

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F600563**

**RODERICK E. INGRAM, EMPLOYEE**

**CLAIMANT**

**OVERNITE TRANSPORTATION COMPANY,  
EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INSURANCE CO.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 6, 2007**

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski, Arkansas.

Claimant appeared ProSe, Little Rock, Arkansas.

The respondents were represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 13, 2007, in Little Rock, Arkansas. A Prehearing Order was filed in this matter on April 19, 2007. A copy of the Prehearing Order was introduced into the record, without objection, as "Commission Exhibit 1," 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 June 2, 2005, and September 4, 2005.
- 3) The claimant's applicable compensation rates are \$466.00 per week for temporary total disability and \$350.00 per week for permanent partial

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disability.

- 4) Respondents' Motion to Dismiss filed February 1, 2007, is withdrawn.
- 5) All issues related to permanent impairment are reserved.

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

- 1) Whether the claimant sustained a compensable right shoulder injury on June 2, 2005.
- 2) If compensability is overcome, whether claimant is entitled to temporary total disability benefits from October 23, 2006, through May 20, 2007, and January 10, 2006, through January 21, 2006, and all associated medical expenses.
- 3) Notice defense.
- 4) A.C.A. § 11-9-411 offset.

At the full hearing, claimant contended, in summary, that he sustained a compensable right shoulder injury on June 2, 2005; and that as a result is entitled to temporary total disability benefits from October 23, 2006, through May 20, 2007, and January 10, 2006, through January 21, 2006, and all associated medical expenses.

The respondents contended at the full hearing, in summary, that the claimant did not sustain a compensable shoulder injury of any kind on June 2, 2005. Respondents affirmatively raise the Notice Defense, and contend they did not receive notice of an alleged injury until January 9, 2006. Respondents contended that there were no objective

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medical findings, whatsoever, traceable to any purported work incident, even if one did occur in June of 2005. Instead, respondents contend claimant was involved in an accident while playing basketball in January of 2006, which resulted in claimant's right shoulder problems and subsequent surgery. Respondents contend claimant had not received any medical treatment of any kind following the purported June 2005 incident, and that the first treatment the claimant received for his right shoulder was on January 9, 2006.

Respondents also contend by way of alternative defense, even if compensability is somehow shown, respondents contend they would have no liability due to the notice issue until after January 10, 2006. Furthermore, respondents assert that the basketball incident in January of 2006 would constitute an independent intervening event to break the chain of liability with the respondents for any compensable injury which would have been sustained in June of 2005. Also the respondents assert an offset for any group health payments made to or on behalf of the claimant, inclusive of any disability or medical benefits pursuant to A.C.A. § 11-9-411, if compensability is somehow established and a determination that the basketball incident was not an independent intervening event, or the source of the claimant's prior shoulder problems.

**DISCUSSION**

Claimant alleges a compensable right shoulder injury to have occurred by specific incident on June 2, 2005. Claimant testified that pursuant to his work duties he was

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unloading tires when the load shifted and fell on him on June 2, 2005. Claimant testified that the top tire struck him and knocked him off the loading dock. Claimant testified that when he fell his shoulder hit the ground and “popped out.” The claimant testified that after he fell he popped his shoulder back in place, was in pain, but continued to work.

Claimant testified that when he got back to his supervisor after the alleged incident on June 2, 2005, he reported the injury that day. Claimant testified that he did not seek medical treatment following the June 2, 2005, incident because he thought he could “strengthen it up on my own without going to the doctor.” (TR. pg. 33, lines 3-11). Claimant testified that for seven months following the incident he continued to work, but his shoulder would also continue to slip out of place at times. Claimant testified he never went to the doctor after the June 2, 2005, tire incident until January 9, 2006. The claimant testified that after the June 2, 2005, tire incident he played basketball “off and on” through January of 2006.

The claimant testified that on January 7, 2006, he was playing basketball when he “kind of reached for the ball,” and his shoulder popped out and “didn’t want to go back in.” (TR. pg. 34, lines 7-11). After the January 7, 2006, basketball incident the claimant testified he needed to go to the doctor and did in fact go see a doctor on January 9, 2006. (RX.1, pg. 1). At the initial doctor visit on January 9, 2006, the medical report states that the claimant gave a history of right shoulder dislocation in September of 2005. At the full

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hearing, claimant testified he said September 2005 because he could not remember the exact date of the tire incident. After going back and looking at his work logs, claimant testified he was able to pinpoint his right shoulder injury to June 2, 2005.

The claimant continued to receive treatment for his right shoulder after the January 7, 2006, basketball incident and ultimately was diagnosed with a right rotator cuff tear and right shoulder instability. Dr. David Collins ultimately performed arthroscopic right shoulder surgery on the claimant on December 15, 2006. Claimant seeks a finding of a compensable right shoulder injury to have occurred on June 2, 2005, and requests temporary total disability benefits and all associated medical expenses.

Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995, Claim Number E400880 that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- 1) Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
- 2) Proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- 3) Medical evidence supported by objective findings, as defined in A.C.A. § 11-9-102(16), establishing the injury;

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- 4) Proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable shoulder injury by specific incident on June 2, 2005.

I come to this conclusion for a number of reasons. First, it must be noted that by the claimant's own admission he did not seek any medical treatment for nearly seven months after his alleged June 2, 2005, compensable event. Only seven months after his alleged compensable event did the claimant go to the doctor and that by his own admission was due to a basketball incident that occurred on January 7, 2006.

It must be noted that the claimant was a credible witness and had credible corroborating testimony that a fall did occur on June 2, 2005. However, the facts are that the claimant never sought medical attention after that fall and it would be pure speculation and conjecture on the part of this administrative law judge to conclude that the claimant's right shoulder injury resulted from the June fall rather than from the January 2006 basketball incident.

The claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 99 S.W.2d 522

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(1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment related incident and a subsequent physical injury based on 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 Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962); Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes a question of fact for the Commission's determination. Kivett v. Redmond Company, 234 Ark. 855, 355 S.W.2d 172 (1962).

In this instance, it is indisputable from the claimant's own testimony that he did not report to a doctor about his alleged shoulder injury until seven months after the incident. Additionally, the claimant continued to work nonstop performing his regular work duties for seven months after his alleged incident. Also, the claimant did not seek medical treatment until after his admitted basketball injury in January of 2006. All of these facts taken together logically conclude that the claimant has failed to prove by a preponderance of the evidence that his shoulder injury arose out of and in the course of his employment with the respondents on June 2, 2005. Even though the claimant credibly

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testified that he reported his injury on the date that it occurred, the fact still remains that the claimant did not ask for medical treatment nor seek medical treatment until after the basketball incident some seven months later.

It would be pure speculation and conjecture to conclude that the claimant's shoulder injury occurred on June 2, 2005, rather than on January 7, 2006. Speculation and conjecture no matter how plausible does not substitute for proof. The claimant's own testimony indicates that something different happened on January 7, 2006, during the basketball incident:

Q I think you said – I think you've already, kind of, said you did something in a way, that day, that you said it took you – that you couldn't get it back in place; is that right?

A Yeah, a little bit – it was a little bit different.

Q That's what I think you told in your deposition. You said it just pinched it in a different way that day; is that right?

A Uh-huh. Yes.

(TR. pg. 39, lines 3-9).

In making my determination, I do not disregard the doctors' opinions contained in the record wherein they state that the claimant's shoulder injury is due to his work-related activity. However, it is the duty of the Commission to determine the validity or accuracy of medical reports. It must be noted that no doctor examined the claimant prior to January 9, 2006. No doctor examined the claimant between June 2, 2005, and

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January 7, 2006. I find that any doctor that would state causation within a reasonable degree of medical certainty would be based purely on speculation.

In summary, I find that the claimant has failed to meet his burden of proving by the preponderance of the evidence that he suffered a compensable injury to his shoulder while employed by the respondents. The seven-month gap between the alleged injury and any medical treatment is too far removed to find that the claimant's injury arose out of and in the course of his employment with the respondents on June 2, 2005. Given this evidence, I find that the claimant has failed to meet his burden of proof.

**ORDER**

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable right shoulder injury while employed by the respondents on June 2, 2005. Therefore, his claim for compensation benefits is hereby denied and dismissed.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb