

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F602406

PHILLIP MILLER, Employee	CLAIMANT
WATSON'S INC., Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED JULY 13, 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 MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 22, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 26, 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 relationship of employee-employer-carrier existed among the parties on February 8, 2006.
3. The respondent has controverted this claim in its entirety.

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

1. Compensability of injury to claimant's right shoulder on February 8, 2006.
2. Related medical.
3. Temporary total disability benefits.
4. Attorney fee.

At the time of the hearing the claimant withdrew as an issue his entitlement to temporary total disability benefits.

The claimant contends he was injured on February 8, 2006 when his right shoulder was injured while lifting and carrying heavy furniture and appliances.

The respondents contend the claimant was not injured in the course and scope of his employment.

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 April 26, 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 he suffered a compensable injury to his right shoulder while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 27-year-old man who began working for the respondent in July 2005. Claimant's job duties included the moving of furniture and appliances, delivery, and set up. Claimant testified that he worked approximately 9 ½ hours per day, six days per week.

Claimant testified that on February 2, 2006 he moved a lot of couches and furniture on that day and that "at the end of work I noticed my shoulder was a little stiff and didn't think much about it."

Claimant testified that on February 8 he woke up and his shoulder was hurting “severely” and he thought he had slept on the shoulder wrong. When he arrived at work that morning he informed Arthur Olson, respondent’s manager, that something was wrong with his shoulder and when Olson asked him what was wrong with it he stated that he was not sure, “Maybe I had slept on it wrong.” Claimant testified that he continued to perform his normal work activities for the remainder of the week but that he continually made complaints to Olson and also to Betty Thomas, the owner of the respondent.

On February 13 claimant went to work and loaded some furniture for a delivery. Claimant testified that he was in so much pain he informed Pauline Cantrell, the respondent’s office manager, that he needed to go to the emergency room. Claimant sought medical treatment from the emergency room at Washington Regional Medical Center on February 13, 2006. Claimant was diagnosed as suffering from AC joint pain, was given medication, placed on light duty for three days, and instructed to follow up with an orthopaedic physician if his pain continued after three days. Claimant did not work for the respondent for three days but did return to work on February 17 and on February 18 after working only a partial day claimant again reported shoulder pain to Olson.

On February 23, 2006 claimant sought medical treatment from Dr. Powell, an orthopaedic surgeon. Dr. Powell diagnosed the claimant’s condition as a right shoulder strain, right shoulder impingement, and a right shoulder AC joint osteoarthritis. Dr. Powell went on to recommend that claimant undergo an MRI scan. Claimant had not undergone the MRI scan at the time of the hearing.

Claimant has filed this claim contending that he suffered a compensable injury to his right shoulder while working for respondent on February 7, 2006. He seeks payment of related medical treatment for that shoulder injury.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his shoulder while moving furniture on February 7, 2006. Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (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 a specific incident and is identifiable by time and place of occurrence.

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 his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder.

At the hearing claimant testified that he moved a lot of furniture for respondent on February 7, 2006 and that he noticed that his shoulder was a little stiff at the end of the day but "didn't think much about it." When claimant woke up the next morning and the shoulder was hurting "severely," claimant did not associate his condition to his job activities the day before. Instead, claimant believed the pain was caused by sleeping wrong on the shoulder. When claimant went to work on February 8 he reported the pain to Olson but did not associate it with work but instead indicated his belief that "maybe I had slept on it wrong."

Although claimant testified that over the course of that week he continued to have problems and continued to make complaints to Olson, Olson testified that he did not recall the claimant complaining about his shoulder for the remainder of that week.

When claimant did seek medical treatment from the emergency room at Washington Regional Medical Center on February 13, 2006, the claimant gave a history of pain for approximately one week. Although the medical report does note that claimant moves furniture for a living, the medical report also indicates that claimant described no known injury and the report contains no history of pain after lifting furniture on February 7, 2006. That history is not contained in the medical reports until Dr. Powell's medical report of February 23, 2006, some two weeks after February 7.

Claimant admitted that he did not inform anyone with respondent that he had injured his shoulder on the job and waited to report a work related injury until February 13, 2006, almost one week later. Claimant then testified as to how he came to the conclusion that his injury was work related.

Q. And when did you come to the conclusion that it was work related and you needed to make that report?

A. When I couldn't figure out what it was that I had done to hurt my shoulder besides working.

Q. So it's your conclusion that because you didn't do anything else with your shoulder but work that work must be the problem?

A. Correct.

Based upon this evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that his injury to his right shoulder arose out of and in the course of his employment with the respondent. While claimant testified that his shoulder was a little stiff on February 7, 2006, claimant did not have shoulder pain until he woke up on the morning of February 8. At that time claimant did not relate his pain to

work activities, but instead related them to sleeping on his shoulder wrong. Claimant admittedly did not tell anyone with respondent that he had injured his shoulder on the job and did not request to file a workers' compensation claim until February 13, 2006, almost one week later. Furthermore, claimant admitted that he came to the conclusion that his shoulder injury was work related only because he could not figure out anything else that could have caused his problem. Finally, the initial medical report from the Washington Regional Medical Center emergency room dated February 13, 2006, does note that claimant moves furniture for a living, but does not contain a history of injury caused by lifting furniture. In fact, the medical report indicates that there was no known injury.

Even if the evidence previously discussed were more in claimant's favor, I would still find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury. Specifically, in order to prove a compensable injury a claimant must offer objective physical findings establishing an injury. Here, the medical records do not contain any objective physical findings establishing an injury. The emergency room report of February 13 indicates that a physical examination of the claimant's right shoulder was normal with no swelling or muscle atrophy present. Claimant subsequently sought medical treatment from Dr. Powell who ordered an x-ray. According to Dr. Powell's report the x-rays were within normal limits with the exception of degenerative changes which included "possible erosive changes of the distal clavicle, AC joint osteoarthritis."

Thus, I find insufficient objective findings establishing an injury in this particular case. The only objective findings are degenerative changes shown on the x-rays. These findings of a pre-existing degenerative condition do not establish an injury as required by statute. Absent objective findings establishing an injury, a claim cannot be compensable.

ORDER

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

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE