

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605277

HELEN S. BURRIS, EMPLOYEE

CLAIMANT

JOHN GOFF AND KIM GOFF D/B/A  
KATFISH KADIES, UNINSURED EMPLOYER

RESPONDENTS

**OPINION FILED OCTOBER 16, 2007**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE RONALD BURNETT, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by HONORABLE STEVE HARRELSON, Attorney at Law, Texarkana, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on August 16, 2007, in Texarkana, Arkansas. A Prehearing Order was entered in this case on June 13, 2007. This Prehearing Order outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the Prehearing Order or during the course of the hearing and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer relationship existed on March 3, 2006, between claimant and respondent.
3. Claimant is currently being treated by Dr. Jeff Young, an orthopedic surgeon in Texarkana, Texas.

4. The respondents controvert this claim in its entirety.
5. The claimant has a documented rotator cuff injury.
6. The claimant's average weekly wage was \$251.00.
7. Arkansas Rehabilitation Services paid \$7,856.30 towards the claimant's medical bills.
8. The claimant has incurred medical expenses of \$26,581.23.

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

Claimant:

1. Temporary/total disability benefits beginning July 1, 2006.
2. Permanent/partial disability benefits based upon her impairment rating and wage-loss.
3. Payment of medical expenses.
4. Controverted attorney fees.
5. Mileage/transportation costs.

Respondent:

1. The causation of the claimant's injuries, prior existing injuries, medical bills, benefits due the claimant, a lump sum award.
2. Compensability.
3. Possible offset for liability on medical mileage based on the dual purpose of each trip.

4. Possible reduction of medical expense liability for benefits paid by Arkansas Rehabilitation Services and by application of Commission Rule 099.30 and the Commission fee schedule.

The record consists of the August 16, 2007, hearing transcript and the exhibits contained therein.

### DISCUSSION

#### **1. Background**

The claimant developed a rotator cuff tear which was documented in an MRI of her shoulder performed on March 29, 2006. The claimant was treated by Dr. Odom in Nashville on March 2, 2006, and was next treated by Dr. Stephanie Hickerson on March 23, 2006. The claimant ultimately underwent surgery performed by Dr. Thomas Young, an orthopedic surgeon, on July 6, 2006.

The claimant contends that her rotator cuff injury occurred at work as a result of lifting incidents at work on March 1, 2006, and March 3, 2006. The claimant testified that she reported the first incident to Mr. Goff, the restaurant owner, on March 1, 2006, or March 2, 2006. (T. 24-25) Mr. Goff testified that he first learned that the claimant was contending that she hurt her shoulder lifting at work after he got sued. (T. 168) Mr. Goff testified that neither the claimant nor anyone else at Katfish Kadies told

him at work about the claimant injuring herself at work. (T. 168, 169, 176) The claimant continued to work at Katfish Kadies until June 29, 2006, when she was paid for a week of vacation in anticipation of surgery. (T. 31, 33)

The Goffs contend that the rotator cuff condition at issue did not arise out of the claimant's employment and that the claimant did not report a work-related injury when she contends.

Dr. Young's left shoulder surgery on July 6, 2006, included a left shoulder arthroscopic glenohumeral debridement, a subacromial decompression, and a rotator cuff repair. The claimant has not returned to work since June 29, 2006. The claimant seeks payment of her medical expenses, an appropriate period of temporary total disability compensation, benefits for permanent impairment and permanent disability, medical mileage reimbursement, and appropriate attorney's fees.

## **2. Evidentiary Objection.**

On pages 128-130 of the hearing transcript, Mr. Harrelson objected to a line of questions that Mr. Burnett posed to Sheila Jones, a Katfish Kadies employee, regarding whether or not Mr. Goff paid for her medical expenses associated with a work-related burn injury. Mr. Burnett

proffered testimony from Ms. Jones that Mr. Goff sent her to the doctor to be checked, paid for her office visit, and paid for her medicine. I took the objection and the proffer under advisement pending a written decision on this case.

The Arkansas Workers' Compensation Commission is not bound by the Arkansas Rules of Evidence, and my research further indicates that there is not a Rule of Evidence in Arkansas which specifically addresses the issue of admitting proof of the existence or non-existence of prior accidents or injuries to show negligence, notice, or causation. The Arkansas Courts have adopted the general rule with respect to the admissibility of evidence of similar circumstances that such evidence is admissible only if "the events arose out of the same or substantially similar circumstances." See Fraser v. Harp's Food Stores, Inc. 290 Ark. 186, 718 S.W.2d 92 (1986).

For my part, I am not clear why the claimant sought to introduce evidence showing that Mr. Goff paid for the medical expenses of a co-employee whose injury he deemed work-related, and I am not clear why the respondents would object to evidence that he accepted financial responsibility for a worker's injury which he concluded was work-related. At any rate, I find that the two injuries at Katfish Kadies

arose out of circumstances sufficiently similar so as to accept the objected-to testimony into evidence.

**3. Compensability of Allegedly Work-Related Rotator Cuff Injury.**

The claimant contends that she developed a work-related rotator cuff injury as a result of lifting incidents which occurred on March 1, 2006, and March 3, 2006. 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).

The claimant has the burden of proof in establishing a compensable injury. The burden of proof the claimant must meet is the 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 the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not the claimant has met the burden of proof be weighed impartially without giving the benefit of the doubt to either party. Arkansas Code Annotated § 11-9-704(c)(4); Wade v. Mr. C. Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104,

357 S.W.2d 263 (1962); Harris Cattle Company v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

In the present case, the record establishes that the claimant was employed at Katfish Kadies, a restaurant which served breakfast, lunch, and dinner on various days of the week. The claimant has presented corroborated evidence which establishes that she experienced pain in her left shoulder early in the morning of March 1, 2006, while she was putting away recently delivered foods and that she experienced pain in her left shoulder again on March 3, 2006, while lifting a thirty-five pound container of oil with her left arm in order to pour the oil into a fryer. (T. 16-17, 121, 132, 136) The pain that she experienced on March 3, 2006, was sufficient to make her cry. (T. 122)

Nevertheless, on the record before me, I find that the claimant has failed to establish by a greater weight of the evidence presented that the lifting incidents on March 1,

2006, and March 3, 2006, either caused or aggravated the rotator cuff tear condition documented on the MRI performed on March 29, 2006.

In this regard, I am persuaded by the impression of the radiologist, Dr. Joe Robbins, who read the March 29, 2006, MRI and concluded that the claimant experienced a complete tear of the distal third of the supraspinatus tendon near its insertion *probably due to impingement by a downsloping acromion*. (C. Exh. 1 p. 53) For my part, I do not understand a downsloping acromion or an impingement caused by a downsloping acromion to be indicative of an acute abnormality.<sup>1</sup>

In his June 7, 2006, note, Dr. Young indicated that he hoped to obtain a good cuff tear repair without performing a debridement; however, his July 6, 2006, operative report indicates that the condition in fact required subacromial decompression prior to repairing the rotator cuff. (C. Exh. 1 p. 54, 58) Dr. Young's decompression surgery appears consistent with Dr. Robbins' statement that the rotator cuff tear was due to impingement by a downsloping acromion.

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<sup>1</sup>Dorland's Illustrated Medical Dictionary, 30<sup>th</sup> Edition defines the acromion as "the lateral extension of the spine of the scapula, projecting over the shoulder joint and forming the highest point of the shoulder."

In concluding that the claimant has failed to establish by the greater weight of the evidence that her rotator cuff tear occurred during the lifting incidents on March 1, 2006, and March 3, 2006, I am also persuaded by the testimony that approximately one month prior to March of 2003, the claimant described a left shoulder injury that she had sustained when she hurt her arm on a door away from work. (T. 144, 145, 155, 157)

I am also persuaded by the fact that the claimant continued to work after the March 1, 2006, incident and after the March 3, 2006, incident and that she continued to use her left arm for some period thereafter before she put her left arm in a sling at the suggestion of her friend, Sheila Jones. (T. 22,29)

Finally, I note that a conflict exists between the testimony of the claimant and of the Goffs as to whether the claimant did or did not report a work-related injury to the Goffs in March of 2006 immediately following the lifting incidents on March 1 and March 3. Although various friends and co-workers of the claimant testified at the hearing in this case, I do not see any evidence from their testimony which would corroborate the claimant's testimony that she reported a work-related injury to Mr. Goff within days of

her painful lifting on March 1, 2006. In addition, even the claimant has conceded that after consulting Dr. Odom on March 2, 2006, that she indicated to the Goffs her condition "could have been arthritis or something like that." (T. 57) Dr. Odom's record is not in the record before me, and based on the conflicting testimony of the parties and after consideration of the surrounding circumstances, I find credible the testimony of the Goffs that they first learned that the claimant was contending that she sustained some type of work-related shoulder injury after she filed a claim for benefits and not on March 2 when the claimant went to the Goffs' home.

In summary, I find that the claimant has failed to establish that her rotator cuff tear was caused by lifting incidents on March 1, 2006, and/or on March 3, 2006, in light of the nature of the preexisting abnormality to the acromion and the impingement identified in her MRI and in her surgery, based on the fact that she continued to work for a period after these incidents, based on the evidence that she described a shoulder injury existing approximately one month before the lifting incidents in March of 2006, and based on the persuasive evidence that she did not report any

type of alleged work-related shoulder injury to the Goffs before she filed her claim with the Commission.

Because I find that the claimant has failed to establish that she has sustained a compensable shoulder injury, I find that the remaining issues regarding her claim for appropriate benefits is moot.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer relationship existed on March 3, 2006, between claimant and respondent.
3. Claimant is currently being treated by Dr. Jeff Young, an orthopedic surgeon in Texarkana, Texas.
4. The respondents controvert this claim in its entirety.
5. The claimant has a documented rotator cuff injury.
6. The claimant's average weekly wage was \$251.00.
7. Arkansas Rehabilitation Services paid \$7,856.30 towards the claimant's medical bills.
8. The claimant has incurred medical expenses of \$26,581.23.
9. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable shoulder injury. Specifically, the claimant has failed to prove by a preponderance of the evidence that her rotator cuff injury was caused by lifting incidents on March 1, 2006, and/or on March 3, 2006, as the claimant contends.

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**ORDER**

For the reasons discussed herein, this claim must be,  
and hereby is, respectfully denied.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge