

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F607557**

<b>ROSE HOLLAND, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ARAMARK, EMPLOYER</b>	<b>RESPONDENT</b>
<b>SPECIALTY RISK SERVICES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 14, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on November 17, 2006, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE JARROD RUSSELL, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant's present shoulder condition is causally related to a compensable chest strain. Also at issue is the compensation rate pursuant to Ark. Code Ann. §11-9-518.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on August 17, 2005 at which time the claimant suffered a compensable chest strain. The claim was accepted as a "medical only" claim and the respondents paid two doctors visits, (August 17, and September 2, 2005). Core

Source, who has filed a lien for \$2,434.54.

The claimant contends she injured her shoulder at the same time as the compensable chest injury. She was given work restrictions but her employer did not provide her with light duty. The claimant seeks payment of additional medical expenses (incurred with Drs. Tim Wilkin and Marc Stevens), temporary total disability benefits from September 2, 2005 to a date yet to be determined and attorney's fees. The claimant contends the correct compensation rate is \$207.00/\$155.00.

The respondents contend there is no causal connection between the compensable chest strain and the claimant's shoulder condition. The respondents contend the correct compensation rate is \$155.00.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript. Respondents also filed a post-hearing letter brief dated December 15, 2006 which has been incorporated by reference.

The following witnesses testified at the hearing: the claimant and manager, Sharon Payne.

The claimant, age 51 (D.O.B. July 16, 1955) is a very petite woman weighing less than 100 pounds and standing 4 feet 11 inches. On February 11, 2003 she began work with the respondent-employer which is a laundry service. Her job duties include replacing ID tags on work uniforms, lifting clothing, and reaching overhead (Tr. p. 11-13).

On August 17, 2005 while lifting clothing, the claimant experienced a sharp pain in her neck, shoulder, arm and chest, on the left side and a burning sensation on the right side, (Tr. p. 14, 16). She took a break around 9:00 a.m. but did not feel any better so she reported the incident to her supervisor, Sharon Payne. Ms. Payne directed her to Peggy Helm where she filled out an accident report. She was sent to Health Care Plus and came under the care of Dr. Morris who assigned lifting

restrictions of ten pounds . She returned to work (until August 19<sup>th</sup>) but resigned due to the pain from her injury. She was denied unemployment benefits. The carrier instructed her to return to the doctor and she was released on September 2, 2005.

The claimant was covered by group insurance through her spouse's employer beginning in October 2005 but the coverage concerning preexisting conditions was limited and she was not eligible for full coverage until January, 2006. Unfortunately, the claimant had some other problems in 2006 which took precedence, including gallbladder surgery on March 1, 2006 and a divorce finalized on July 27, 2006. Her symptoms worsened and Dr. Stevens performed shoulder surgery on August 16, 2006. On November 8, 2006 she began work at J.C. Penney.

On cross-examination, counsel emphasized that the claimant's supervisor assigned a co-worker, Henry Humphries, to help the claimant with lifting, and Dr. Morris released her on September 2, 2005 with no restrictions. Counsel also noted that the claimant did not seek treatment for several months and did not describe a work related shoulder injury to her physicians.

The claimant's supervisor, Sharon Payne, a 25 year employee, testified the claimant did report chest pain but never mentioned a shoulder injury. Ms. Payne also testified the claimant never complained about her job duties and never tried to return to work. Ms. Payne stated there was no lifting requirement, the employee could select the number of garments to carry. However, the claimant rebutted this notion, explaining that she had to process a certain number of pieces per hour and if she lifted only one garment at a time it would be hard to reach her quota.

#### **COMPENSATION RATE**

The claimant earned \$6.66 per hour in 2005 but she received a raise in January, 2006 to \$7.33 per hour. Depending on the work load, sometimes she would be sent home early and sometimes she

would be asked to work overtime, (Tr. p. 30-31). Because of this variable, I find it is necessary to average her wages rather than use the contract of hire at the time of injury.

The claimant contends the correct compensation rate is \$207.00/\$155.00 based on an average weekly wage of \$310.72. The claimant calculated the wages by excluding incomplete weeks. (Tr. p. 5-7).

The respondents contend the correct compensation rate is \$155.00 based on an average weekly wage of \$233.00. The respondents calculated the average weekly wage by totaling her wages from August 20, 2004 to August 19, 2005, (Tr. p. 7-8, 48).

In pertinent part, Ark. Code Ann. §11-9-518 provides:

(a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of accident and in no case shall be computed on less than a full-time workweek in the employment.

(b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.

After review, I find the claimant's method of calculation is consistent with the statute.

### **MEDICAL EVIDENCE**

The claimant was seen at Health Care Plus on August 17, 2005, complaining of mid anterior chest pain (both sternal borders, left pectoral muscle at the humeral attachment, left trapezius muscle pain). She was diagnosed with traumatic costochondritis, (the center of the chest) and prescribed medication. Dr. Morris advised against lifting or pulling more than ten pounds. I note that the references to the "trapezius" and "humeral" suggest shoulder symptoms, however, these

findings were on the left side and the claimant's surgery a year later was performed on the right rotator cuff. The claimant stated the doctor's exam notes were in error.

The claimant returned to Dr. Morris on September 2, 2005. She reported improvement of left shoulder and chest pain. The claimant told her physician she had resigned from her job because she did not like the light duty work she was assigned. Dr. Morris released the claimant from his care with no restrictions.

Six months later, the claimant saw general practitioner, Dr. Tim Wilkins on March 27, 2006, reporting a four month history of right arm and shoulder pain. He prescribed a steroid, Prednisone and an anti-inflammatory, Naproxen. She was diagnosed with bursitis and referred to orthopaedic surgeon Dr. Marc Stevens. The doctor recorded the following history:

Rose Holland is a 50 year(s) old female with a history of right shoulder pain with onset beginning last year. The initial pain was associated with an unknown change... Medications that have been tried include: Steroids, NSAIDS, Premarin.

Dr. Stevens diagnosed adhesive capsulitis and rotator cuff syndrome of the right shoulder. He prescribed injections and physical therapy. The claimant's condition did not improve and surgery was performed on August 17, 2006 to repair her rotator cuff. Dr. Stevens' report of August 25, 2006 indicates she was restricted from lifting with her right arm.

Medical records also show the claimant treated with Dr. Lon Bitzer (from February 13, 2006 to March 3, 2006) for gallstones. His exam notes indicate the claimant denied any musculoskeletal problems (no arthritis, tendinitis, joint, back or leg pain).

### **DOCUMENTARY EVIDENCE**

The claimant received warnings about her attendance record prior to the incident at work. On two occasions, she took a leave of absence from February 24, 2005 to March 3, 2005 and from May 23, 2005 to July 5, 2005.

The respondents' exhibit packet contains an administrative form 1A-1, which cannot be used in evidence, Ark. Code Ann. §11-9-529.

The claimant completed a Form AR-C on August 17, 2005 reporting a chest injury while lifting clothing.

The claimant applied for unemployment benefits on August 26, 2005. The application form indicates she quit her job for health reasons, although she listed no "disabilities" that would preclude her from working. She did, however, explain that she injured her chest muscle on the job and no light duty was provided and she acknowledged she had been released by the doctor. The claimant was denied benefits because the doctor did not advise her to quit work and she "did not try to preserve her job prior to quitting."

The claimant filed a Form AR-C for a right shoulder injury in July 2006.

### **FINDINGS AND CONCLUSIONS**

The determination of whether the causal connection exists is a question of fact for the Commission to determine based on the evidence of record and the credibility of the witnesses. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998), Ellison v. Therma-Tru, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

It is the claimant's burden to prove a causal connection between the work-related accident and the later disabling injury. Lybrand v. Arkansas Oak Flooring Co., 266 Ark. 946, 588 S.W.2d 449 (Ark. App. 1979). Objective medical evidence is not always necessary if there is a preponderance of non-medical evidence. Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.2d 375 (2002).

If the disability develops soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, "then the claimant has established a causal connection. However, if there is a span of time between the accident and the disability, a question of fact arises concerning the causal connection. Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

Based on the claimant's testimony of sharp pain in the left side, Dr. Morris' exam notes showing treatment for the left side, the lack of a work-related history of injury in the exam notes of Drs. Wilkins and Stevens, and the gap in time between the incident at work and the treatment for a rotator cuff injury, I find the claimant has failed to meet her burden of proving a causal connection between her injury at work and her later surgery for a rotator cuff tear.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on August 17, 2005 at which time the claimant suffered a compensable chest injury at a compensation rate of \$207.00/\$155.00.
2. The claimant's compensable injury was treated conservatively by Dr. Morris who released her September 2, 2005.

3. The claimant has failed to prove by a preponderance of the credible evidence of record that she injured her right shoulder on August 17, 2005.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge

Entered NUNC PRO TUNC February 15, 2007