

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700335

GAIL BATES, EMPLOYEE

CLAIMANT

**MORRISON MANAGEMENT SPECIALIST, INC.,
EMPLOYER**

RESPONDENT

**NEW HAMPSHIRE INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 26, 2007

Hearing before Administrative Law Judge S. Dale Douthit on May 2, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Mr. Andrew M. Ivey, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted May 2, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on March 21, 2007, and a Prehearing Order was filed on that same day. At the hearing, the parties announced that the stipulations, issues, and their respective contentions were properly set out in the Prehearing Order, subject to an amended stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was introduced, without objection, as Commission's Exhibit #1 and made a part of the record herein.

The parties stipulated to the following at the full hearing:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The employee/employer/carrier relationship existed at all relevant times, including September 13, 2006.

3. The claimant's applicable compensation rates are \$175.00 per week for temporary total disability and \$154.00 per week for permanent partial disability benefits.

The parties agreed that the following issues would be presented for determination:

1. Whether claimant sustained a compensable left shoulder injury on September 13, 2006.

2. If compensability is overcome, whether claimant is entitled to all associated medical benefits and temporary total disability benefits from November 7, 2006, to a date yet to be determined.

Claimant contended at the hearing that she sustained a compensable left shoulder injury while in the respondent's employ on September 13, 2006. Claimant contended that as a result of her compensable injury, she is entitled to all associated medical treatment and temporary total disability benefits from November 7, 2006, to a date yet to be determined.

Respondents contended at the hearing that the claimant is not entitled to the requested benefits because she cannot establish that she sustained accidental injuries with resulting objective findings of injury to her left shoulder, which arose out of and in the course of her employment with the respondent employer on or about September 13, 2006. Respondents contend that should the claim be found compensable and benefits awarded, respondents would be entitled to an offset pursuant to Ark. Code Ann. § 11-9-411.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 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 hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a compensable left shoulder injury arising out of and during the course of her employment with Morrison Management Specialist, Inc. on September 13, 2006.

DISCUSSION

To prove the occurrence of a compensable injury as a result of a specific incident, which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

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This record contains far too many contradictions and inconsistencies for one to conclude that the claimant's left shoulder problems arose out of and in the scope of her employment on September 13, 2006. The claim turns on the medical evidence and the credibility of the claimant, who I found not to be a credible witness.

The claimant testified as follows regarding the incident of September 13, 2006, in which she alleges she injured her left shoulder at work:

A. Okay, Your Honor. September the 13th, I was – I was coming down – out the elevator, down the small hallway, and –

Q. You're talking about September 13th of '06; is that correct?

A. '06, yes, sir.

Q. Okay.

A. And I was coming down – out the elevator, down the small hallway, and there's an entrance that – I had to stop at the entrance, and when I looked up, I was already at the entrance, so – it was a hallway, people walking down the hallway. So either I had to let this cart go or stop the cart. So I had to come in front of the cart and stop the cart, because I couldn't stop it, pulling it. So I had to step in front of the cart, and the cart hit me in my left arm.

If the – if the cart would have hit the doctor or – it was a doctor walking by. It was people – well, there was more people other than the doctor, but the doctor was closer, so it would have hit the doctor if I hadn't stepped in front of the cart.

The claimant testified that after she passed out her remaining trays of food, she reported the incident to her supervisor, Ms. Marguerite Calloway, that same day. However, Ms. Marguerite Calloway testified at the full hearing that the claimant had never reported to her a work-related injury to her left shoulder on September 13, 2006, or at any other time. (Tr. p. 54, lines 1-11) A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985).

The claimant also testified that she told another supervisor, Ms. Brittany Nelson, about her left shoulder problems within four days after the alleged September 13, 2006, incident. (Tr. p. 24, lines 16-25) However, Ms. Nelson testified that whenever the claimant did approach her with complaints of left shoulder pain, that the claimant said, “she had been having shoulder pain for a few months.” (Tr. p. 66, lines 2-7)

The testimony of Ms. Nelson is also backed up by the medical evidence. A report from Dr. Melanie Hoover with Arkansas Specialty Care MRI Center dated September 29, 2006, states, “Left shoulder pain for four months.” (Cl.X1 p. 5) Further showing claimant was experiencing left shoulder problems well before her alleged September 13, 2006 specific incident is Dr. Ethan Schock’s September 29, 2006 report. In Dr. Schock’s September 29, 2006 report he states claimant’s left shoulder pain “has been ongoing for several months.” (RX1 p. 1)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. Pearson v. Faulkner Radio Service, 220 Ark. 368, 247 S.W.2d 964 (1952); Farmer v. L. H. Knight Company, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is a preponderance of the evidence. Voss v. Ward’s Pulpwood Yard, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704(c)(4); Wade v. Mr. C.

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Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

As stated previously, the claimant's credibility at the hearing came into serious question. The claimant, by her own admission, testified untruthfully at her deposition. The claimant testified that she did so because she didn't think certain questions and/or answers were "relevant to the case." (Tr. p. 43, lines 14-17) The claimant went on to testify that she only gave answers in her deposition which she thought were needed. The claimant's credibility was shown to be severely lacking at both her deposition and the full hearing.

The claimant had the burden to prove by a preponderance of the evidence that her left shoulder injury arose out of and in the course of her employment on September 13, 2006; the claimant has failed to meet her burden. The evidence shows that in fact the claimant's left shoulder problems pre-existed September 13, 2006, and that the claimant failed to report any type of work-related injury on September 13, 2006.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that she sustained an injury arising out of and during the course of her employment with Morrison Management Specialist, Inc., on September 13, 2006. Accordingly, this claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge