

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502582

DENISE JOHNSTON	CLAIMANT
CLOYES GEAR & PRODUCTS, INC.	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 15, 2006

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

Claimant represented by THOMAS MICKEL, Attorney, Conway, Arkansas.

Respondents represented by BETTY DEMORY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 2, 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 December 6, 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 March 1, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her head and neck on March 1, 2005.

4. The claimant is entitled to a weekly compensation rate of \$466.00 for temporary total disability and \$350.00 for permanent partial disability.

5. Medical expenses have been paid to date.

6. Temporary total disability has been paid to date.

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

1. Compensability of the claimant's right shoulder injury of March 1, 2005.

2. Additional temporary total disability from April 5, 2005, to a date to be determined.

3. Medical for the claimant's right shoulder injury from July 2005 to a date to be determined.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she sustained a compensable injury by specific incident to her head, neck and right shoulder when a robot hit her while she was working for the respondent employer. Respondents do not appear to dispute the injuries to the head and neck. Claimant has treated most recently with Dr. Evans of Cooper Clinic for her shoulder. Dr. Evans recommended surgery. Respondents had claimant seen by Dr. David Collins, who opined that claimant's shoulder problem was not caused by the admittedly compensable injury and that surgery on the shoulder was not reasonably necessary. Claimant was unable to work either due to headaches from the head injury, the shoulder, or both conditions, since April of 2005. Claimant continues having

headaches and cannot work due to shoulder pain, stiffness and problems, and will be in her healing period until she receives additional treatment for her shoulder. Claimant contends that respondents have controverted this claim with respect to the benefits claimed at present. Therefore, claimant contends she is entitled to maximum attorney's fees on all benefits awarded. Claimant requests that and consents to claimant's portion of attorney's fees, payable to claimant's attorney, be deducted from compensation payable to claimant by respondents and paid directly to claimant's attorney.

In regard to the foregoing issues the respondents contend that the claimant has been provided all appropriate benefits to which she is entitled. Specifically, the respondents have paid the claimant's medical expenses and temporary total disability benefits. However, respondents take the position that the claimant's request for shoulder surgery is not a compensable consequence of the March 1, 2005, accident. The respondents reserve the right to assert additional contentions as may become known through discovery.

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. The respondents submitted medical evidence marked Respondents' Exhibit No. 1 and an abstract of the respondents' medical evidence marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty years old and had a bachelor's degree from Arkansas Tech University in Physical Education. The claimant testified that she went to work for the respondent in March 2004 as a supervisor. The claimant testified that on March 1, 2005, she was called into an area where she normally did not work to repair or reprogram one of the robots. The claimant testified that this was the only spot in the plant where two robots worked together and it was not her regular work area. The claimant testified that when she thought she had the robot fixed she asked another one of the supervisors to turn the machine on forgetting that when the machines were turned on both robots would start performing. The claimant testified that she was bent over looking to see if the robot she worked on was going to pick up the parts. The claimant testified that the other robot came back to its home position which was where her head was and since she was bent over it came and hit her right in the top of the head. The claimant testified that the robot threw her back against the fence that surrounds the robot area. The claimant testified that the other supervisor was standing there and he caught the fence as it was falling back into the wall and pulled her up. The claimant testified that she is not sure what the fence is made of but it was yellow plastic which might have had metal in it. The claimant testified that she knew that her head and back were hit but she did not remember anything about her other body parts

because everything had happened so fast. The claimant again stated that she knew for sure that her head and neck were hit.

The claimant testified that she worked the night shift and it was around 1:30 in the morning and there were several people present who saw this accident happen. The claimant testified that she was taken to the hospital in Paris. The claimant testified that she reported to the doctor's at the hospital that she had been hit in the head with a robot and that her neck was getting stiff and she could hardly move her neck or turn her head. The claimant testified that the stiffness was kind of going from her neck all the way down into her back. The claimant testified that the pain and stiffness also went down into her shoulder noting that all of her whole trapezius muscle was really tight. The claimant testified that she could not move her shoulders or raise her arms or turn her head.

The claimant agreed that she has had a history of migraine headaches but after her accident she continued to have headaches. The claimant testified that from the date of her accident she continually had migraine headaches until the end of April when she was seen by Dr. Keating, a neurologist. The claimant agreed that as she continued to be treated by Dr. Keating her migraine headaches became less and less. The claimant testified that she continued to have problems with her shoulders indicating the top of her right shoulder. The claimant explained that it felt like she had a weight pressing down on the top of her shoulder on the right side. The claimant testified that Dr. Keating eventually referred

her to Dr. Jeffrey Evans who after a couple of visits and taking x-rays recommended surgery for her right shoulder. The claimant testified that the respondents denied her request for surgery and sent her to Dr. Collins. The claimant stated that when she was seen by Dr. Evans, he would examine her for approximately twenty to twenty-five minutes and her visit with Dr. Collins was for about ten to fifteen minutes. The claimant testified that it was her understanding that Dr. Collins has opined that she did not have a work related shoulder injury and that she did not need surgery on her shoulder.

The claimant testified that she tried to return to work after her injury but due to her headaches she was unable to work. The claimant explained that at that time her headaches over rode her shoulder discomfort even stating that she did not realize that her shoulder was hurt that bad. The claimant testified that the respondent laid her off work in April 2005. The claimant stated that since that time she has tried to file for unemployment but because she had not been released by her doctor to return to work she was not entitled to benefits.

The claimant testified that she has not worked anywhere since April 2005, she has never had right shoulder problems prior to her accident with the robot and she has not been seen by a physician since she was seen by Dr. Collins.

On cross examination, the claimant agreed that by April 2005 her migraine headaches had primarily resolved. The claimant agreed that following her accident she also received treatment for her

neck and that the neck problems have pretty well resolved as well. The claimant testified that in May 2004 she was involved in a motor vehicle accident when she hit her right shoulder. The claimant testified that she did not have any x-rays and was primarily seen for her complaints of migraine headaches following this accident. The claimant testified that when she filled out an accident report for the respondents she does not remember whether she put anything down about her shoulder or not because her headaches were overriding everything else. The claimant testified that she told Dr. Alexander about her shoulder problems in March after she had gone to the ER remembering that she told him about her neck and the weight on the end of her shoulder. The claimant testified that when the robot hit her in the top of her head it kind of threw her up because she was bend over. The claimant agreed that the fence she hit was about one foot from where she had been standing and she did not fall to the floor but was able to stay on her feet. The claimant testified that the problems she is currently experiencing with her right shoulder include pain all the time on the top of her shoulder with burning shooting pains that go down to about the middle of her arm. The claimant testified that she takes medication off and on for her shoulder but not every day. The claimant agreed that no doctor has put any restrictions on her activities as far as her right shoulder is concerned.

On redirect examination, the claimant testified that from the very beginning when she saw Dr. Alexander and all the physicians she has seen subsequent to that she has reported to them that she

felt a weight on her neck or on her trapezius muscles, noting that this went from the base of her skull all the way down to the top of her shoulder. The claimant further testified that she has reported a tightness from the bottom of her neck all the way out to her shoulder like weight on the end of her shoulder just pushing down. The claimant testified that due to her shoulder problems, since she cannot raise her arm, it limits her as to the types of work she has done in the past.

Ronnie Atkinson testified on behalf of the respondents stating that he was the personnel director for the respondent. Mr. Atkinson testified that he has been an employee of the respondent for eight and one half years and was acquainted with the claimant. Mr. Atkinson testified that on March 1, 2005, he received information that there had been a work related incident involving the claimant. Mr. Atkinson testified that it was his understanding that the claimant had injured her head and neck and it was not until much later that he learned that she was claiming a shoulder problem. Mr. Atkinson testified that due to a down turn in the respondent's business the third shift, which the claimant worked, had to be eliminated and did end up in some lay offs of individuals on the third shift. Mr. Atkinson agreed that the claimant was laid off opposed to being terminated.

On cross examination, Mr. Atkinson testified that since the claimant worked third shift which was the night shift he had very little interaction with her. Mr. Atkinson testified that to his knowledge the claimant was not known in the plant to be someone who

would fake or feign injuries or lie about things. This witness testified that the claimant was the only person on light duty on the third shift who was subject to layoff.

The medical records set forth that the claimant was seen at the emergency room on March 1, 2005, for head injuries as a result of an accident with a robot. It is reported that the claimant has blurred vision, head pain and stiff neck and back. On March 3, 2005, Dr. Eugene Alexander writes that he has seen the claimant following her March 1, 2005, work accident noting that she now complains of neck discomfort and discomfort in her trapezius muscle and feels as though there is a heavy weight sitting on her neck. It is further set forth that all this muscle tension is causing the claimant to have another one of her migraine headaches. Medications were recommended as well as a cervical soft collar and she was taken off work. A CT of the claimant's cervical spine done on March 3, 2005, reveals mild degenerative spondylosis at C5-C6 with no evidence of acute cervical fracture. Dr. Alexander writes on March 9, 2005, that the claimant has not had any adequate relief from the medications prescribed and was seen for her complaints of headache and neck pain that radiates down into her trapezius muscle. After examination, the claimant was assessed with having cervical spine degenerative joint disease as well as degenerative disc disease exacerbated by recent trauma for which the doctor prescribed medication. The claimant was also given a off work slip for two weeks so that she could concentrate on physical therapy. Dr. Keith Holder writes on March 23, 2004, that he has seen the

claimant for her work related injury. Dr. Holder notes that the claimant has a history of migraines but these headaches have returned with the onset of her neck pain after her injury. After examination, the doctor assessed the claimant with having cervical strain but ordered an MRI to rule out a herniated disc in her neck. Dr. Holder released the claimant to return to work on Monday with no lifting over five to ten pounds, no climbing ladders, bracing on her right arm, repetitive motion of the neck and that she should wear her neck brace. The claimant underwent an MRI on March 25, 2005, which revealed that she had straightening of the normal lordosis and probable lateral spur at C6-7 as well as minimal central bulge at C5-6. This test sets forth that there were no significant focal protrusions or herniations identified. On March 30, 2005, Dr. Holder writes that the claimant's head and neck are still problematic and she has still not returned to work but notes that she has had some improvement with physical therapy. Dr. Holder writes that she has received a TENS unit and that the headaches seem to be in the neck area on the right side. Dr. Holder recommended that she continue physical therapy as well as her medications and that she may return to work with basically sedentary duties with no climbing ladders, lifting over five to ten pounds and no repetitive motion of her neck. Dr. Holder writes on April 13, 2005, that the claimant has less neck stiffness but reports right occipital pain radiating down to the front trapezius with tightness in this area and a trigger point in the right trapezius. The doctor writes that the claimant reports heaviness

to her right shoulder. Dr. Holder administered an injection to the claimant's right trapezius, continued her on her medications as well as physical therapy as well as her work restrictions.

The claimant was seen by Dr. Janis Keating on April 28, 2005. Dr. Keating writes that the claimant reports the events of her work related injury noting, that she has had a headache since the date of her accident, noting that the claimant reports pain in the right side of her head and the right occiput as well as in the right side of her neck which radiates all the way down to her right shoulder. Dr. Keating does a review of the claimant's treatment plan as well as her medications. The claimant reports that she has a heavy feeling in her shoulders but has not had any numbness, tingling or focal weakness in her arms and legs. Dr. Keating also reviewed the claimant's MRI and CT scans. After examination, Dr. Keating assessed the claimant with episodic migraine which has been intensified due to her recent trauma. Dr. Keating also assessed the claimant with having post concussion syndrome as well as a whiplash type injury causing muscular skeletal right neck pain, noting that she has palpable muscle spasm and tenderness over this region. Dr. Keating recommended that they proceed with Botox treatments opining that this should help give her symptomatic relief and would help control her muscle spasm which should relieve her headaches. Dr. Keating recommended that the claimant discontinue some of her medications and to decrease the intake of some of her medications. Dr. Keating did recommend some medications as well as Botox injections. Dr. Jeffery Evans saw the

claimant on June 21, 2005. Dr. Evans notes that a review of the claimant's x-rays which showed no significant abnormality of the claimant's right shoulder. Dr. Evans, after examination, assessed the claimant with having right shoulder impingement syndrome and recommended that she undergo a scope of her right shoulder. The claimant underwent an evaluation by Dr. David Collins where it is noted that she is seen for evaluation and not for treatment. After a review of the claimant's medical treatment as well as her various tests and a physical examination, Dr. Collins indicated that based on the claimant's history which had been provided to him regarding the mechanics of her accident, it is his opinion that her right shoulder impingement syndrome is not causally related to her March 1, 2005, injury. Dr. Collins further indicates that the surgery which Dr. Evans has recommended in his opinion would not be reasonable or necessary for the treatment of the claimant's right shoulder.

After a complete review of this matter, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on March 1, 2005, while working for the respondent. Arkansas law requires that there be objective medical findings of injury in order to establish compensability. It is not questioned that this claimant sustained a traumatic injury to her head affecting her neck and causing her to have severe headaches with pain radiating down into her shoulders and upper back. It is further noted that the claimant reported heaviness in her shoulders when seen on March

3 by Dr. Alexander and continued with complaints of pressure in her right shoulder to Dr. Holder as well as to Dr. Keating. However, Arkansas law requires objective medical findings rather than just complaints of pain or feeling in order to establish a compensable injury. Therefore, this claim for benefits for the claimant's right shoulder should be denied in its entirety.

The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from April 5, 2005, to a date to be determined. The claimant has been returned to work with numerous restrictions as a result of her compensable injuries but the respondent laid her off and made no accommodation to try to move her to another shift on light duty or within work that was within her restrictions. Due to her numerous restrictions employment is not available by evidence of her testimony that she could not file for unemployment benefits due to her numerous restrictions.

FINDINGS & CONCLUSIONS

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

2. On March 1, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her head and neck on March 1, 2005.

4. The claimant is entitled to a weekly compensation rate of \$466.00 for temporary total disability and \$350.00 for permanent partial disability.

5. Medical expenses have been paid to date.

6. Temporary total disability has been paid to date.

7. The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that she sustained a compensable injury to her right shoulder while working for the respondent on March 1, 2005. See discussion above as well as Ark. Code Ann. §11-9-102(16)(A)(i).

8. That the claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from April 5, 2005, to a date to be determined. See discussion above.

9. The respondents controverted this claimant's entitlement to additional benefits.

10. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that she sustained a compensable injury to her right shoulder while working for the respondent on March 1, 2005.

The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from April 5, 2005, to a date to be determined.

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