

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F600945**

DEBBIE PERRY, EMPLOYEE	CLAIMANT
CONESTOGA WOOD SPECIALITIES, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, TPA	RESPONDENT

**OPINION FILED MARCH 9, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in  
Batesville, Independence County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE WILLIAM FRYE, Attorney at  
Law, Little Rock Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on February 9,  
2007, in Batesville, Arkansas. A Prehearing Order was entered in  
this case on October 3, 2006. This Prehearing Order set out the  
stipulations offered by the parties, and outlined the issues to  
be ligated and resolved at the hearing.

By agreement of the parties, the stipulations applicable to  
this claim are as follows:

1. The employee-employer-carrier relationship existed  
on October 14, 2005, and at all other relevant  
times.
2. The claimant's average weekly wage at the time of  
her injury was \$416.80 (\$10.42 an hour), which  
entitles her to a weekly temporary total disability  
(TTD) rate of \$278.00 and a weekly permanent partial  
disability rate of \$208.00
3. The period of TTD at issue is from February 20, 2006  
until May 22, 2006.

4. The claimant was paid short term disability from February 20, 2006 until May 22, 2006 (a clerical error reflects the beginning date as February 20, 2002 rather than February 20, 2006).
5. The respondent has controverted this claim in its entirety.

By agreement of the parties, the issues to be litigated were limited to the following:

1. Whether the claimant sustained a compensable right shoulder injury on October 14, 2005.
2. Whether the claimant is entitled to medical benefits.
3. Whether claimant is entitled to temporary total disability from February 20, 2006 until May 22, 2006.
4. Whether the respondent is entitled to a set-off under Ark. Code Ann. § 11-9-411.

In regard to the foregoing issues, the claimant essentially contends she sustained a compensable injury to her right shoulder while working for the respondent on October 14, 2005 and that she is entitled to reasonable and necessary medical treatment and temporary total disability (from February 20, 2006 until May 22, 2006), as a result of her compensable injury.

The respondent contends that the claimant did not report her fall on the day of her injury, but refused medical attention. However, two months after her reported fall, she seeks treatment by her family doctor. The claimant did not report her problems as being work related to either her employer or to her initial treating physician.

Subsequent to this, the claimant's husband reminds her that

she had fallen at work and the claimant then relates her shoulder problems to her fall upon her next doctor's visit approximately another month later in January 2006. It is respondent's contention that they have no medical information to substantiate the claimant's contention of her problems being work related.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order marked Commission's Exhibit No. 1. The claimant's Prehearing Questionnaire was marked as Claimant's Exhibit No. 1, and medical records submitted by the claimant were marked as Claimant's Exhibit No. 2. The respondent's Prehearing Questionnaire was marked as Respondent's Exhibit No. 1, and medical records submitted by the respondent were marked as Respondent's Exhibit No. 2, a letter pertaining to short-term disability was marked as Respondent's Exhibit No. 3.

The following witnesses testified at the hearing: the claimant, Tracy Morrison and Rex Blackwell.

### **DISCUSSION**

The claimant, age 45(5/13/61), has a high school education and one semester of college. Prior to her employment with the respondent, the claimant was a housewife. The claimant began work for the respondent in 1998, as an inspector on the floor. On October 14, 2005, the claimant worked for the respondent as a process auditor, wherein she performed work in the repair area. According to the claimant, on the aforementioned date, her right shoulder was injured when an upset employee pushed a buggy into her and knocked her off her feet, causing her to fall backwards

into the repair shelf, thereby injuring her right shoulder.

The claimant testified that this incident was witnessed by John Lambert, and Glenn Bontreger. The claimant also testified that shortly after this, she reported the injury to Sue Allen and the coordinator in that area, who was Jimmy Burris. The claimant further testified that company policy required her to report her injury to Mr. Jennings, the safety guy, and if he is not in, then employees are to report their injury to Ms. Allen or to human resource, or to a supervisor, or a coordinator. She specifically testified that since Mr. Jennings was not there, she reported her injury to Ms. Allen.

The claimant testified she reported her injury because she did not want others to get hurt, and although she had hurt her shoulder, she thought she would be okay. Following this incident, the claimant testified her shoulder was sore and bruised. According to the claimant, she did not request medical attention, because in safety meeting, they had been told that if you have an injury you need to try to get over it yourself because strains usually heal with time.

After her injury, the claimant testified she continued to work and did not seek treatment for her injury until December 22, 2005. The claimant testified that during this period of time, her shoulder was sore, but it got to where it would ache some and she would have to take pain medicine such as Aleve or Ibuprofen for the aching. According to the claimant, her work as a process auditor is not as physically demanding as the work of a

material auditor. However, if the material handlers got behind or if they were on vacation or something of that nature, the process auditors would have to take their place and lift the panels and flip them over.

The claimant testified she sought treatment on December 22, 2005 because she was hurting that particular day and it (her shoulder) had been getting worse, as during the holidays, material auditors had taken vacation leave and she had been auditing more. According to the claimant, after her injury, a co-worker, Ms. Morrison would do the auditing because she knew the claimant would complain about her shoulder.

The claimant admitted to having seen her family doctor, Dr. Ron Simpson, who subsequently referred her to Dr. J.D. Allen. According to the claimant, Dr. Allen initially tried physical therapy and gave her some medication. Thereafter, she testified he suggested arthroscopic surgery, which was performed April 7, 2006.

According to the claimant, she was off work due to her shoulder injury from February 20, 2006 until May 22, 2006. The claimant testified she returned to work for the respondent on May 22, 2006.

Although the claimant admitted to having pulled a muscle between her shoulder and back while at work three or four years ago, she denied having previously injured her right shoulder. The claimant denied having any subsequent problems with her shoulder as a result of the October 14, 2005 incident.

On cross-examination, the claimant essentially admitted to having mistakenly reported in her Prehearing Questionnaire back in July of 2006 that her injury occurred on October 11, 2005 rather than October 14, 2005, because she did not remember the date. The claimant admitted to being paid short-term disability (at a weekly rate of \$250.08) by the respondent during the entire period of time she was off for her shoulder injury.

The claimant admitted that although she did not complain and report continued problems with her shoulder to any supervisor, she complained to the people around her, and Ms. Tracy tried to cover for her because she knew she had hurt her shoulder.

She explained that when she went in to see Dr. Simpson, she did not think about the fall, nor did she report it because after she got over the soreness, her shoulder got to where it ached and it was a different kind of pain.

Upon being questioned by the Commission, the claimant admitted she was taken off work by Dr. Allen beginning February 20, 2006, and he did not release her to return to work until May 22, 2006. The claimant testified she was unable to perform her job duties during this period of time because her shoulder ached and she began losing more of her range of motion.

Tracy Morrison, a fellow co-worker, was called to give testimony on behalf of the claimant. Ms. Morrison testified the claimant showed her shoulder to her about a week after the incident. She admitted that the claimant complained about her

shoulder and that she would see her taking medicine for her shoulder. According to Ms. Morrison, the claimant would borrow medicine from her to take for her shoulder. Ms. Morrison also admitted to doing more of the auditing work due to the claimant having injured her shoulder.

Mr. Rex Blackwell, gave testimony on behalf of the claimant. Mr. Blackwell has worked for the respondent since June 29, 1989, with his current position being that of process supervisor, as he is over the panel department. Mr. Blackwell admitted that during safety meetings, employees are instructed to try and get over their injuries themselves in order to save the company money. Mr. Blackwell essentially testified that this has been a common practice with the respondent and most companies to encourage employees to work through their injuries rather than seek treatment from a doctor, especially strains and things of that nature.

On re-direct examination, Mr Blackwell testified that after the claimant mentioned her shoulder to him and explained how the fall occurred, at that point he went and talked to Robert Jennings, and there was documentation that he had of a buggy being in a congested area and either being pushed or kicked, and it having hit the claimant, and causing her to fall backwards. In addition to this, Mr. Blackwell testified he discussed the matter with Mr. Burris, and he told him that the claimant had gone to Sue Allen and reported what had happened, but did not want to turn it in on a workers' comp. According to Mr.

Blackwell he and Robert (Jennings) discussed the matter in depth and to his knowledge there was no doubt the claimant sustained the fall, and the doctors' report had stated that her injury, according to their knowledge, would be from a fall of that nature.

Medical records reflect that on January 24, 2006, the claimant returned to Dr. J.D. Allen for evaluation of right shoulder pain, which she had experienced since last fall when she fell landing across the anterolateral aspect of the shoulder. He specifically wrote, "Exquisite tenderness with any flexion/abduction activities. She has seen her family physician who has injected it a couple of times. She has taken nonsteroidal anti-inflammatories." His assessment was "impingement with cuff tendonitis," for which he injected her subacromial space with some Depo Medrol and Ropivacaine." Dr. Allen noted that if this failed to work, the claimant would need to have an MRI.

An MRI of the right shoulder was done on February 2, 2006, with the following impression:

1. Marrow edema is seen at the greater tuberosity of the humeral head with some very mild erosive changes.
2. Possibility of hill-sack like lesion is considered.
3. There is seen no rotator cuff tear. No Joint effusion seen.

On February 14, 2006, Dr. Allen saw the claimant for follow-up care of her right shoulder problems. He wrote:

... MRI indicates some edema in the region of the greater tuberosity of her humerus. No frank cuff tear.

Discomfort persists even after the shot. It makes me think that she probably has something continuing inflammatory going on. I am going to get her a Medrol dose pack. We are going to start her on some therapy, and I am going to see her back in three weeks.

On March 7, 2006, the claimant returned to see Dr. Allen, who reported, "She is still miserable. The therapy is not doing the trick. Still having pain across the anterolateral aspect. Pain in the region of the supraspinatus and infraspinatus. Pain at night." In addition to this, Dr. Allen noted that at some point, they were going to need to scope the claimant and do a little debridement and go from there.

The claimant underwent surgery with Dr. Allen on April 7, 2006, in the form of a diagnostic arthroscopy, arthroscopic acromioplasty, and arthroscopic distal clavicle resection with bursectomy of the subacromial space. The claimant was assessed with a post-op diagnosis of subacromial bursitis with impingement and acromioclavicular joint disease.

On April 25, 2006, the claimant saw Dr. Allen for re-check following her arthroscopic decompression and distal clavicle resection, at which point he noted she was doing great, as her symptoms had been significantly relieved. Therefore, he released from care and directed her to return to work effective May 22, 2006.

On October 31, 2006, in response to type-written questions, Dr. Allen reported that the extent of the claimant's injury was, "impingement/post traumatic with symptomatic acromioclavicular joint pain." Upon being asked if this kind of injury can occur

over time, he responded, "Possibly- but symptoms due to fall." He also stated that on an average, this type of injury occurs as a result of a "direct blow/lateral shoulder." According to Dr. Allen, the type of injury the claimant sustained can occur because of a fall and he believes that the fall sustained by the claimant while working for the respondent caused her injury. Dr. Allen was asked if he told the claimant he was sure that her injury was due to her fall, and his response was, "She told me her symptoms started with the fall. I have no reason to doubt her story."

The respondent's human resource manager, Robert McLellan, reported in a letter dated February 8, 2007, that the claimant had received short-term disability for 480 hours totaling some \$3,000.96, from February 20, 2006 through May 22, 2006 due to disability from her right shoulder surgery. Prior to this, in a letter dated October 3, 2006, Mr. McLellan stated the claimant's first day off work was on February 20, 2006, and she returned to work on May 22, 2006.

The claimant contends that she sustained a compensable injury to her right shoulder while working for the respondent on October 14, 2005. Ark. Code Ann. §11-9-102(4)(A) defines compensable injury as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury

is "accidental" only if it is caused by a specific incident and is identifiable by the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E) (i).

The claimant has proven by a preponderance of the evidence that she sustained a compensable right shoulder injury arising out of and in the course of her employment with the respondent/employer on October 14, 2005. The claimant presented a credible account of a co-worker pushing a buggy into her and causing her to fall backwards into a repair shelf injuring her shoulder. The claimant testified that shortly thereafter she reported the incident to at least two persons in management, Ms. Allen and Mr. Burris, but she did not request medical treatment. Although the claimant did not seek immediate treatment for her shoulder symptoms, it appears the claimant was attempting to follow the respondent's unwritten policy of not seeking immediate treatment for minor injuries/strains in an attempt to save money. Approximately four to five weeks later, the claimant told Mr. Blackwell about her incident. He conducted an investigation of the matter and his findings corroborate the claimant's account of falling and having reported the incident to Ms. Allen. On February 2, 2006, the claimant underwent an MRI of the right

shoulder which indicated some edema in the region of the greater tuberosity of her humerus, and Dr. Allen initially assessed the claimant as having impingement with cuff tendonitis. The aforementioned satisfies the objective findings requirement of Ark. Code Ann. § 11-9-102(4) (D). Dr. Allen performed right shoulder surgery on April 7, 2006, which consisted of arthroscopic decompression and distal clavicle resection. On October 31, 2006, Dr. Allen opined that the claimant's fall at work caused her shoulder injury/symptoms. There are no expert opinions to the contrary, nor is there any probative evidence before the Commission demonstrating that the claimant's right shoulder problems resulted from some other source. Based on the expert opinion of Dr. Allen, I find that the conservative treatment received by the claimant for her right shoulder, and the resulting surgery performed by Dr. Allen were reasonable and necessary treatment pursuant to Ark. Code Ann. § 11-9-508 (a). Therefore, the respondent remains liable for all reasonable and necessary medical treatment the claimant has pursued for her compensable right shoulder injury.

The claimant next contends that she is entitled to temporary total disability during the time she was off work due to her compensable shoulder injury. An injured employee is entitled to temporary total disability compensation during the time that she is within her healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981).

In the present case, the claimant has proven by a preponderance of the evidence that she remained within her healing period from her right shoulder injury and was totally unable to earn wages from February 20, 2006 until May 22, 2006. The claimant testified she became unable to work due to her injury on February 20, 2006, at which time, Dr. Allen took her off work. On April 25, 2006, Dr. Allen reported that after the claimant's surgery, the claimant was doing great and that her symptoms had been significantly relieved. Therefore, Dr. Allen released her from care, and he also released her to return to work effective May 22, 2006. The claimant admitted to returning to work on May 22, 2006 without recurrent problems from her October 14, 2005 shoulder injury. Relying on Dr. Allen's report and the claimant's ability to return to work on May 22, 2006 without any resulting problems from her shoulder injury, I find that the claimant reached the end of her healing period for her October 14, 2005 shoulder injury no later than May 22, 2006.

The respondent asserts it is entitled to a set-off for short term disability paid the claimant from February 20, 2006 through May 22, 2006. The claimant admitted to having been paid short-term disability during this period of time, and Mr. McLellan verified in a letter dated February 8, 2007, the claimant was paid short-term disability for surgery to her shoulder during this period of time totaling some \$3,000.96. As a result, the respondent is entitled to a set-off in this amount pursuant to

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed on October 14, 2005, and at all other relevant times.
3. The claimant's average weekly wage at the time of her injury was \$416.80 (\$10.42 an hour), which entitles her to a weekly temporary total disability (TTD) rate of \$278.00 and a weekly permanent partial disability rate of \$208.00
4. On October 14, 2005, the claimant sustained a compensable right shoulder injury.
5. The respondent is directed to pay all medical expenses within thirty days of receipt pursuant to Rule 099.30.
6. The claimant has proven by a preponderance of the evidence of record that she is entitled to temporary total disability compensation from February 20, 2006 until May 22, 2006.
7. Pursuant Ark. Code Ann. §11-9-411, the respondent is entitled to a \$3,000.96 credit for short-term disability paid the claimant for her compensable shoulder injury.

**AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact cited above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Arkansas Code Ann. §11-9-809.

IT IS SO ORDERED.

CHANDRA HICKS  
Administrative Law Judge