

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706526

DEONA PIPER, Employee	CLAIMANT
BENTON COUNTY, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED OCTOBER 31, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 10, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 15, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties on June 20, 2007.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$425.00 for total disability benefits and \$318.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left shoulder.
2. Medical.

3. Temporary total disability benefits.
4. Attorney fee.
5. Statute of limitations.

At the time of the hearing the claimant clarified her request for temporary total disability benefits to include the period of June 29, 2007 through a date yet to be determined.

The claimant contends she was injured on June 20, 2007 when her left shoulder was injured doing filing and recording while filling in for a missing co-worker. She contends she is entitled to temporary total disability, medical, and an attorney fee.

The respondents contend this claim is barred by the statute of limitations. The shoulder condition has been present for eight years according to the medical reports. It was not reported as a work-related injury until June 22, 2007. The claim is not compensable; the claimant's job is not rapid and repetitive and it appears the alleged condition is due to a gradual onset; and there was no specific incident.

From a review of 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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 15, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant's claim for compensation benefits is not barred by the statute of limitations.
3. Claimant has met her burden of proving by a preponderance of the evidence

that she suffered a compensable injury to her left shoulder while employed by the respondent.

4. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

5. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.

### FACTUAL BACKGROUND

The claimant is a thirty-eight-year old woman who began working for the respondent in March 1994. For approximately six years the claimant performed a job microfilming documents in the circuit clerk's office. For the next two years the respondent obtained a new system which required the claimant to scan documents such as deeds and mortgages into a computer. For the next four years, claimant performed a job which required her to place documents page by page into a machine that recorded and scanned them at the same time. Claimant performed this job for approximately four years before she became a supervisor in April of 2006. Subsequent to April 2006 the claimant still performed some scanning work when employees were absent. Claimant testified that she continued to perform this job for one to two hours over the course of each day.

On June 20, 2007, an employee whose usual job was scanning documents called in sick. As a result, claimant was required to perform the scanning job for most of her work day. Claimant testified that beginning on June 20, 2007 her shoulder began hurting and it progressively worsened until Friday, June 22, when she "couldn't take it anymore." Claimant reported her shoulder problem to her supervisors, Brenda DeShields and Bonita Stubbs, by e-mail because they were out of the office. Claimant testified that she also completed a workers' compensation form in the human resources department and was sent to the Wellquest Clinic later that day.

At the Wellquest Clinic claimant was diagnosed as suffering from pain and given medication. Claimant returned to Wellquest on June 24, 2007 with no improvement in her condition. An MRI scan was recommended and claimant was given an injection. Claimant subsequently sought medical treatment from Dr. Beeman who referred claimant to Dr. Arnold, orthopaedic surgeon, for an evaluation. Dr. Arnold ordered an MRI scan of the claimant's left shoulder which revealed a partial cuff tear. In a report dated July 10, 2007, Dr. Arnold recommended three months of aggressive physical therapy, anti-inflammatories, and no left-handed duty. Dr. Arnold also indicated that if claimant's condition did not improve he would inject her AC joint and that claimant might eventually need an arthroscopic procedure. Claimant has not received the treatment recommended by Dr. Arnold because of a lack of funds.

Claimant has filed this claim contending that she suffered a compensable injury to her left shoulder while employed by the respondent. She seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee. The respondent contends that the claimant's claim for compensation benefits is barred by the statute of limitations.

### ADJUDICATION

The first issue for consideration involves respondent's contention that claimant's claim for compensation benefits is barred by the statute of limitations. Claimant testified that she first developed shoulder problems while performing her job for the respondent in 2002. However, claimant did not file a claim for compensation benefits until July 3, 2007. Respondent contends that the claimant's injury was a gradual onset injury; therefore, the statutory time period for filing a claim began to run when she first developed problems in 2002. The Court in *Minnesota Mining & Manufacturing v. Baker*, 337 Ark. 94, 982 S.W. 2d 11 (1999) and *Pina v. Wal-Mart Stores, Inc.*, 91 Ark. App. 77, 208 S.W. 3d 236 (2005),

did find that the statute of limitations for gradual onset injuries begins to run when the injury becomes apparent to the employee. However, the statute only begins to run if the injury is a scheduled injury. The general law in Arkansas is that the statute of limitations does not begin to run until the true extent of the injury manifests and causes an incapacity to earn wages sufficient to give rise to a claim for disability benefits. *Halls Cleaners v. Wortham*, 311 Ark. 103, 842 S.W. 2d 7 (1992). For injuries which are scheduled a loss of earnings is presumed; therefore, the statute of limitations begins to run when the scheduled injury becomes apparent. However, for unscheduled injuries there is no presumption of a loss of earnings and the statute does not begin to run until the injury manifests and causes an incapacity to earn wages. Here, the claimant's injury to her left shoulder is an unscheduled injury; therefore, the statute of limitations did not begin running in 2002, but instead began running in June 2007 and her filing of a claim on July 3, 2007 was within the two-year statutory time period.

Accordingly, for the foregoing reasons, claimant's claim for compensation benefits is not barred by the statute of limitations.

The next issue for consideration involves claimant's contention that she suffered a compensable injury to her left shoulder while employed by the respondent. Claimant contends that her compensable injury is the result of a gradual onset resulting from job duties she has performed scanning documents with the respondent over the course of several years. A claimant seeking workers' compensation benefits for a gradual onset injury must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(A)(ii) and (E)(ii). In addition, claimant must prove by a preponderance of the evidence that the injury was the result of rapid repetitive motion. The task must be

repetitive and the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1988).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof. Initially, I find that claimant's job duties with the respondent require her to engage in rapid repetitive motion.

Claimant testified that in order to perform the job of scanning documents it is first necessary to get the document, remove any staples and/or paper clips, stamp each page of the document and run each page through the scanner. If the document has information on both sides, it must be reinserted into the scanner. Once the document has been scanned it is necessary to reassemble the document. Claimant testified that deeds recorded and scanned consist of one to two pages and mortgages can consist of anywhere from two to 100 pages and are frequently two-sided. Prior to April 2006 when claimant became a supervisor she performed this job scanning documents seven hours each day. It was while she was performing this work that claimant first developed shoulder problems. Claimant testified that these shoulder problems would last during the work week and would improve over the weekend. After claimant became a supervisor she was still required to scan documents for one to two hours over the course of each work day. On June 20, 2007 when an employee called in sick the claimant was required to scan the documents all day long. It was during this three-day period that claimant's shoulder problems worsened.

Based upon the claimant's testimony, I find that her job duties with the respondent required her to engage in rapid repetitive motion in order to perform the job scanning documents. Prior to April 2006 the claimant scanned documents using her hands and shoulders some seven hours each day. Even after the claimant became a supervisor she was required to scan documents for some one to two hours over the course of a day. Based upon this evidence, I find that claimant's job duties involved rapid repetitive motion.

I also find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment and that the injury was the major cause of her disability or need for medical treatment. Here, claimant testified that her shoulder problems began while she performed the job scanning documents in the respondent's office. There is no indication that claimant suffered any other injury to her left shoulder. Claimant reported the injury to her supervisors and the medical reports contain a history of injury consistent with claimant's testimony.

Based upon the claimant's testimony which I find to be credible as well as the remaining evidence presented, I find that claimant has met her burden of proving by a preponderance of the evidence that the injury arose out of and in the course of her employment and that the injury was the major cause of her disability or need for treatment.

I also find that claimant has proven by a preponderance of the evidence that the injury caused internal physical harm to her body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury. Claimant eventually came under the care of Dr. Arnold, orthopaedic surgeon, who ordered an MRI scan of the claimant's left shoulder revealing a partial cuff tear. As a result, Dr. Arnold has recommended additional medical treatment for claimant's injury.

Based upon the foregoing evidence, I find that claimant has satisfied the remaining elements of compensability.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a gradual onset injury to her left shoulder while employed by the respondent. The respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes medical treatment provided by Dr. Arnold.

The final issue for consideration involves claimant's request for temporary total disability benefits. As previously noted, the injury to claimant's shoulder is an unscheduled

injury. In order to be entitled to temporary total disability benefits for an unscheduled injury, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). Here, I find that claimant has remained within her healing period. However, I do not find that claimant has suffered a total incapacity to earn wages. After her initial medical treatment claimant returned to work for the respondent for approximately two days before she was terminated for insubordination. Claimant subsequently came under the care of Dr. Arnold who ordered the MRI scan and recommended additional medical treatment. However, Dr. Arnold did not indicate that claimant was totally incapacitated from earning wages. Instead, Dr. Arnold released the claimant to return to work with the restriction of no left-handed duty. Given Dr. Arnold's opinion that claimant is capable of returning to work with restrictions, claimant does not suffer from a total incapacity to earn wages. Therefore, she is not entitled to temporary total disability benefits.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

#### AWARD

Claimant's claim for compensation benefits is not barred by the statute of limitations. Claimant has met her burden of proving by a preponderance of the evidence that she

suffered a compensable injury to her left shoulder while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left shoulder injury. This includes, but is not limited to, medical treatment provided by Dr. Arnold. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$276.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE