

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510065

ALICIA SMITH	CLAIMANT
CINTAS CORPORATION	RESPONDENT
FIDELITY & GUARANTY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 26, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant appearing pro se.

Respondents represented by LEE MULDROW, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on March 21, 2006, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on January 31, 2006. At the time of the pre-hearing conference, the respondents did not appear by designated representative or legal counsel. Thus, no stipulations were initially entered, and every potential issue was listed. Prior to the commencement of the hearing, the parties announced that they could stipulate that on all relevant dates, the relationship of employee-employer-carrier existed between the parties and that the appropriate weekly compensation rates were \$220.00 for total disability and \$165.00 for permanent partial disability. These two stipulations rendered moot the first two issues listed in the initial pre-hearing order. Prior to the commencement of the hearing, further periods of alleged temporary total disability were identified and have been set out in the second issue of the amended pre-hearing order. A copy of this amended pre-hearing order was

made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate compensation rates are \$220.00 for total disability and \$165.00 for permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained compensable injuries to her left shoulder, left arm, and left wrist/hand during her employment with the respondent.
2. The claimant's entitlement to the payment of medical expense and temporary total disability from January 3, 2005 through April 11, 2005 and August 9 and 10, 2005, August 19, 2005, on September 26, 2005, September 27, 2005, October 13, 2005, October 26, 2005, November 1, 2005, November 7, 2005, November 17, 2005, December 7, 2005, January 23, 2006, March 7 and 8, 2006.

In regard to these issues, the claimant contends that her difficulties with her left shoulder and arm represent "compensable injuries," as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a). She further contends that she is entitled to the payment of medical expenses incurred for reasonably necessary medical expenses required by these compensable injuries and to temporary total disability benefits for the specific periods set

out in the pre-hearing order.

In regard to these issues, the respondents now deny the occurrence of any compensable injury to the claimant's left shoulder and/or left upper extremity and controvert this claim in its entirety.

## DISCUSSION

### I. COMPENSABILITY

The central issue in this case is the question of whether the claimant sustained "compensable injuries" to her left shoulder, arm and/or wrist and hand within the meaning of the Arkansas Workers' Compensation Act. The burden rests upon the claimant to prove all of the required statutory elements necessary for these alleged injuries to be "compensable" under the Arkansas Workers' Compensation Act.

The first of these statutory elements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury or condition alleged to be compensable. Further, the claimant must show that the actual existence of this physical injury or condition is supported by "objective findings," as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The medical record documents various complaints involving the claimant's entire left upper extremity from her shoulder to her fingers. However, there appears to be no real consensus on the actual physical cause or etiology of these various complaints.

Left shoulder difficulties are noted by Dr. Bachman (the claimant's family chiropractic physician) as early as June 20, 2000. The records of Dr. Bachman also chronicle a multitude of complaints involving the claimant's neck, left jaw, right shoulder, upper back, low back, left arm, breasts, and headaches. These complaints include pain, numbness, and swelling. However, it would appear that Dr. Bachman, himself, never gives any specific diagnosis of the cause or etiology of the complaints involving the claimant's left shoulder and/or left upper extremity. Although Dr. Bachman records observing paraspinous muscle spasms, he does not note that he observed any "objective findings" or abnormalities involving the claimant's left shoulder and/or left upper extremity.

As early as July 24, 2001, Dr. Michael Norwood (the claimant's family physician) recorded that the claimant was experiencing "recurrent" musculoskeletal discomfort and that she was seeing a chiropractor. He also noted that this chiropractic treatment "does help." However, he did not specifically identify the nature of these "musculoskeletal complaints." The first specific complaints recorded by Dr. Norwood, which involved the claimant's left upper extremity, were complaints of pain and swelling in the claimant's left arm. These complaints were recorded in a report dated December 14, 2004. In this same report, Dr. Norwood also noted complaints of swelling of the claimant's throat, dizziness, and chills. In subsequent reports, Dr. Norwood records that the claimant related that she had experienced muscle spasms involving her left upper extremity. However, in none of his reports or

records does he indicate that he actually observed any swelling, muscle spasms, or other objective abnormalities involving the claimant's left shoulder and/or left upper extremity. Dr. Norwood's records give various diagnoses of the etiology of the claimant's various complaints, including those involving her left shoulder and left upper extremity. These diagnoses include neurological disorders (such as peripheral neuropathy) and soft tissue disorders (such as tendinitis/bursitis). However, these diagnoses appear to be based solely on the claimant's subjective complaints and diagnoses made by other physicians.

The medical records show that the claimant was seen at the St. Edwards Mercy Medical Center emergency room on December 15, 2004. At that time, she complained of difficulties, which were in the form of tingling of her left arm, dizziness or vertigo, chest tightness, chest pain, and fatigue. As a result, the claimant was evaluated and tested for possible cardiac causes for these symptoms. However, little or no objective evidence of any cardiac abnormality was apparently found.

The claimant was then evaluated by Dr. William Knubley, a neurologist. Dr. Knubley thoroughly investigated the potential for a neurological cause of the claimant's left shoulder or upper extremity difficulties (as well as her vertigo). Extensive testing was performed at the request of Dr. Knubley, which included an MRI of the claimant's cervical spine, an EMG/NCV of the claimant's left upper extremity, an arterial Doppler study of the claimant's left upper extremity, and a MRI and MRA of the claimant's left cervical

plexus. None of these tests revealed any objective findings to support the existence of a neurological injury or condition as the cause of the claimant's left shoulder and upper extremity complaints. With the exception of the cervical MRI, all of these tests were interpreted as normal. While the cervical MRI did reveal "minimal bulging of the disc at C6-7," there was no evidence of any impingement of the spinal cord or exiting nerve roots. It would appear that Dr. Knubley felt that this was merely an incidental finding and was not the cause of any of the claimant's left upper extremity complaints. It was his opinion that the claimant's subjective left upper extremity complaints were in no way neurological in origin.

On June 21, 2005, the claimant was seen by Dr. Keith Holder (the respondent's company physician), at the respondent's request. In his initial report, Dr. Holder noted that the claimant was complaining of left shoulder pain that radiates down her entire arm. On his physical examination, he recorded the observation of "crepitus" of the claimant's left shoulder with both internal and external rotation. Although his initial diagnosis was that of left shoulder pain "of a neurogenic origin", such a diagnosis had already been eliminated by the extensive evaluations and testing of Dr. Knubley. A neurogenic origin of the claimant's complaints would also be inconsistent with the only objective finding noted by Dr. Holder on his physical examination (i.e. "crepitus" of the claimant's left shoulder joint). Dr. Holder continued to note the presence of this crepitus upon movement of the claimant's left

shoulder joint, in various subsequent physical examinations. X-rays performed at the request of Dr. Holder failed to reveal objective evidence of any left shoulder abnormalities. Although Dr. Holder did not appear to make any specific diagnosis of the actual physical cause of the claimant's left shoulder and left upper extremity complaints, he somehow concluded that the cause of these complaints could in no way be work related. As a result, he discharged the claimant from his care, as the company physician, and returned her to the care of her family physician. Curiously, he continued to medically restrict the claimant from engaging in any activities (work or otherwise) that involve repetitive motion of her left shoulder. These were essentially the type of activities required by the claimant's employment position at the time of the onset of her current left shoulder and arm difficulties.

The evidence shows that the claimant was ultimately seen and evaluated by Dr. Robert Bebout (an orthopaedic surgeon) on August 23, 2005. Following his initial examination, Dr. Bebout diagnosed the claimant's difficulties as "overuse syndrome and bursitis/tendinitis of the shoulder." He appears to have based this diagnosis on the claimant's subjective complaints and his physical examination of the claimant. In his report, the only objective finding that he noted to support his diagnosis was a "positive impingement sign" of the left shoulder on physical examination. The remainder of his physical examination was essentially normal and x-rays taken at the time were interpreted as unremarkable.

After consideration of the evidence presented, I find that the claimant has proven by the credible medical evidence the actual existence of a physical injury or condition involving her left shoulder, which is in the form of joint impingement and bursitis/tendinitis. I further find that the credible evidence shows the presence of “objective findings” to support the existence of these particular physical injuries or conditions. These objective findings are the crepitus of the shoulder, repeatedly noted by Dr. Holder, and impingement signs noted by Dr. Bebout. However, the claimant has failed to “establish” by medical evidence, which is supported by “objective findings,” the actual presence or existence of any other physical injuries or conditions involving any other portions of her left arm, wrist, or hand. Thus, in regard to her left shoulder difficulties, she has satisfied the statutory requirements for a “compensable injury” found in Ark. Code Ann. §11-9-102(4)(D), but has failed to satisfy these statutory requirements in regard to any other injuries or difficulties involving her left upper extremity.

Next, the claimant must prove by the greater weight of the credible evidence that these medically established and objectively supported physical injuries or conditions satisfy the definitional requirements for a “compensable injury,” which are found in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are:

- (1) That the physical injury or condition must arise out of and occur in the course of the employment;

- (2) That the physical injury or condition must cause internal or external physical harm to the claimant's body;
- (3) That the physical injury or condition must be caused by "rapid repetitive motion."

In addition, the claimant must also prove that her shoulder difficulties satisfy the requirements for a "compensable injury" found in Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection mandates that the work related contribution to the claimant's "resultant condition" must be the major cause of her need for medical treatment or any disability she may have sustained. It must be noted that this subsection does not require that the employment related contribution to the claimant's "resultant condition" be the major cause of the "resultant condition" itself.

Clearly, the greater weight of the evidence presented shows that, at the time of the onset of her severe left shoulder difficulties, the claimant was performing employment activities for this respondent that would involve "rapid repetitive motion" of the claimant's left shoulder, giving those terms their usual and customary meaning. Clifford Clifton, the respondent's plant manager testified that, at the time of the onset of the claimant's significant left shoulder difficulties, her employment activities required her to pick up two pieces of material, hold the pieces together, manipulate the pieces while running them through a sewing machine, and then discarding the single formed piece or "yolk." He further testified that the claimant would perform this same entire sequence of movements once every thirty to sixty seconds during her entire work shift.

Unquestionably, this employment activity would reasonably produce cumulative stress or trauma to various anatomical components of the claimant's upper extremities, including her left shoulder. This cumulative stress or trauma could have logically produced the diagnosed impingement syndrome and bursitis/tendinitis of the claimant's left shoulder joint. It must be noted that when these particular left shoulder difficulties were first noted, the claimant was regularly performing these specific employment activities. There is no evidence presented of any other significant stress or trauma to the claimant's left shoulder that could have also reasonably caused these specific injuries or conditions involving the claimant's left shoulder.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that her left shoulder difficulties, in the form of impingement syndrome and tendinitis/bursitis satisfy all the definitional requirements for a "compensable injury", found in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Specifically, she has proven the existence of a causal relationship between her employment activities with this respondent, which involved rapid repetitive motion of her arm, and her medically established and objectively documented left shoulder injuries or conditions. She has further proven that these physical injuries or conditions have, at least temporarily, resulted in internal physical harm to her left shoulder joint. Finally, she has proven that her employment related activities for this respondent were the "major cause" of her need

for medical treatment for her left shoulder injuries or conditions (beginning in late 2004).

In reaching this decision, I am aware that Dr. Holder has expressly opined that the claimant's left shoulder difficulties were not related to her employment with this respondent. I further recognize that none of the other physicians have expressly stated that it is their opinion that the claimant's left shoulder difficulties are causally related to her employment activities with this respondent. However, I would note that it could be logically concluded from the records of both Dr. Norwood and Dr. Bebout that it was their opinion that the claimant's difficulties with her left shoulder were causally related to her employment activities for this respondent. Both of these physicians specifically note that the claimant's employment activities required strenuous and extensive use of her arms. Both of these physicians have diagnosed these left shoulder difficulties as representing an "overuse syndrome." Except for the claimant's employment activities, their reports indicate no other particularly stressful or extensive use of the claimant's left shoulder and upper extremity.

In regard to Dr. Holder, I simply find that no weight should be afforded to his opinion that the claimant's left shoulder difficulties are in no way causally related to her employment activities for this respondent. Dr. Holder stated that this opinion is based on the fact that the claimant gave Dr. Knubley a history that her left arm pain began following a breast biopsy (report of August 18, 2005). He also apparently bases this opinion, in part,

on his conclusion that the claimant's subjective complaints outweigh her objective findings (report of August 2, 2005). A review of Dr. Knubley's records do not indicate that the claimant ever attributed her left shoulder complaints to the breast biopsy, nor does Dr. Knubley. Rather, the claimant merely indicated that some weeks after the breast biopsy, she began to experience difficulties in the area of her armpit due to a reactive lymph node. Clearly, the claimant's reactive lymph node would not reasonably be caused by her employment activities. However, it is equally clear that this reactive lymph node is playing no causal role in the subsequently diagnosed overuse syndrome with bursitis/tendinitis of the left shoulder joint. There is simply no rational basis to conclude that the medically established and objectively documented physical injuries or conditions involving the claimant's left shoulder are in any way causally related to either the claimant's breast biopsy or her subsequent lymph node irritation in August of 2004. I also find it extremely important to note that even though Dr. Holder repeatedly stated his opinion that the claimant's employment activities played no causal role in her left shoulder difficulties, he has also continued to medically restrict the claimant from engaging in these very same employment activities or any activities requiring the strenuous or repetitive use or movement of her left arm.

I would note that the Appellate Courts have repeatedly held that the required causal relationship between the employment and the subsequent physical injury or condition need not be proven by

medical evidence. All that is necessary is that the claimant prove by the greater weight of the credible evidence that the employment related activity or event could have logically and reasonably caused the injury or condition sustained, that the injury or condition occurred within a reasonably close temporal relationship to the particular employment activity or event, and that there is no other equally reasonable cause for the injury or condition. In the present case, the evidence presented satisfies all of these requirements.

In summary, I find that the claimant has proven by the greater weight of the credible evidence that she sustained a compensable injury to her left elbow that was in the form of impingement syndrome with bursitis/tendinitis. In regard to this particular injury, the claimant would be entitled to appropriate benefits under the Act. However, she has failed to prove by the greater weight of the credible evidence that she has sustained compensable injuries to any other portion of her left upper extremity. Thus, she would not be entitled to any benefits attributable to her various complaints involving her left arm below the shoulder and her left wrist and hand.

## II. BENEFITS

First, the claimant would be entitled to reasonably necessary medical services for her compensable left shoulder injury. In the present case, this is complicated by the fact that the claimant has experienced a multitude of complaints with various portions of her anatomy, other than her left shoulder. Further, she has been

treated by a number of physicians for some or all of these wide spread complaints. However, in order to constitute reasonably necessary medical services for the claimant's compensable injury, the services must be necessitated by or connected to the claimant's left shoulder complaints and symptoms and must have a reasonable expectation of accomplishing the purpose or goal for which the service was rendered.

I find that the medical services rendered to the claimant by and at the direction of Dr. Knubley, Dr. Norwood, Dr. Holder, and Dr. Bebout and directed solely toward the claimant's left shoulder complaints represent reasonably necessary medical services for the claimant's compensable left shoulder injury. The expense of these services, subject to the medical fee schedule established by this Commission, is the liability of the respondents herein.

However, any other medical services rendered to the claimant by or at the direction of these physicians for the multitude of other complaints that the claimant made in regard to other portions of her body do not represent reasonably necessary medical services for a proven compensable injury. Therefore, the expense of these services cannot be the liability of the respondents herein.

The final matter concerns the claimant's entitlement to temporary total disability benefits. In order to be entitled to such benefits, the claimant must prove by the greater weight of the credible evidence that she continued within her healing period from the effects of her compensable left shoulder injury and has been rendered totally disabled from all forms of regular employment by

the effects of the compensable injury. This issue is complicated by the fact that the claimant was also experiencing disabling difficulties from a multitude of other complaints, which have not been shown to be the result of compensable injuries or conditions. However, any disability caused by these non compensable complaints or conditions cannot be considered in determining the claimant's entitlement to temporary total disability benefits.

The record reveals that the claimant sought medical leave on January 3, 2005, for what she stated was an "illness." Although the form completed inquired if the disability was job related, the claimant made no response to this inquiry. The subsequent request for leaves of absence were completed by the claimant on a monthly basis through April 6, 2005. On each of these, the claimant again indicated the reason for her requested leave of absence was an "illness" and did not indicate that her disability was in any way related to her employment.

Accompanying medical certifications were completed for the claimant during this period of January 3, 2005 through April 11, 2005, by Dr. Norwood. On each of these medical certifications, Dr. Norwood gave as the reason for the claimant's inability to work that she was experiencing chest pain, palpitations, vertigo or dizziness, and either bradycardia or tachycardia. On one of these forms, Dr. Norwood indicated that it was "undetermined" whether these conditions were work related and on all the subsequent forms, he indicated that these conditions were not work related. The first mention during this period of any left arm difficulties as a

cause of the claimant's disability does not occur until a supplemental medical statement by Dr. Norwood, which is dated April 18, 2005. At that time, Dr. Norwood indicated that the reasons for the claimant's disability for the period of January 3, 2005 through April 11, 2005 was left arm pain and vertigo. However, he again specifically stated that this disability was not due to an injury arising out and in the course of the claimant's employment or to an occupational disease.

The various medical certifications from Dr. Norwood were also signed or acknowledged by the claimant. The records reveals that the claimant not only applied for but actually received group disability benefits in the gross amount of \$125.00 per week during th period of December 24, 2004 through April 10, 2005.

The evidence shows that the claimant returned to work on or about April 11, 2005, and with certain limited exceptions has continuously worked thereafter. The claimant's ability to continue her regular employment with the respondent has been facilitated by the respondent providing the claimant with work that falls within the physical restrictions on her activities due to left shoulder difficulties. The respondent appears to have continued to provide the claimant with such suitable employment through the present time. Clearly, there is no reason to believe that the respondent would not have provided the claimant with such suitable limited or restricted employment during the period of January 3, 2005 through April 11, 2005.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove that her inability to maintain regular gainful employment with the respondent during the period of January 3, 2005 through April 11, 2005, was the result of her compensable left shoulder injury. Rather, her inability to maintain gainful employment during this period appears to have been due to her various other physical complaints and maladies, which have not been shown to be work related. The record further reveals that the claimant was appropriately compensated for her non work related disability under her group program of insurance. Therefore, I find that the claimant is not entitled to temporary total disability benefits for her compensable left shoulder injury during this period.

The remaining periods for which the claimant seeks temporary total disability benefits are rather sporadic and cover a period from August 9, 2005 through March 8, 2006. Based upon the evidence presented (particularly the medical evidence), I am unable to ascertain whether the claimant continued within her healing period from the effects of her compensable left shoulder injury during this time. I am again unable to ascertain from the evidence presented whether the claimant's inability to work on these specific dates was due to her compensable left shoulder injury or her various other non compensable complaints. Therefore, I have no alternative but to deny the claimant's request for temporary total disability benefits on these various dates between August 9, 2005 and March 8, 2006. I would also note that, even if the claimant

has continued within her healing period from the effects of her compensable left shoulder injury and was prevented from performing employment on one or more of these dates as a result of her compensable left shoulder injury, her entitlement to temporary total disability benefits for these dates might still be precluded by the provisions of Ark. Code Ann. §11-9-501(a).

In summary, I simply find that the claimant has failed to prove that as of this date, she is entitled to any temporary total disability benefits for her left shoulder injury. Thus, her request for such benefits must be denied.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. On all relevant dates, the appropriate weekly compensation rates are \$220.00 for total disability and \$165.00 for permanent partial disability.
4. The claimant has proven that she sustained a compensable injury to her left shoulder during her employment with this respondent that was in the form of impingement syndrome and bursitis/tendinitis of the left shoulder joint. In regard to these particular injuries or conditions, the claimant has established their existence by medical evidence, which is supported by objective findings. She has further proven by the greater weight

of the credible evidence that these specific injuries or conditions arose out of and occurred in the course of her employment with this respondent, were caused by rapid repetitive motion, and resulted in internal physical harm to her left shoulder joint (at least temporarily). Finally, she has proven that the employment related cause or contribution to these injuries or conditions was more than 50% of the cause of her need for medical treatment for these injuries or condition.

5. The claimant has failed to prove that during her employment with this respondent, she sustained compensable injuries to any other portions of her left arm or her left wrist/hand. Specifically, she has failed to “establish” by medical evidence, which is supported by “objective findings,” the actual existence of any physical injuries to any other portion of her left arm or her left wrist/hand.
6. The medical services provided to the claimant by and at the direction of Dr. Knubley, Dr. Norwood, Dr. Holder, and Dr. Bebout for the claimant’s compensable left shoulder injury and resulting left shoulder complaints represents reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508. Pursuant to this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission. However, any

medical services provided to the claimant by or at the direction of these physicians for any other symptoms or complaints involving any other portions of her anatomy, have not been proven to represent reasonably necessary medical services for a compensable injury. Therefore, the respondents would not be liable for any expenses incurred as the result of these services.

7. The claimant has failed to prove that, at the present time, she is entitled to any temporary total disability benefits for her compensable left shoulder injury.
8. The respondents have denied the occurrence of any compensable injury to the claimant's left shoulder, left arm, or left wrist and hand. Even though the respondents initially provided some medical services, they now controvert the claimant's entitlement to any and all benefits.

#### ORDER

The respondents are liable for the expenses incurred as the result of medical services provided to the claimant by and at the direction of Dr. Knubley, Dr. Norwood, Dr. Holder, and Dr. Bebout, which were necessitated by or related to the claimant's compensable left shoulder injury and resulting complaints with this portion of her anatomy. The respondents shall also be liable for at least a further examination or evaluation of the claimant by Dr. Bebout to determine if any further medical services or testing would be necessary or appropriate for the claimant's compensable left

shoulder injury. As an orthopaedic surgeon with particular expertise in the area of medicine associated with shoulder injuries and difficulties, Dr. Bebout would be the most appropriate provider for this additional medical service.

The respondents are not liable for any expenses that the claimant may incur as the result of medical services provided her by and at the duration of any physicians for any conditions or difficulties other than those involving her left shoulder. Such medical services have not been proven to be reasonably necessary for a compensable injury.

At the present time, and for the reasons heretofore stated in this opinion, the claimant's request for temporary total disability benefits must be denied.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge