

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F603049

GEORGE W. DYKES, EMPLOYEE

CLAIMANT

**GRANITE MOUNTAIN QUARRIES,
EMPLOYER**

RESPONDENT

**ACIG INSURANCE COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED MARCH 15, 2007

Hearing before Administrative Law Judge O. Milton Fine II on January 9, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 9, 2007, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on October 30, 2006. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

At the hearing, the parties discussed the stipulation set forth in Commission Exhibit 1. Claimant and Respondents added an additional stipulation, resulting in the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including February 1, 2006.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage was \$496.12, giving him compensation rates of \$331.00 for temporary total disability and \$248.00 for permanent partial disability.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

The following were litigated:

1. Whether the Claimant sustained a compensable injury.
2. Whether the Claimant is entitled to medical benefits and temporary total disability benefits.

Contentions

Claimant. Due to the additional stipulation regarding Claimant's compensation rate his following contentions remain: (1) that he was injured on or about February 1, 2006; (2) that he is entitled to medical and temporary total disability benefits from February 1, 2006, to a date yet to be determined; and (3) that he is entitled to the maximum compensation rate.

Respondents. Respondents contend (1) that Claimant did not sustain a work-related injury; (2) that there is no medical opinion with any degree of medical certainty linking his condition to the job; and (3) that Claimant's condition is idiopathic.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of dizziness/chest pain in that there is no medical evidence supported by objective findings regarding this alleged injury.
4. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right shoulder in that he has not shown that the injury arose out of and in the course of his employment by Respondent employer.
5. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of "drawing" of his right arm in that there is no medical evidence supported by objective findings regarding this alleged injury.

6. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of right carpal tunnel syndrome in that he has not shown that the injury arose out of and in the course of his employment by Respondent employer.
7. Because of the above findings, the balance of the issues are moot and will not be addressed.

CASE IN CHIEF

Testimony

Because of Claimant's *pro se* status, and without objection from Respondents, I initiated the questioning of Claimant, and then afforded Respondents the opportunity to question him. His testimony was as follows on direct examination:

Claimant testified that his full name is George Washington Dykes. He is 51 years old. Currently, Claimant is not employed anywhere. He worked for Respondent employer, a rock quarry, from August 2005 to February 2006 as a laborer. The quarry has machinery consisting of belts and chutes that carry the rock for processing. One of Claimant's jobs was to clear the rocks clogging the chutes and to remove the rocks from the belts when the belts needed repair. To accomplish this, Claimant used his hands. He wore work gloves, hearing protection, safety glasses, and a hard hat on the job.

Claimant testified that he was injured on February 1, 2006 while working for Respondent employer. At the time, he was moving rocks, "big rock"—in the words of Claimant—and became dizzy. According to Claimant, the rocks he was moving that day weighed 50 to 60 pounds—that was the size they had been reduced to at this point in the process. At another point in his testimony, he stated that they weighed from 25 to 50

pounds. He described the rocks as reaching up to twelve inches in diameter. He had to move several of them to clear the chutes and to allow the belts to be repaired on the machinery. Claimant climbed inside the chute itself to accomplish this. This clearing process generally occurred twice a week at the quarry and would involve eight to ten workers and tons of rock. To move the rocks, he would bend at the waist, pick them up, and throw them off of the conveyor belt onto the ground.

He testified that he had moved approximately 150 rocks on February 1 before becoming dizzy. Claimant stated that did not lose consciousness, but almost fell. He grabbed a nearby pole and alerted Matt, one of the ground supervisors, that something was wrong, but that he did not know what. According to Claimant, Matt took him to the trailer at the quarry and asked, "George, are you okay?" Claimant answered, "I don't think I am," and stated that he needed to go home. Matt told Claimant to sit there for a few minutes to see if he felt better. However, his symptoms got worse, so Matt advised him to "go see a doctor." So Claimant did just that.

Claimant asserted that he first went to Dr. Robert Casper, his family physician. From there, he underwent tests over the course of several weeks. Some were performed at Baptist Hospital. Claimant testified that the medical records he offered into evidence at the hearing would reflect the tests that were performed.

Claimant testified that his tests ruled out that he had experienced a stroke, heart attack, or seizure. However, x-rays on his shoulder disclosed rotator cuff and nerve damage in his right shoulder. Claimant stated that he has nerve damage in his wrist and carpal tunnel syndrome. He has to wear a brace to keep his hand from drawing, and is

unable to raise his right arm completely. Also, he “lose[s] focus of picking up things, grasp[ing] things”

Regarding treatment for his alleged injuries, Claimant testified that he was given some cortisone shots in his right shoulder and some pain medication. He stated that he takes non-prescription Extra Strength Tylenol for his pain because he cannot afford the prescription medication. Claimant testified that he is also having problems with carpal tunnel syndrome in his right wrist. He wears a brace on his right hand that goes up to his forearm. He stated that the purpose of the brace is “to keep my hand from drawing on me.” Dr. Schock prescribed it for him. In addition to the nerve problems in his wrist, Claimant stated that he has nerve damage in his right shoulder. However, he has not undergone surgery for these conditions.

In his testimony, he was unable to explain how the circumstances that led to his leaving the job site on February 1, 2006, relates to the alleged nerve damage. Claimant stated that he did not have problems with his shoulder or wrist before February 1. He felt that the way he was moving rock on that date caused his injuries.

Claimant stated that he returned to work for Respondent employer on February 16, 2006. He was allowed to finish work that day, working with only one hand, but was told not to return to work without a doctor’s statement. On February 27, the Respondent employer told Claimant to see the company doctor. He did, and the doctor cleared him to return to work. However, according to Claimant, his physician, Dr. Casper, disagreed with that finding and advised him not to return to work until Claimant’s condition was diagnosed. Claimant testified that he was terminated.

On cross-examination, Claimant testified that he had no medical problems before February 1, 2006. But after further questioning, he admitted that he had seizures prior to the date at issue. And he stated that he thought he was having a seizure on the day he left work. He felt dizzy while moving the rock, and had never felt like this before. When he reached the trailer, he still felt “a little bit” dizzy. That night, at home, his right arm began hurting and drawing on him, and contracted all the way behind him. His fingers drew up as well. This drawing still occurs. Dr. Rutherford told Claimant that this condition was due to nerve damage.

As for his shoulder, Claimant stated that it began to hurt shortly after he became dizzy on February 1. He believes he incurred “[rotator] cuff . . . and nerve damage.” However, he admitted that his MRI did not show a rotator cuff injury, but very mild carpal tunnel damage. As for whether moving the rocks caused the shoulder injury, Claimant testified: “It’s a possibility.”

He admitted that he told the adjustor that on the date in question, he was “shoveling dust” when “something popped . . . [i]n my upper back.” When asked to explain the discrepancy between this statement and his testimony, Claimant stated that he had been shoveling gravel and dust when he was told to stop and to help clean the rock out of the chutes. He had been at work around five hours that day when he became dizzy. He testified that no one rock injured him; it occurred “gradually.”

When examined by Dr. Casper on February 1, based upon the numbness in his left arm and chest pain, he initially thought that Claimant was having a heart attack. But that was ultimately ruled out. That night, at 6:30 or 7:00, was when Claimant’s right arm began drawing. He admitted that he told the doctor that for ten days after February 1, his arm had

been shaking. However, Claimant testified that the record incorrectly refers to his left arm as the one that was shaking, when it actually was his right.

While Claimant testified on direct that he worked only one day after his alleged February 1 injury, he admitted that he was paid on February 11, 18 and 25, and March 4 for working part-time. He stated that as reflected in the record evidence, Dr. Scott Carle, to whom Respondents referred Claimant, indicated that his condition was not work-related. But Claimant insisted that his physician was of a different opinion. Claimant testified that he was terminated on March 25, 2006 for failure to provide a release to return to work. Dr. Schock provided Claimant a full release on May 19; but at that time, there were no positions at Respondent employer. Claimant testified that has not seen a physician since that time because he cannot afford one. Since his termination, he has only worked 31 days, as a bell-ringer for Christmas.

On redirect, Claimant testified that he shoveled gravel every day at the quarry, that it was his primary duty. He would shovel gravel from underneath the belts to keep them from stopping. He would have to move the gravel from five to eight feet. The head of the shovel he used was from eight to ten inches across.

As for his receipt of checks from Respondent employer, Claimant testified that he only worked one day after his alleged injury. The other checks he received were for going to the doctor. His only job since leaving Respondent employer was for the Salvation Army, ringing a bell with his left hand.

On recross examination, Claimant admitted that his payroll record (Respondents' Exhibit 2) reflected that he worked a substantial number of hours after the alleged incident.

Also, he testified that his hand began to draw up on him at work on February 1, 2006, before he left to go to the doctor.

Respondents called no witnesses.

Records

Pre-incident. The medical records of Claimant that were introduced at the January 9, 2007 hearing and are part of Claimant's Exhibit 1 reflect that on March 3, 2004, he presented to Dr. Gregory K. Morton with the need to be re-evaluated for a driver's license. The record states that his last reported seizure was one year before this.

Post-incident. On February 2, 2006, one day after the alleged incident, Claimant presented to the St. Vincent Family Clinic with chest pain and dizziness. An X-ray of Claimant's chest reviewed by Dr. George A. Norton on that day (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) found no abnormalities.

On February 3, two days after the alleged incident, Claimant was seen by Dr. C. Rodgers at St. Vincent Family Clinic. The record notes (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) state that Claimant "has a past history of seizures." He was given a Bruce protocol exercise test, but it was stopped after 7:33 minutes due to Claimant's dizziness and weakness. Dr. Rodgers found the test result to be "probably normal" and stated in his comments:

I don't believe [Claimant's] symptoms are related to a cardiac problem. No significant change with exercise, blood pressure, EKG and no arrhythmia, etc. The patient also had some right knee pain which made it difficult for him to walk and if ischemia is suspected, may need to do a chemical stress test, but at this point, I think a neurologic evaluation is probably more in line. He is to follow-up with Dr. Casper on this in the next few days.

Dr. Robert Casper's February 17, 2004 notes (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) reflect that Claimant presented with tingling, numbness, and chest pain. His cardiac work-up was normal. He presented with difficulties in his right arm and hand, and shaking/jerking in his left arm for the past 10 days. Claimant gave a history of possible seizures 15 years ago in another state. In 2002, he "had tonic clonic seizures in his arms and legs only one side, consistent with partial complex seizures and had post ictal state." Dr. Casper placed Claimant on Dilantin and noted in his examination that "[P]atient does have a sore right shoulder as well from past history of seizures."

Notes for February 22, 2006 (part of Claimant's Exhibit 1) reflect that Claimant contacted St. Vincent for a release to return to work. However, Dr. Casper denied the request, stating that he wished for Claimant to wait for the results of a scheduled MRI.

X-rays taken of Claimant's right shoulder (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) on February 24, 2006 showed no evidence of acute disease, but the orthopedist's notes from that date (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) read in pertinent part:

I had the pleasure of seeing Mr. George Dykes in the clinic. I appreciate your referral of this very pleasant 50-year-old gentleman who present[ed] with chief complaint of right shoulder pain. This began recently while at work. He was shoveling gravel, something he does regularly and felt light-headed and nauseated. He began having pain in his neck and right shoulder and right upper extremity. This pain also radiates towards his low back pain [sic]. He was seen here in the office recently and actually went and had an MRI of his brain this morning. He has 'excruciating' right shoulder pain and has lost function in his right upper extremity due to this pain.

Denies any previous history of shoulder problems.

X-rays of his right shoulder were reviewed today. It is type 1 acromion. Some mild degenerative changes of the AC joint. No evidence of shoulder dislocation or fracture. The glenohumeral joint shows minimal degenerative [sic].

On examination today he is very hesitant to shake with his right hand due to right shoulder pain. His right shoulder is very pain [sic] after about 90 degrees of forward elevation at 6 degrees of abduction. He has accurate recreation of his symptoms with impingement type testing and his rotator cuff is very weak and painful on testing, especially the supraspinatus. The subscapular area appears to be intact. I see no evidence of atrophy of the right shoulder. The AC joint is slightly tender and slightly prominent but there is no evidence of instability. There is no evidence of scapular winging or neurological deficit above the right shoulder. His neck shows good motion without any evidence of radicular symptoms.

His hand is neurovascularly intact.

IMPRESSION:

Right shoulder pain with impingement type discomfort, possible rotator cuff tear.

PLAN:

1. Gave an injection today in subacromial space. This was tolerated well. I would like to see how he responds to this. Additionally we referred for some physical therapy to work on general stretching and strengthening of the right rotator cuff. I would like to see him back in 3 to 4 weeks to check his progress. If he does not show significant improvement with this approach we will consider an MRI.

Dr. Scott Carle's letter to Respondent employer on February 28, 2006 (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) reads in pertinent part:

Further history has become evident that leads me to believe, with reasonable medical certainty, that Mr. Dyke's shoulder complaints are related to complications from a group health disorder. His shoulder and arm trouble have not been maximally treated and are likely to be associated with an altered capacity to work at his normal job. Furthermore, there appears to be present a group health disorder that precludes safety sensitive work task. The nature of risk would be unsuspected incapacitation and the duration of risk at least one year and possibly permanent. The likelihood of risk is high and imminent.

He does not appear to have an injury or illness that is causally related to his occupation. I am therefore releasing him from his worker's [sic] compensation case.

In a letter from Dr. R.J. Rutherford to Dr. Robert Casper (part of Claimant's Exhibit 1 and Respondents' Exhibit 1) regarding Dr. Rutherford's March 3, 2006 neurology consultation regarding Claimant, he states that the MRI study of Claimant's brain showed

it to be structurally sound. His neurological examination of Claimant was normal. He found that Claimant presented a low probability of having a seizure disorder, and found that further treatment with Dilantin at this point was not warranted. He stated that an EEG would be conducted.

As reflected in Claimant's Exhibit 1 and Respondents' Exhibit 1, in an MRI conducted on Claimant's right shoulder on March 7, 2006, Dr. Reginald Pareja found supraspinatus and infraspinatus tendinosis, and mild-to-moderate acromioclavicular osteoarthritis, but no rotator cuff tear. When Dr. Ethan J. Schock reviewed the MRI on March 10, 2006, he found "no obvious tear but clear irritation and partial thickness injury to the rotator cuff." Dr. Schock stated that [t]his appears to be consistent with his mechanism of injury as well as likely to account for his symptoms. Claimant was given an injection in his shoulder.

Also on March 7, Claimant underwent a routine EEG. In a report on March 10 (part of Claimant's Exhibit 1 and Respondents' Exhibit 1), Dr. Rutherford found it to be "normal" and "unremarkable." He stated that Claimant would next undergo an ambulatory EEG. But the records do not reflect that this took place.

On April 10, 2006 Claimant underwent an EMG. The report is part of Claimant's Exhibit 1 and Respondents' Exhibit 1. Dr. Rutherford found:

The nerve conduction study is abnormal demonstrating evidence for right carpal tunnel syndrome. Changes are mild in degree. Study of the ulnar nerve is normal as is electromyographic examination right upper extremity. In summary present study demonstrates evidence for right carpal tunnel syndrome. Changes are moderate in degree.

In his April 14, 2006 letter to Dr. Casper (part of Claimant's Exhibit 1 and Respondents' Exhibit 1), Dr. Schock states that the EMG "shows some very mild carpal tunnel

compression on the median nerve. No evidence of significant radicular neuropathy or other derangement.” He further stated:

[Claimant’s] symptoms are rather diffuse today. He is complaining of a lot of wrist discomfort, clumsiness in the hand, dropping things and the sense that his hand and entire arm will go ‘limp.’ His right shoulder pain appears to be more anterior and parascapular than true subacromial type pain today. His previous MRI showed some subacromial impingement type changes of the rotator cuff but no full thickness or high grade partial thickness.

I’m not sure what these symptoms represent. He had only very temporary relief with the injection on a previous visit and therapy did not provide any noticeable modification of his symptoms as far as he can tell. He has asked for more pain medication but I am reluctant to continue this. I think an anti-inflammatory medication would be best. I do think a cock-up wrist splint, for nighttime use, might be helpful. I doubt that his symptoms are adequately explained by his carpal tunnel compression of the median nerve alone.

Dr. Casper recommended that Claimant continue to work on strengthening exercises at home, and stated that he was planning on releasing him at that time. He saw no need for any restriction of Claimant’s activities. As reflected in an order dated May 19, 2006 (part of Respondents’ Exhibit 1), Dr. Schock released Claimant to return to work at full duty.

ADJUDICATION

A. Compensability

Claimant has testified regarding a number of problems he allegedly suffered as a result of working for Respondent employer on February 1, 2006. They are his: (1) chest pain and dizziness; (2) right shoulder; (3) the “drawing” of his right hand; and (4) carpal tunnel syndrome. He has also referred at times to having “nerve damage.” But this appears to relate to one or more of the injuries alleged above.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of all of Claimant's alleged injuries except for carpal tunnel, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997); *Bivens v. Conagra Poultry*, 2006 AWCC 57, Claim No. F212239 (Full Commission Opinion filed March 26, 2006).

Dizziness/chest pain. Claimant testified that while moving rocks on February 1, 2006, he became dizzy. He sought medical treatment for this, along with pain in his chest and left arm. However, the chest x-rays taken on February 2, showed no abnormalities. And while he was unable to complete his treadmill test, Dr. Rodgers found the test to be

“[p]robably normal,” and opined that Claimant’s symptoms were not related to a cardiac problem. Dr. Rodgers noted that Claimant had a past history of seizures, and recommended him for a neurological evaluation. But his EEG came back as normal. Simply put, there is no medical evidence supported by objective findings regarding this alleged injury.

Shoulder. Claimant, who testified that he had no previous shoulder injury, presented to Dr. Schock on February 24 with “excruciating” right shoulder pain. X-rays revealed a type 1 acromion. Dr. Schock found that Claimant had “accurate recreation of his symptoms with impingement type testing and his rotator cuff is very weak and painful on testing, especially the supraspinatus.” He was diagnosed as having “[r]ight shoulder pain with impingement type discomfort, possible rotator cuff tear,” and was given an injection in the subacromial space.

In a follow-up visit with Dr. Schock on March 10, Claimant underwent an MRI of his right shoulder that showed “no obvious tear but clear irritation and partial thickness injury to the rotator cuff.” Dr. Schock stated that “[t]his appears to be consistent with his mechanism of injury as well as likely to account for his symptoms.” The injection of the shoulder was repeated. Dr. Pareja, a radiologist, when examining the same MRI, found no tear of the rotator cuff, but found supraspinatus and infraspinatus tendinosis, and mild-to-moderate acromioclavicular osteoarthritis.

Dr. Carle’s opinion was firmly that there was no compensable shoulder injury:

Further history has become evident that leads me to believe, with reasonable medical certainty, that Mr. Dyke’s shoulder complaints are related to complications from a group health disorder. His shoulder and arm trouble have not been maximally treated and are likely to be associated with an altered capacity to work at his normal job.

...

He does not appear to have an injury or illness that is causally related to his occupation. I am therefore releasing him from his worker's compensation medical case.

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based upon my review of the evidence, I am not inclined to credit Dr. Carle's findings. Nothing in the record before me shows how Dr. Carle arrived at his findings.

However, after considering the evidence introduced at the hearing, both testimonial and documentary, I must nonetheless conclude that Claimant has not proven by a preponderance of the evidence that he incurred a compensable injury to his right shoulder while working for Respondent employer on February 1, 2006. Claimant's testimony was that on that date, he was working at the quarry shoveling dust and gravel when he was called upon to clear rocks from the chute so that the conveyor belt could be repaired. After moving approximately 150 rocks weighing up to 50 or 60 lbs., he became dizzy. Shortly thereafter, his shoulder began to hurt.

However, on cross examination he admitted that he told the adjustor that on the date in question, he was "shoveling dust" when "something popped . . . [i]n my upper back." He did not refer to a shoulder injury.

Moreover, the records for Claimant's first two medical visits after the alleged injury, on February 2 and 3, 2006, are devoid of any reference to any shoulder pain or injury. Notably, Claimant did point out during his treadmill test that he was suffering from right

knee pain. But no reference was made to his right hand, wrist, arm or shoulder. It is true that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on the 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.*, 234 Ark. 104, 357 S.W.2d 263 (1962). The problem with that here is that Claimant testified that his shoulder began hurting the day of the alleged accident, soon after he experienced numbness. The medical evidence does not bear that out, and calls his credibility on this issue into question.

The first reference to Claimant's shoulder in the documentary evidence does not occur until February 17, when he went for a follow-up visit to Dr. Casper and asked to be referred to an orthopedist. That day, according to the record, he had "a sore right shoulder as well from past history of seizures." From this awkward phrasing, it is difficult to tell if Dr. Casper is attributing the shoulder injury to seizures Claimant had apparently suffered in the past, or was simply listing two separate findings.

As stated above, Dr. Schock in his March 10, 2006 notes stated that the partial thickening of Claimant's right rotator cuff was "consistent with his mechanism of injury as well as likely to account for his symptoms." The only reference in Claimant's medical record to what Dr. Schock could be basing his opinion on is part of his February 24, 2006 x-ray report, where Dr. Schock states that Claimant "was shoveling gravel, something he does regularly and felt light-headed and nauseated. He began having pain in his neck and right shoulder and right upper extremity." This account is inconsistent with Claimant's

testimony that his symptoms began after he stopped shoveling and had been clearing rocks for some time:

Q. Let me ask you if this what you told her [the adjustor]. 'Where were you when you were injured?' You said, 'I was around one of the belts.' Is that right?

A. Uh-huh.

Q. And she said, 'Tell me what happened.' You said, 'I was shoveling.' And she said, 'What happened?' And you said, 'Something popped and I don't know exactly where.' And she said, 'Where—something popped where?' And you said, 'In my upper back.' And said, 'Okay. And what where you doing?' You said, 'I was shoveling dust.' Is that what happened?

A. I was moving rock.

.....

Q. Well, which was it now, were you—was it the shoveling or was it lifting twenty-five or fifty pounds?

A. Lifting rocks.

In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical

opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Here, Dr. Schock's statement is speculative because (1) it is unclear what his opinion is based upon and (2) the only possible basis for it in the record does not comport with Claimant's testimony as to how he was injured. When that is considered along with the two-week-plus gap between the alleged injury and the first mention of it, and the fact that Claimant apparently never complained of it in his initial and second doctor visits, means that the injury cannot be tied to the alleged February 1 incident without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Hemdon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979); *Gregory v. State Hwy. & Transp. Dept.*, 2006 AWCC 23 (Feb. 7, 2006). Hence, Claimant has not proven by a preponderance of the evidence that his shoulder injury occurred as a result of his work for Respondent employer.

Drawing. Claimant's testimony was that on the night of February 1, 2006, while at home, his right arm began drawing on him, and contracted all the way behind him. His fingers drew up as well. He stated that this drawing still occurs, and that Dr. Rutherford told Claimant that this condition was due to nerve damage. At the outset, it should be noted that the records reflect no such remark from Dr. Rutherford or any of Claimant's other physicians. In fact, neither the term "drawing," nor the symptoms Claimant described above, are mentioned anywhere in the records. In light of Claimant's testimony that the drawing began the night of February 1, one would expect a reference to this symptom in his medical records for February 2 and 3. But it is not there. Hence, Claimant has failed

at the outset to show the existence of any objective findings supporting this. I find that this is not a compensable injury.

Carpel Tunnel Syndrome. Claimant also alleges that he suffered carpal tunnel syndrome in his right wrist as a result of working for Respondent employer. Under Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2002), “compensable injury” means:

(ii) An injury causing internal or external physical harm to the body and arising out of an in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

The medical evidence, supported by objective findings, shows that Claimant was diagnosed by Drs. Rutherford and Schock, following an EMG, as having right carpal tunnel syndrome. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998); *Bolden v. Intl. Paper Co.*, 2005 AWCC 42, Claim No. F303479 (Full Commission Opinion delivered February 24, 2005).

I find that the Claimant proved his carpal tunnel syndrome of the right wrist was an injury causing physical harm to the body, and he has established this by medical evidence supported by objective findings. That, however, leaves the question of, inter alia, whether this injury arose out of and in the course of his employment for Respondent employer. His problem with establishing the causal connection between his employment and the injury is the same as for his shoulder—there is an unexplained 16-day gap, between the injury and its first appearance in the medical records, despite visits to Drs. Rodgers and Casper in the interim. Claimant testified that on his February 17 visit to Dr. Casper, he stated that his

right arm had been shaking for ten days prior to the 17th. But the record clearly reflects that the shaking was referring to the left arm, and that it was radiating into his left lower extremity. His right arm is referred to separately in this note: "He [Claimant] is having difficulty with his right arm sometimes with _____ type feelings in his right hand." Consequently, I find that Claimant has failed to establish his carpal tunnel syndrome to be a compensable injury by a preponderance of the evidence.

B. Balance of Issues Under This Claim

Because of the above finding, the balance of the issues under this claim— whether Claimant is entitled to medical treatment and temporary total disability—are moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that his alleged injuries are compensable. He has failed to do so. Therefore, his claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge