

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F504517**

<b>SHEILA SCHAFFNER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DR. CHARLES POPE, EMPLOYER</b>	<b>RESPONDENT</b>
<b>STATE AUTOMOBILE MUTUAL INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 13, 2006**

Hearing before Administrative Law Judge J. Mark White on January 26, 2006, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Kenneth Harper, Attorney at Law, Monticello, Arkansas.

Respondents represented by Mr. Gene Williams, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On January 26, 2006, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on October 31, 2005, and a Prehearing Order was entered that same day. A copy of the October 31, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; and that the employee/employer/carrier

relationship existed at all relevant times. At the hearing, the parties clarified the stipulations to reflect that the employee/employer relationship existed from 1991 until 2005.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable gradual-onset injury; whether the claimant is entitled to temporary total disability benefits; whether the claimant is entitled to medical treatment; and controversion and attorney's fees.

The claimant contends that she sustained a compensable injury to her arms, back, and neck; and that she is entitled to past and future medical benefits, temporary total disability benefits, and attorney's fees.

Respondents contend that the claimant did not sustain an injury during the course and scope of her employment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged injury is established by medical evidence supported by objective findings.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer as a lab technician fabricating eyeglass lenses. In the course of her employment, she worked with several large machines that required repetitive movements of her hands, arms and shoulders. She testified that approximately four years ago, she began experiencing pain in her left wrist. She testified that she then began having pain in her right wrist as well, and that the pain moved up her arm into her elbows, and then into her

shoulders, neck and chest. She testified that the pain and resulting headaches became so severe she had to stop working as of June 28, 2005. Extensive testimony was offered by both parties as to the circumstances of the claimant's departure from her employment, but as explained below that particular evidence is immaterial to resolution of this claim.

The claimant testified she treated with Dr. Jay Lipke for her upper extremity pain, but no treatment records or narrative reports describing such treatment were submitted into the record. She also testified that she treated with Dr. Lawrence Braden for this pain. His notes make little mention of these complaints of pain, but in a July 11, 2005, letter Dr. Braden wrote:

Sheila presents with persistent, severe, bilateral shoulder and neck pain. This has progressed to the point that she is incapacitated by prolonged headaches of muscular origin. I feel confident *by this time* that, indeed, hers is a muscular problem. I feel confident also that her muscular problem is consequent to her work. ... I think it best today to pull her out of the workplace to begin physical therapy [emphasis added].

The claimant has also treated with chiropractor Steven Keller. In contrast to Dr. Braden, who diagnosed the claimant with "a muscular problem," Dr. Keller's diagnoses target the cervical and thoracic spine. Dr. Keller treated the claimant over the course of a year, and his treatment seems to have brought some improvement to the claimant's condition.

## II. Adjudication

A claimant seeking benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) the existence and extent of the injury is established by medical evidence supported by objective findings; and (4) the injury was a major cause of the disability or need for treatment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001). The claimant bears the burden of proving her entitlement to benefits under the Workers' Compensation Act. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

This case is somewhat odd in that the medical records submitted herein are clearly deficient as regards the claimant's alleged injury. Though the claimant testified that she and Dr. Braden discussed her problems for some time, Dr. Braden's treatment notes say little about her wrist, arm and shoulder problems. Yet given the July 8, 2005, phone message in Dr. Braden's chart, and the July 11 letter that evidently resulted from it, it appears indisputable that Dr. Braden and the claimant had discussed these issues and that Dr. Braden was well aware of them. Dr. Braden had evidently been aware for some time, for an April 2004 note mentions (without

detail or explanation) a workers' compensation injury to the elbow. For whatever reason, either Dr. Braden failed or chose not to document these discussions in his records, or the parties failed to obtain and submit all of his records. Another example: the claimant testified that Dr. Lipke provided steroid injections to treat the symptoms of her alleged work injury. The bills from Dr. Lipke document that shoulder x-rays and steroid injections were performed in October 2004, but there are no treatment notes establishing why these injections were provided, nor any report of the x-rays. Either Dr. Lipke failed or chose not to make any notes, or the parties were unable to obtain or submit all of his records.

After reviewing the limited medical evidence in the record, I am unable to identify any objective findings of injury sufficient to meet the claimant's burden of proof. To be compensable, an injury must be "established by medical evidence supported by objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings are statutorily defined to be those findings "which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16). Dr. Keller noted hearing "some crepitus" on October 18, 2004, but his note is not entirely clear as to the source of the crepitus. More to the point, nothing in the record connects this crepitus with the claimant's symptoms, nor with her alleged work injury. Dr. Keller also reviewed x-rays of the cervical spine; his notes are somewhat illegible, but it is

clear he observed osteophytes. Yet again, nothing in the record connects this objective finding with the claimant's present symptoms nor her alleged work injury. Finally, a nerve conduction study performed July 12, 2005, produced abnormal results, but the study concluded the results were due to "a sensory axonal polyneuropathy that is due to a systemic etiology as DM, RA, Lupus, B12/folate deficiency, etc." Nothing else in the record connects these abnormal results with the claimant's symptoms nor with her alleged work injury.

In short, one can only guess as to whether the handful of objective findings contained within the record have any causal connection with the claimant's symptoms and diagnoses, or whether these findings have any relationship to her alleged work injury. It is well established that speculation and conjecture can never be substituted for credible evidence. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1980). Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged injury is established by medical evidence supported by objective findings. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury.

**AWARD**

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge