

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409837

ROBERT HARDIN	CLAIMANT
CARL SINGLETON	RESPONDENT
UNION INSURANCE COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 26, 2006

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

Claimant represented by JOHN VERKAMP, Attorney, Greenwood, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 1, 2005, 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 4, 2005. 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 July 22, 2004, 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 left shoulder injury.

2. Related medical.

3. Temporary total disability from July 23, 2004, until the date of release by the claimant's doctor.

4. The appropriate compensation rate for this claimant.

5. Attorney's fees.

The claimant reserves all other issues.

In regard to the foregoing issues the claimant contends that this claim is compensable and all reasonable necessary related medicals and compensation should be paid. Claim has been controverted in its entirety.

In regard to the foregoing issues the respondents contend that the claimant is alleging a shoulder incident on July 8, 2004, while lifting a chainsaw. The claimant only worked for the insured for two days. The two days he worked were July 21 and 22. The claimant never reported an on the job injury to the insured and just simply failed to return to work. The respondents contend that the claimant did not sustain an on the job injury during those two days of employment and that the claimant's problems are related to a prior shoulder problem.

The documentary evidence presented 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. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1, the deposition of Dr. Steve Smith marked Respondents' Exhibit No. 2 and additional

documentation marked Respondents' Exhibit No. 3. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he went to work for the respondent on July 21, 2004, driving a log truck. The claimant testified that the first day he worked Vernal Singleton came by his house and picked him up, they went and put fuel in the truck, then drove to the site. The claimant testified that Vernal loaded the logs and they strapped the logs down and then he, the claimant, drove the logs to the mill. The claimant testified that he drove back out to the log woods and loaded another load of logs and this time he took the load to Vernal's house so that he could leave the truck there over night. The claimant testified that the next day he picked up the log truck and took the load to the saw mill and went back out on the job site. The claimant testified that the truck was again loaded with logs and that Wayne Boren, another employee, had climbed up on the logs to trim some of the branches off the logs. The claimant testified that Mr. Boren climbed up on the truck and that he, the claimant, using his left arm, handed him the chainsaw. The claimant stated that immediately he felt a tearing burning feeling in his left shoulder. The claimant testified that once Mr. Boren got the saw out of his hand, he lowered his arm and rubbed it and it kind of quit hurting so he did not think that much about it at that time. The claimant testified that following this event as he was driving the truck and turning the wheel his shoulder began to hurt. The claimant testified that it was late in the day by

this time and he again drove the truck to Vernal's house for the evening.

The claimant testified that when he got to Vernal's house Vernal was not home so he left the truck and went on to his house. The claimant testified that as the night went on his arm kept getting stiffer and stiffer and he was experiencing more pain. The claimant testified that he got up at 4:30 in the morning and could not move his arm without using his other arm or hand to move it so he called Vernal and reported his accident. The claimant testified that he has never had problems with his left shoulder which required him using his right hand and arm to move his left arm. The claimant testified that he reported to Vernal that he had hurt his shoulder lifting the chainsaw up to Wayne Boren and he could not move his arm so he was going to go to the doctor. The claimant testified that after he went to the doctor that day, he returned to Vernal's house and told him what the doctor had told him. The claimant testified that he has not worked for the respondent since that time.

The claimant testified that he initially was seen by Dr. Cruz who recommended home exercises. The claimant testified that these exercises did not improve his condition and after seeing Dr. Cruz a couple of times he was referred to Dr. Sherrill who sent him to a physical therapist. The claimant testified that after three weeks of physical therapy he still had not improved and at that time he was referred to Dr. Smith.

The claimant testified that when he was first seen by Dr. Cruz he reported to the doctor that he had had ongoing problems with both of his shoulders and had been given cortisone injections for these problems. The claimant testified that he was not sure how long it had been since he had his last injection but did remember that he had had two or three injections while he was driving a truck for Matt McCafferty. The claimant testified that these cortisone shots were very effective to alleviate the discomfort in his right shoulder but occasionally he would still get some pain in his left shoulder. The claimant testified that the difference between the pain that he had in both his shoulders before the chainsaw event and the pain he experienced as a result of the chainsaw event was very dramatic indicating that before the incident his pain would be like a one and after the chainsaw event it was more like the pain was a ten. The claimant testified that he has not worked for anyone since the respondent until he began working for Tyson. The claimant testified that after the chainsaw event he could hardly lift any weight with his left arm and could not drive a truck, noting that he could barely turn the steering wheel on his car. The claimant testified that since his arthroscopic surgery he has had no problems with his left shoulder except a little minor pain at night when he may lay on his arm too long. The claimant testified that he now is able to work and can drive a truck without any problems.

On cross examination, the claimant agreed that after his surgery he has not had to have any cortisone shots for his shoulder

nor does he take any medications. The claimant agreed that before July 21, 2004, he could not lift his arm above his head and he was taking medications. The claimant agreed that his shoulder problems began in 1996 or 1997 when he had to dolly up trailers all day. The claimant testified that he had minor pain in his shoulders when he would drive a truck as far back as 2002 and that these problems continued but were not constant. The claimant agreed that in his deposition he testified that when he would get steroid injections this treatment would help his right shoulder but did not seem to help as much with the left shoulder. The claimant agreed that since 2004 he has been taking Hydrocodone on the weekends for pain in his left shoulder. The claimant indicated that he could not take this medication and still be able to drive a truck that is why he only took it on the weekend. The claimant agreed that he also took Vioxx and Bextra for his shoulders. The claimant agreed that when he was seen by Dr. Young in April 2004 his shoulder pain was getting worse. The claimant agreed that when he saw Dr. Young on June 16, 2004, the doctor gave him an injection in his shoulders and prescribed Celebrex and Roxicet. The claimant testified that when he saw Dr. Young on July 30, 2004, he was being seen for a prostate infection and the medications prescribed at that time were primarily for this problem. The claimant agreed that he did not report to Dr. Young any new shoulder problems. The claimant agreed that during the year 2004 when he would do physical activities sometimes it would bother his shoulder and he would have to go in for medication or an injection. The claimant testified that in the

past when he would do physical activities he would have twinges of pain in his shoulders but that they would go away. The claimant further agreed that on July 22 when he lifted the fifteen-pound chainsaw he felt a twinge of pain that lasted a few seconds and then went away. The claimant agreed that he was able to do his job for the rest of the day as well as drive to Mansfield. The claimant agreed that when he saw Dr. Cruz on August 12, 2004, he told him that he had had chronic recurrent shoulder pain since 1996 or 1997 for which he has taken medications and had injections. The claimant agreed that he had been told by a physician that he could continue with this type of conservative treatment until he got to the point where he could not stand it and at that time they would do surgery to correct his shoulder problems. The claimant agreed that Dr. Cruz had him on Darvocet and Lorcet which he took at night which was pretty much the same regime he had been on for taking medications on the weekend for his shoulder problems. The claimant testified that when he saw Dr. Cruz on October 20 he was also having problems with his right shoulder noting that he has had problems with both his shoulders since 1996 to 1997. The claimant agreed that Dr. Cruz had gone over with him the fact that he had left shoulder pain due to probably arthritis. The claimant testified that he underwent MRIs of his shoulders prior to being referred to Dr. Sherrill. The claimant testified that eventually he was sent to Dr. Smith who scoped his left shoulder. The claimant also agreed that since his surgery he has not had to take medication for pain or discomfort as he has for the last seven or

eight years. The claimant agreed that when Dr. Smith scoped his shoulder he also cleaned out the bone spurs which the doctor in Texas had told him he needed to have done.

On redirect examination, the claimant testified that prior to the chainsaw incident, the pain which he had in his left shoulder was a constant mild pain. The claimant testified that he did not start taking medications on a daily basis for his shoulder until he had his prostate infection. The claimant agreed that after the chainsaw incident he took medication more often for his left shoulder than he had before the incident. The claimant testified that he took his medication daily up through February and on for approximately six weeks following his surgery. The claimant testified that he is not currently taking medications.

The medical records set forth that the claimant was seen at the Scott County Hospital on July 23, 2004, for his complaints of shoulder pain. The history sets forth that the claimant started having left shoulder pain yesterday after lifting a chainsaw. After examination, Dr. Cruz diagnosed the claimant with having left shoulder pain and prescribed an arm sling as well as medications. Dr. Cruz writes on July 30, 2004, that the claimant's left shoulder pain is better and continued him with conservative treatment. The claimant continued to follow up with Dr. Cruz approximately once a month for his continuing complaints of left shoulder pain for which conservative treatment was recommended. On October 27, 2004, Dr. Cruz writes that the claimant reports that his pain is so bad he cannot sleep at night. Dr. Cruz writes that the claimant now is

experiencing bilateral shoulder pain and that crepitus is evident in both sides. Dr. Cruz ordered an MRI, injected medications into the claimant's left shoulder area and referred him to an orthopedic specialist. The claimant underwent an MRI of his left shoulder on October 29, 2004, which revealed mild hypertrophic changes of the acromioclavicular joint with irregular bright signal involving the infraspinatus tendon and possible portions of the teres minor tendon posteriorly. These findings would suggest a high grade partial tear without definite focal through-and-through tear appreciated. The report reads that the remainder of the study is otherwise unremarkable. The claimant was seen by Dr. William Sherrill on November 30, 2004, and after examination and review of the claimant's MRI and x-rays, the doctor recommended injections into the claimant's left shoulder followed by an exercise program. Dr. Sherrill writes on December 21, 2004, that the claimant's MRI showed evidence of inferior surface tears of the rotator cuff, both the right and left shoulders. Dr. Sherrill notes that the claimant has not benefitted from therapy. Dr. Sherrill recommended that the claimant be scheduled for arthroscopic surgery. Dr. Steven Smith writes on January 3, 2005, that he has seen the claimant on referral from Dr. Sherrill. Dr. Smith notes that the claimant's MRI shows undersurface rotator cuff injury. Dr. Smith notes that the claimant reports a history of picking up something over his head and feeling a twinge in his shoulder and that since then he has had posterolateral pain. Dr. Smith notes that at the time of his examination the claimant had impingement positive maneuvers.

Dr. Smith writes that he has reviewed the claimant's MRI and considers him a candidate for left shoulder arthroscopy and acromioplasty. The claimant underwent surgery performed by Dr. Smith on January 11, 2005. Dr. Smith writes on January 24, 2005, that he has seen the claimant thirteen days out from his left shoulder surgery. Dr. Smith notes that the claimant had undersurface rotator cuff tear. Dr. Smith writes on February 15, 2005, that the claimant can return to regular duty work on February 28, 2005.

The claimant's earlier medical records set forth that he underwent a bone scan on April 29, 1999, which was read to reveal a slight increase in activity generally at the right AC joint which would indicate a chronic sprain type injury. On December 12, 2003, Dr. Young injected the claimant's right and left shoulder with cortisone. Dr. Young injected the claimant's shoulders with medication on April 5, 2004. Dr. Young writes at that time that the claimant has increasing pain in both shoulders noting that he has subdeltoid bursitis. The medical records set forth that the claimant had injections in his left shoulder on June 16, 2004, administered by Dr. Young.

The non medical information sets forth that the claimant received a check from the respondents on August 10, 2004, in the amount of \$214.20.

Dr. Steve Smith in his deposition testified that he performed a left shoulder arthroscopy and arthroscopically debridged a partial tear of the claimant's rotator cuff and then did a

arthroscopic bursectomy and acromioplasty noting that this procedure is essentially shaving down a bone spur in part of the claimant's shoulder. The doctor agreed that this surgery was performed on January 11, 2005. Dr. Smith explained a supraspinatus, bursitis in the subacromial space, and a curved acromion. The doctor testified that he could not tell from looking at the time he did surgery how long the claimant had had these problems. The doctor did testify that the claimant had a Type II chromium which would lend itself to a person developing shoulder problems. Dr. Smith testified that generally speaking shoulder problems will develop more likely on the dominant side. Dr. Smith did not know whether the claimant was right or left-hand dominant but agreed that if the claimant was right-hand dominant that would be his dominate side. Dr. Smith testified that he was unaware that the claimant had experienced shoulder problems since 1996 or 1997. Dr. Smith agreed that dollying up trailers all day long is the type of activity that could cause shoulder problems. Dr. Smith testified that cortisone injections are typically given into the subacromial space to try and calm down the tendinitis and bursitis that developed in the shoulder. Dr. Smith was asked that if the claimant was taking pain medications before his chainsaw event would this be inconsistent with the pathology which he found when he did surgery on the claimant and Dr. Smith responded, "No." Dr. Smith testified that if a person has tendinitis and not a partial tear then cortisone shots can work indefinitely but if there is a partial tear a cortisone shot might help briefly but that these

shots do not typically cure the tear or make the discomfort go away forever. Dr. Smith was asked that if the claimant had this tear back over the last four or five years then the injections might provide some temporary relief but nothing long lasting and Dr. Smith responded, "Yes." Dr. Smith also agreed that if someone is having increasing pain in his shoulder that indicates that there is some ongoing pathology. Dr. Smith agreed that if someone was having ongoing pathology in his shoulder he would expect that person to have pain on activity. Dr. Smith was asked, "And you are going to expect him to have pain in the shoulder if they do anything, even like what Dr. Sherrill described as a less strenuous activity of picking up a chainsaw?" Dr. Smith responded, "Yes." Dr. Smith agreed that this does not necessarily mean that picking up the chainsaw caused the problem it just means that when he does that activity he has pain. Dr. Smith was asked that if the claimant had pain for like fifteen seconds and it then went away was that then consistent with someone who was having recurrent long term problems. Dr. Smith responded, "Yes." Dr. Smith testified that he was aware that the claimant's MRI of his right shoulder also showed a possible partial tear. Dr. Smith testified that based on the claimant's arthroscopic findings with the labral pathology this would indicate some early arthritis. Dr. Smith agreed that based on the information provided him during this deposition as far as how long the claimant has had shoulder problems and the medications and injections which he has received, his opinion would be that this was a chronic situation which he had

treated. Dr. Smith stated that based on the information they had discussed concerning the claimant during the deposition, it sounded as if he has had a long-standing problem and based on his symptomatology it certainly sounded like his problems had been going on longer than July. Dr. Smith agreed that he felt like the claimant's July 9 event would be a recurrence of long-standing problems. Dr. Smith was asked that if the claimant had come to him with the history of shoulder problems since 1996 or 1997 and having injections which only provided temporary relief as well as reviewing his MRI would he have recommended surgery and Dr. Smith responded, "Yes, based---even more strongly based on the longevity of the symptoms, I would have recommended surgery." Dr. Smith testified that he has not assessed the claimant with an impairment rating but did remember that he has released him with no restrictions.

On cross examination, Dr. Smith agreed that if the claimant was lifting the chainsaw up over his head extending his arm upward could that have been an action that would have caused the tears to the labrum or the supraspinatus. Dr. Smith responded, "It could have, yes." Dr. Smith was asked that if a person has some chronic condition such as a partial tear to his shoulder tendons would that make them more susceptible to further tearing if they lift something overhead? Dr. Smith responded yes. Dr. Smith testified that the claimant had a curved acromion that predisposed him to development of a rotator cuff pathology. Dr. Smith agreed that coupled with activity and the claimant's curved acromion this could

have caused shoulder symptoms such as what he has experienced over the past years. Dr. Smith agreed that the claimant having a curved acromion was a condition that could have caused some pain and symptoms without him having a tear to his rotator cuff. Dr. Smith was asked what kind of symptoms this could cause without a tear and Dr. Smith responded, "Similar symptoms. Pain with overhead activity and impingement syndrome where you have a rotator cuff tendinitis."

On redirect examination, Dr. Smith was asked if after being asked questions by the claimant's attorney was his opinion still the same as to this being a long term, chronic problems? Dr. Smith responded, "It sounds like it's a long term and chronic problem."

On recross examination, the doctor was asked if he could state within a reasonable degree of medical certainty if he could say whether or not the claimant further injured or tore his rotator cuff by lifting the chainsaw. Dr. Smith responded, "I don't think you can say whether he can or he can't. He was having symptoms before and then he has had more symptoms and you know, again, there is no way to definitely say that this is the day he tore it without an MRI before that day and after that day."

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury which is identifiable by time and place of occurrence while working for the respondent on July 22, 2004. It is not argued that this claimant had long standing left shoulder problems for which he had been receiving occasional

treatment. It has also been pointed out that the claimant also had a predisposition for shoulder problems due to his physical makeup. But it was not until he was lifting a chainsaw with his left arm up over his head while working for the respondent that his left arm problems were so exacerbated that he no longer could work and had to seek medical treatment. The claimant has shown by objective medical evidence that he did have an injury to his left shoulder for which medical treatment was necessary to address and he reported his work related injury to his employer on July 23, 2004, after he returned from seeing his doctor. The respondents, therefore, shall pay all the reasonable and necessary medical treatment for this claimant's compensable left shoulder injury as well as temporary total disability from July 24, 2004, until he was released by his doctor after surgery on February 28, 2005.

The testimony has been that the claimant only worked for the respondent two days. There has been placed in the record a check from the respondent to the claimant for this two days of work. Using the \$214.20 as a basis as to what the claimant would earn over a two-day period of time, this would translate into a weekly wage of \$535.50. This then would entitle the claimant to a temporary total disability rate of \$357.00 and a permanent partial disability rate of \$268.00.

FINDINGS & CONCLUSIONS

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

2. On July 22, 2004, 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 his left shoulder while working for the respondent on July 22, 2004. See discussion above.

4. The respondents should pay for all reasonable and necessary medical treatment for this claimant's left shoulder problem. The respondents should also pay temporary total disability to this claimant from July 24, 2004, until February 28, 2005. See discussion above.

5. The claimant is entitled to a compensation rate based on an average weekly wage of \$535.50 which would entitle him to a temporary total disability rate of \$357.00 per week and a permanent partial disability rate of \$268.00 per week. See discussion above.

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

7. 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 injury while working for the respondent on July 22, 2004.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's left shoulder compensable injury.

The respondents should pay temporary total disability to this claimant from July 24, 2004, to February 28, 2005.

The claimant is entitled to a compensation rate of \$357.00 for temporary total disability and \$268.00 for permanent partial disability.

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