

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F702470

KIMBERLY D. HARRIS, EMPLOYEE **CLAIMANT**

**COLUMBIA SEWING CO., INC.,
EMPLOYER** **RESPONDENT**

**STATE AUTOMOBILE MUTUAL INS. CO.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED DECEMBER 20, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by Mr. A. Gene Williams, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 27, 2007, the above captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing conference was conducted on July 24, 2007, and a Prehearing Order was entered that same day. A copy of the July 24, 2007, Prehearing Order was marked as Commission Exhibit 1 and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including February 1, 2007.

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- 3) The claimant had an average weekly wage of \$186.22, which would give the claimant a TTD and PPD rate of \$124.00 per week.

At the full hearing the parties agreed the following issues would be presented for determination:

- 1) Whether the claimant sustained compensable gradual onset injuries to her right upper extremity.
- 2) If compensability is overcome, whether claimant is entitled to all associated medical treatment, TTD benefits from February 21, 2007, to a date yet to be determined, and attorney's fees.

At the full hearing, the claimant contended that she sustained compensable injuries to her right hand, wrist/arm on or about February 21, 2007, which is the date of first doctor's visit. Claimant contended that her injuries occurred over time as a result of the rapid, repetitive nature of her work related activities. Claimant contended that she should be paid TTD from February 21, 2007, to a date yet to be determined, all associated medical treatment, and attorney's fees.

Respondents contended at the prehearing conference that the claimant did not sustain a compensable injury during the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following

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findings of fact and conclusions of law are hereby made in accordance with A.C.A. §

11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The parties' stipulations outlined herein are reasonable and are hereby accepted as fact.
- 3) Claimant has failed to prove by a preponderance of the evidence that the injuries she sustained to her right upper extremity arose out of and in the course of her employment.
- 4) Therefore, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset injury to her right upper extremity.

DISCUSSION

The claimant began working for the respondent-employer on or about November 7, 2006. The claimant testified that she was hired by Columbia Sewing Company, Inc. to trim and inspect shirts. The claimant testified as follows regarding her work duties for Columbia Sewing Company, Inc.:

Q All right. As a trim and inspect person, describe the process for us. When you got to work that day, what was the job that you did throughout the day?

A Okay. They would have carts of shirts, most with thirty-five on. You'd reach and you'd get a shirt, and you would always turn it inside out, with the last two buttons, you would spread the shirt out completely, you know, the sleeves and everything. You would start at the collar of the shirt, and you would start to clip, you know, any threads you saw, and then you would turn the shirt

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on the correct side. You'd get all bar tags, buttons, down the seams of each pocket, the bottom of the shirt. There were like hundreds of threads, you know, on one shirt.

Q Okay. So at your work station, there would be a cart or a crate with bundles of shirts in it, is that right?

A Yes, sir.

Q How many shirts would there be per bundle?

A Thirty-five.

Q Okay.

A More or less. Mostly thirty-five.

Q All right. As you understood it, was there a goal or a desired number of shirts that they would like for you to get through each day?

A Yes, sir. They wanted you to do a hundred shirts a day or more.

Q All right. So there's thirty-five shirts in a bundle. As you would take the one shirt from the bundle, what exactly were you doing with that shirt?

A We would trim every thread that you saw. It was for the military, and it was supposed to be very neatly done. You're not supposed to see any threads hanging. If there were mistakes made by the seamstress, you would still . . . You would stop and get a tape, get that seamstress' number, put it on, but you would still continue to inspect the rest of the shirt, and then you would hang it. If the shirt had mistakes, you would hang it, but if it didn't have mistakes, you would lay it flat.

Q Now, describe for me . . . I guess, one of these raw shirts that's just come out of a bundle, what did it look like before you would

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go to work on it?

A Threads hanging everywhere. You'd see how much threads . . . There were threads from every button, from bar tags, threads hanging off the bottom. Just a lot of threads that had to be cut.

Q Are we talking about twenty threads a shirt?

A No, sir. Hundreds. Over a hundred threads. Hundreds on each shirt. Or at least a hundred or more on one shirt, and if there were like size XXX shirts, it's just uncountable how many threads you would cut. You can't never keep up. You was just focused on cutting all these threads, because you have somebody standing there watching you work.

(T. pp. 13-15, lines 8-25, 1-25, 1-14).

The claimant testified that in order to perform her job of trimming threads from shirts she could do so two different ways. One method was manually clipping the threads with small scissors with her right hand and the other method was using an air trimmer. Ms. Martha Taylor, manager of the stitching floor at Columbia Sewing Company, testified at the full hearing how an air trimmer works:

Q How does an air trimmer work?

A The air trimmer has . . . The threads will suck up through it, and if you pull it back this way, it's like . . . really, like a pair of hair clippers almost, the blade, and it sucks it up and then they go that way, it will clip. Now, if you do this, it may not.

(T. pp. 48-49, lines 25, 1-6).

The claimant testified that it was quicker for her to use her hand clippers rather than

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the air trimmer. Ms. Taylor also testified that the thread trimming the claimant was doing was production type work, and that the more shirts employees trimmed the more money they would make.

The claimant testified that her right hand began getting sore in December of 2006. The claimant testified that her hand continued to stay sore in January of 2007, and that in February of 2007 her symptoms had become worse:

Q Do you know approximately when this was that you're saying that it suddenly got real bad?

A It was in February.

Q February of 2007?

A Uh huh.

Q At that time, if you'd had some general soreness for a month or so before that, what was different by that point in February that something had changed? What was going on?

A Because it had got swollen, and my thumb had . . . there was this big knot on my thumb, and it was swollen all around my . . . my wrist was swollen. I mean, it was . . . I couldn't do anything with my hand. I could barely open it up.

Q Okay. So after a day or so, were you able to get in to see Jakeeli Bennett at the Dr. Goins' clinic?

A Yes, sir.

(T. pp. 20-21, lines 19-25, 1-11).

As shown in the claimant's testimony above, she stated that within a day or so

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after her hand became swollen and a knot appeared on her thumb, she was able to get in to see Jakeeli Bennett at Dr. Goins' clinic. The medical records show that the claimant first saw Ms. Bennett on February 1, 2007. The medical report from Ms. Bennett dated February 1, 2007, reflects that the claimant did not complain of any right extremity pain or problems. (Respondents' Exhibit 3). Ms. Bennett's next report in February of 2007 came on February 21, 2007, and shows that the claimant complained of right hand pain that radiated to her right shoulder. (Claimant's Exhibit 1, page 1). Ms. Bennett's February 21, 2007, report does not show any swelling or objective findings of injury to the claimant's right upper extremity. Further, Ms. Bennett's deposition, which is contained in the record herein at Respondents' Exhibit 4, shows that Ms. Bennett testified that on February 21, 2007, she did not note any objective findings of injury to the claimant's right upper extremity on that date. On February 21, 2007, Ms. Bennett did issue an off work notice for the claimant to be off work for two weeks.

Page three of Claimant's Exhibit 1 shows that the claimant went back to Ms. Bennett on March 15, 2007, still complaining of right hand pain at the base of the right thumb. However, once again, Ms. Bennett's report from March 15, 2007, shows that she noted no objective evidence of right upper extremity problems. Additionally, in Ms. Bennett's deposition contained herein at Respondents' Exhibit 4, Ms. Bennett

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testified that she did not note any swelling or any objective findings of injury on March 15, 2007. On April 11, 2007, the claimant went back to Ms. Bennett when at that time Ms. Bennett noted swelling of the tendon at the base of the right thumb. Ms. Bennett again recommended the claimant consult an orthopedic doctor. The next medical visit the claimant underwent was on August 1, 2007, wherein she saw Dr. Goins. In that report Dr. Goins noted swelling and knots along the tendon of the right thumb. As a result of that report, Dr. Goins assessed the claimant with tendinitis of the right thumb due to repetitive motion and recommended the claimant see an orthopedic doctor and undergo physical therapy.

The claimant testified that she was not able to go to an orthopedic doctor due to the respondents controverting compensability of her right upper extremity, and that she did not have the funds to seek orthopedic treatment on her own. The claimant maintains that she has sustained a gradual onset injury to her right upper extremity due to the rapid and repetitive nature of her work at Columbia Sewing. Respondents allege that the claimant did not sustain a compensable gradual onset injury while in the respondent-employers' employ.

The issue in this case is whether the claimant sustained a compensable injury to her right upper extremity as the result of gradual or cumulative trauma to her right upper extremity due to her day to day employment related activities with the

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respondents. The burden rests upon the claimant to prove that her right upper extremity injuries satisfy all the relevant requirements that are set out in the Act. For the type of injury the claimant alleges, the controlling sections of the Act are found in A.C.A. § 11-9-102(4)(A)(ii)(a), 11-9-102(4)(D), and 11-9-102(4)(E)(ii).

The claimant must first prove that her right upper extremity difficulties satisfy the requirements for a compensable injury which are contained in A.C.A. § 11-9-102(4)(D). This subsection mandates, “A compensable injury must be established by medical evidence supported by objective findings as defined in subsection (16) of this section.” Thus, the claimant must prove by medical evidence the actual existence of physical injury or damage to her right upper extremity as supported by the presence of physical findings which are beyond the claimant’s voluntary control.

Next, the claimant must prove that her right upper extremity difficulties satisfy the definition requirements for a compensable injury which are contained in A.C.A. § 11-9-102(4)(A)(ii)(a). These definition requirements are: 1) that the physical injury or damage must arise out of and in the course of employment if it is not caused by specific incident or is not identifiable by time and place of occurrence; 2) that the physical injury or damage must cause internal or external physical harm to the claimant’s body; 3) the physical injury or damage must be caused by rapid repetitive motion (unless, the physical injury is in the form of carpal tunnel syndrome).

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Finally, the claimant must prove that the employment related aspect of her right upper extremity injury was the “major cause” of either her “need for medical treatment” for her right upper extremity difficulties or of any “disability” that her right upper extremity difficulties have occasioned. A.C.A. § 11-9-102(4)(E)(ii). This subsection does not require the employment related aspect or contribution to a total “resultant condition” to be the “major cause “ of the “resultant condition” itself. This section only requires that the employment related aspect or contribution to the total resultant condition be the major cause of either the resultant condition’s need for medical services or of any disability the resultant condition may have produced.

I find that the claimant has failed to prove by a preponderance of the evidence that her right upper extremity injury arose out of and in the course of her employment with Columbia Sewing Company, Inc. In making this determination I do not completely disregard Dr. Goins’ finding of causation outlined at page 7 of Claimant’s Exhibit 1. However, it must be noted that in Dr. Goins’ deposition contained herein at Respondents’ Exhibit 5, that part of the reason Dr. Goins found as he did regarding causation was based upon the statements made by Ms. Harris. It must be noted that I found the claimant’s testimony to lack consistency and at times to be contradicting. For instance, in Dr. Goins’ August 1, 2007, report, he notes the claimant told him that she worked no where the last year except for Columbia Sewing. However, the

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claimant testified that she worked for the Hair Hut sweeping floors shortly before her employment with Columbia Sewing Company. The claimant testified that she worked for the Hair Hut for approximately two months before going to work for Columbia; but, it must be noted that the claimant barely worked more than two months for Columbia Sewing.

Q Had you been working before you started at Columbia? Had you been working somewhere else?

A Well, I put it on my application, which I kind of got . . . not a job. I had a friend, you know, and I didn't . . . You know, I was having hard times, and she had a beauty shop. There were five different stations there. I would go there on Mondays, and it might take me twenty minutes, no more than thirty minutes, just to brush up her station, put a fresh towel on her table. My son . . .

Q Is that a place called the Hair Hut?

A The Hair Hut, yes. And she paid me \$20.00, sometimes \$25.00 a week, you know, if I had to sweep her section, which was just a small area, you know, where she would do her hair.

Q We're talking sweeping the cut hair off the floor?

A Yes, sir.

(T. pp. 18-19, lines 12-25, 1-4).

I do note that the claimant testified she only worked a very limited amount of time at the Hair Hut. However, once again, the claimant's credibility comes into question because she failed to mention that employment at all when discussing her problems

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with her right hand with Dr. Goins.

The most troublesome aspect of the claimant's assertion that her right hand problems occurred due to her employment with Columbia Sewing is the fact that no objective signs of injury were noted until nearly two months after the claimant first reported to the doctor regarding her right hand symptoms. The claimant testified that her hand was getting sore in December and January but that it didn't get really bad until February of 2007. As stated above the claimant went to see Nurse Bennett on February 1, 2007; however, the claimant did not report any problems whatsoever with her hand at that time. Additionally, in Nurse Bennett's deposition, she acknowledged that on February 1, 2007, the claimant did not mention any problems with her right upper extremity. Then, the claimant testified that some time in February of 2007 a knot appeared on her thumb and her wrist became swollen. The claimant testified that within a day or two of the knot and swelling, she was able to get in to see Jakeeli Bennett at Dr. Goins' clinic. The claimant testified that at that time Ms. Bennett saw that her wrist was swollen. However, in Ms. Bennett's report of February 21, 2007, contained at page 1 of Claimant's Exhibit 1, Ms. Bennett reported no swelling of the claimant's right upper extremity. Further, in Ms. Bennett's deposition contained in the record herein, she once again acknowledged that she saw no swelling on February 21, 2007.

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Q Do you know approximately when this was that you're saying that it suddenly got real bad?

A It was in February.

Q February of 2007?

A Uh huh.

Q At that time, if you'd had some general soreness for a month or so before that, what was different by that point in February that something had changed? What was going on?

A Because it had got swollen, and my thumb had . . . there was this big knot on my thumb, and it was swollen all around my . . . my wrist was swollen. I mean, it was . . . I couldn't do anything with my hand. I could barely open it up.

Q Okay. So after a day or so, were you able to get in to see this Jakeeli Bennett at the Dr. Goins' clinic?

A Yes, sir.

Q When you went to do that the first time or before you went to do that for the first time, did you talk to anybody, your supervisor, or tell anybody at the plant about the problems that you were having?

A During my first visit?

Q Yes.

A No, sir. I just went to the doctor. I didn't want to complain because, you know, I didn't want them to fire me or anything.

Q When you went in to see Ms. Bennett, what did you tell her? What did you tell her your problems were?

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A I told her that my hand was swollen. Well, she looked at it and saw that it was swollen, and she asked me was I working, and I told her yes, at Columbia.

(T. pp. 20-22, lines 19-25, 1-25, 1-2).

As shown in the testimony above, once again the claimant's testimony seems to contradict Ms. Bennett's testimony. The claimant said that Ms. Bennett saw swelling on her first doctor's visit of February 21, 2007, however Ms. Bennett says otherwise. The next time the claimant went to the doctor was on March 15, 2007. Again, Ms. Bennett's report of March 15, 2007, shows no swelling or objective findings of injury to the claimant's right upper extremity. Further, Ms. Bennett testified in her deposition contained herein that she did not recall any swelling or objective evidence of injury to the claimant's right upper extremity on March 15, 2007. Not until April 11, 2007, did Ms. Bennett note any signs of swelling on the claimant's right upper extremity.

The daily attendance records from the respondent-employer admitted into evidence at Respondents' Exhibit 1, page 3, shows that the claimant did not work at Columbia Sewing between February 11, 2007, and April 11, 2007. In fact, the evidence is clear that the claimant never worked again for Columbia Sewing after February 11, 2007. The question then becomes why would it have taken two months for the claimant's right upper extremity to begin swelling when in fact she hadn't been

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doing any of the rapid repetitive work in that two month period. It would seem logical that if the claimant's employment were causing injury to her right upper extremity in the form of swelling and knots, that those symptoms would have appeared while the claimant was working in the first week of February 2007 or at least within a month after she had quit. It must also be noted that Ms. Bennett's recommendation for the claimant from her initial meeting with the claimant on February 21, 2007, was rest of the claimant's right upper extremity. Ms. Bennett seemed to think rest would help the claimant's condition, however, the record before me shows that the claimant's condition actually worsened two months after she completely stopped all work activities with Columbia Sewing.

The claimant is asking that the Commission speculate that swelling and knots can appear nearly two months after she had ceased all work activity with the respondent-employer. It is well settled that speculation and conjecture no matter how plausible does not take the place of proof. As stated earlier, Dr. Goins seems to indicate causation based upon the claimant's symptoms, her work activities, and her statements. However, as stated earlier, the claimant's testimony was shaky at best.

Another area where the claimant's testimony seemed inconsistent was dealing with the last day that she worked. The records are clear that the claimant last worked on February 10, 2007. Ms. Martha Taylor and Ms. Melinda McMullan, office

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manager for Columbia Sewing, testified at the full hearing that the claimant called in on February 12, 2007, and quit because her daughter was having health problems. Ms. McMullan and Ms. Taylor also testified that prior to February 12, 2007, the claimant had never made complaints of right upper extremity pain to them. The claimant seemed to testify that when she called in on February 12, 2007, she had in fact called in to let her employer know that her doctor had taken her off work for two weeks.

A No. It was around the middle part of it. Maybe that's when they said I called in on the 12th, that's when I called in to let her know that my doctor had taken me off for two weeks, and she said, we're fixing to shut down for two weeks. Call us back . . . you know, come back in two weeks and then . . . she said, we'll be back to work in two weeks and then just come on back and Martha will put you back to work.

(T. pp. 83-84, lines 21-25, 1-3).

The claimant's testimony regarding the events that took place around February 12, 2007, seems to testify that she called in around the 12th of February 2007 to report that her doctor had taken her off work for two weeks. However, it is clear that Ms. Bennett did not take the claimant off work until February 21, 2007.

(Claimant's Exhibit 1, page 2). Second, the claimant seems to indicate that she did not call around the 12th of February 2007 to state she was having trouble with her daughter, but rather to report problems with her right upper extremity. That testimony

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is in direct contradiction to the credible testimony from Ms. Taylor and Ms. McMullan. Additionally, the claimant in her own handwriting stated "I asked for a few days off around the second week of Feb. 07 for two reasons my 9 yr. old daughter has been sick." (C. Ex. 1, pg.15). The claimant's handwritten statement is more in line with the testimony of Ms. McMullan and Ms. Taylor than the claimant's testimony at the full hearing. The claimant also testified at the hearing that she did not tell her employer about any hand problems before her first doctor visit, which was February 21, 2007.

Q When you went to do that the first time or before you went to do that for the first time, did you talk to anybody, your supervisor, or tell anybody at the plant about the problems that you were having?

A During my first visit?

Q Yes.

A No, sir. I just went to the doctor. I didn't want to complain because, you know, I didn't want them to fire me or anything.

(T. pg. 21, lines 12-20).

It is clear to this examiner that at no time did the claimant report or have symptoms of problems with her right upper extremity while she was employed with the respondents. I find that the claimant voluntarily quit her employment on February 12, 2007, and that at no time prior to that date did the claimant ever exhibit

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or report problems with her right upper extremity. Not until two months after the claimant had quit her employment did swelling appear on her right wrist. 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 Const. Co., 234 Ark. 104, 357 S.W.2d 263 (1962). The problem with that here is that the evidence does not support claimant's contention that her physical problems of swelling and knots first emerge in February of 2007. I cannot tie claimant's problems first diagnosed objectively on April 11, 2007, to her work at Columbia Sewing without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. Dena Const. Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). As stated, I do not totally disregard Dr. Goins' assessment of causation; however, the determination of a witness' credibility and how much weight to accord that person's testimony are solely up to the Commission. White v. Greg Agricultural Enterprises, 72 Ark. App. 309, 37 S.W.3rd 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. In doing so the Commission is not required to believe the testimony of the claimant or any other witnesses, but may accept and translate into

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findings of fact only those portions of the testimony that it deems worthy of belief.

Based upon the record before the Commission, I find that the claimant has failed to prove by a preponderance of the evidence that her right upper extremity injuries arose out of and in the course of her employment with Columbia Sewing Company, Inc.

ORDER

Based on the reasons outlined herein and reciting the findings of fact and conclusions of law, this claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb