

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601632

JUANITA CORLEY	CLAIMANT
CRAWFORD COUNTY SENIOR CITIZEN	RESPONDENT
GALLAGHER BASSETT SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 8, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 17, 2006, in Fort Smith, 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 16, 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 January 4, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$66.00 for temporary total disability.

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

1. Compensability of the claimant's right shoulder injury of January 4, 2006.
2. Related medical.
3. Temporary total disability from April 6, 2006, to July 17, 2006.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that on January 4, 2006, she sustained injury to her right shoulder while lifting a heavy mixing bowl. The claimant contends that she is entitled to reasonably necessary medical treatment. The claimant contends that her attorney is entitled to an attorney's fee on any disability benefits that may ultimately be awarded in this case since the claim has been controverted in its entirety.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury to her right shoulder while employed by the respondent employer on or about January 4, 2006. The claimant is not entitled to any benefits. This claim has been denied and controverted in its entirety. The claimant's problems with her right shoulder, if any, were preexisting and degenerative and not related to her work for the respondent employer. In the alternative, if it is determined the claimant sustained a compensable injury, the respondents hereby request a setoff for all benefits paid by the claimant's group

health carrier, any short term disability benefits received by the claimant and any unemployment benefits received by the claimant.

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, photographs marked Claimant's Exhibit No. 2 and additional documents marked Claimant's Exhibit No. 3. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that her birth date is September 18, 1935 and that she has been working for the respondents since January 2003 as an assistant cook making deserts and breads. The claimant testified that on January 4, 2006, she mixed up a big mixer of dough and was taking it from the mixer and when she turned around to the table she felt a sharp pain hit her in the right shoulder. The claimant identified photographs of the mixing bowl and the mixer which she had been working with. The claimant testified that when the bowl is full of dough it weighs twenty pounds and when it is empty it weighs five pounds. The claimant testified that the bowl does not have handles. The claimant again testified that when she picked up the bowl, she felt a jabbing pain in her right shoulder and thought that she had pulled a muscle. The claimant demonstrated by pointing to the top of her right shoulder.

The claimant agreed that she has had problems with her right shoulder before and has been treated by Dr. Axelsen for arthritis. The claimant testified that Dr. Axelsen had given her a cortisone shot which helped her some. The claimant testified that she saw Dr. Axelsen just one time for her shoulder.

The claimant testified that after the event on January 4, 2006, she initially thought that she had pulled a muscle or strained her shoulder but by Saturday she could not lift her arm. The claimant testified that by Monday her shoulder was hurting really bad and she reported the event to her supervisor, Kathy. The claimant testified that she reported to Kathy that she had pulled a muscle or strained her shoulder and she needed to see a doctor. The claimant testified that her supervisor did not authorize her to go to the doctor but told her that she would call Ms. Gregory. The claimant stated that she did not get to talk to Ms. Gregory. The claimant testified that she called the doctor's office and told them that she needed to see a doctor and they made her an appointment with Dr. Rhomberg. The claimant testified that she went to see the doctor on Tuesday after she had talked to Kathy on Monday. The claimant agreed that she saw Dr. Rhomberg on January 10, 2006, at 2:00 in the afternoon. The claimant testified that she did not tell Dr. Rhomberg that she had a six-week history of right shoulder pain because she told him that she had hurt her arm at work while she was working with the mixer. The claimant agreed that her accident happened on January 4 and that she saw Dr. Rhomberg on January 10 and that would have been six days instead of

six weeks. The claimant testified that she did not tell the doctor about having problems for six weeks. The claimant agreed that in fact she had been off work for several weeks before January 4 because of having pneumonia. The claimant further agreed that if she had been having shoulder problems during the period of time that she was off due to pneumonia, she would have told her doctors about this problem. The claimant testified that Dr. Rhomberg x-rayed her shoulder and gave her a cortisone shot. The claimant testified that after she saw Dr. Rhomberg she called Sheila Hall, the workers' compensation claims adjuster, and told her that she needed an MRI and that the claims adjuster would not authorize the MRI. The claimant testified that she then called Elaine Gregory and told her that she needed to see a doctor and that Ms. Gregory told her that they used the orthopedic doctors in Van Buren. The claimant testified that based on this information she made an appointment with Dr. Griffin who was with the orthopedic group in Van Buren. The claimant agreed that Ms. Gregory did not give her a name of one of the orthopedic doctors. The claimant testified that she saw Dr. Griffin on January 23, 2006, and reported to him what had happened and showed him pictures of the mixer. The claimant stated that Dr. Griffin sent her for an MRI and at some point he put her on one handed restricted duty. The claimant agreed that she was put on one handed duty on April 3 or 4, 2006, and it was when she handed the note to her supervisor, Kathy, restricting her to one-armed duty that she was put on medical leave. The claimant testified that she continued on medical leave

until July 17, 2006, all the while being under Dr. Griffin's active medical treatment. The claimant testified that Dr. Griffin performed surgery on her shoulder on May 31, 2006, for rotator cuff repair.

The claimant again testified that she has never had any problems with her shoulder except for the one time she saw Dr. Axelsen for bursitis when she got a cortisone shot. The claimant agreed that she was seen by her family doctor, Dr. Dillard, in December 2005 and if she was having problems with her shoulders during this period of time, she would have told her family doctor about these problems. The claimant agreed that she was admitted to the hospital with pneumonia on December 16, 2005, and was released to return to work on January 3, 2006.

On cross examination, the claimant testified that she worked on a part time basis working six hours a day, three days a week for the respondent. The claimant agreed that several years ago she had seen Dr. Axelsen and had received an injection in her left shoulder but had no treatment for her right. The claimant agreed that at the time she was treated for her left shoulder she was informed that she had some arthritis or bursitis in her right shoulder as well. The claimant agreed that when she saw Dr. Rhomberg on January 10 she told him about her shoulder problems and again indicated that she did not tell the doctor that she had been having shoulder problems for six weeks because she had been having shoulder problems for six days. The claimant testified that she did report to Dr. Rhomberg that she hurt her shoulder picking up a

mixing bowl. The claimant agreed that after seeing Dr. Rhomberg she was seen by Dr. Griffin who did surgery on her right shoulder on May 31, 2006. The claimant agreed that Dr. Griffin released her to return to work on July 16, 2006, and that she has in fact returned to work for the respondent doing light duty that was a little easier. The claimant testified that she cleans up the table and floors as well as cleans the bathrooms and mops the floors. The claimant testified that she now is working five days a week four hours a day. The claimant testified that by the time she was released to return to work she was finished with all of her physical therapy and at the time of her release and since that time she is not on any kind of medications for her right shoulder. The claimant agreed that prior to going on medical leave on April 6, 2006, she had worked four hours each day for the three days prior to the sixth. The claimant testified that she went into work on April 6 and worked two hours and then her supervisor had her go on medical leave. The claimant testified that after her accident she did not report an accident to her co-workers but did tell them that her shoulder was bothering her. The claimant testified that it was the next Monday, the 9th of January, that she reported to Kathy that she had hurt her shoulder on the 4th. The claimant testified that after she was seen by Dr. Rhomberg she continued to do her work because she did not want to lose her job. The claimant testified that Medicare and Aetna have paid all of her medical bills because workers' comp had denied her claim. The claimant agreed that after she saw Dr. Axelsen in 1994 and received an injection into her left

shoulder she got some relief. The claimant testified that subsequent to the shot she continued to have some soreness and a little burning in her shoulder due to bursitis and arthritis.

Kathy Rippee testified by way of speaker phone. Ms. Rippee testified that she is the site director for the respondent and has been working for the respondent for a little longer than a year and a half. Ms. Rippee testified that she would see and work with the claimant each of the days that the claimant would work. Ms. Rippee testified that on January 9, 2006, the claimant reported to her that she was going to her doctor to get a shot for bursitis. Ms. Rippee testified that she does not recall the claimant telling her anything about getting hurt on the job. Ms. Rippee testified that the following Monday, January 16, 2006, the claimant came in and reported a work related injury. Ms. Rippee testified that the claimant had worked each of her regularly scheduled days from January 4 up until January 16, 2006. This witness testified that when the claimant asked for a workers' compensation claim, she told the claimant she would have to wait until the next day because Elaine Gregory, who was their supervisor, would have to help her. Ms. Rippee testified that the following day, January 17, is when she turned this claim over to Elaine Gregory.

On cross examination, Ms. Rippee testified that on Monday morning, January 9, the claimant told her that Sunday she could hardly lift her arm due to her bursitis. Ms. Rippee testified that the claimant had complained about her arm between the fourth and the ninth of January but does not recall the claimant having any

complaints about her arm in the month of December. Ms. Rippee testified that she does not recall the claimant complaining about her arm in November or October 2005. Ms. Rippee testified that the only time she can specifically remember the claimant complaining about her shoulder was in January. This witness testified that she recalls the claimant coming into work on January 9 and saying that she was going after work to get a shot and that the next working day the claimant had, she reported that her shoulder was a little better. When asked, Ms. Rippee testified concerning the claimant's conversation on January 16. This witness testified that the claimant reported that her doctor said she must have torn her shoulder lifting the mixing bowl on January 4th and that she needed an accident report to fill out. Ms. Rippee testified that the claimant reported that her doctor told her that she had torn her rotator cuff and that the claimant had told her that she hurt it on January 4th. This witness testified that on January 17th when Elaine Gregory was in, the claimant filled out an accident report and the respondent sent her to the doctor.

Deborah Jones testified that she worked for the respondent as a bus driver delivering meals on wheels and has been so employed since August 31, 2005. Ms. Jones testified that she is acquainted with the claimant and would see her when she would come in and out of the facility on the days that the claimant was working. Ms. Jones testified that she was aware that the claimant had filed a workers' compensation claim alleging that she had hurt her shoulder on January 4, 2006. This witness testified that the claimant had

complained of having problems with her shoulders and bursitis before January 2006. Ms. Jones testified that the claimant had told her that her right shoulder bothered her a lot and her doctor told her that she was going to have to have surgery eventually because it bothered her basically every day. When asked, Ms. Jones testified that she really was not sure which shoulder the claimant was complaining of, just that she said her shoulder.

On cross examination, Ms. Jones testified that she recalls the claimant complaining about her shoulder approximately a week after she, Ms. Jones, began working for the respondent and that she complained all the time. Ms. Jones testified that the claimant complained about something, one thing or another, every day that was bothering her or hurt her. This witness testified that the claimant always complained about her shoulder and the weather as far back as when she first started working. Ms. Jones stated that it was her impression that the claimant was being seen by a doctor for her shoulders. Ms. Jones stated that the claimant had told her that her doctor had said that she, the claimant, would probably need surgery later on down the line because her shoulder was bothering her so much. Ms. Jones testified that the claimant only told her about needing surgery one time and that was approximately six months ago. Ms. Jones testified that this conversation took place approximately six months ago but when informed that this was right after the first of the year, Ms. Jones became hesitant and stated that she was confused. Ms. Jones finally testified that it was about six months before she hurt herself that the claimant told

her that she would need surgery. Ms. Jones testified again that the claimant complained all the time and that she could not be sure if the claimant only mentioned needing surgery one time but she does remember the claimant stating that her doctor told her that she would need surgery. Ms. Jones testified that the ladies working for the respondent were always talking and the claimant was always talking about one pain or another or her doctor this or her doctor that and that she did not pay that close attention to a lot that she was over hearing. Ms. Jones testified that besides the other two workers and the claimant, Kathy Rippee would also be present. Ms. Jones testified that she could not say what Kathy Rippee heard or did not hear, all she could testify to was what she heard. Ms. Jones testified that she could not remember if the claimant had told her in January 2006 that she had gone to the doctor. Ms. Jones was asked if the claimant talked about needing surgery in January 2006 and Ms. Jones responded, "I can't answer that."

On rebuttal, the claimant testified that she rarely talked to Deborah Jones and has never complained to her about her shoulder. The claimant testified that Ms. Jones is in and out and that they are rarely together for any length of time. The claimant testified that Kathy Rippee is there on a regular basis noting that Ms. Rippee is her boss. The claimant testified that no doctor has ever told her before January 4, 2006, that she would need to have surgery on her shoulder.

On cross examination, the claimant testified that Deborah Jones is a driver and that she comes in around 9:00 to get the lunches and then she leaves and does not come back until around noon. The claimant testified that on the days that she works she may see Ms. Jones for approximately fifteen minutes. The claimant agreed that when she is working, Ms. Jones would be in the kitchen during the period of time that she is there. The claimant testified that when Ms. Jones comes back in after noon to have her lunch, she does not visit with her during that period of time, the only time she would have a chance to talk with Ms. Jones would be at 9:00 in the morning. The claimant testified that when Ms. Jones was in around 9:00 they would have casual conversation but never told her that she hurt her shoulder.

On redirect examination, the claimant testified that the kitchen was noisy and they had an air conditioner going as well as a blower over the stove but that people could converse at a normal level and still be heard.

The medical records set forth that the claimant was seen by Dr. Nils Axelsen on July 7, 2004, with complaints of right shoulder pain. Dr. Axelsen writes that the claimant is sixty-eight years old and reports pain in her right shoulder. The doctor notes that he had injected her left shoulder years ago for bursitis and that she did well. Upon examination, Dr. Axelsen notes that the claimant's strength in her external rotators is good and she is not tender over the AC joint. X-rays taken that day show that the claimant has arthritis in her right shoulder. Dr. Axelsen writes

that the claimant has right subacromial bursitis as well as asymptomatic right AC joint arthritis. Dr. Axelsen injected the claimant's right shoulder with medications and instructed her to come back in six weeks if she is not improved. The medical records also set forth that in December 2005 the claimant was treated for pneumonia, headache and dizziness by Dr. Dillard. These medical records would indicate that the claimant was in the hospital for a few days as a result of her pneumonia.

The claimant was seen by Dr. Edward W. Rhomberg on January 10, 2006, with complaints of right shoulder pain. Dr. Rhomberg writes that the claimant has a six-week history of progressive right shoulder pain. Dr. Rhomberg notes that the claimant reports that she has had an injection several years back by Dr. Axelsen and that this worked fairly efficiently until about six weeks ago when she redeveloped arm pain. The doctor notes that the claimant works in what sounds like a kitchen and has to lift heavy objects periodically and that this may well indeed have exacerbated her symptoms. Upon examination, Dr. Rhomberg notes that the claimant has a positive Hawkins sign as well as her Neer sign is positive. The doctor writes that the claimant has pain with cross over and abduction as well as pain with resistance in abduction. X-rays taken demonstrate acromioclavicular arthrosis as well as a Bigliana Type II acromion. Dr. Rhomberg writes that the claimant's assessment is that of rotator cuff syndrome. The doctor recommended an MRI and administered an injection in her shoulder. Dr. Frankie Griffin writes on January 23, 2006, that the claimant

reports that she was lifting a large mixer when she felt a pull in her right shoulder and then a sharp pain on January 4, 2006. It is noted that the claimant reports that her shoulder has been sore since this time. After examination and review of the claimant's x-rays which showed no fractures or dislocations, the claimant was assessed with having an impingement syndrome of the right shoulder and in order to rule out a rotator cuff tear, an MRI was recommended. Dr. Griffin prescribed medications for the claimant. The claimant underwent an MRI of her right shoulder on March 30, 2006, which revealed a complete tear of the supraspinatus tendon as well as AC degenerative changes. Dr. Frankie Griffin writes on April 3, 2006, that he has seen the claimant for her right shoulder problems following her MRI which revealed a focal but complete tear of her rotator cuff. Dr. Griffin recommended rotator cuff repair with distal clavicle resection and due to the claimant's concern about whether this is a workers' comp issue or not she did not want to consider surgical options at this time. Dr. Griffin placed the claimant on one arm duty with no use of her right arm. The claimant was instructed to get back with the doctor if she desired to schedule rotator cuff repair and a prescription for physical therapy was given. The medical records set forth that the claimant engaged in a rather vigorous physical therapy program beginning April 4, 2006, continuing through May 8, 2006. Dr. Dillard writes on May 30, 2006, that the claimant is scheduled for right shoulder rotator cuff repair on May 31, 2006. Dr. Griffin released the

claimant to return to work on July 17, 2006, with the instruction to do only one armed duty and no use of the right arm.

After a complete review of this entire case, its evidence and testimony, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on January 4, 2006. The claimant has testified to a specific incident of lifting a twenty-five-pound large mixing bowl with dough in it and feeling immediate pain in her right shoulder. An MRI of the claimant's right shoulder revealed a rotator cuff tear for which surgery was eventually carried out to repair. The claimant has testified and the medical records set forth that some years before this incident she did receive treatment for her shoulders from Dr. Axelsen and has and will continue to have arthritis or bursitis in her shoulders. It is questioned, however, that the claimant continually complained about shoulder problems to Ms. Jones, a co-worker, indicating that her doctor had suggested shoulder surgery for the claimant prior to January 4, 2006. The medical records do not reveal any problems being discussed with the claimant's doctors throughout the month of December when she was receiving extensive medical treatment and it is noted that the claimant's supervisor, Kathy Rippee, has no recall of the claimant complaining about her shoulders prior to January 4, 2006. The respondents, therefore, should pay all reasonable and necessary medical costs for the treatment of this claimant's compensable right shoulder injury subsequent to January 4, 2006. The claimant is also entitled to temporary total

disability from the date that she began being off work as a result of her compensable injury on April 6, 2006, through her release by Dr. Griffin following her surgery on July 17, 2006. The respondents shall be entitled to a set off for all benefits paid through the claimant's group health insurance carrier as well as any short term disability benefits which she received while she was on medical leave.

FINDINGS & CONCLUSIONS

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

2. On January 4, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$66.00 for temporary total disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right shoulder while working for the respondent on January 4, 2006. See discussion above.

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable right shoulder injury. See discussion above.

6. The respondents should pay temporary total disability to this claimant from April 6, 2006, to July 17, 2006. See discussion above.

7. The respondents will be entitled to a set off for any benefits paid to this claimant through her group health insurance or short term disability benefits.

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

9. 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 she sustained a compensable injury to her right shoulder while working for the respondent on January 4, 2006.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable right shoulder injury. The respondents should be entitled to a set off for any benefits paid by the claimant's group health insurance.

The respondents shall pay temporary total disability to this claimant from April 6, 2006, to July 17, 2006, subject to a set off for any short term disability benefits which this claimant may have been receiving.

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.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE