

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F708230 (07/28/07)

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| DARLENE RODGERS, EMPLOYEE | CLAIMANT |
| FRANK CRUM 1, INC., EMPLOYER | RESPONDENT |
| PROVIDENCE PROPERTY & CASUALTY INS. CO., CARRIER | RESPONDENT |

OPINION FILED JULY 31, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 27, 2008, at Luxora, Mississippi County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE C. MICHAEL WHITE, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claim to determine the claimant's entitlement to workers' compensation benefits. On May 6, 2008, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Darlene Rodgers, the claimant, and Steven Turnage coupled with medical reports, and other documents along with video surveillance comprise the record in this

claim.

DISCUSSION

Darlene Rogers, the claimant, with a date of birth of October 11, 1957, resides in Osceola, Arkansas. The claimant has an Associate's Degree in education from what was formerly Mississippi County Community College but is now Arkansas Northeastern. The testimony of the claimant reflects that she is engaged and that her fiancée is in Iraq. Claimant testified that the children of her fiancée lived with her and she cared for them, however due to the injury she is now unable to take on that responsibility.

The testimony of the claimant reflects that for a period of sixteen years she was affiliated with the Osceola Public Schools. The claimant's Associate's Degree enabled her to work for the Osceola Public Schools as a paraprofessional. The claimant testified that she has worked as a substitute teacher for two (2) years.

Claimant testified that approximately twenty (20) years earlier she worked at American Greetings for a while. On July 16, 2007, the claimant commenced her employment with respondent-employer, a temporary employment agency, and was placed at American Greetings. The testimony of the claimant reflects that it was her understanding that if she worked at American Greetings for a period of time through respondent-employer that she would become an employee of American Greetings. As a consequence to the afore, claimant maintains that it was her intention not to return to substitute teaching once school resumed in August 2007, but to remain as an employee of American Greetings. (T. 73).

The claimant testified regarding her job assignment through respondent-employer in July 2007, and specifically at American Greetings:

When I went back there I started off in, I started in the janitor department and then I worked in the department where you take cards loose. It was in the stripping department. And that was just a couple of days until January, I'm sorry, not January, until July 25. That's on a Wednesday. When I was told, when I was assigned to a, the jitter machine. Where I got my on the job injury. (T. 16-17).

Claimant testified that she was assigned the A70 envelope machine at American Greetings. In describing the A70 envelope machine claimant testified:

Well. A - - It's in the same department called jitter. A70 machine is a long machine. It has an oven and it has a, it has a booth where three employees work on the booth and one employee have to be at the assembly line. And I was one of the employees at the assembly line. (T. 17).

Claimant testified further regarding her job duties on the assembly line:

On the assembly line with the machine going at a certain speed, the cards and envelopes spitting out. I had to take the cards and above my head was a box, a line, a box line where the box would slide down after you pushed the button. So I had to reach over my head to push the button for the box to slide down, take the cards as they come down the line, put them in the box. After I put them in the box I have to pick the box up with all the cards in it, swing it to my left, put it on a create and then I have to make sure a pallet is there. There's a lot of pallets on the floor. I have to pick them up by myself. I asked for help. I did not get help. And the board, on the board at AG it says that if you, in order to prevent injury if you need help in lifting ask someone. And I did before I saw it on the board. I asked someone to help me and I, and the guy that was over me on the, in the department, he refused to help. His name was Steve. And I told him that this was a woman's - - this was a man's job not a woman's job. So he still refused to help me so I went on and tried to do what I was assigned to do and did not realize what I was doing was ruining my body. (T. 17-18).

The claimant asserts that she was assigned to pick up at least 10 cards at a time and place them in a box which was located in front of her. Claimant's testimony reflects that the box, which was rectangle in shape, held from 40 to 50 cards and envelopes. When asked to hold out her hands to demonstrate the width of the box claimant responded:

I can hold up this hand. I cannot, I can hold this hand up but I cannot hold this one up. (T. 20).

Claimant testified that the number of boxes she handled during the course of a shift varied from 10 to 50. Once the cards were in the box, claimant testified regarding the disposition of the box:

I had to pick the box up and swing it over to my left and put it on a pallet. It was, it was about 30, about 10 boxes. You have to use the pallet first. First, you have to grab the pallet by the machine that's running. The machine never was cut off.

The cards fell out on the floor every time I tried to turn the machine off. That guy, Steve, would come and cut it back on and say I wasn't supposed to cut it off, but the cards was falling on the floor because of the speed of it, it was running down. Soon as I take the, go get a pallet, put it on the top of - - I had to put the pallet down first, then get all those boxes then swing them over to my left, put them on the pallet, than turn around and put another pallet. The pallets was very heavy. They weighed over, they weighed 46 pounds. And I had to turn around and put more boxes into th order. Sometimes the order, like it was going to Wal-Mart - -

I dis a couple of Wal-Mart's orders. And sometimes Wal-Mart required orders of at least, from 40 to 60 boxes of cards. Already sealed, already labeled, ready to go. And I had to take care of that, that's what I was doing.

Yes, sir. About 30 boxes. Then turn around and pick up another pallet put it on top of those boxes. And then turn around after I do all of the, after the pallet, more boxes of order, of cards and envelopes, turn around and pick up another pallet, put it on top of that. So that means that I was doing a lot of lifting over my head. That's what caused my injury. (T. 22-23).

The testimony of the claimant reflects that once the stack of pallets reach a height of approximate eight feet, she used a hand truck and moved it to another department approximately 40 feet away, a task the claimant maintains was supposed to take five minutes, however took her from 15 to 20 minutes. Claimant testified that she made four trips with the stacked pallets in the morning and about three after lunch.

The claimant testified regarding the duration that she had worked on the A70 machine before she first noticed physical problems which she attributed to same:

I started n the jitter envelope machine on Wednesday, July 25. I hope I got the date right, it was on a Wednesday, the 25th . And I noticed that Saturday, which is, 25th , 26th , 27th - - 28th , I think.

I noticed that I was, I noticed and I was telling my coworker, I said, I feel funny right now, and she said, what's wrong with you? And when I was telling her that I was feeling it in my shoulder and my arm and my leg and I said, I stopped talking to her so I left and I walked to the bathroom and when I came back and I told her, I said, I'm going to have to tell them Monday, about how I'm feeling. So, I noticed that feeling in my leg and my arm and my shoulder, but I didn't realize it was that bad. I didn't realize it until the after effect. (T. 27).

Claimant testified that she did in fact return to work the following Monday and reported the injury:

That following Monday I reported, as soon as I got there I made my mind up after what I went through that weekend at home, I make my mind up to report it to, I can't even think of her name, I know her name, I made my min up to report it on the 30th of June, July. And I reported it to the lady that assigned me over there. Reported that morning at 6:30. (T. 28).

Claimant maintains that she reported her injury to Paulette Ward, whom she understood she was supposed to report work-related injuries. Claimant testified that Ms. Ward worked at a booth out among the machines in the plant. Claimant's testimony reflects, regarding the reporting:

No, she, when I approached her and told her how I was feeling that day, I said, please Paulette, don't put me back on that machined, because, I had a hard time this weekend and I don't think I need to go back on that. Could you please assign me somewhere else? And she told me to go tell someone else, and I didn't go tell that someone else, because that someone else didn't know nothing about me, and I didn't know that someone else, what I was supposed to go to tell her everything. Paulette assigned me to everything. (T. 28-29).

Claimant testified that while she did finish out her shift at 2:30 p.m. on Monday, she was moved to a different machine.

Claimant testified that she learned after she had been dismissed that Kim Gilloch was supposed to have been the individual over her when she was hired, to include taking her to the jitter department and introducing her to her assignment, however she did not do so. The afore task was done by Ms. Ward. Claimant maintains that Danny Austin was Ms. Ward's supervisor.

Claimant acknowledged that after she finished her workday at American Greetings on Monday, she was contact by respondent-employer. Claimant's testimony reflects, regarding her contact with respondent-employer:

The lady called me and she asked, she asked to speak to me and I said, This is she, and she said, Darlene, you don't have to go back to AG, they no longer need you anymore. I said, they don't? Why? She said, you just don't have to go back. That's what she said. (T. 30).

As a result of the telephone conversation claimant testified that she considered her employment terminated.

The testimony of the claimant reflects that she was seen by Dr. Lin, a Osceola physician, on three (3) occasions regarding her injury. The firsts visit were pursuant to the directions of respondent-employer, and the last visit on her own. Claimant acknowledged that the August 3, 2007, report of Dr. Lin reflects a diagnoses of a sprained left shoulder. The testimony of the claimant reflects that when she returned to Dr. Lin on August 10, 2007, x-rays were obtained and she was referred to an orthopedic physician. Claimant's testimony reflects that while she made an appointment with the orthopedic physician, she cancelled her appointment. Claimant testified that while she did not have health insurance, she had a way of paying for the orthopedic

appointment and diagnostics, in that someone was going to take care of it for her. (T. 31).

The testimony of the claimant reflects that on June 18, 2008, she was seen by a family health doctor in West Memphis. The testimony of the claimant reflects that the afore was an examination to which she had been referred by Social Security. Claimant concedes that she has not been seen by any other physician relative to her injury since the August 2007, visits to Dr. Lin.

In describing her present symptoms and complaints attributable to the July 2007, work injury, claimant's testimony reflects:

Ever since the injury, it gradually, I noticed that I cannot, I can hold certain things in my left arm, the injury side, I cannot raise it up to comb my hair. I cannot swing it out to my side. It gets numb at times, and I always slept on, Lawyer Burton, I always slept on my left side ever since I've known I was in this world. But not I have a hard time sleeping on my left side.

Sleeping on my right side is not as easy, but I try to lay on it anyway, because I know if I lay on my left side, I have problems. There are times that I have went to have my, you know this is kind of embarrassing, because I don't like to have no one paying my bills, but I have had EOC in Osceola they have paid a couple of my light bills and she's a witness to me dragging myself down there, because she's not allowed to come to the house to take care of nothing like that. I have to go to her. And, I have ordered on my own, I got a rail too, one by the commode in my bathroom and one by the tub because it's hard for me to climb in and out. I use it both to get in and both to get out. I have numbness where sometimes I lose my balance. So I try to walk closer to a pole, like an old person, and I'm not old. I try to walk closer to a pole or rail or the wall. When I wake up in the morning sometimes, I just can't jump up out of the bed. Someone ringing the doorbell, it takes me a long time to get to it because I just can't jump up like I used to. (T. 32-33).

In describing other physical complaints, in addition to her left shoulder and arm, attributable to the July 2007, work-related injury, claimant testified:

I cannot squeeze like, if you put a ball in your hand and squeeze. I cannot hold my skillets. I have got iron skillets. I cannot hold them in my left arm because they are heavy. But I can, I can hold it in my right hand, but not long. It seems to mess up my mind because, this is embarrassing too. I have put milk in the oven, this is true. I have put an empty skillet when I have, you know, cleaned it out. And I realized that, this is not where it is supposed to go. I have put a skillet, dishes in the refrigerator. You know, it just, this injury has really messed my mind up. I cannot think the way I should think. (T. 34).

Regarding the pain in her left shoulder, along with other symptoms, the testimony of the claimant reflects:

Yes, sir. It's not on a daily basis, but you can say that because I cannot sit back to nothing hard. It has to be something cushioned. And I can't raise it up, period.

I have numbness in both [left arm and hand]. I don't know when its coming. It comes and, I don't know - - it's not something that I know is, it's 12:00 now here it comes. I don't know when it's going to come. It comes unexpectedly. (T. 34-35).

The claimant testified regard other complaints attributable to the July 2007, work-related injury:

Okay. My leg gives out on me sometimes. I lose my balance, it gets numb. I have, when its like that I get out of breath sometimes when I walk as far as where I live to my mailbox, which that's not far. But sometimes I just, I have problems with my leg. It hurts sometimes. Sometimes I can't even hardly raise it up.

It's on the left. Every now and then I have trouble with my right leg because, Lawyer Burton, as you went back there to that door, pushing those boxes and cart, was just, wasn't just a woman's job. I ain't going to say it wasn't for me, it just wasn't a woman's job and I feel like I should have had help or a man should have done it.

Every now and then I have problems with my neck. Every now and then I hurt. It all depends on the sitting position or when someone, I'm talking to someone, like I'm looking at you right now, I'm looking straight at you but if you was sitting on that side and I had to turn and I had to talk to you I couldn't do it long. (T. 35).

Claimant concedes that after leaving the employment of respondent she did continue to substitute teach periodically. The claimant testified:

Periodically, yeah. They called me on a daily basis. Lawyer Burton, most of this, you know, you are familiar with subs, they call you when you are needed.

And I was needed on a daily basis because my needs was requested by teachers and a lot of time I got in trouble, not with the teachers or the school, but I got in trouble with sub teach, that's a program that's over all the schools now. I got in trouble with them, because they sent me two letters saying that they didn't like where I was, they called me and I won't go.

Well, there was times that I couldn't go. And I made my mind up that my body was just more important. If it gets where I can't do anything then who's gonna be there for me. So I decided, that I just couldn't go. Sometimes I wasn't even able to get out of the bed. They didn't understand that like I thought they should, so . . . (T. 36).

The testimony of the claimant reflects that school started in August 2007, and continued until May 2008. Regarding the number of times she work as a substitute teacher, the testimony of the claimant reflects:

Well some months its not the same because some months I was able to sub longer, maybe 10 or 15 days, but not in a row. Some, that I wasn't. Some might have been two days out of a month or three days out of a month. All of it would depend on, and a lot of times I went to work, Lawyer Burton, I wasn't feeling up to it, but you know when you got someone who requests for you and you love working with people as far as teachers and children, it's hard to say no. And a lot of times it hurt me to say no but I had no choice. But the times that I did say yes, I really didn't need to be there. (T. 37).

Claimant was paid \$60.00, per day as a substitute teacher.

Claimant acknowledged that she operated a small t-shirt business. Initially, clamant testified that she had not been able to do anything with the business. Later, the claimant conceded:

Okay. Now, I did, someone was having a birthday party and I did a shirt, I think back in January, and one shirt for their child. And I did, but I don't think I have done nothing since. (T. 38).

The testimony of the claimant reflects that while some substitute teachers are hired during the summer, she did not seek employment. Claimant explained that she was not physically able to do it.

During cross-examination, claimant acknowledged that she worked other jobs in the past. One such job was at Family Dollar Store, which was seasonal from October to December. The testimony also reflects that during one summer claimant was employed at Wal-Mart. Claimant conceded that periodically she would take on extra jobs in addition to the job with the school district.

Claimant acknowledged that through her employment with respondent-employer she was assigned to American Greetings. Further, claimant testified that the first job she worked at American Greetings during the assignment was stripping. Claimant acknowledged that she refused to do the lifting in the stripping job. Claimant worked in stripping until July 25, 2007. Claimant did not have any physical problem in the stripping job.

Claimant denied that she objected to lifting duties while assigned to the A70 machine. Claimant acknowledged voicing that she felt liked she should have more frequent breaks. The testimony of the claimant reflects that she July 26, 2007, she worked the A70. While the claimant started the day on July 27, 2007, on the A70, later that day she moved back to stripping. Claimant testified that on July 28, 2007, she worked overtime on stripping. The testimony in the record reflects that prior to July 30, 2007, claimant worked all day on July 25, and July 26, 2007, on the A70 and approximately four hours on July 27, 2007, on the A70 machine.

Claimant acknowledged that she did not report that she had injured herself at the time of the July 30, 2007, conversation with Ms. Paulette Ward, only that her body was feeling funny and requested to be moved to a different machine. The testimony in the record reflects that there was a meeting in the department on the morning of July 30, 2007. Claimant conceded that during the meeting there was one employee who discussed her dissatisfaction with the A70 machine. Claimant acknowledged that she did not mention during the meeting that she was having problems attributable to A70 machine. When questioned regarding the afore, claimant testified:

That wasn't the time to mention it.

When, I was going to mention the injury part, that's not, that wasn't the plant's business. It was only between my supervisor and I. (T. 47).

Claimant was questioned regarding those aspects of her job duties which resulted in her leg complaints:

What employment duties? The lifting, the lifting over my head, over and over and 19 minutes for lunch. Any time you, Lawyer White, I'm glad you asked that. Any time you are doing that type of job, where you are lifting, you just, it's like a motion job, left and right, left and right, left and right, left and right, and you do that from 6:30 until lunch time. Lunch time is at 11:30 and you didn't have a break, you have to hold yourself, you can't go to the bathroom, that was - - that was just too much. (T. 48).

Claimant maintains that other employees performing the same job that she was doing had more freedom because they had been there longer. Claimant acknowledged that she could not identify any specific moment when she hurt herself while working at American Greetings. Claimant attributes her injury to the cumulative effect of lifting all the pallets.

The testimony of the claimant reflects that she returned to substitute teaching on August

26, 2007. In describing her job duties as a substitute teacher, the testimony of the claimant reflects:

It varies. One was take the children, it all depends, I work with the first graders, you know, they have to have more attention. I would go and pick them up, well, I don't have to pick them up. I didn't have to pick them up no more. Usually, you have to pick them up in the cafeteria for breakfast.

Walk to the cafeteria and then go in the building and then take them, they go to the bathroom on their own. I usually did, I did mostly sitting because there was the option for me to sit or stand, so I did either of that. Most of the time the teacher, I didn't have to do nothing on the board because most of the time the teacher had it written out on a piece of paper. (T. 59-60).

The testimony of the claimant reflects that this is her first year working at the charter school, with students in grades 6 and 8.

Claimant testified that she is able to drive "sometimes". The testimony of the claimant reflects that she uses both hands when driving:

I have, I have both. I have this one, this is the one used for turning. And I use this to hold to the steering wheel with my hand. This hand. (indicating). (T. 64).

Claimant's testimony reflects that her ability to turn her neck to look behind her is limited, responding:

Depending on what side you are talking about, Lawyer White. (T. 64).

The claimant testified that the children of her fiancée are no longer staying with her because she does not feel that she is capable of taking care of them. Claimant distinguished her ability to perform her job duties as a substitute teacher caring for children over an eight hour period and the children of her fiancée left in her charge:

Because, I didn't have to cook at the school. I didn't have to make sure that, I'm very ticky at home. I didn't have to go in the bathroom with them and get their bath water and at school, it was just different. It wasn't the same responsibility as far as, you know, it was different. And then my two would have to, I didn't want them staying stuck up in the house with me all day, that wasn't right for them. They need to be outside because they're children. So I didn't want to ruin their responsibility as a child. They needed to, you know - - (T. 65).

The children were ages 8 and 9, and are now living with their aunt.

Respondents put forth the testimony of Steven Dwayne Turnage, a licensed private investigator, who is employed by Hubb Enterprises. Mr. Turnage testified that he has worked as a private investigator since 2003. Mr. Turnage's testimony reflects that within the course of his employment with Hubb Enterprises he received an assignment to conduct a surveillance on Darlene Rodgers, the claimant, whom he identified at during the hearing. The surveillance of the claimant was conducted on February 21, and February 22, 2008. Mr. Turnage testified that they were authorized 16 hours of surveillance over the two day period.

Mr. Turnage's testimony reflects that video surveillance of the claimant's activity was obtained. Mr. Turnage testified, regarding the afore:

I can, I've got my notes from my report with me. I can tell you the amount from each day. Four minutes and 18 seconds on the 21st, approximately. And then on the second day, six minutes and 50 seconds, and that includes areas video shots the we shoot periodically. (T. 82).

Mr. Turnage testified regarding his observation of the claimant during the surveillance:

Sure. On both days she traveled from her home to school locations in Osceola. And during both of those days when I observed her get to the school and she would get out of her vehicle, she used both of her hands and arms when she was getting out of the car. Going into the building, she always carried her purse, that was a handbag with some handles on it, over her left arm. The first day carrying a jacket and also had a sack lunch or something, something in a brown

paper bag in her left hand. (T. 83).

Mr. Turnage's testimony reflects, regarding his observation of the claimant's activities using the left upper extremity:

I believe so. On the second day she traveled to what I believe is the high school. I've got the notes in here, I can look up the actual name of it if I need to, but it was out off the came road that the other school was on, she'd gone to the first day. And on both days in the parking lot, I'm at a school, we try to keep a distance when we're around where children are going to be. We don't like to be in parking lots where kids are around and we're shooting video and that kind of thing. So at most schools I noted that she pulled into the parking lot and she always reversed to park. Would reverse park into a parking space. I'm not sure why.

The first day she had pulled in all the way in the lane at the, I think it's the middle school and stopped where that lane ends and I'm not sure if it was because there was a bus there. There was a bus lane nearby, or if there was traffic, but backed up the distance of that lane and into an open parking space. The second day, at the high school, it's wide open. The school administration building's on the right and as I was approaching at some distance because of the openness of the area, getting ready to try to speed up and get up where I can see what's going on, she's already pulled into the parking lot. And I observed her reversing as a pretty quick rate of speed and then determined that she had also reversed parked into a parking space where there was a pole. And first day, there was a sign behind her vehicle where she reversed parked; the second day was reversed parked up to a pole. (T. 84-85).

Mr. Turnage also testified regarding the placement of the claimant's hands while driving and her use of her left upper extremity as reflected in the video surveillance. (RX. #1).

The medical in the record reflects that the claimant was seen by Dr. Chinc-Shan Lin on August 3, 2007. Pursuant to his examination of the claimant during the August 3, 2007, visit, the claimant's complaint was diagnosed as a sprain left shoulder, for which provided medication to include Meldrol Dosepak, Motrin, and Robaxin. The claimant was released to limited duty work

entailing lifting no more than 15 pounds on the left and done at shoulder level. Claimant was also directed to return to the clinic in one week. (CX. #1, p.1). The record reflects that the claimant was again seen by Dr. Lin on August 10, 2007. The clinic note relative to the August 10, 2007, visit reflects that the diagnosis was the same, that claimant was released with the same restrictions, that an x-ray had been obtain of the left shoulder, and that the claimant was referred to an orthopedic. (CX #1, p. 2).

Also included in the record is a DVD of approximately 10 minutes duration reflecting the claimant's activities on February 21, 2008, and February 22, 2008. A review of the video surveillance reflects that the same corroborates the testimony of Mr. Turnage regarding his observations of the claimant, particularly with respect to the use of her left upper extremity. In the video surveillance the claimant does not demonstrate any limitations or restrictions regarding her left upper extremity, neck, or lower extremities in her movements. (RX #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical and other documentary evidence, video surveillance, application of the appropriate statutory provisions, and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about July 28, 2007, the relationship of employee-employer-carrier existed among the parties.
3. On or about July 28, 2007, the claimant did not sustain an injury arising out of and in the coursed of her employment with respondents.

CONCLUSIONS

The claimant asserts that while within the course and scope of her employment with respondent on or about July 28, 2007, she sustained an injury to her neck/shoulder area, legs and left arm. Claimant seeks corresponding medical and indemnity benefits relative to the injury. Respondents deny that the claimant sustained a compensable injury, pursuant to Ark. Code Ann. §11-9-102 (4) (A).

The present claim is one governed by the provision of Act 796 of 1993, in that the claimant asserts entitlement to workers's compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In the instant claim, the claimant acknowledged that her claimed injury was not the product of a specific incident, but rather asserts that the same resulted from cumulative lifting, pushing, and pulling while discharging employment activities. Specifically, claimant attributes her injury to the time frame that she worked on A70 machine at American Greetings.

The credible evidence in the record reflects that the claimant was assigned to and discharged duties from the A70 machine on July 25, 2007, July 26, 2007 and for approximately 4 hours on July 27, 2007. Claimant asserts that she first noticed the residuals of her injury on Saturday, July 28, 2007. The claimant did not report her injury to supervisory personnel on Monday, July 30, 2007, although the evidence clearly reflects that she had ample opportunity to do so, particularly when during a meeting another employee complained of her difficulties with the A70 machine.

The claimant was directed to obtain medical treatment under the care of Dr. Lin by respondents once she reported her injury. The evidence in the record reflects that the claimant

was seen by Dr. Lin on two (2) occasions. Dr. Lin's medical records does not reflect the presence of objective findings establishing an injury. The records reflect a diagnosis of sprain left shoulder. The medical/clinic notes in the record do not reflect a diagnosis or complaint relative to the claimant's neck, legs or arm.

Since the claimant does not assert as specific incident accidental injury, in order to establish a compensable injury she must prove by a preponderance of the evidence the following factors under the "rapid repetitive motion" theory: the injury arose out of and in the course of her employment; the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; the injury was caused by rapid repetitive motion; the injury was the major cause of the disability or need for treatment; and the injury must be established by medical evidence supported by objective findings. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998).

In *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997), the court noted that the statutory definition of compensability contains many elements that simply are not susceptible of proof by medical evidence supported by objective findings. Further, the court noted that there will be times when a claimant's account of a work-related incident and the resulting injury is the only evidence available as to the causation between the two. The court concluded that in such cases the issue of causation resolves down to a matter of credibility. *Id.*

In the instant claim, I find from the evidence in the record that the claimant is wholly lacking in credibility. In her testimony before the Commission during the hearing, claimant frequently grimaced as to evidence pain, physical limitations and restriction. Claimant asserted an inability to turn her head to without moving her entire body to direction of the questioner.

Claimant even maintained difficulty standing to walk to the witness stand due to numbness in her leg, or the ability to extend her left arm for any appreciable distance from her body. Video surveillance of the claimant demonstrates an individual unrestricted in her movement of walking, bending, driving, turning her head, and in the use of her left and right upper extremities. If ever a claim warranted a referral to the fraud unit of the State Insurance Department, this is one that cries out, when the claimant's testimony under oath is compared to her actions on the video surveillance.

In the instant claim, the claimant has failed to sustain her burden of proof by a preponderance of the credible evidence that she sustained a compensable injury in the employment of respondents. Specifically, the medical evidence in the record is devoid of objective findings of an injury. This claim is respectfully dismissed and denied.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE