

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F604687

PATRICIA LEACH, Employee	CLAIMANT
OZARK DELIGHT CANDY COMPANY, Employer	RESPONDENT
UNION STANDARD INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED DECEMBER 5, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On November 8, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 5, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties at all relevant times.

At the time of the hearing the parties agreed to stipulate to an average weekly wage subsequent to the hearing. However, no such stipulation has been forthcoming.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right shoulder and elbow while working for respondent.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

At the time of the hearing the claimant clarified her request for temporary total disability benefits to include the period of April 25, 2006 through October 20, 2006.

The claimant contends she suffered a compensable injury to her right shoulder and elbow as a result of lifting 20 to 50 pounds all day long and from doing a lot of stirring. She requests temporary total disability benefits, medical, and an attorney fee.

The respondents contend that claimant did not suffer a compensable injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 5, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right shoulder and elbow while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 47-year-old woman who began working for the respondent in 1992 as a cook and she has continued in that position since that time. The respondent manufactures candy suckers in various flavors.

As a cook, claimant's job duties entailed various activities. In order to manufacture

the candy, pots were filled with a syrup mixture and placed on a regular kitchen stove to heat. After a period of time sugar was added to the mixture and it was necessary for this to be stirred. Claimant testified that this stirring process took approximately three to four minutes and that she primarily stirred with her right arm. After a mixture was cooked the pot was taken off the stove and placed in a "sling" at the end of a bungee cord. This sling was used to hold the pot while the syrup mixture was poured into molds. According to claimant's testimony, each pot would fill 14 molds. After the mixture was poured into the mold, sticks were placed in the mold and the candy was allowed to cool. After the candy had cooled it was taken out of the mold and the excess candy was chipped off each piece with a plastic knife. According to claimant's testimony it would take approximately five to six minutes to "chip" a tray of suckers. After chipping the suckers were placed on a cooling rack and used pots were placed in a dishwasher.

As various mixtures were ready, this process continued throughout the day. Claimant performed these job activities with a partner with one stirring various batches while another worked in a room chipping the excess candy. According to claimant she and her partner would make some 32 to 35 batches of candy per day.

The claimant first complained of bilateral elbow pain in March 2002 and was diagnosed as suffering from tennis elbow tendinitis of the left arm. Claimant was also diagnosed as suffering from bilateral carpal tunnel syndrome for which she underwent surgery on June 11, 2002. This surgery was performed by Dr. Heinzemann and he released the claimant to return to work with no restrictions and no permanent impairment in August 2002.

At some point in time the claimant began noticing problems with her right elbow and shoulder and she eventually terminated her employment with the respondent on April 25, 2006 due to pain in her right elbow and shoulder. Claimant sought medical treatment from her family physician, Dr. Lee, the next day on April 26, 2006. Dr. Lee diagnosed

claimant's condition as right tennis elbow and prescribed rest, ice, a brace, and medication. Claimant was next evaluated by Dr. Lee on May 1, 2006, at which time he noted that claimant's pain also radiated into her right shoulder. He indicated that claimant should continue her treatment and also ordered physical therapy. When physical therapy did not improve claimant's condition, Dr. Lee referred claimant to Dr. Heinzelmann. Dr. Heinzelmann diagnosed claimant's condition as right tennis elbow and probable overuse syndrome involving both shoulders. He took claimant off work for several days and then indicated that claimant could return to work with restrictions. Claimant was also seen by Dr. Arnold who diagnosed claimant's condition as right elbow pain secondary to lateral epicondylitis and right shoulder pain.

Following claimant's visit with Dr. Arnold she returned to Dr. Heinzelmann on June 20, 2006, at which time he indicated that claimant should look for less strenuous work, that she had suffered no permanent impairment, and that she should return for additional treatment as needed. A subsequent MRI scan of the claimant's right shoulder which was ordered by Dr. Arnold revealed no evidence of a rotator cuff tear.

Claimant has filed this claim contending that she suffered a compensable injury to her right elbow and shoulder as a result of her job activities with the respondent. She seeks payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

The claimant does not contend that she suffered a compensable injury to her right elbow and shoulder as a result of an injury identifiable by time and place of occurrence. Instead, claimant contends that she suffered a gradual onset injury to her right elbow and shoulder. In order to prove a gradual onset injury which does not involve carpal tunnel syndrome, claimant has the burden of proving by a preponderance of the evidence that

she suffered an injury which caused internal or external harm to her body which arose out of and in the course of her employment and which required medical services or resulted in disability or death; that the injury was caused by rapid repetitive motion; that the injury was the major cause of the disability or need for medical treatment; and she must establish a compensable injury by medical evidence supported by objective findings. A.C.A. §11-9-102.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury. Specifically, I find that claimant has failed to prove by a preponderance of the evidence that her job activities involved rapid repetitive motion.

While there is no question that claimant's job duties for the respondent required extensive use of her hands, I do not find that claimant's job activities involved rapid repetitive motion as required for compensability of a gradual onset injury. The Arkansas Supreme Court in *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998) indicated that rapid repetitive motion is a two-prong test which requires proof that (1) the task performed is repetitive, and that (2) the repetitive motion is rapid. In this particular case, while claimant did perform various job activities throughout the day, I do not find that the job activities described by the claimant satisfy the Court's two-prong test that the tasks performed were repetitive and that the repetitive motion was rapid. For instance, claimant informed Dr. Arnold that she was required to repetitively lift 10 to 50 pounds. The 50 pounds claimant lifted was a bag of sugar. According to claimant's testimony she was required to lift the sugar off of a pallet for use in the candy mixture. However, claimant admitted that she alternated this duty with her partner so she might not even be required to perform that job activity every day. In fact, claimant testified that she would perform this job only some four to five times per week. In addition, while claimant

was required to stir the mixture in the pots she admitted that each pot must cook approximately 15 minutes on the stove before it is moved from one burner to the next.

Furthermore, while claimant is responsible for washing dishes which are used in the cooking process, this involves placing pots in a dishwasher which washes the pots. Claimant is not required to wash the pots by hand.

In short, even when all of claimant's various job activities throughout the day are considered, I do not find that those job activities constituted rapid repetitive motion as required to prove compensability of a gradual onset injury. Therefore, I find that claimant has failed to meet her burden of proving a compensable injury by a preponderance of the evidence.

In reaching this decision, I also find it significant to note that at the same time claimant was performing her job activities for the respondent she also engaged in bowling one night a week. Claimant testified that she bowled three games one night a week and that in either February or March, shortly before she sought medical treatment, she was in a tournament and bowled up to six games. Even if the claimant was bowling a perfect game she would have to throw a 10-pound bowling ball at least 30 to 35 times per night. If claimant was not bowling a perfect game she obviously had to throw the ball more than 30 to 35 times on a particular night. The claimant's bowling activities are significant when one considers that claimant testified that her elbow and shoulder hurt her more after she bowled than they did when she was performing her job activities.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right elbow and shoulder while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE