

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510171

PAULA WHITE, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED OCTOBER 11, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on July 18, 2006 at El Dorado, Union County, Arkansas.

Claimant represented by HON. SILAS H. BREWER , Attorney at Law, Little Rock, Arkansas.

Respondents represented by HON. MICHAEL J. DENNIS, Attorney at Law, Pine Bluff , Arkansas.

STATEMENT OF THE CASE

On July 18, 2006, the above-captioned claim came on for a hearing at El Dorado, Arkansas. A prehearing order was filed on May 11, 2006. A copy of the prehearing order was marked as Commission Exhibit "1" and made a part of the record without objection.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times, including September 14, 2004.

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3) The claimant's average weekly wage at the time of the alleged compensable event was \$495.09 per week.

4) All issues not outlined at the full hearing are reserved.

At the full hearing, the parties agreed to litigate the following issues:

1) Whether the claimant sustained a compensable cervical injury on September 14, 2004.

2) If compensability is overcome, to what extent the claimant would be entitled to TTD benefits, associated medical benefits and attorney's fees.

At the full hearing, the claimant modified her contentions to state that she sustained a gradual onset cervical injury on September 14, 2004. (T. pg. 51, lines 11-23) The claimant contended that as a result of her gradual onset injury, she is entitled to TTD benefits, TPD benefits, associated medical benefits, and attorney fees. Claimant reserved all other issues.

Respondents contended at the full hearing that the claimant's alleged injuries of September 14, 2004, are not related to her employment. Respondents further contended that should benefits be awarded, respondents are entitled to an offset pursuant to A.C.A. §11-9-411.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties and recited herein are hereby accepted as fact.
- 3) Claimant's proffered Exhibit "3" is hereby excluded as evidence as it violated the seven day rule outlined in the prehearing order.
- 4) Claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset cervical injury while employed by the respondents.

DISCUSSION

A. HISTORY

The claimant, age forty-five (45), began working for the respondent-employer in July of 1996. The claimant testified that in September of 2004, she was performing the job of a press operator. The claimant testified as follows regarding some of the duties of a press

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operator.

... - I mean, I put rubber inside the press, and you had to operate buttons on the press. It consisted of pulling the mold out of the press, it consisted of twisting the mold around, and it consisted also of pulling - reaching and pulling down a gun like thing to go into the mold, to exert the part off of the press. We had two hand controls, which one was air and the other one was to actually pull the part off. You had to push this gun onto, which it was retractable. You had to pull it down, push it onto the press, twist it, and pull the part off. (T. pg. lines 2-12)

The claimant testified she would perform her press operator duties about four hours per work day, and the other four hours left in the work day she would work as an inspector/assembler. (T. pg. 16, lines 3-7) The claimant testified the most difficult part of her various job duties was working the press mold. (T. pg. 16, lines 8-12)

The claimant testified as follows regarding her injury of September 14, 2004:

Q. On September 14, 2004, Can you tell the Judge what symptoms of injury that you had at that time?

A. Okay. Just doing my job on a continual basis, I did a lot of pushing and pulling and the injury that I had, that I reported,

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were to my arm and my wrists and my upper arm. I was hurting and I reported that to personnel and they sent me to the doctor. (T. pg. 16, lines 20-25, T. pg. 16, lines 1-3)

The claimant testified that upon having her problems in September of 2004, she reported those problems and was sent to SAMA Health Care by her employer. The claimant testified she went to SAMA twice in September of 2004, and was placed on light duty for one week. (T. pg. 18, lines 5-6) The claimant testified she resumed her regular duties after the one week of light duty.

The medical reports contained in the record herein show the claimant did not seek medical attention after September 2004, until August of 2005. The claimant testified that in August of 2005, she started having swelling in her arms and shoulder. At that time, the claimant returned to SAMA Health Care who then placed her on light duty again. Ultimately the claimant was referred to Drs. Shahim and Quershi, who administered muscle relaxants, pain pills and "trigger point shots" in claimant's neck. (T. pg. 25, lines 9-19) After the injections the claimant went back to work in January of 2006, but stated she could only work for about a week and one-half because muscle spasms in her arm, shoulder, and neck. (T. pg. 26, lines 1-10) The claimant testified she has not worked since February of 2006.

ADJUDICATION

The claimant has alleged a gradual onset cervical injury manifesting itself on or about September 14, 2004. (T. pg. 51, lines 16-22) To satisfy the requirements to prove a gradual onset cervical injury, the claimant must prove by a preponderance of the evidence that she sustained internal or external damage to the body as the result of an injury that arose out of and in the course of employment; and the claimant must establish the compensability of the claim with medical evidence, supported by objective findings. Pursuant to A.C.A. 11-9-102(4)(E)(ii), the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Finally, the claimant must prove that her injury was caused by rapid repetitive motion.

The claimant has failed to meet her burden of proof on at least two elements. First, the claimant has failed to prove that her cervical injuries arose out of and in the course of her employment. The claimant testified, and the medical records clearly show, the claimant had no cervical problems whatsoever around September 14, 2004. The claimant testified as follows regarding her cervical area around the time of her alleged injuries:

Q. Now, I've looked at the records and it looks like a visit of September 15, 2005, to SAMA.

A. Uh-huh.

Q. And it says that there was wrist pain. You agree with that, that you were having wrist pain back then?

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A. Uh-huh, it started in my wrist.

Q. All right. And at that time, and again I'm looking just at September 15, 2004, that one visit, but it says no neck pain or stiffness. Do you agree that in September of 2004 you were not having neck pain or neck stiffness?

A. Not at that time, no.

Q. All right. And it also says no elbow pain at that time. Do you also agree that you were not having any elbow pain at that time?

A. No.

Q. No, you weren't having elbow pain or no, you disagree?

A. I was not. Okay.

Q. I'm sorry, I asked a bad question. Okay. Then I look at the September 20, 2004, that second visit to SAMA and it talks about wrist pain so you were still having wrist pain then?

A. In my arm, yes.

Q. And it says neck pain and neck stiffness not present. Do you agree that on September 20, 2005, you were not having neck pain or neck stiffness?

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A. No, I wasn't.

Q. Okay. And also it says that there was no elbow pain and full range of motion. Do you agree that on September 20, 2004, that you were not - - -

A. I can't agree to that because I don't remember then.

Q. Okay. Now, when I look at the - you went back to SAMA in August of 2005, is that right?

A. That's correct. (T. pgs. 35, 37 & 37, lines 25, 1-25 & 1-11, respectively)

The claimant testified, and the medical records clearly state, that in September of 2004 the only treatment requested by the claimant was for her wrist. Further, the records show that between September of 2004 and August of 2005, the claimant worked her regular duties with no mention or treatment of cervical problems. Absolutely nothing in the record demonstrates a causal connection between the claimant's work activities in September of 2004, and her alleged cervical injuries of August 2005.

The claimant asked at the full hearing that her contentions be amended to conform to the proof, and that, according to the claimant; the proof reflects an aggravation or recurrence of her cervical injuries in August of 2005. However, regardless of whether the claimant argues recurrence or aggravation in August of 2005, there still had to be a previous injury; which the claimant contended occurred in September of 2004. I find that the claimant

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worked for nearly ten months after September 14, 2004, at full duty with no restrictions, and never complained or asked for treatment for a cervical problem. The only restriction placed upon the claimant in September of 2004 was light duty for a week and one day, and that was due to her wrist complaints.

The deposition testimony of Dr. Reza Shahim further casts substantial doubt about the claimant's cervical injuries arising out of her employment around September of 2004:

Q. Okay. Doctor, if - - if a physician examined Miss White in September of 2004 and noted that neck pain and neck stiffness was not present, would that indicate to you that the symptomatology (sic) was - - or that the problems that she was having when she saw you were not existing at that time?

A. Yeah, I mean, if she didn't have it then, I guess she didn't have it. (CLX-2, lines 6-13)

The only two medical reports contained in the record before August of 2005, are from September of 2004 and they both clearly state the claimant was treated for wrist pain and that no neck pain or stiffness was present in September of 2004. (RX-1, pg. 2-5) I find the claimant has failed to prove by a preponderance of the evidence that her cervical injuries arose out of and in the course of her employment with the respondent-employer.

Second, the claimant has failed to prove that her cervical injuries were caused by

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rapid repetitive motion. In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998), a two-part standard was devised to determine whether an injury is caused by rapid and repetitive motion: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. The only evidence contained in the record regarding the speed at which the claimant performed her job duties was her own testimony. I find the claimant's testimony falls short of proving her cervical injuries were caused by rapid repetitive motion.

In *Rodman v. ACX Technologies*, Ark. Workers' Compensation Full Commission Opinion filed July 8, 1999 (Claim No. E804579), the Full Commission noted that the Court of Appeals has stated it "must consider the positioning of the part of the body as well as the number of movements the claimant has to undergo to determine if the movement is rapid and repetitive." See also *Patterson v. Frito-Lay, Inc.*, 66 Ark. App. 159, 992 S. W. 2d 130 (1999). Here, the claimant has failed to prove a gradual onset cervical injury for a number of reasons. First, she has failed to meet the two prior test set forth in *Malone v. Texarkana Public School*, and has failed to present any evidence as to the position of her neck or cervical spine during the alleged repetitive tasks in which she performed for the respondent-employer.

C. ADMISSIBILITY OF EVIDENCE.

At the full hearing the claimant sought to introduce a medical report contained herein as claimant's proffered Exhibit "3". At the full hearing, the claimant's attorney

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admitted to not providing the proffered report within seven days of the hearing to opposing counsel. As a result, the respondents objected to the reports admissibility since it was not disclosed prior to the hearing. The prehearing order filed in this matter and contained herein as Commission Exhibit "1" clearly states that "no documents will be allowed into evidence unless exchanged by the parties at least seven (7) days prior to the scheduled hearing."

Pursuant to the prehearing order and A.C.A. §11-9-705(C)(2)(A), I find the claimant failed to provide the proffered exhibit to opposing counsel within seven days of the scheduled hearing and therefore shall be excluded as evidence for the purposes of this opinion.

ORDER

Based upon the forgoing evidence outlined herein, I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset cervical injury while in the respondents' employ. Therefore, this claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge