

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505255

LINDA DUNCAN, EMPLOYEE	CLAIMANT
STAFFMARK, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE, CO., CARRIER	RESPONDENT

OPINION FILED APRIL 4, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 17, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MELISSA ROSS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers's compensation benefits.

On January 10, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing and the parties' contentions relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Linda Duncan, the claimant, and Nick Lee, coupled with medical reports and other documents comprise the record in this claim. Prior to the taking of testimony in

this claim respondents announced that they had accepted the treatment of the claimant's right elbow as compensable and would pay the cost of medical treatment associated with same.

DISCUSSION

Linda Duncan, the claimant, with a date of birth of May 9, 1956, has a G.E.D. Claimant commenced her employment with respondent on August 28, 2000. During the course of her employment with respondent, a temporary employment agency, claimant as assigned to job duties with various employers.

The testimony of the claimant reflects that in October 2004, she was assigned to job duties Skil Corp. through her employment with respondents when she begin to experience symptoms of pain in her right arm. Claimant reported her complaints of pain to supervisory personnel at the work site, Pat Nichols and Mike Shelton. Claimant denies ever having complaints or problems with elbow or neck prior to the October 2004 onset. Claimant asserts that she was furnished an arm brace, which she wore during work. After approximately three to four months a band was put around to support her right elbow by personnel at the plant.

Claimant's testimony reflects that she was eventually seen by Dr. Joseph, the company doctor, regarding her complaint. Dr. Joseph later performed carpal tunnel surgery on the claimant's right wrist. Claimant testified that respondents paid for the cost of the surgery and temporary total disability benefits while she was off work recovering. Claimant estimates that she was released by Dr. Joseph in August 2005.

Claimant did not report to work for respondents upon her release. Claimant explained :

Well, I worked for Staffmark up to the 4th month of the injury.
I worked part time at Junior Foods. And then they hired me full time.
So, I took the full time position there and I worked to them, I do believe

it was the 18th maybe was the last day to work. Or they wouldn't let me work is what it was. The last day that I worked any place is May 11th. (T.9).

Claimant's testimony reflects that at the time she last discharged employment duties for any employer, May 11, 2005, the same was for Junior Foods. Further, the claimant testified that the symptoms she experienced at the time included pain in the wrist, pain in the elbow, and pain in the upper arm, all on her right side.

Claimant's testimony reflects that she experienced symptoms in her right shoulder from "day one" when she began having symptoms in her right wrist, October 2004. Claimant testified:

The same time, yes. And I had reported that when I did the statement I just did not use the word shoulder I used upper arm. Because it really doesn't hurt me right here in the shoulder. It's here in the arm. (T. 13).

Regarding her job duties at Skil, her assigned work area at the time of the onset of her symptoms, claimant's testimony reflects:

I was doing, I packed, I put motors in tools. I did molding machines where you had to lift up and put molding form the top of a machine to mold it. It varied to many different kind of jobs. (T. 13).

Claimant explained that the reason she did not attempt to get medical treatment for her right elbow complaint was because at the time she not appreciate where the pain was emanating from but rather thought it was a part of the healing process for the carpal tunnel surgery.

Claimant testified that she went to her doctor, Dr. Shawn Peyton, and had a MRI scan ordered.

The right shoulder MRI scan was performed at St. Bernard Medical Center. Claimant's testimony reflects that it is her impression that the results of the right shoulder MRI scan revealed that the problems stem from the shoulder on down.

Claimant's testimony reflects that Junior Foods terminated her employment in July 2005,

due to her inability to work as a result of the symptoms she was experiencing. Claimant testified that she is now physically capable of working. Claimant has sought employment since her August 2005, release by Dr. Joseph.

Regarding the present status of her right shoulder, the testimony of the claimant reflects that while she sees Dr. Peyton for her regular health needs she is not being furnished medical treatment specifically geared toward her right shoulder complaint. Claimant testified that she takes over-the-counter medicines (ibuprofen and Aleve) as well as sleep aid to assist with sleeping at night. Claimant also utilizes hot patches and a hot pad to obtain relief from her symptoms.

Claimant testified that when she was seen by Dr. Joseph she relayed complaints of pain in her upper arm and elbow as well as her wrist. Claimant explained why she did not ask for treatment for her shoulder:

No. I reported it to them about my arm and then when they did the surgery on my carpal tunnel and I seen that it wasn't getting any better after therapy, yes, I did go to my doctor and say, look, something is wrong here. (T. 15).

The testimony of the claimant reflects that she does housework, which includes washing dishes, laundry, and vacuuming the floor. Claimant is now receiving unemployment compensation benefits at a weekly rate of \$188.00.

Nick Lee, Human Resource Manager for Robert Baush Tool Corp, testified that he had responsibility for the Heber Springs and Walnut Ridge divisions along with NEA. The testimony of Mr. Lee reflects that Skil was the corporate name in the 70's when the company was purchased by Emerson Corporation then eventually Robert Baush Tool Corp. The company is still know as

Skil in the community. Mr. Lee testified that the claimant was assigned to work at the plant through her employment with respondents.

Mr. Lee provided testimony regarding the procedure for reporting an injury at his place of employment, the Skil Corp:

The procedure would be normally that the employee, the associate, notify their supervisor and the supervisor would then come to Ms. Glenda Staten, who is my benefit clerk. She represents us for workers' compensation and for benefits. At that point in time she would then get with either our doctor or if it's a Staffmark employee we would notify the Staffmark office that there is an injury to one of their associates. And Staffmark would take over at that point in time. (T. 19).

Mr. Lee testified that Pat Nichols is the key assembler in the area where the claimant was working, and that Mike Shelton was the unit manager for that area.

Mr. Lee acknowledged that he would not have any role in the documents completed by Staffmark regarding the claimant's workers' compensation claim. The testimony of Mr. Lee reflects that the extent of his company's reporting of a work-related injury of the claimant would have been to notify her employer, respondents. Mr. Lee further testified that he would no information regarding any of the claimant's complaints to her employer, respondent. Mr. Lee added:

I would not. And, sir, sometimes that does occur because Staffmark will tell the Staffmark associates, if you get injured, call us immediately. So, sometimes they will call Staffmark because that's their employer and would bypass us. And sometimes they would tell our supervisors they've been injured. Our supervisor would follow our procedure and tell my benefit clerk, Ms. Staten, and she would come to me. (T. 21-22).

The record reflect the presence of an occupational injury notice by respondent-employer regarding the claimant with an October 13, 2004, date of injury. The record also reflects that the

claimant was seen by Dr. Thomas Joseph on May 3, 2005, for a diagnosis of right carpal tunnel syndrome, and that Dr. Joseph was awaiting authorization from the workers' compensation carrier to perform a surgical release. Pending the afore, claimant was released to regular duties with no restrictions. (RX. #1, p. 2).

While the record contains a number of medical reports regarding office visits by the claimant and are identified in the index as being authored by Dr. Joseph, the nature of these reports appear to be more in line with the services rendered by a primary care physician. Claimant's primary care physician/family physician has been identified as Dr. Shawn Peyton. Dr. Joseph is a Pocahontas orthopedic physician.

The claimant underwent a MRI scan of her right shoulder on July 28, 2005, at St. Bernards Medical Center pursuant to the directions of Dr. Joseph. The report reflects the following conclusions:

1. Moderately severe supraspinatus rotator cuff tendinopathy. No evidence of a full-thickness tear, however.
2. Under surface spurring of the distal clavicle at the acromioclavicular joint with some impingement upon the supraspinatus. (RX. #1, p.5).

On August 19, 2005, Dr. Joseph authored a certificate releasing the claimant to return to full duty work relative to her carpal tunnel syndrome. The August 19, 2005, release noted that the claimant was not released to return to work relative to her shoulder and elbow. (RX. #1, p. 6).

On October 5, 2005, Dr. Joseph noted in a letter to respondent that claimant did not suffer any permanent impairment from the carpal tunnel release and trigger finger release which was performed on May 11, 2005. (RX. #1, p. 8).

After a thorough consideration of all of the evidence in this record, to included the

testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 15, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On October 15, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$201.00/\$151.00, for temporary total/permanent partial disability.
4. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she suffered a compensable injury, as defined pursuant to Ark. Code Ann. §11-9-102, to her right shoulder within the course and scope of her employment with respondents.

CONCLUSIONS

The claimant suffered injuries to her right wrist and elbow which were ultimately accepted as compensable by respondent. In addition to the right wrist and elbow complaints claimant maintains that she suffered an injury to her right shoulder which had its onset at the same time. Claimant asserts that respondents are liable for the cost of medical treatment associated with her right shoulder complaint. Respondents deny that the claimant suffered an injury to her elbow within the course and scope of her employment.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. Ark. Code Ann. §11-9-102 (4)(A) defines compensable injury to mean:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

To prove a rapid repetitive motion injury, a claimant must prove by a preponderance of the evidence that the injury: arose out of and in the course her employment; caused internal or external physical harm to the body requiring medical services; was caused by rapid repetitive motion; and was the major cause of the disability or need for treatment. *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998).

In the instant claim, claimant was employed by respondent-employer, a temporary employment agency, and assigned to job duties at different work sites. At the time of the onset of her symptoms in October 2004, claimant was discharging duties as an employee of respondent-employer at the Skil Corporation. Claimant continued to discharge employment duties at the Skil Corporation as an employee of respondent through April 2005.

After reporting her complaints of right wrist pain and soreness to supervisory personnel of the Skil Corporation claimant was provided with a wrist brace. Claimant ultimately reported her symptoms of arm, hand and wrist pain to supervisory personnel of respondent-employer. As a consequence of the afore claimant was directed to respondent-designated medical provider for treatment. On April 18, 2005, claimant signed a document of respondent acknowledging that she had been released to light duty work as of April 15, 2005, that alternate/modified duty was available at respondent and that she declined the job offer. (RX. #2, p. 1).

While working for respondent-employer claimant also worked part-time at Junior Foods,

a convenient store. Claimant later became a full time employee of Junior Foods. Claimant worked for Junior Foods through May 11, 2005.

Claimant underwent the right carpal tunnel release surgery by Dr. Thomas Joseph on May 11, 2005. Claimant continued to have complaints of pain relative to her right shoulder and right elbow following the May 11, 2005, surgery by Dr. Joseph. There is a medical report in the record regarding an office visit by the claimant of July 19, 2005, which recites “complaint or upper arm radiation”. (RX. #1, p. 4). As a consequence of the continuing complaints with respect to the right shoulder, on July 28, 2005, claimant underwent a MRI scan of the right shoulder at St. Bernards Medical Center pursuant to the directions of Dr. Joseph. The MRI scan report noted “moderately severe supraspinatus rotator cuff tendinopathy”.

Claimant last discharged employment duties for respondent in April 2005. Claimant is right hand dominate. In describing the mechanics of her job duties claimant noted that “it varied to many different kind of jobs”. Claimant does not describe her job duties as rapid, nor does she provide testimony or evidence of the speed required to perform the tasks of her job. Finally, there is no testimony in the record regarding the specifics of the claimant’s job duties in her employment with Junior Foods, which continued after she left the employment of respondents.

In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), a two-part standard was devised to determine whether an injury is caused by rapid and repetitive motion; the tasks must be repetitive, and the repetitive motion must be rapid. While the claimant, in her responsive pre-hearing questionnaire, argued that her job with respondents was repetitive she does not assert that the same was rapid. Accordingly, the claimant has failed to sustain her burden of proof by a preponderance of the evidence that the injury to her right

shoulder is a rapid repetitive motion injury pursuant to Ark. Code Ann. §11-9-102 (A)(ii) (a).

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge