

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F505004

**RANDAL LAMAR FORREST,
EMPLOYEE**

CLAIMANT

**RISER MOTORS, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**RAMSEY, KRUG, FARRELL &
LENSING, RISK MANAGEMENT
RESOURCES DIVISION,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED MAY 12, 2006,

Pursuant to a hearing conducted February 16, 2006, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. William K. Moritz, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant, and

Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to consider the issue of compensability of bilateral upper extremity injuries which developed by gradual onset.

During the period in question, the claimant was employed as a line mechanic doing motor vehicle repairs for the respondent employer. Beginning in February, 2004, he developed symptoms such as pain and weakness in his upper extremities, particularly at the elbow, and was eventually diagnosed by Dr. David M. Rhodes as having bilateral epicondylitis and left elbow proximal common extensor tendon tear with lateral collateral ligament tear. After conservative care failed to provide adequate relief, Dr. Rhodes performed surgery on the claimant's left arm on June 10, 2005, and on his right arm on September 23, 2005. The claimant was released to return to work on

December 5, 2005, and at the time of the hearing was employed as a motor vehicle salesman by the respondent employer. He attributes his condition to his employment activities as a line mechanic.

Specifically, the claimant contended that on or about May 9, 2005, he suffered compensable injuries to both arms arising out of and in the course of his employment, by gradual onset, and that he should be awarded benefits, including reasonably necessary medical and related expenses, such as the expenses of surgery performed by Dr. Rhodes, as well as benefits for temporary total disability from May 9, 2005, until December 5, 2005. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that (1) the claimant did not suffer an injury in the course and scope of his employment; (2) the claimant's condition was not caused by rapid repetitive motion at work; (3) the alleged compensable injuries are not the major cause of any disability or need for treatment the claimant may have experienced; (4) a compensable injury to the claimant's right arm cannot be established by medical evidence, supported by objective findings, as required by the Act.

The record, which included documentary evidence and the testimony of the claimant and the deposition testimony of Dr. Rhodes, was closed at the conclusion of the hearing, consistent with the Prehearing Order and Ark. Code Ann. §11-9-705(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, specifically including May 9, 2005, and benefits rates of \$387.00 and \$290.00 per week apply in this case.

3. The preponderance of the evidence fails to show that the claimant's gradual onset injuries were the result of rapid repetitive motion at work.

DISCUSSION

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Ark. Code Ann. §11-9-102(4)(A) defines a gradual onset injury, generally, as one caused by rapid repetitive motion, unless it falls into other specified categories not here applicable. Thus, the claimant's proof must include causation by rapid repetitive motion at work.

Dr. Rhodes in his deposition explained that epicondylitis is a chronic inflammation resulting from small tears of the extensor tendon. Dep. at 10. He stated that the type of motion that causes

this injury to flare up is usually extending the wrist as in lifting or carrying in a particular fashion. Dep. at 9. He also explained that we normally have such tears to our soft tissue but the body heals them. However, the claimant who had worked for several years as a mechanic, was now getting this condition because aging caused his tendons to be weaker and not to repair quickly enough, so that he developed chronic inflammation. Dep. at 12. Dr. Rhodes attributed the claimant's condition to his work as a mechanic, lifting, torquing, and using his hands daily in a variety of ways. Dep. at 12.

The claimant's testimony at the hearing was not inconsistent with the opinion of Dr. Rhodes. He stated that he performed a variety of tasks, such as brake jobs, changing and rotating tires, replacing batteries, some power steering work, oil changes, and normal mechanic jobs, although he did not do transmissions or work on motors. He stated that he did nothing over and over. Tr. at 28. He gave some examples of activity that was particularly uncomfortable to him at his employment, such as holding a tire with one hand on a balancer, squeezing a brake caliber, and lifting with his palms down. His testimony indicated that he might do as many as 15 brake jobs, change 20 batteries, and replace 60 tires during a given week. He also testified that he had been working on commission since 1999 although he had previously been paid an hourly wage.

Although there may have been a causal connection between the claimant's work activity and the gradual development of lateral epicondylitis, the Act now requires that such a condition be caused by rapid repetitive motion at work to be compensable. Here, the record fails to show that the claimant's activity at work involved motion that was rapid and repetitive. Indeed, the record indicates that gripping and carrying, without regard to rapidity or repetitiveness, may have been related to the development of his symptoms. Thus, his condition does not meet the statutory requirement of causation by rapid repetitive motion and is not compensable.

The Act also requires that a compensable injury be established by medical evidence, supported by objective findings, Ark. Code Ann. §11-9-102(4)(D), and that the injury be the major cause of disability and need for treatment. Ark. Code Ann. §11-9-102(E)(ii). As to these requirements, the record is more favorable to the claimant's request for benefits.

Dr. Rhodes in his deposition indicated that he observed diseased tissue that was discolored and indicative of epicondylitis in both of the claimant's arms when he performed his surgeries. This in itself is sufficient to satisfy the objective findings requirement of the Act. In a letter dated October 4, 2005, Dr. Rhodes wrote that the claimant's job was greater than 50% of the cause of his injury and need for treatment. While this does not fulfill the statutory requirement that the injury, not the job, be the cause of the claimant's disability and need for treatment, the record demonstrates that the claimant's bilateral epicondylitis was more than 50% of the cause of his need for medical care, including his surgeries, and the associated period of temporary total disability. However, to be compensable, the claim must meet all statutory requirements, including that of causation by rapid repetitive motion.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge