

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F611981**

**ALICE FORD, EMPLOYEE**

**CLAIMANT**

**SANYO MFG. CORP., EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL INS. CO., CARRIER**

**RESPONDENT**

**OPINION FILED OCTOBER 1, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 28, 2007, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style to determine the claimant's entitlement to workers' compensation benefits. On July 31, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Alice Ford, the claimant, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Alice Fay Ford, the claimant, with a date of birth of September 22, 1950, is a high school graduate who commenced her employment with respondent-employer on July 21, 1971.

Claimant last perform work for respondent on June 15, 2007, as a temporary employee.

In 2003 claimant sustained a compensable injury to her elbow which resulted in surgery. Following her recovery from the afore injury and return to work in February 2004, claimant was assigned to a different job, which entailed placing labels on boxes. Claimant continued to perform the afore job until 2005, at which time she put in for an upgrade and was assigned the air check job. Claimant performed the air check job from 2005 until the February 28, 2007, lay-off at the plant. As noted above, claimant worked for respondent-employer on two occasions following the over-all lay-off. Specifically, in May 2007, claimant returned to respondent-employer for a period of two (2) weeks to perform “re-work” on television sets. The work that the claimant performed for respondent-employer in June 2007 was as a temporary employee. Respondent employer closed its Forrest City plant.

Claimant denies that she experienced either neck, shoulder or arm pain or complaints prior to August 31, 2006. Further, there is no evidence in the record to reflect that the claimant received medical treatment for complaint relative to her right shoulder, neck or arm prior to August 31,2006.

There is not a dispute regarding the manner in which the claimant discharged her employment duties performing the air check job. The testimony of the claimant reflects that the television sets arrived at her work station on a conveyer line. Claimant used a computer to monitor the television set to determine if it was properly tuned. If the television set was not

properly tuned and adjustments were required to achieve same, it was claimant's responsibility and duty to reach around behind the television set and make the necessary adjustments. The television set was at the level of the claimant's stomach. Claimant repeated the maneuver of check the computer screen and reaching behind the set to make adjustment on multiple occasions with each television set.

Claimant acknowledge that her job entailed repetitive activity, however she denies that her injury is the product of a gradual onset. Specifically, claimant's testimony reflects that she did not experience pain or discomfort in either her neck, right shoulder or right arm prior to the specific incident which serves as the basis for the present claim which occurred on August 31, 2006.

The credible testimony of the claimant reflects that on August 31, 2006, as she was leaning over to reach behind a television set with her right arm to adjust the tuning she pain in the area between the right side of her neck and her shoulder along with a pulling sensation. Claimant also described the pain as radiating. Claimant denies ever experiencing similar pain or symptoms prior to the incident. Claimant reported the injury to her supervisor who referred her to the plant nurse, Ms Charlotte Gibson.

The credible testimony in the record reflects that injured employees of respondent-employer were referred by the plant nurse to respondent-designated medical providers. Further, the plant nurse was responsible for scheduling the appointment for the employee with the medical provider. The injured employee was not seen by the respondents' designated medical provider prior to the appointment being scheduled. The credible testimony reflects that the date of the injury and the date of the scheduled appointment were not the same.

In the instant claim, the evidence reflects that the claimant reported her injury to the supervisor on the date of its occurrence, August 31, 2006, and that she was referred by same to the plant nurse. The plant nurse, Ms. Charlotte Gibson, then scheduled an appointment for the claimant to be seen by respondents' designated medical provider, Dr. Sudesh Banaji.

The claimant's appointment with Dr. Banaji was scheduled for September 5, 2006. Claimant was seen by Dr. Banaji on September 5, 2006, pursuant to the directions of the plant nurse, who scheduled the appointment at the time of the reporting on August 31, 2006. Claimant relayed a history of her injury to Dr. Banaji, as well as the manner in which she performed her job duties and the mechanics of her injury. The September 5, 2006, clinic note relative to the claimant's visit reflects that she had complaints of pain in the right shoulder above the shoulder blade area which appeared to be radiating down the right arm.

While the clinic note reflects that the claimant's complaints started on the date of the visit and that she thought that it might be she was working the computer, the same is incorrect and clearly the product of erroneous note recording by the physician. Dr. Banaji, an internal medicine specialist, assessed the claimant's complaint as "Myalgia, right shoulder", for which he prescribed Lodine 400 mg b.i.d. for ten days, and directed her to use a heating pad. Claimant was released to return to work with a follow up visit in two weeks if she was no better. (CX. #1, p. 1).

The claimant continued to discharge her regular employment duties. The credible testimony reflects that the claimant's symptoms did not abate. Claimant was again seen by Dr. Banaji on September 20, 2006. The office note relative to the visit reflects, in pertinent part:

The patient is here with complaints of persistent pain in her right shoulder blade and the area above it. She continues to work on computer monitor and sometimes has to reach out, although she does not seem to be having

any weightbearing activity.

EXTREMITIES: Right shoulder blade area is tender. She has good handgrip.

Shoulder myalgia.

I am giving her Medrol Dosepak. I am switching her to Arthrotec since Lodine did not seem to have helped. I am going to ask for ergonomic keyboard at Sanyo and hopefully that should help her. No excuse or light duty for now. (CX. #1, p. 2).

The claimant was furnished with an ergonomic keyboard by respondent-employer pursuant to the recommendation of Dr. Banaji. The claimant continued to experience pain in the area of upper shoulder between the neck and the top of the right shoulder. The medication prescribed by Dr. Banaji did not relieve her symptoms. The credible testimony of the claimant reflects that in addition to the pain in the region of her upper back between the neck and right shoulder she also experienced muscle spasms in the region. Claimant continued to discharge her employment duties.

The claimant was again seen by Dr. Banaji on October 17, 2006. The office note relative to the visit reflects, in pertinent part:

The patient is here with recurrent pain in the right shoulder and neck area. She wants to know what is causing it. She would like to get an x-ray of her neck done as well. She states the Lodine gave her some relief before.

VITALS: WT: 130 pounds. BP: 144/96. TEMP: 98. PULSE: 58.

NECK: She is tender in the right trapezius muscles. Neck movements are grossly normal.

RADIOLOGY INTERPRETATION: X-ray of the C-spine showed arthritic changes and liping in the C5-6 and C7 regions.

1. Neck myalgia.
2. Cervical degenerative disk disease.

Refilled Lodine 400 mg b.i.d., #60 pills, with one refill. Apply ice and heat alternately. I have asked her to also seek advice with her regular physician Dr. Weber for medical followup. (CX. #1, p. 3).

Claimant's testimony reflects that her symptoms persisted and worsened. Claimant denies that she experiences joint stiffness or pain other than the area of upper shoulder between her neck and shoulder on the right side. Further, claimant testified that she has not been diagnosed as having arthritis prior to the August 31, 2006, onset of her symptoms. Claimant notes that in addition to the muscle spasm, the pain that she experiences, which she attributes to the August 31, 2006, specific incident, is constant and prevents her from sleeping on her right side.

Claimant testified that she requested a change of physician because Dr. Banaji was attributing her complaints to arthritis, which she disputed. On January 22, 2007, a Change of Physician Order was entered by the Medical Cost Containment Department of the Arkansas Workers Compensation Commission. In the Change of Physician Order the claimant's treating physician was changed from Dr. Banaji to Dr. Apurva R. Dalal, a Memphis orthopedic physician.

Claimant was seen by Dr. Dalal on March 2, 2007. The claimant was not seen by any physician relative to the complaints which she attributes to the August 31, 2006, injury between October 17, 2006, and the March 2, 2007, date. The March 2, 2007, clinic note of Dr. Dalal, relative to the claimant's visit of the same date reflects, in pertinent part:

**CHIEF COMPLAINT:** This is a 56-year-old female patient who works at Sanyo. The patient stated that she sustained a work related injury to her neck, RT shoulder, and RT hand. She states, the entire arm is going numb. She has had a tennis elbow surgery done 3 years ago. Now she states that she cannot sleep at night. The hand aches all the time. The pain is shooting down her RT arm. The patient states that doing repetitive work at work has caused her to have significant problem.

\* \* \*

**LOCAL EXAMINATION:** Examination of her cervical spine shows she has moderate cervical spinal spasms. Spurling's test is positive. Lhermitte's sign is negative.

Examination of the RT shoulder is completely negative. She has got an excellent range of motion with no evidence of any impingement. Examination of the RT elbow shows a well-healed scar of the tennis elbow with excellent range of motion. Examination of the right hand shows the evidence of paresthasias in ulnar fingers of the RT hand.

**RADIOGRAPHS:** Radiographs of the cervical spine shows extensive degenerative arthritis of the C4, C5, and C6 vertebrae, with evidence of neural foraminal stenosis. Radiographs fo the shoulder are negative.

**DIAGNOSIS:** Severe degenerative arthritis of the C-spine with neural foraminal stenosis and radiculopathy.

**RECOMMENDATION:**

1. I have referred the patient for an MRI of the cervical spine.
2. I think she is now going to need to have a cervical spine fusion. After the MRI, we will need to refer the patient to a neurosurgeon for further evaluation and management. I will see her back next week. (CX. #1. p.4).

The respondents refused to authorize the MRI of the claimant's cervical spine as recommended by Dr. Dalal. Claimant has not received medical treatment relative to the complaints that she attribute to the August 31, 2006, injury, since the March 2, 2007, visit to Dr. Dalal. Claimant noted that even her efforts to secure medical treatment through her health insurance carrier was denied. Claimant's medication to address her symptoms from the August 31,2006, incident is limited to over-the-counter pain relievers.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, which I deem credible, review of the medical reports, application of the appropriate statutory provisions and case law, I make the following:

## **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 31, 2006, the relationship of employee-employer-carrier existed among the parties.
3. On August 31, 2006, the claimant sustained an injury to her cervical spine arising out of and in the course of her employment.
4. The respondents shall pay all reasonable and necessary medial, hospital and medical expenses, to include the diagnostic study recommended by Dr. Apurva R. Dalal, arising out of the injury of August 31, 2006.
5. The respondents have controverted the compensability of the claimant's August 31, 2006, cervical injury in its entirety.

## **CONCLUSIONS**

The claimant asserts that she sustained an injury on August 31, 2006, to her neck while discharging employment duties with the course and scope of her employment with respondent. Claimant seeks further medical treatment as a result of the injury, to include diagnostic studies recommended by her authorized treating physician. Respondents deny that the claimant's current condition regarding her neck for which she seeks medical benefits is the product of a specific injury occurring in its employment.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the date of the effective date of the afore provision.

The evidence reflects that the claimant was employed by respondent-employer from July

21, 1971, until February 28, 2007, when she was laid off. The plant has since closed. Claimant worked for respondent-employer on two occasions subsequent to the February 28, 2007, lay-off. There is no evidence in the record to reflect that the claimant sought or required medical treatment relative to her cervical spine prior to August 31, 2006. Further, there is no evidence in the record to reflect that the claimant complained of neck pain, radiating pain in her right shoulder and down her right arm, or numbness in the right arm and hand prior to August 31, 2006.

From 2005 through the remainder of her employment with respondent-employer claimant performed the “air check job”. The mechanic of the “air check job” and the manner in which the claimant performed the job physically are not disputed. While monitoring a computer screen, claimant leaned forward and reached behind television set on an assembly line which was waist high as she adjusted and tuned the television sets. The job was repetitive in nature. The credible evidence reflects that on August 31, 2006, while discharging her employment duties, claimant leaned forward and using her right arm reached around behind a television that she was in the process of tuning when she experienced pain and a pulling sensation in the right side of her neck over the area of her shoulder.

The pain was such that she notified her supervisor who in turn referred her to the plant nurse, Charlotte Gibson. After reporting to Ms. Gibson on the date of the occurrence August 31, 2006, an appointment was scheduled for the claimant to be seen by respondents’ designated medical provider, Dr. Sudesh Banaji. The claimant was seen by Dr. Banaji on September 5, 2006, the date of the scheduled appointment. The course of the claimant’s medical treatment while under the care of Dr. Banaji is not disputed. Claimant was seen by Dr. Banaji on three

separate occasion in connection with her complaints growing out of the August 31, 2006, incident. The medical records of Dr. Banaji reflects that he assessed the claimant's complaints and symptoms as emanating from the right shoulder. It was only as a result of the claimant's request that he address her neck, that Dr. Banaji obtain x-rays of the cervical spine, which was had on October 17, 2006. After obtaining the results of the x-rays, Dr. Banaji diagnosed cervical degenerative disk disease in addition to neck myalgia. In addition to providing the claimant with a refill of Lodine, Dr. Banaji directed the claimant to seek advice from her regular physician for medical followup.

When seen by Dr. Apurva R. Dalal on March 2, 2007, as a result of Change of Physician Order entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission pursuant to Ark. Code Ann. §11-9-514 (a)(3)(A)(iii) (Repl. 2002), claimant provided a consistent history relative to the onset of her symptoms, the mechanics of her job duties, and the manner in which she discharged the job. Further, the March 2, 2007, physical examination of the claimant by Dr. Dalal disclosed "moderate cervical spinal spasms".

In order to be entitled to workers' compensation benefits for a specific incident injury claimant has the burden of proving by a preponderance of the evidence that she suffered an accidental injury, identifiable by time and place, that arose out of and in the course of her employment, caused internal or external physical harm to her body and required medical services by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102 (4) (A) (i).

In the instant claimant the evidence preponderates that the claimant did not experience symptoms relative to her cervical spine prior to the August 31,2006, incident. On August 31,2006, while leaning forward and reaching with her right arm extended and bent at the elbow

to adjust the tuning of a television set, claimant experienced the onset of pain and a tightening/pulling sensation in her right shoulder. The afore was the product of a specific incident. Claimant had not previously experienced pain in her neck or right shoulder area.

X-ray film of the claimant's neck obtained by Dr. Banaji on October 17, 2006, disclosed the presence of arthritic changes and lipping at the C5-6 and C7 regions. Dr. Banaji diagnosed the claimant with cervical degenerative disk disease. Radiographs of the claimant's cervical spine obtained by Dr. Dalal on March 2, 2007, disclosed extensive degenerative arthritis of the C4, C5, and C6 vertebrae with evidence of neural foramial stenosis. There is no evidence in the record to reflect that the degenerative disk disease in the claimant's cervical spine was symptomatic prior to the August 31, 2006, work-related incident.

The aggravation of a pre-existing, non-compensable condition by a compensable injury is itself compensable. *Hublely v. Best Western-Governor's Inn*, 52 Ark. App. 226, 916 S.W. 2d 143 (1996). Further, the aggravation of a pre-existing condition by a specific work-related incident need not be the major cause of the claimant's disability in order to be compensable. *Farmland Insurance Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). Additionally, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S. W. 2d 550 (1996).

In the instant claim, the evidence preponderates that the claimant sustained either a new

injury or aggravation of her pre-existing asymptomatic cervical degenerative disk disease on August 31, 2006, within the course and scope of her employment with respondent as a result of a specific incident, identifiable by time and place of occurrence. Further, the injury is supported by objective evidence in the form of muscle spasm. Respondents have controverted the claimant's entitlement to workers' compensation benefits as a result of the injury to her cervical spine suffered on August 31, 2006.

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with an employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). In the instant claim the claimant's authorized treating physician has recommended further a diagnostic study in the form of an MRI of the cervical spine. The evidence preponderates that the procedure is reasonably necessary in connection with the treatment of the claimant's August 31, 2006, compensable injury. Respondents have controverted the claimant's entitlement to further medical treatment subsequent to March 2, 2007, as well as the compensability of the claim in its entirety thereafter.

#### **AWARD**

Respondents are herein ordered and directed to pay all reasonably necessary and related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable cervical injury of August 31, 2006, to include the MRI scan of the claimant's cervical spine as recommended by her authorized treating physician, Dr. Apurva R. Dalal.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**