

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610517

BUENA HAWKINS	CLAIMANT
RHEEM MANUFACTURING	RESPONDENT
OLD REPUBLIC INSURANCE INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 3, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 15, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on December 21, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant suffered a hit to her head in October 2005.

4. The claimant was temporarily totally disabled after her surgery on February 23, 2006, to June 19, 2006.

5. The claimant is entitled to a compensation rate of \$416.00 for temporary total disability and \$312.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's neck injury.
2. Related medical.
3. Temporary total disability from February 23, 2006, to June 19, 2006.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was hit on the head with a hoist hook in October or November of 2005 and sustained injury to her cervical spine. In the alternative she contends that her job activities after being hit with the hook worsened her cervical spine condition and caused her to become in need of treatment in January of 2006. The claimant contends that she is entitled to temporary total disability benefits from February 22, 2006, until June 19, 2006, and reasonably necessary medical treatment. The claimant contends that her attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant's cervical condition is not causally related to the bump on her forehead. Further, respondents contend that claimant gave no notice to Rheem that her surgery and lost time were due to a work-related injury until May 2006 over two months after her cervical fusion. Rheem's policy requires that an employee who

suffers any on the work related injury report to the first aid station which is staffed by a nurse. It is undisputed that claimant never reported to first aid and never sought medical treatment for the bump on her forehead. Claimant's medical treatment for her cervical condition was paid by her group health insurance through Rheem and in the event that the treatment is determined to be necessitated by the bump on the forehead, respondents are entitled to a credit therefore.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was sixty-five years of age and had been working for the respondent for twenty-nine years. The claimant testified that in October 2005 while working for the respondent she was hit on the right side of her head with a chain hoist. The claimant testified that in the area where she was hit a large knot came up. The claimant testified that at the time other than the knot she did not realize that she had any other injuries. The claimant testified that after a few days perhaps up to two weeks she began to experience pain in her left shoulder under her shoulder blade. The claimant testified that initially she had no idea what the problem was but her shoulder continued to

hurt until finally she sought medical attention in January 2006. The claimant testified that the pain in her shoulder continued to get worse and even with taking Tylenol or Aleve it would not take away her discomfort. The claimant testified that for several days before the end of the year, her pain was excruciating and the reason she did not go to the emergency room at that time was because her insurance was with Sparks and beginning of 2006 her insurance would cover both Sparks and St. Edwards and St. Edwards was in her area. The claimant testified that she continued to work for the respondent up until she went to the emergency room in January.

The claimant testified that her job with the respondent has the title of a twister. The claimant testified that she uses her hands and arms in an up and down motion lifting a gate in order to run her machine and it also involves her standing during her shift. The claimant testified that from the date of her accident her condition would get worse at times and then it would seem not to hurt as consistently. The claimant testified that in December, however, the pain just kept getting worse. The claimant testified that initially she filed her medical treatment under her group policy as well as took short term disability. The claimant testified that it was not until her group insurance denied her benefits that she filed a workers' compensation claim. The claimant testified that since her group insurance would not pay she gathered her information and took it to Troy Johnson who is in management with the respondent. The claimant testified that it was

during the conversation she had with Mr. Johnson that he suggested that she file a workers' compensation claim which she did. The claimant testified that she had no intension of filing a workers' compensation claim and was going to take care of her medical problems with her group insurance until it was denied.

The claimant testified that at the time she was initially seen at the emergency room, she did not report the hoist accident because she did not think it had anything to do with her problems. The claimant testified that it was Dr. Capocelli that asked her if she had been involved in any kind of an accident at which time she told him about the October 2005 event. The claimant testified that she, up until that time, had not made the connection between the hoist hitting her in the head and having pain in her shoulder.

The claimant testified that on September 7, 2005, she had an accident at her home which involved falling to her knees and trying to grab herself with her hands. The claimant testified that she had her hand through the handle of a toy wagon and as she went down she threw her hands out in front of herself. The claimant testified that she had her right hand in the handle of the wagon and when she threw her hands out it bent her fingers back and the wagon hit her shoulder. The claimant testified that she saw a doctor one time as a result of this event and only did that because her finger was swollen and a little crooked. The claimant was asked if she had any pain in her shoulder or neck as a result of this incident and the claimant responded, "No." The claimant testified that she does not remember seeing Dr. Wolfe in 1992 with

complaints of neck pain. She does remember, however, seeing Dr. Wolfe for carpal tunnel syndrome. The claimant testified that in 2001 she had pneumonia and was in the hospital for two weeks as a result of this illness. The claimant testified that she had surgery on her left lung as a result of her pneumonia. The claimant testified that subsequent to this surgery she has had pain on the left side of her chest and under her left breast since her surgery but this pain is much different than what she experienced after her accident in 2005. The claimant agreed that she continued to work until she saw Dr. Capocelli and that between February 23, 2006, and June 19, 2006, she was under active medical treatment and unable to work during this period of time.

On cross examination, the claimant testified that when she was hit by the chain it hit her on the top at the right-hand side of her forehead. The claimant testified that she fell back but she did not fall down when she was hit and that the chain did not break the skin on her forehead. The claimant testified that she was aware that all accidents were to be reported to the respondent and that she should have gone to the nurse's station but she did not. The claimant testified that she was seen by Dr. Nichols for complaints of spasms in her neck in December 2003 as well as seeing Dr. Young on March 16, 2004, with complaints of muscle spasms in the left side of her neck. The claimant agreed that in her deposition she had indicated that prior to October 2005 she had never seen a doctor for any complaints to her neck. The claimant testified that after she had her accident in October 2005 she

continued to work for the respondent and did not go to the nurse's station to report that she had had a work related injury. The claimant agreed that during the month of December the respondent's plant closed down and she was laid off. The claimant agreed that the first medical treatment she received was at the emergency room on January 2, 2006. The claimant agreed that the ER records reflect that she was seen by a chiropractor the week before and that she also had not made this known during her deposition. The claimant testified that she did not report the hoist accident to the ER personnel when she was seen on January 2, 2006. The claimant testified that the reason why she told the ER personnel that her pain started one week ago was because that was when the solid pain started. The claimant agreed that the week prior to her being seen at the ER she was on layoff. The claimant testified that she was not seen by a physician while in the ER and that all of her dealings were with a nurse. The claimant agreed that she did not tell anyone at the ER about the chain hitting her in the forehead. The claimant testified that she was seen by Dr. Young the next day after she was in the ER. The claimant testified that she does not recall telling Dr. Young that she had been having pain in her shoulder off and on for one year. The claimant testified that the only x-ray that she had taken was by the chiropractor a few days before she was seen at the ER. The claimant testified that she returned to work the second week in January. The claimant testified that the respondent's plant was closed down from before Christmas until after New Years but did not go back immediately to

work after the plant reopened. The claimant testified that she continued to work for the respondent up until she was seen by Dr. Capocelli on February 23, 2006. The claimant agreed that all of her medical treatment up through being seen by Dr. Capocelli was filed on her group health insurance. Again the claimant testified that during the periods of time she was working for the respondent up until she was seen by Dr. Capocelli she did not report her accident to the respondent. The claimant agreed that the first medical provider which she reported her October 5 accident to was Dr. Capocelli. The claimant agreed that the surgery performed by Dr. Capocelli was paid for through her group policy. The claimant agreed that it was not until her claim for short term disability benefits was denied that she talked to Tony Johnson and ultimately filed a workers' compensation claim. The claimant testified that after she filed a claim for workers' compensation indicating that her injury was work related, the respondents sent her to Dr. Lloyd, the company doctor. The claimant agreed that May 2, 2006, was the first day the respondent was notified that she was claiming that she had a work related injury.

On redirect examination, the claimant testified that a co-employee, Diane Harrell, was present when she was hit with the hoist. The claimant testified that her supervisor, Allen Tate, came up to her after her hoist accident and asked her if she wanted to go to first aid. The claimant agreed that even though there was a supervisor present she was not sent to the first aid station nor to fill out any accident report.

On recross examination, the claimant testified that if an employee is hurt the respondent's policy did not require that the supervisor send the employee to the nurse's station, they could go on their own. The claimant testified that Allen Tate is no longer an employee with the respondent. Part of Dr. Capocelli's narrative report was read to the claimant and the claimant agreed that she had reported this information to the doctor.

Diane Harrell testified on behalf of the claimant stating that she was an employee of the respondent and had been so employed for twenty-nine and one half years. Ms. Harrell testified that she has worked with the claimant the entire time that she has worked for the respondent. Ms. Harrell was asked about the claimant's accident and this witness stated that the claimant was helping her put coil in her machine and after they were finished, they were removing the chain hoist and it got hung up and when it got unhung it came back and hit the claimant. This witness testified that a big knot came up on the claimant's forehead immediately. Ms. Harrell testified that the hoist is heavy enough that it knocked the claimant back. This witness testified that Allen Tate, their supervisor, did not see the accident but was made aware of the accident immediately. Ms. Harrell testified that the claimant continued to work the rest of the day but did complain that she had a headache. Ms. Harrell testified that some days later the claimant's left shoulder started hurting. Ms. Harrell testified that after the accident it became quite evident that the claimant was in pain because you could see it in her eyes and the way she

would hold her arm. This witness testified that the claimant is not a complaining type person but she would say occasionally that it really hurts. Ms. Harrell testified that the claimant did not relate getting hit in the head with her shoulder problems. This witness testified that she did not associate the claimant's accident with her shoulder problems either. Ms. Harrell testified that before the hoist accident she did not observe anything about the claimant's physician appearance or her work that would indicate that she was having any problems with her left shoulder.

On cross examination, Ms. Harrell testified that the claimant would tell her if she had been receiving medical treatment by a specialist prior to her October accident. Ms. Harrell testified that their supervisor, Mr. Tate, tried to get the claimant to go to the first aid station but she would not go.

On redirect examination, Ms. Harrell testified that once the claimant began complaining about her left shoulder after the hoist hit her in the head she continued to complain about her left shoulder up until she went to the doctor. Ms. Harrell testified that, in fact, once she began to complain about her shoulder, it got worse.

The medical records set forth that the claimant was seen at Mercy Hospital of Scott County on January 2, 2006, with complaints of left shoulder pain which started one week ago and she had been to a chiropractor on Friday and Saturday but cannot get any relief from her pain medications. The triage notes indicate that the claimant has pain that goes into her arm and thumb as well as first

two fingers are numb. The radiologist report indicates that she does have moderately severe degenerative changes in her thoracic spine but that no acute pathology was seen at this time. The claimant was seen by Dr. Russell Young on January 3, 2006, for her complaints of pain in the lower left neck down into the upper shoulder area out into the left arm and down into the fingers. Dr. Young ordered an MRI of the claimant's cervical spine as well as x-rays. On January 9, 2006, Dr. Young writes after reviewing the claimant's MRI that she has a C5-6 left foraminal stenosis secondary to ruptured disc at that level and C6-7. Dr. Young made an appointment for the claimant with Dr. Capocelli.

Dr. Anthony Capocelli writes on February 23, 2006, that the claimant was hit in the head while at work with a hoist. The doctor notes that the claimant reports that she did not have any definitive neck pain and did not report her injury but that by the end of December she had an onset of severe neck pain with radiation to the left shoulder blade and some to the left forearm. Dr. Capocelli notes that Dr. Young ordered an MRI which demonstrated at least two levels of stenosis and disc herniation to the left side at 5-6 and 6-7 with 6-7 appearing the worse. After examination and review of the claimant's various tests, Dr. Capocelli recommended surgery. The claimant underwent surgery on February 28, 2006, undergoing an anterior cervical discectomy and anterior arthrodesis with fusion with allograft at C5-6 and C6-7 with SlimLine plate and instrumentation. Dr. Capocelli signed a statement of disability indicating that the claimant should be off work from February 23,

2006, through May 8, 2006, approximately. Dr. Capocelli writes on May 3, 2006, that he has seen the claimant and that she is progressing positively following her surgery. Dr. Capocelli notes that he is prescribing for the claimant physical therapy geared toward strengthening her so she can return to work in about six weeks. Dr. Capocelli writes on June 15, 2006, that he has seen the claimant and she is doing quite well and would release her to full duty as of June 19, 2006. The claimant was seen by Dr. Greg Lloyd on May 2, 2006, at the request of the respondents. Dr. Lloyd writes that the claimant was hit in the head with a chain hoist in October 2005 which caused a knot to come up on the right side of her forehead but she did not report this incident when it first happened. The doctor notes that the claimant reports that she started having left shoulder pain. Dr. Lloyd notes that the claimant initially went to the ER on January 1, 2006, and ultimately was seen by Dr. Young and then operated on by Dr. Capocelli.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent in October 2005 when she was hit in the head with a chain hoist. The claimant and her co-workers testimony are both very credible and both have testified to a specific incident occurring at work causing a knot on the claimant's forehead as well as knocking her backward and her experiencing a severe headache following this incident. The claimant's co-worker, Diane Harrell, has

corroborated the claimant's testimony and has added that the claimant began to exhibit problems with her shoulder within a short period of time after the hoist accident. Ms. Harrell testified that when the claimant first began to complain, her complaints continued to grow noting that the claimant is not a complainer by nature. I do find, however, and the claimant has testified that she did not report this accident as a work related injury to the respondent until her short term disability benefits were terminated or denied. Therefore, I find that the claimant is not entitled to benefits prior to May 2, 2006, when she was seen by Dr. Lloyd as a result of reporting a work related injury. I find that the respondents will be responsible for any medical treatment for this claimant's compensable neck injury subsequent to May 2, 2006, and that she will be entitled to temporary total disability from May 2, 2006, to June 19, 2006, which is the date Dr. Capocelli released her to full duty work.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant suffered a hit to her head in October 2005.
4. The claimant was temporarily totally disabled after her surgery on February 23, 2006, to June 19, 2006.

5. The claimant is entitled to a compensation rate of \$416.00 for temporary total disability and \$312.00 for permanent partial disability.

6. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her neck while working for the respondent in October 2005. See discussion above.

7. The respondents will be responsible for all reasonable and necessary medical treatment for this claimant subsequent to May 2, 2006.

8. The claimant will be entitled to temporary total disability from May 2, 2006, until June 19, 2006. See discussion above.

9. The claimant did not report a work related injury to the respondents until May 2, 2006, therefore she will not be entitled to benefits prior to this date.

10. The respondents have controverted this claim in its entirety.

11. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her neck in October 2005 while she was working for the respondent.

The claimant did not report a work related injury to the respondent until May 2, 2006.

The claimant will be entitled to temporary total disability from May 2, 2006, to June 19, 2006.

The respondents shall be responsible for all reasonable and necessary medical treatment for this claimant's compensable injury subsequent to May 2, 2006.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE