

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607251

BETTY DANSBY, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 4, 2008

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Hope, Hempstead County, Arkansas.

The claimant was PRO SE.

The respondent was represented by HONORABLE M. MELISSA LEE, Attorney at Law, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 7, 2008. A Prehearing Order was entered in this case on October 24, 2007. This Prehearing Order 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 employer/employee relationship existed on April 14, 2006.
3. The respondent accepted an injury to the claimant's right shoulder in the form of a strain/bursitis arising out of and in the course of her employment on April 14, 2006.
4. The respondent denied further medical treatment in the form of rotator cuff surgery on May 15, 2007, based on Dr. Dickson's physician letter of May 3, 2007.
5. The respondent has paid \$00.00 in temporary total disability benefits.

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

1. Compensability of right rotator cuff injury.
2. The claimant's entitlement to additional medical benefits including rotator cuff surgery proposed by Dr. DeHaan.

As no post-hearing briefs were filed in this case, the record consists of transcript of the February 7, 2008, hearing and the exhibits contained therein.

DISCUSSION

The claimant, Betty Dansby, became employed at Tyson Poultry in 1997. Ms. Dansby has been a technician in quality control/quality assurance since at least 2005. Her primary job as a debone quality assurance tech requires her to inspect boneless chicken product for possible bones, to check temperatures on finished product, to record data on paper forms, and to input data into a computer.

For approximately one and one-half months in 2005 Ms. Dansby was assigned to quality assurance on the main line. Ms. Dansby testified that she developed right shoulder problems during the period that she worked in quality assurance on the main line. Dr. Jeffrey DeHaan has diagnosed Ms. Dansby with a rotator cuff tear and opined that her medical condition is related to her work at Tyson. Dr. DeHaan explained in an April 13, 2007, letter that these types of tears occur more commonly with repetitive activity, especially overhead activity, as opposed to possible one-time traumatic events.

When Ms. Dansby worked by herself on the main line, she performed six different quality assurance functions: inspecting birds from two productions lines for possible contamination; inspecting birds from reprocessing for

possible contamination; inspecting bird from the chiller for contamination; counting bagged product in the feet room; testing a metal detector; and inspecting gizzards.

Ms. Dansby explained at the hearing that her main line work in the feet room, her work with the metal detector, and her work inspecting gizzards did not involve any significant use of her shoulder or weight lifting. Ms. Dansby testified that she used her shoulder to hang and lift birds during her chiller, main line and reprocessing inspections. Ms. Dansby did not fill out an injury report until she was back performing debone quality control. In that report, she attributed her problems to writing. At the hearing Ms. Dansby testified that she assumes that her shoulder injury was caused by numerous times of failing to re-hang five to seven pound birds on passing shackles after inspection on the main line.

Because Ms. Dansby does not contend that her right shoulder rotator cuff injury was caused by a specific incident and is identifiable by time and place of occurrence, this claim for a gradual onset shoulder injury is governed by the provisions of Arkansas Code Annotated § 11-9-102(4)(A)(ii) which 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.

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, 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).

The Arkansas Court of Appeals summarized prior cases in determining whether work duties are properly classified as "rapid repetitive motion" in Holland Group, Inc. v. Hughes, 95 Ark. App. 369, ___ S.W.3d ___ (2006):

In determining whether a worker's injury was the result of repetitive and rapid motion, the appellate courts have required some showing of how rapidly the repetitive actions were performed. See *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000) (Commission's denial of benefits reversed where movements repeated every twenty seconds); *Parker v. Atlantic Research Corp.*, ___ Ark. App. ___, ___ S.W.3d ___ (June 30, 2004) (where the Commission found that appellant's job duties fell within the meaning of rapid repetitive motion, considering the multiple tasks that she was required to perform at high volume and with quick and fast movements in a repetitive nature over the course of a sometimes ten-to-twelve hour shift, six to seven days a week, there was substantial evidence to support the Commission's finding that appellant's job duties required rapid repetitive motion); *Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998) (a series of repetitive motions, performed 115 to 120 times per day separated by periods of only 1.5 minutes, constituted rapid motion within the meaning of the statute); *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998) (movements repeated every fifteen seconds found to be sufficiently "rapid").

In the present case, Ms. Dansby does not contend that her normal duties as a debone quality assurance tech caused her shoulder injury. After considering her description of her duties while temporarily assigned to the main line, I find that she has failed to establish that her various job

duties in that temporary assignment, when considered together, required rapid repetitive motion.

With regard to her work on the main line at issue in this claim, I note that Ms. Dansby described individual tasks requiring repetitive lifting and shoulder motion when she inspected birds from the two processing lines, when she inspected birds from reprocessing tubs, and when she inspected birds coming out of the chillers. However, Ms. Dansby's own testimony indicates that while assigned to the main line she spent (1) only 6 to 10 minutes per hour inspecting 20 birds from the two lines, (2) at most 3 to 5 minutes every two hours inspecting 10 birds coming out of the chiller, and (3) 3 to 5 minutes per tub inspecting 15 birds from any reprocessing tubs generated during an hour. Ms. Dansby testified that for 30 to 35 minutes per hour she would have nothing to do, and Ms. Dansby's description of her metal detector testing, her gizzard work, and foot room work did not involve either any appreciable lifting or appreciable shoulder motion.

Ms. Dansby's testimony therefore indicates that the majority of her time each hour was down time, and only three of her six described functions involved any lifting or shoulder use. Under these circumstances, the claimant has

failed to establish that her down time and six job functions, taken together, involved repetitive shoulder motion on a sustained basis. In light of Ms. King's testimony that quality assurance inspectors work at their own pace and Ms. Dansby's description of down time and tasks that required no shoulder motion or lifting, the preponderance of the evidence in the record also fails to establish that Ms. Dansby's work required rapid motion.

Because Ms. Dansby has failed to establish by a preponderance of the evidence that main line quality assurance work consisted of rapid motion or repetitive motion, I find that she has failed to establish by a preponderance of the evidence that she sustained a compensable rotator cuff injury in her right shoulder under the Arkansas Workers' Compensation Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on April 14, 2006.
3. The respondent accepted an injury to the claimant's right shoulder in the form of a

strain/bursitis arising out of and in the course of her employment on April 14, 2006.

4. The respondent denied further medical treatment in the form of rotator cuff surgery on May 15, 2007, based on Dr. Dickson's physician letter of May 3, 2007.
5. The respondent has paid \$00.00 in temporary total disability benefits.
6. The claimant has failed to establish by a preponderance of the evidence that her job duties during the time period at issue required rapid repetitive motion. The claimant has therefore failed to establish by a preponderance of the evidence that her gradual onset rotator cuff condition was caused by rapid repetitive motion. Therefore, the claimant has failed to establish a compensable rotator cuff injury under the relevant provisions of the Arkansas Workers' Compensation Law.

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ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge