

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F400676

CHARLES CLARK, Employee	CLAIMANT
SPRINGDALE POLICE DEPARTMENT, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED AUGUST 16, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 25, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 16, 2007, and a pre-hearing order was filed on May 17, 2007. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained compensable injuries to his elbows and wrists on December 24, 2003.
3. The claimant was earning an average weekly wage of \$601.50 which would entitle him to compensation at the weekly rates of \$401.00 per week for total disability benefits and \$301.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to bilateral shoulders.
2. Medical treatment for shoulders.

The claimant contends that he suffered a compensable injury to his shoulders and is entitled to medical treatment.

The respondents contend that claimant did not suffer a compensable injury to his shoulders.

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

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 16, 2007, and contained in a pre-hearing order filed May 17, 2007, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his shoulders while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 50-year-old gentleman who began working as a dispatcher for the respondent in 1976. Claimant became a patrol officer and continued working for the respondent until he retired in 1993. After operating his own business performing small engine repair, the claimant returned to work for respondent in August 1995 as a 9-1-1 dispatcher. Claimant testified that his job duties required him to answer the telephone, type radio logs, and dispatch police and fire.

Claimant testified that in December 2003 he began having pain in his arms and hands. Claimant reported those problems to his immediate supervisor and he was sent to Dr. Bertram for medical treatment. Dr. Bertram diagnosed claimant's condition as upper

extremity pain and treated claimant with medication and work restrictions. Dr. Bertram subsequently referred claimant to Dr. Benafield. Dr. Benafield diagnosed claimant's condition as probable bilateral cubital tunnel syndrome and lateral epicondylitis. Dr. Benafield's treatment consisted of braces, medication, and physical therapy.

According to claimant's testimony he was not satisfied with Dr. Benafield's treatment and as a result he received a change of physician to Dr. Hixson. Claimant was initially evaluated by Dr. Hixson on May 13, 2004, at which time she diagnosed claimant's condition as tendinitis in both forearms. Dr. Hixson provided claimant with a cortisone injection and indicated that claimant should continue wearing his braces. Subsequent testing revealed that claimant suffered from bilateral carpal tunnel syndrome. In addition, Dr. Hixson diagnosed claimant as suffering from bilateral cubital tunnel syndrome. As a result, Dr. Hixson performed surgery on July 16, 2004 to release the claimant's right ulnar nerve at his elbow. In addition, she also gave claimant an injection in his right carpal tunnel. When claimant's complaints in his right hand persisted, Dr. Hixson performed a carpal tunnel release on the claimant's right wrist on January 4, 2005. Dr. Hixson subsequently performed a carpal tunnel release of the claimant's left wrist on February 28, 2005.

The medical records indicate that Dr. Hixson released claimant from her care to return to work as of June 1, 2005. Claimant subsequently returned to Dr. Hixson complaining of pain in both his forearms and shoulder areas. Dr. Hixson in a report dated July 19, 2006 indicated that claimant most likely suffers from epicondylitis of the elbows and may also have cubital tunnel syndrome. Dr. Hixson ordered an MRI of the claimant's right elbow and nerve conduction studies of both upper extremities.

The nerve conduction studies returned normal; however, the MRI scan of the right elbow revealed lateral epicondylitis with fluid and swelling. As a result, Dr. Hixson performed a second surgical procedure on the claimant's right elbow on November 27,

2006. In addition, she performed surgery on the claimant's left elbow on March 16, 2007.

At some point in time the claimant sought medical treatment from the Veteran's Administration Hospital. Medical records from the VA indicate that claimant made similar complaints of pain in his shoulders, arms, and hands as he had made to his authorized treating physicians.

The respondent accepted as compensable injuries to claimant's elbows and wrists and paid appropriate benefits. Claimant has filed this claim contending that he also suffered a compensable injury to his bilateral shoulders. He seeks payment of medical treatment associated with that injury.

#### ADJUDICATION

Claimant does not contend that he suffered a specific injury identifiable by time and place of occurrence to his shoulders while working for the respondent. Instead, claimant contends that his shoulder injuries are the result of a gradual onset injury caused by his work duties with the respondent.

A claimant contending that they have suffered a compensable gradual onset injury has the burden of proving by a preponderance of the evidence: (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 which required medical services, or resulted in disability or death; (3) the injury was the major cause of the disability or need for medical treatment; (4) the nature and extent of the injury must be established by objective medical findings; and (5) the injury must have been caused by rapid repetitive motion. *Cottage Café, Inc. v. Collette*, 94 Ark. App. 72, \_\_\_\_ S.W. 3d \_\_\_\_ (2006).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable gradual onset injury to his shoulders while

employed by the respondent. Specifically, I find that claimant has failed to prove by a preponderance of the evidence that his job activities involved rapid repetitive motion of his bilateral shoulders.

While claimant's original form AR-C did not mention complaints of shoulder pain, the medical records from Dr. Bertram dated January 19, 2004 indicate that he examined the claimant's shoulder. Presumably, this would have been due to claimant's complaints of shoulder pain. Likewise, Dr. Hixson's medical reports indicate that claimant complained of pain in his shoulder area. However, these complaints coupled with the compensable injuries to claimant's elbows and wrists are not sufficient to prove a compensable injury to the shoulders.

The respondent contends that claimant did not suffer a compensable injury to his shoulders; therefore, the claimant has the burden of proving by a preponderance of the evidence all of the elements of a compensable gradual onset injury. As previously noted, one of these elements requires proof that the injury was caused by rapid repetitive motion.

The Arkansas Supreme Court has established a two-part test for interpreting "rapid repetitive motion." First, the task must be repetitive, and second, the repetitive motion must be rapid. If the tasks are not repetitive, the rapidity element is not reached. The Court noted that even repetitive tasks and rapid work alone and of themselves do not satisfy the definition. Instead, the repetitive task must be completed rapidly. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998).

In this particular case, I do not find that claimant's job duties required rapid repetitive motion of his bilateral shoulders. As previously noted, claimant's job duties required him to answer the telephone, type radio logs, and dispatch police and fire. In order to perform this job, claimant testified that he was required to sit at a console with a keyboard and two monitors. Claimant testified that while sitting at this console it was necessary for him to lean over to push buttons in order to open a door and to answer the telephone. Claimant

testified that in an hour's time he would answer the phone anywhere from 5 to 30 times and that he had to push the button to open the door "several" times each day. Even if the claimant had to stretch and push a button 30 times an hour to answer a telephone, this would not constitute "rapid, repetitive" motion. Pushing the button even 30 times per hour would require on average this motion only once every two minutes. Pushing the button to answer the phone on five occasions in an hour would be less than one time every 10 minutes. Furthermore, pushing the button to open the door "several" times a day would not constitute rapid repetitive motion.

In reaching this decision, I note that claimant testified that he spent approximately 90 percent of his day typing. While claimant's shoulders would have moved to some extent while typing, I do not find that typing would involve rapid repetitive motion of the shoulders.

When asked how he concluded that his job duties with the respondent caused the problems with his shoulders, claimant indicated that the reaching duties he performed were the only thing he could think of that could have caused the problem with his shoulders.

In summary, in order to prove a compensable gradual onset injury, claimant has the burden of proving by a preponderance of the evidence that his job duties required rapid repetitive motion involving his bilateral shoulders. I find based upon the evidence presented that claimant's job duties did not require rapid repetitive use of his shoulders. Absent a showing of rapid repetitive use of his shoulders, claimant cannot prove by a preponderance of the evidence that he suffered a compensable injury to his shoulders.

### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his shoulders while employed by the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$270.40.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE