attorney's fees.

5. Defense of lack of notice until the filing of the AR-C.

In regard to the foregoing issues the claimant contends that he was injured on October 19, 2005. He injured both shoulders, elbows, and his wrist through rapid and repetitive work.

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 the employment as defined by the Arkansas Workers' Compensation Act. In the alternative, should it be determined that the claimant did sustain a compensable injury, the respondents contend the claimant is barred from receiving benefits for his failure to properly report this injury. The respondents' first notice of an injury was with the filing of the AR-C on or about January 9, 2006.

The documentary evidence submitted in this matter 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 and additional documentary evidence marked Claimant's Exhibit No. 2. The respondents submitted the pay sheet from Crockett Adjustment marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical evidence marked Claimant's Exhibit No. 1 and supplemental medical evidence marked Claimant's Exhibit No. 2 as well as the deposition of the claimant's marked Claimant's Exhibit No. 3. The respondents submitted a claim for compensation marked Respondents' Exhibit No. 1 and a letter from Carl Bayne marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified through an interpreter that he began working for the respondent on January 10, 1996. The claimant testified that he worked seven years sharpening the end of the rims that the robot could not make. The claimant testified that this required the use of both of his hands and because he was right-handed, he used his right hand the most. The claimant testified that he had to make a quota before he could take a break. The claimant testified that he worked between ten and twelve hours five days a week and worked eight hours on Saturdays. The claimant testified that he had to use his arms all the time and began to experience some pain for which he took medications when he was working. The claimant testified that after he had worked at this particular job for approximately seven years, he was changed to the nickle line. The claimant testified that he would move rims out of the line for other people to inspect. The claimant testified that these rims average from twenty-five to thirty pounds but that there

were some that weighed up to seventy pounds. The claimant testified that every time the respondent would hire a new person, they would move him to another area where he was to remove the rims and put them in a pile. The claimant testified that this has to be done really fast because the rims are coming down the line fast. The claimant testified that he had been doing this job for almost three years. The claimant testified that he used his arms all the time at this job and that his shoulder started bothering him two years before October 20, 2005, when he could not use his arm at all. The claimant testified that he went to a medical clinic which was close to the hospital in 2003 and the doctor there gave him a big pack of pills and that he kept on working. The claimant testified that the doctor at the clinic send him to Dr. Moore to get tests and that he took the results of these tests back to his doctor. The claimant was asked how he got to see the first doctor and the claimant responded, "A co-worker referred me when he complained about his arms and recommended an orthopedic doctor and then that particular doctor sent him to Dr. Moore." The claimant testified that he continued to work for the respondent for the next two years. The claimant testified that in July 2005 he returned to Mexico and was involved in a car accident. The claimant testified that the car rolled over but that nothing happened to him.

The claimant testified that in July 2005 he went to the JPA Clinic. The claimant testified that a female doctor told him to go to this clinic and see Dr. Arnold. The claimant explained that he used to drive by the JPA Clinic every day and that he had heard

that there was a Hispanic doctor there who spoke Spanish so he went in. The claimant testified that it took him approximately a month to get an appointment with Dr. Arnold. The claimant testified that he reported to his supervisor several times that he was having problems with his shoulders during the period of time he was being seen at the JPA Clinic as well as seeing Dr. Arnold. The claimant testified that his supervisor is Jeff Linson. The claimant testified that it was long before July that he began complaining to his supervisor about his arm problems. The claimant testified that the respondent wanted to move him to another line where the work was more intense and would require more movement of his shoulders and arms. The claimant testified that he did not think that his supervisor believed him. The claimant testified that he had told Jeff that both of his arms were hurting but especially his right arm and that Jeff would tell him that he was sorry but he did not have anyone else to work in his position. The claimant testified that all the time he was working in the nickle line, his shoulders continued to get worse every day. The claimant again testified that he told Jeff that his shoulders were hurting but that Jeff never sent him to the doctor.

The claimant testified that when he was seen by Dr. Arnold, Dr. Arnold x-rayed his shoulders and gave him shots in each of his shoulders to make them feel better. The claimant agreed that he has had surgery on his right shoulder and that he is still treating with Dr. Arnold. The claimant testified that his surgery was on February 4, 2006, and that the last day he worked for the

respondent was on October 20, 2005. The claimant testified that he had gone into work and had actually worked four hours when they wanted to move him to another line which had a heavier product which he just could not do. The claimant testified that when he was sent to the heavier duty work on the 20<sup>th</sup> and he reported that he just could not do the work, Reynaldo told him that if he was not going to work he should just go back home. The claimant testified that Reynaldo's position was that of a supervisor. The claimant testified that he has not worked since October 20, 2005, because no one will hire him due to the condition of his shoulders. The claimant testified that Dr. Arnold gave him a paper stating that he could do another job without using his arms but that they did not have anything for him at the respondent's business.

On cross examination, the claimant testified that he has had a couple of other accidents while working for the respondent. The claimant agreed that one of these accidents was when a forklift ran over his left foot and another one was when he injured his left arm. The claimant further agreed that on both of these accidents he filled out an accident report and the respondent paid for the medical treatment. The claimant testified that he could not remember the name of the doctor or the clinic that the respondents sent him to for treatment of his left arm and left foot. The claimant testified that he has had a third incident and has been sent to the Lowell Clinic, agreeing that this time he also filled out an accident report. The claimant agreed that the clinic which he went to on highway 265 which is close to the respondent's plant

did not send him to Dr. Moore in 2003. The claimant testified that his wife's insurance has paid for his shoulder surgery. The claimant testified that he filled out the AR-C and signed it. The claimant was asked how much education he had and he indicated he has a first grade education and he came to the United States from Guatemala. The claimant further indicated that it was very difficult for him to fill out the AR-C. The claimant agreed that his problems were not caused by a specific incident but just brought on over time. The claimant testified that in October 2005 he was working on the nickle line taking rims off of the line as they came down on hooks. The claimant testified that these rims come down constantly. The claimant testified that he was the only person in the plant doing this job except when he needed to take a break and they would put someone else to doing this task. The claimant testified that the rims came down at two different levels, one approximately the height of his eye brows and he then would place them on an inspection line which is about elbow high. The claimant testified that the second layer of rims were about bellybutton high and he would have to get down and pull the rim off the line. The claimant agreed that on his drivers licence it states that he is 5'5" tall. The claimant testified that besides taking the wheels off the hooks if there was a spot on the wheels he used a sander to sand off the spot. The claimant testified that he also would place a number on the wheels with a marker. The claimant testified that after he had taken the wheels off of the hooks, sanded off any spots and marked them with a marker he would

then push the rim down a series of rollers to an inspector. The claimant testified that if a rim was not good enough, he then would put it on a pallet. The claimant testified that in an hour he would work with about ten bars and that each bar would hold around eighteen wheels. The claimant agreed that he did all of these wheels himself.

The claimant testified that in July 2005 he was working on the line and his arms were tired and hurting when something on the line popped out and hit him in the arm. The claimant testified that no accident report was filled out because there was no blood. The claimant again testified that his problems came on gradually and the pain was intermittent and gradual. The claimant agreed that he did not fill out a form requesting workers' compensation benefits until he went to his attorney's office. The claimant also agreed that when the forklift ran over his foot and he had problems with his back, there was no blood but an accident report was filled out. The claimant testified that he was sixty-one years old. The claimant testified that right before he quit working, his shoulders were really really painful and that at night it was difficult for him to sleep. The claimant testified that he guessed that working during the days his muscles would warm up but when he would try to sleep at night he had incredible pain. The claimant agreed that he would drive himself to work each day but it was difficult for him to drive.

On redirect examination, the claimant testified that when he hurt his back and his foot, he was called to the office to fill out

workers' compensation papers. The claimant testified that he never filled out papers and that the first thing that the respondent did was have him take a drug test. The claimant testified that he has never hurt his shoulders outside of work. The claimant testified that when he went to the JPA Clinic in July 2005 he told the doctor that his shoulders were bothering him. The claimant testified that it was the female doctor at the clinic that referred him to Dr. Arnold. The claimant explained that the reason his treatment has been on his wife's insurance was because he had canceled his health insurance because there was no need to have two policies. The claimant testified that when he told Jeff he was hurting, he did not give him a specific date such as I hurt myself yesterday. The claimant testified that Jeff never offered to send him to the office to fill out paperwork or to talk with anyone about his shoulders. The claimant testified that during the ten years he worked for the respondent his supervisors told him what to do and that he always had good performance reports.

On recross examination, the claimant testified that when he told Jeff his shoulders were hurting, he told him that it was because of his work.

Larry Massey testified on behalf of the respondents stating that he has been employed with the respondent for sixteen years and four years with the respondent at their Fayetteville chrome plant. Mr. Massey testified that he is a supervisor and is acquainted with the claimant. Mr. Massey testified that when an injury occurs at the plant, the injured employee is to report their injury

immediately to their supervisor and then he is contacted with the information. Ms. Massey testified that injuries can be reported directly to him. Ms. Massey testified that if an employee reports an injury to his lead or supervisor, an incident report will be filled out, a drug test would be performed and workers' compensation paperwork filled out. Mr. Massey testified that he has reviewed the claimant's personnel file and there is no incident report pertaining to the claimant's shoulders in his personnel file. Mr. Massey testified that if an employee files for FMLA and reports a work related injury he would be contacted in order to ask the employee the proper questions as to the incident. Mr. Massey testified that to his knowledge Mr. Barrera has never requested or sought medical treatment for his shoulders through workers' compensation.

On cross examination, Mr. Massey testified that he does not speak Spanish and agreed that it would be difficult for a Spanish speaking employee to report an incident to him. Mr. Massey testified that Jeff does not speak Spanish but does believe that the claimant's lead spoke Spanish.

On redirect examination, Mr. Massey testified that the respondent has personnel who act as interpreters and that there is no reason why an employee could not get an interpreter to report an injury to his supervisor.

On redirect examination, Mr. Massey testified that he is over many departments and agreed that the claimant did not work directly for him. Mr. Massey testified that he thinks that Mr. Jeff Linson

can understand some Spanish but cannot speak Spanish. Ms. Massey testified that when an accident is reported the supervisor should initiate the paperwork but if that should not happen then the injured worker could go to security to fill out paperwork and have their drug test. Ms. Massey testified that the respondent has an open door policy and that if an injured worker feels as if they are not being listened to, they are free to go around their supervisor and come directly to personnel.

The medical records set forth that the claimant was first seen by Dr. Moore on March 20, 2003, with complaints of pain in both shoulders into his elbows. After examination, the claimant was diagnosed with bilateral carpal tunnel syndrome and tendinitis in both shoulders for which a nerve conduction study was ordered. Dr. Moore writes on April 10, 2003, that he has seen the claimant and that his nerve conduction studies were normal, noting that the claimant's sensation was better today but still tender in both elbows. Medications were prescribed and heat and ice were recommended. The claimant was seen at the JPA Clinic on July 22, 2005, for complaints of bilateral shoulder pain but stating that his right shoulder is worse and is unable to raise it without pain. X-rays taken were within normal limits and it is noted that the claimant does heavy lifting at Superior. After examination, the claimant was diagnosed with having right shoulder pain, neck pain with radiculopathy and muscle spasms for which medications were prescribed. Dr. Christopher Arnold writes on October 20, 2005, that he has seen the claimant for his bilateral shoulder pain. Dr.

Arnold writes that the claimant has a history of bilateral shoulder pain which has gotten severe over the past week but reports no particular injury with the right shoulder worse than the left. After examination, x-rays were taken which were negative. Dr. Arnold diagnosed the claimant with having right shoulder pain, opining that it was secondary to rotator cuff tendinitis versus a tear versus adhesive capsulitis. Dr. Arnold recommended injection therapy as well as anti-inflammatories and if these do not improve his condition, to undergo an MRI. Dr. Arnold then injected both of the claimant's shoulders with medications and referred him to Dr. Mike Morse for evaluation. Dr. Arnold writes on December 15, 2005, that the claimant's shoulders are no better with the injections. Dr. Arnold notes that as per Dr. Morse and the claimant's MRI report, it is revealed that the claimant has cervical spondylosis of C6-7 with right foraminal narrowing. Dr. Arnold writes that he thinks that the claimant has cuff tears as well as some pain from the cervical spine, therefore, recommending an MRI of the claimant's right shoulder. The claimant underwent an MRI of his right shoulder on December 20, 2005, which revealed mild degenerative changes at the AC joint as well as spectrum of findings involving the distal supraspinatus tendon, likely represent a combination of partial tear/degeneration and a focal full thickness tear, involving the anterior third. This test also revealed bursitis secondary to the claimant's tear and mild signal heterogeneity involving the supraspinatus musculotendinous junction, which is likely due to an impingement type process. On

December 22, 2005, Dr. Arnold writes that the claimant's MRI review reveals an AC arthropathy and rotator cuff tear of his right shoulder for which Dr. Arnold recommended surgery. Dr. Arnold operated on the claimant's right shoulder on February 3, 2006, and the procedure performed was a right shoulder diagnostic arthroscopy, arthroscopic acromioplasty, open distal clavicle excision and rotator cuff repair. On follow up Dr. Arnold writes on March 9, 2006, that the claimant states his shoulder is feeling better than it was before surgery and Dr. Arnold recommended therapy including passive motion but no active motion and no strengthening. On April 20, 2006, Dr. Arnold writes that the claimant reports his shoulder is feeling better, although a little stiff, noting further that the claimant reports that he has been fired from his job. Dr. Arnold recommended that the claimant needs to work on his range of motion and start some gentle strengthening in order to regain his mobility. The claimant was again seen by Dr. Arnold on June 13, 2006, where it is noted that he is four months after a rotator cuff repair and doing well and is pleased with his results, noting further that his shoulder is a little stiff. Dr. Arnold recommended that they continue with the post operative protocol and he will see him back in three months.

Notes from Arnold Orthopedics and Sports Medicine dated October 20, 2005, indicates that the claimant was not released to return to work and will follow up for reevaluation at the doctor's office in two months. On December 15, 2005, Dr. Arnold again indicates that the claimant was not released to return to work. On

December 22, 2005, Dr. Arnold released the claimant to return to work with the restriction of no right hand or arm duty. On December 22, 2005, Dr. Arnold explains that the claimant will be in a sling for six weeks then still cannot use his arm for six more weeks for a total of twelve weeks after his shoulder surgery.

In the claimant's deposition, the claimant was asked if he considered himself an employee of the respondent and the claimant responded that he did not think so anymore because in February the respondent told him they could not wait for him any longer and they put him on medical layoff. The claimant stated that the doctor gave him an opportunity to return to work but that the respondent would not accept him with restricted work. The claimant testified that his first job for the respondent involved working with a small machine that shot air onto the rims and he would move the rims from one side to the other. The claimant testified that his next job was putting the rims on the robot and he did this job for approximately five years. The claimant testified that then the respondent moved him to the job where he had to unhook the rims from the line and put them down and he was at this job for approximately two years and nine months. The claimant testified that he was doing this job in October 2005, and that the name of the job was called nickle line. The claimant testified that his supervisor was Jeff Linson and that his lead person was named Chris but he did not know his last name. The claimant testified that he understood that if he got hurt on the job he was to report this to his lead who would be Chris. The claimant testified that he has

had two other injuries while working for the respondent, one to his arm and one when a forklift ran over his foot. Both of these were reported to his supervisors, paperwork was filled out and he received medical treatment. The claimant stated that he is still undergoing therapy for his right arm and as soon as he finishes with this he will undergo surgery on his left shoulder because it is in bad shape. The claimant testified that his wife's group health policy has covered his medical bills for his right shoulder treatment. The claimant testified that he had been feeling a little bit of pain in both of his shoulders for some time but a moment came when he felt a noise or a twist in his shoulder. The claimant testified that he had this pop or noise in his shoulder when he picked up a rim while working for the respondent. The claimant testified that he reported this to Chris and to Jeff but no one paid any attention to him. The claimant testified that he did not fill out any paperwork as a result of his shoulder problems but did seek medical treatment through his wife's insurance because the respondent would not listen to him. The claimant testified that he did ask Jeff, Chris and Reynaldo for medical treatment. The claimant explained that Reynaldo is in charge when Chris is not there and when he reported to Reynaldo that he could no longer do the work, Reynaldo told him to just go home. The claimant testified that the reason he received medical treatment for his previous two injuries was because Jeff and Chris saw these two injuries happen. The claimant testified that he applied for a leave of absence in July 2005 when his wife had an accident. The

claimant testified that when he reported his shoulder problems the respondent told him that the only thing left for them to do was to give him time off to see if it would right itself. The claimant testified that he reported to the respondent that he could not work anymore and that he took medical reports to them. The claimant testified that he reported his work related injury to Stacy as well as another person who spoke both languages. The claimant agreed that there was a person there to interpret for them. The claimant testified that after he reported his work related injury to Reynaldo, Chris and Jeff, he did not ask to fill out paperwork. The claimant then described the work which he was last doing for the respondent as the rims came out of an oven, he would unhook the rims from the line, noting that two wheels came down at a time, one approximately shoulder level and another about waist level. The claimant was asked and he testified that he is 5' 5" tall. The claimant testified that when he takes a wheel off there is a little black patch on each rim which he would scrape off with an airgun. The claimant testified that in a day he would do some 600 to 700 or possibly more wheels. The claimant testified that when he took off the black patch he would take the wheel and place it on a little table to take off the patch. The claimant testified that he has not worked since he last worked for the respondent and cannot find work because of his shoulders. The claimant explained that he is still under doctor's treatment and has not been released.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a

compensable injury to his shoulders while working for the respondent. The claimant has testified to work for the respondent of heavy lifting on a repetitive basis, handling 600 to 700 rims per day, each rim weighing from twenty-five to seventy pounds each. The claimant has testified that his problems began to come on slowly but continually got worse as he continued to work for the respondent. The claimant testified that he began complaining to his supervisors that his shoulders were causing him problems but that they would not pay any attention to him. The claimant testified that on October 20, 2005, he worked for the respondent approximately four hours and when they moved into a line with a heavier product he just could not do the work any longer. The claimant has testified that his supervisor, Reynaldo told him that if he could not do the work he should just go home. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his compensable shoulder problems from October 20, 2005. I further find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from October 20, 2005, to a date to be determined. Dr. Arnold took the claimant off work on October 20, 2005, and then again on December 15, 2005. Dr. Arnold released the claimant on December 22, 2005, to restricted duty of no right handed duties but the respondents have made no work available to this claimant within his restrictions. Therefore, the respondents should pay temporary total disability to this claimant from October 20, 2005, to a date to be determined. The respondents have raised the defense of lack

of notice until the filing of the AR-C. The claimant has testified that he repeatedly reported to his supervisor and lead person that he was having problems with his shoulders as a result of his work. As of October 20, 2005, the claimant reported to his supervisors that he could not do the work assigned to him and he was sent home because of his inability to do his work due to his shoulder problems. In find, therefore, that at least as of October 20, 2005, the respondents had notice that the claimant was having problems with his shoulders resulting from his work.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 19, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to both of his shoulders while working for the respondent. This injury resulted due to rapid repetitive work over a period of time for the respondent.

4. The respondent should pay for all medical treatment for this claimant's compensable shoulder injury subsequent to October 20, 2005.

5. The respondents should pay temporary total disability to this claimant from October 20, 2005, to a date to be determined. See discussion above.

6. The claimant did report a compensable injury to the respondent at least by October 20, 2005, the date he was sent home

due to his inability to do the work assigned to him. See discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable gradual onset type injury to his shoulders while working for the respondent.

The respondent should pay for the cost of medical treatment which is reasonable and necessary for this claimant's bilateral shoulder problems from October 20, 2005, to a date to be determined.

The claimant is entitled to temporary total disability from October 20, 2005, to a date to be determined.

The claimant reported his compensable injury to the respondent at least by October 20, 2005.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE