

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503230

ANNETTE WILSON,
EMPLOYEE

CLAIMANT

COOPER STANDARD AUTOMOTIVE, INC.,
EMPLOYER

RESPONDENT

ST. PAUL TRAVELERS INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 7, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK
CHURCHWELL, in El Dorado, Union County, Arkansas.

The claimant was PRO SE.

The respondents were represented by HONORABLE MICHAEL J.
DENNIS, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on
November 16, 2006 in El Dorado, Arkansas. A prehearing
order was entered in this case on October 2, 2006. A copy
of this prehearing order set out the stipulations offered by
the parties and outlined the issues to be litigated and
resolved at the present time. A copy of this prehearing
order was made Commission's Exhibit No. 1 to the hearing
record.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including March 24, 2005 and January 29, 2004.
3. The claimant earned an average weekly wage of \$556.
4. The respondents controvert this claim in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited during the hearing to the following:

1. Whether the claimant sustained a compensable injury to her neck and both shoulders as a result of the specific incident on or about January 29, 2004.
2. Whether the claimant sustained a compensable gradual onset injury to her left wrist on or about March 24, 2005.

3. Whether the claimant is entitled to medical treatment for her injuries.
4. Whether the claimant is entitled to temporary total disability benefits from March 23, 2006 through June 15, 2006 and from August 3, 2006 through October 24, 2006.

The record consists of the November 16, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Did The Claimant Sustain A Compensable Gradual-Onset Injury To Her Left Wrist On Or About March 24, 2005?

Arkansas Code Annotated § 11-9-102 (4) (A) (Suppl. 2003)

defines "compensable injury" in relevant part as follows:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence; if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive and (2) the repetitive motion must be rapid.

Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d

644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Id. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D); Ark. Code Ann. § 11-9-102(16). For a gradual onset injury caused by rapid repetitive motion, including carpal tunnel syndrome, the resulting condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4) (E) (ii); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

In the present case, the claimant engages in repetitive hand activities running the "shooter" for the respondents. To the extent that she asserts that she has sustained a compensable left wrist injury as a result of this activity, however, I respectfully point out that, as indicated above, a compensable injury must be established by medical evidence supported by objective findings. In the present case, the only medical report in the record even remotely referring to

a possible wrist or hand injury, or symptoms possibly related to carpal tunnel syndrome, is Dr. Shahim's June 15, 2006 report which states in relevant part "Her biggest *complaint* today is bilateral shoulder pain *and hand numbness*". (Emphasis added) [C. Exh. 1 p. 7]

I note that Arkansas Code Annotated § 11-9-102(16) defines "objective findings" as "those findings which cannot come under the voluntary control of the patient." The Arkansas Courts have long recognized that a patient's subjective complaints to a doctor do not represent objective medical findings within the meaning of Act 796 of 1993. See Mays v. Alumnitec, Inc., 76 Ark. App. 274, 64 S.W.3d 772 (2001); Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998); Crawford v. Pace Industries, 55 Ark. App. 60, 929 S.W.2d 727 (1996). Since a *complaint* comes within the voluntary control of the patient who expressed the complaint, Dr. Shahim's notation of a complaint of hand numbness cannot qualify as an objective medical finding. Absent any other medical evidence in the record possibly containing objective findings to establish a hand or wrist injury, I find that the claimant has failed to establish that she has sustained any type of hand injury, work-related

or otherwise, with medical evidence supported by objective findings. I therefore find that the claimant has failed to establish that she has sustained a compensable gradual-onset left wrist injury on or about March 24, 2005.

2. Did The Claimant Sustain A Compensable Injury To Her Neck And Both Shoulders As A Result Of A Specific Incident On Or About January 29, 2004?

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant contends that she experienced an injury to her neck and both shoulders when she felt a pop while lifting a pan at work on or about

January 29, 2004. The claimant testified that she reported an injury and filled out paperwork for that incident. The claimant testified that she treated with Dr. Hatley and underwent physical therapy in February of 2004. The claimant testified that she saw Dr. Gati, and saw Dr. Grant in March of 2005. The claimant ultimately underwent surgery on her left shoulder performed by Dr. Shock on August 3, 2006, some two and one-half years after the alleged incident on January 29, 2004.

On the record before me, I find that the claimant has failed to establish by a preponderance of the evidence in the record that she sustained a compensable shoulder injury or a compensable neck injury on January 29, 2004. In this regard, I note that neither party offered into evidence any reports of treatment by Dr. Hatley, Dr. Gati, Dr. Grant or any other doctor who may have treated the claimant in office visits in 2004 or 2005. The only two reports from 2004 or 2005 in the record are the report of a cervical x-ray performed on January 29, 2004 and the report from a left shoulder MRI performed on April 12, 2004, read by Dr. Forward and Dr. Hoffman, respectively. (C. Exh. 1 p. 3 and C. Exh. 2 p.1)

In addition, neither party offered into evidence any forms which the claimant may have filled out on or about January 29, 2004. The only form offered by either party was a Form-N signed by the claimant on March 24, 2005. This document makes no reference to an incident that allegedly occurred on January 29, 2004. This document merely refers to the claimant's neck, shoulder and left wrist injuries as "old injuries".

Finally, I note that the claimant's group health insurance has apparently paid for several diagnostic tests in the record, including two left shoulder MRIs, a right shoulder MRI, and a cervical MRI. While the reports from these tests do appear to indicate various abnormalities in the claimant's shoulders and neck, the claimant has not offered into the record any medical opinions from any physician indicating that these abnormalities are in any way causally related to a lifting incident at work on January 29, 2004.

I do find credible the claimant's testimony that she experienced a lifting incident on January 29, 2004, and that she felt a pop and filled out paperwork that day. I note that Dr. Forward's January 29, 2004 radiology report is

consistent with the claimant's testimony, since that report contains an indication of "Neck pain. Strain from lifting." [C. Exh. 1 p. 3] However, I also note that Dr. Forward interpreted that neck study as "normal." As discussed above, subsequent studies in March of 2004 and in 2006 appear to have identified some type of problems in the claimant's shoulders and neck. However, the claimant has the burden of proof of establishing a causal connection between any "objective findings" in the record and the alleged compensable injury. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). See also, Farmland Insurance Co. v. Dubois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). On this record, I find that it would require impermissible speculation and conjecture on my part to find that the claimant has established by a preponderance of the evidence any causal connection between the multiple abnormalities identified in her March of 2004 MRI or her 2006 MRIs with the lifting incident that occurred at work on January 29, 2004. Because I find that the claimant has failed to establish a causal connection between the lifting incident and the various abnormalities later identified in her shoulders and neck, I find that the claimant has failed

to establish her alleged work-related neck and shoulder injuries with medical evidence supported by objective medical findings causally related to those alleged injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The employee/employer/carrier relationship existed at all relevant times, including March 24, 2005 and January 29, 2004.

3. The claimant earned an average weekly wage of \$556.

4. The respondents controvert this claim in its entirety.

5. The claimant has failed to establish by a preponderance of the evidence that she sustained a compensable injury to her neck and/or both shoulders as a result of a specific incident on or about January 29, 2004.

6. The claimant failed to establish by a preponderance of the evidence that she sustained a compensable gradual onset injury to her left wrist on or about March 24, 2005.

7. Because the claimant has failed to establish that

she sustained a compensable injury, claimant has also failed to establish that she is entitled to the medical treatment and temporary total disability benefits at issue in this claim.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge