

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.F506190

JEFFERY GLOVER,
EMPLOYEE

CLAIMANT

WACKENHUT CORP,
EMPLOYER

RESPONDENT NO. 1

NEW HAMPSHIRE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY TRUST FUND

RESPONDENT NO. 2

OPINION FILED JUNE 29, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondent No. 1 was represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 waived appearance.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on May 1, 2007, in Little Rock, Arkansas. A Prehearing Order was entered in this case on March 21, 2007. This Prehearing Order set out the stipulations offered by the parties and 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 and are hereby accepted:

1. The employee-employer-carrier relationship existed on May 23, 2005.
2. Respondents have accepted liability for a left shoulder injury.
3. Respondents have denied liability for a cervical or right shoulder injury.
4. The parties stipulate that claimant's compensation rates are \$197/\$154 based on an average weekly wage of \$295.37

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

Claimant:

1. Compensability of right shoulder injury and cervical injury at C4-5 and C6-7 in addition to the admittedly compensable left shoulder injury.
2. Temporary disability compensation from August 30, 2006, to a date yet to be determined and underpayment of prior payments at \$180 per week instead of \$197 per week. (Underpayment Reserved)

Respondent No. 1:

1. Compensability of cervical and right shoulder injuries.
2. Entitlement to additional medical benefits.
3. Entitlement to temporary total disability benefits. (8/30/06 to a date to be determined)
4. Entitlement to permanent physical impairment benefits. (Reserved)
5. Entitlement to wage loss disability benefits. (Reserved)

6. Second Injury Fund liability. (Reserved)

The record consists of the May 1, 2007, hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant was employed by the respondent as a security guard and sustained an admittedly compensable left shoulder injury while attempting to close an overhead door on May 23, 2005. In addition to the admittedly compensable left shoulder injury, the claimant also contends that he injured his neck and right shoulder closing the door on May 23, 2005.

In this regard, the claimant testified in part that he felt a pop in his neck and both shoulders when he attempted to close the door. T.12 The claimant testified that his right shoulder (not his left shoulder) was hurting him first, even if Dr. Wright's reports indicate to the contrary. T.25 The claimant testified that he has not worked since August of 2006 because he has been unable to raise his right arm. T.17

The claimant also testified that he has no recollection of being unable to raise his right arm in 2004 (i.e., the calendar year before the door incident), and he does not

recall visiting a doctor in August of 2004 or September of 2004. T.23-24

Nevertheless, I find that a preponderance of the credible evidence establishes that the claimant's right shoulder and neck problems at issue pre-existed the incident on May 23, 2005, and the claimant has failed to establish that he sustained a right shoulder injury or a neck injury on May 23, 2005, for the following reasons.

First, Dr. Wright's May 23, 2005, report indicates that the claimant's chief complaint on that day was left shoulder pain, not right shoulder pain. Second, a June 9, 2005, addendum to Dr. Wright's May 25, 2005, follow-up report contains information that the claimant reported only a left shoulder claim to workers' compensation.

Third, contrary to the claimant's recollection at the hearing, a September 14, 2004, progress note indicates that the claimant had been experiencing right shoulder pain at that time for three or four months, that the right shoulder was asymmetric compared to the left, and that the claimant was experiencing a frozen shoulder syndrome unlikely to resolve without intervention. The undated report immediately preceding the September 14, 2004, report in the claimant's medical exhibits indicates that the claimant was

unable to raise his right arm at that time and that the claimant requested a cancellation of an August 31 referral to a specialist for financial reasons. Moreover, the claimant underwent right shoulder x-rays on September 14, 2004. An October 15, 2004, addendum indicates that the claimant was trying to get insurance at that time and declined an orthopedic referral and/or physical therapy until he was able to do so.

Fourth, on August 10, 2006, Dr. Hefley physically observed wasting of the biceps and deltoid, limited shoulder motion, and impingement with crepitation for which Dr. Hefley recommended cervical and right shoulder MRIs. Dr. Hefley's partner, Dr. Bowen, interpreted the studies as indicating a significant cervical disc bulge producing longstanding atrophy of the claimant's right upper extremity, going on for two years, and requiring neurosurgical evaluation for decompression. Notably, Dr. Hefley's notation that the condition had been going on for two years (i.e., since before the door closing incident at work on May 23, 2005) is consistent with the asymmetric right shoulder finding discussed above from September 14, 2004.

In summary, in light of the various medical reports discussed herein establishing that the claimant's symptoms in his right upper extremity pre-existed the incident at work by many months, I find that the claimant has failed to establish that his cervical disk bulge currently causing symptoms in his right upper extremity is casually related to the door closing incident at work on May 23, 2005. As discussed, the medical record likewise establishes that the claimant was experiencing right shoulder dysfunction before May 23, 2005, and the claimant has failed to establish that he experienced any new right shoulder injury or dysfunction on May 23, 2005. I therefore find that the claimant has failed to establish that he sustained a compensable cervical injury or a compensable right shoulder injury on May 23, 2005. The present claim for benefits related to the claimant's right shoulder and cervical abnormalities must therefore be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed on May 23, 2005.
2. Respondents have accepted liability for a left shoulder injury.
3. Respondents have denied liability for a cervical or right shoulder injury.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable right shoulder injury or a compensable cervical injury in addition to his admittedly compensable left shoulder injury on May 23, 2005. Specifically, the preponderance of the evidence establishes that the claimant's cervical condition and right upper extremity symptoms pre-existed the incident at work on May 23, 2005, and the claimant has failed to establish a causal connection between his right upper extremity symptoms at issue and the incident which occurred at work on May 23, 2005.

ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge