

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F701460

ROY C. DUNN, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
CROCKETT ADJUSTMENT, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 13, 2007

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

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On August 22, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 9, 2007, and a pre-hearing order was filed on the same date. 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 stipulation:

1. The prior opinion in Claim Number F507250 is final.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$495.00 which would entitle him to benefits at the rate of \$330.00 for total disability and \$248.00 for permanent partial disability.

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

1. Compensability of gradual onset injury to right shoulder and cervical spine.
2. Medical.
3. Temporary total disability benefits from February 14, 2005 through a date yet to be determined.
4. Attorney fee.

At the time of the hearing the parties also agreed to litigate the issue of whether claimant's claim for compensation benefits is barred by the doctrine of *res judicata*.

The claimant contends he suffered a compensable injury to his right shoulder and cervical spine in the form of a gradual onset injury. He requests medical, temporary total disability benefits from February 14, 2005 through a date yet to be determined, and an attorney fee.

The respondent contends that claimant's claim for compensation benefits is barred by the doctrine of *res judicata*. Alternatively, respondent contends that claimant did not suffer a compensable gradual onset injury.

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 parties' stipulation that the prior opinion in Claim Number F507250 is final is hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage of \$495.00 which would entitle him to benefits at the rate of \$330.00 for total disability and \$248.00 for permanent partial disability benefits is hereby accepted as fact.
3. Claimant's claim for compensation benefits relating to his right shoulder and cervical spine is barred by *res judicata*.

#### FACTUAL BACKGROUND

The claimant is a thirty-eight year old man who worked for the respondent for more than two years. Claimant was hired by the respondent as a material handler and his job

required him to hang and palletize wheels which weighed 17 to 32 pounds. In the performance of these jobs duties claimant was required to place wheels on two rows of racks - - one row at waist-line level and a second at eye level.

On February 9, 2005 the claimant was hanging wheels on the racks and as he turned to get more wheels he heard a wheel falling and as he turned the wheel struck him in the left shoulder. Respondent accepted as compensable an injury to the claimant's left shoulder and paid some compensation benefits.

After claimant sought medical treatment for his compensable left shoulder injury, he returned to work for respondent performing various jobs until February 28, 2005. Claimant has filed this claim contending that the jobs he performed between February 10, 2005 and February 28, 2005 resulted in a gradual onset injury to his neck and right shoulder.

### ADJUDICATION

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant's claim for compensation benefits relating to his neck and right shoulder is barred by the doctrine of *res judicata*.

*Res judicata* applies where there has been a final adjudication on the merits of an issue by a court of competent jurisdiction on all matters litigated and on those matters which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 980 S.W. 2d 270 (1998). The doctrine of *res judicata* does apply to the decisions of the Arkansas Workers' Compensation Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W. 2d 776 (1996).

This claimant previously requested workers' compensation benefits for an injury to his neck and right shoulder in Claim Number F507250. A hearing was conducted on that claim on May 3, 2006. At that time, the claimant was contending that he suffered a compensable injury to his neck and right shoulder as a direct result of the incident wherein

a wheel fell and struck him on the left shoulder on February 9, 2005. In an opinion filed June 2, 2006, I found that claimant had failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his cervical spine and right shoulder on or about February 9, 2005. That opinion was appealed by the claimant to the Full Commission which affirmed and adopted the decision on March 27, 2007. Claimant has filed this current claim no longer contending that his cervical and right shoulder injuries are related to the incident on February 9, 2005, but rather to the job duties he was performing between that date and the date he last worked for respondent on February 28, 2005. Clearly, this is an issue which could have been litigated at the time of the hearing on May 3, 2006. There have been no relevant facts introduced at the most recent hearing that were not known at the time of the original hearing. The only thing which has changed is that claimant is now alleging a gradual onset injury as the cause of his neck and right shoulder problems as opposed to a specific incident. Indeed, I believe it is important to note that claimant has not even offered any additional medical evidence in support of his current contention, but instead relies upon the very same evidence which was previously submitted at the hearing on May 3, 2006.

In short, the doctrine of *res judicata* bars the re-litigation of claims which have previously been litigated or claims which could have been litigated at a prior hearing. Here, claimant's current contention that he suffered a gradual onset injury could have been litigated at the time of the prior hearing on May 3, 2006. Claimant chose at that time to contend that his cervical and right shoulder injuries were the result of a specific incident. Now, claimant contends that the cervical spine and right shoulder injuries are the result of a gradual onset injury. This issue could have been litigated at the hearing on May 3, 2006. All of the facts submitted at the most recent hearing were known at the time of the hearing on May 3, 2006. Furthermore, claimant relies upon the exact same medical evidence now as he did in support of his claim at the prior hearing. This issue could have been litigated

at the time of the hearing on May 3, 2006. Therefore, claimant's current claim for compensation benefits is barred by the doctrine of *res judicata*.

ORDER

Claimant's claim for compensation benefits relating to his neck and right shoulder is barred by the doctrine of *res judicata*. Therefore, his claim for compensation benefits is hereby denied and dismissed.

The respondent is ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$339.50.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE