

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800989

ROGER D. CASON, EMPLOYEE	CLAIMANT
NUCOR YAMATO STEEL COMPANY, EMPLOYER	RESPONDENT
ARCH INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 17, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on June 6, 2008, at Luxora, Mississippi County, Arkansas.

Claimant represented by Mr. Thomas W. Mickel, Attorney-at-Law, Conway, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 6, 2008, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on May 7, 2008, and a Prehearing Order was filed on May 8, 2008. At the hearing, the parties stated that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an additional stipulation, as well as an amended contention by respondents, raising an affirmative defense regarding the claimant's claim of cervical injury. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times through on or about September 6, 2007; that the claimant earned sufficient wages to entitle him to the maximum applicable compensation rates of \$504.00 per week for temporary total disability and \$378.00 per week for permanent partial disability in the event the claim was found compensable; and that respondents had controverted the claim in its entirety for purposes of attorney's fees. At the hearing, the parties further stipulated that the claimant has, at all times throughout the period of his claimed disability, received in excess of \$4,000.00 per month from Hartford Insurance Company under a disability policy provided by the employer which would entitle respondents to a dollar-for-dollar credit or offset pursuant to Ark. Code Ann. §11-9-411.

By agreement of the parties, the primary issue presented for determination concerned compensability of an alleged gradual onset injury to the claimant's shoulders and neck. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a gradual onset injury to both shoulders and to his neck as a result of repetitive, overhead work requiring repetitive and frequent reaching; that the work activities caused an injury, specifically, to the right shoulder which required surgical repair; and that the injury was the major cause of the claimant's need for treatment and disability. Claimant contended that he was entitled to payment of all hospital, medical, and related

expenses, together with continued reasonably necessary medical treatment; that he was entitled to temporary total disability for the period beginning September 7, 2007, and continuing through a date yet to be determined; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant cannot prove an injury arising out of and during the course of his employment; that his job activities did not involve rapid and repetitive motion; and that the alleged neck condition was not work-related and not corroborated by objective medical findings. Alternatively, respondents raised a notice defense, maintaining that no notice of the claim was made until January 11, 2008. Further, at the hearing, respondents raised a statute of limitations defense concerning the neck claim, maintaining that the claimant first had problems and knowledge of a neck injury in 2003.

The claimant was the only witness to testify. The record is composed solely of the transcript of the June 6, 2008, hearing containing a joint medical exhibit consisting of twenty-one (21) pages.

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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. Specifically, claimant has failed to prove, by a preponderance of the evidence, that his injury arose out of and during the course of his employment with Nucor Yamato Steel Company. Further, the claimant has failed to prove that his alleged gradual onset injury was caused by rapid, repetitive motion related to his work activities.
4. The claimant has failed to prove, by a preponderance of the evidence, that there is a causal connection between the injury and his employment.

#### DISCUSSION

The claimant, Roger Dale Cason, testified in his own behalf. The claimant is fifty-eight (58) years old. The claimant was employed by the within employer for almost twenty (20) years. The claimant's job was to maintain the equipment in the steel mill. His duties required him to use impact wrenches to work on large equipment, including air or pneumatic wrenches. He stated that, at times, he had to work on large equipment overhead using impact tools that weighed up to seventy (70) pounds. The claimant stated that he began experiencing problems with his neck and upper extremities beginning in May, 2007, at which time he went to his

family physician, Dr. John Russell. The claimant stated that Dr. Russell initially thought his problems with his neck and shoulders were related to sleeping improperly. Dr. Russell subsequently ordered an MRI which revealed significant problems with both shoulders, more severe on the right, and Dr. Russell referred him to an orthopedic specialist, Dr. Joseph Yao, who eventually performed surgery on both shoulders, first the right, in January, 2008, followed by the left approximately six (6) weeks later. (Tr.12-13, 17)(Jt. Ex. A, pp.8, 17-18)

The medical evidence reflects that the claimant first began experiencing neck pain as early as November 24, 2003, which prompted him to see Dr. Russell, as well as problems with both upper extremities as early as August 19, 2004. (Jt. Ex. A, pp.2, 4)

The record reflects that the claimant has not returned to work since September 7, 2007. Again, Dr. Yao has performed surgery on both of the claimant's shoulders. The claimant stated that, to date, no surgery has been recommended for his neck. He maintained that the surgery improved the symptoms in both of his shoulders. The claimant's medical treatment was paid under his group health insurance at Nucor, together with Federal Blue Cross/Blue Shield Insurance. In addition, as reflected by the stipulations, the claimant has been receiving disability benefits from the Hartford Insurance Company.

On cross-examination, the claimant acknowledged that he never sustained a specific work-related incident or injury while working for the employer herein.

Further, his testimony on cross-examination reflects that his job duties as a mechanic did not involve rapid repetitive activities. The claimant did not file a claim for workers' compensation benefits in 2003 or 2004, when he first began experiencing problems or at any time prior to on or about January 11, 2008, after learning the nature and extent of his injuries. Although the claimant maintained that he never related his physical problems and need for treatment to his work until after talking to Dr. Yao and Dr. Day, as will be set out further below, there is no medical opinion of record that the claimant's physical problems and need for treatment are causally related to a work-related injury. (Tr.25-26)

#### COMPENSABILITY

In the present claim, the claimant does not contend that his injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,

(5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

A preponderance of the credible evidence fails to establish that the claimant sustained an injury arising out of and during the course of his employment with Nucor Yamato Steel. Further, there is no credible evidence that the claimant's injury was caused by rapid repetitive motion.

A 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, 990 S.W.2d 522 (1999). However, medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

Despite the claimant's assertion that he did not file a workers' compensation claim until he learned that his problems might be related to his employment activities, there is no medical opinion of record which relates the claimant's injury, need for treatment, and disability to his job.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor.

*Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

It would require sheer speculation and conjecture to attribute the claimant injury to his employment. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company v. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital v. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge