

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512102

SHIRLEY A. EAGLE

CLAIMANT

LITTLE ROCK HEALTH CARE

RESPONDENT EMPLOYER

WAUSAU

RESPONDENT CARRIER

ORDER AND OPINION FILED JUNE 29, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on June 8, 2006. A prehearing conference was held on April 11, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulation:

1. There was an employer-employee relationship on May 12, 2005.

The claimant contends she sustained a compensable specific incident injury to both shoulders on May 12, 2005. The claimant further requests medical benefits, temporary total disability benefits from May 12, 2005 through August 16, 2005, and attorney's fees. Claimant further contends the temporary total disability rate is based on the claimant's earnings of \$6.90 per hour for 40 hours per week.

Respondents contend the claimant did not sustain a compensable injury arising out of and in the course of her employment. The claim has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Temporary total disability rate.
5. Attorney's fees.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on May 12, 2005.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable shoulder injury arising out of and in the course of her employment.

DISCUSSION

The claimant is a 47-year old woman with a ninth grade education who was working for the respondent employer as a CNA, making \$6.90 per hour for 40 hours per week. According to the claimant, she was in orientation on May 12, 2005, when she was involved in lifting a patient and hurt her shoulders. According to the claimant, she reported the incident to Mr. Anderson, the nurse in charge, and she went to the doctor on her own and saw Dr. Jamie Howard at UAMS, as she is on Medicaid. The claimant verified that she was off work until August 2005, when she returned to work for another employer.

Under cross examination, the claimant testified that she thought she might have had her injury on May 19, 2005, instead of May 12, 2005. She could not really remember. The claimant could not remember that she had treated in February or March for shoulder problems even though the medical documented that treatment. The claimant subsequently changed her testimony to indicate that her shoulder problems came on gradually as she was lifting patients rather than lifting one patient. The claimant believed her problems developed over her first two days of employment.

The claimant initially contended that she sustained a specific incident injury. In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a

preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Later in her testimony, the claimant contended that her injury happened gradually. Since the claimant in the present claim alleges that she sustained a gradual onset injury as a result of rapid repetitive motion, the requirements of Ark. Code Ann. §11-9-102(4)(A)(ii) (Supp. 2005) are controlling and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion;
- (5) proof by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish the compensability of the claim and compensation must be denied. See, *Jerry Reed v.*

ConAgra Frozen Foods, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

The claimant has the burden of proving by a preponderance of the evidence compensability of her claim. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). Credibility of witnesses is also properly the province of the Commission, which had the benefit of the witnesses' presence to judge their demeanor and determine the weight to be accorded their statements. *Gansky v. Hi-Tech Engineering*, 32 Ark. 163, 924 S.W.2d 790 (1996).

Whether the claimant contends that she sustained an accidental injury caused by a specific incident pursuant to Ark. Code Ann. §11-9-102(4)(A)(i), or whether the claimant contends that she sustained an injury caused by rapid repetitive motion in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the preponderance of evidence indicates that a compensable injury was not established by medical evidence supported by objective findings, pursuant to Ark. Code Ann. §11-9-102(4)(D). A compensable injury must be established by medical evidence supported by objective findings. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

In the instant claim, the claimant did not provide credible testimony to support her contention that she sustained a compensable injury while in the course of her employment. The claimant presented both testimony that the alleged injury was a specific incident and was also gradual onset. She remained confused when the alleged injury actually occurred, as well as being confused about having previous shoulder problems. Finally, the medical evidence did not provide the objective findings that are

required for a compensable injury nor did it document any work-related event as being the precipitating factor. For all these reasons, the claimant has failed to prove she sustained a compensable injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable shoulder injury arising out of and in the course of her employment. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**