

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F512949

MARY A. SMITH, EMPLOYEE

CLAIMANT

**AMERICAN FUEL CELL &
COATED FABRICS, EMPLOYER**

RESPONDENT

**CROCKETT ADJUSTMENT,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JULY 14, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. C. Michael White, Attorney at Law, North Little Rock, Arkansas.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 17, 2008, the above captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing conference was conducted on October 11, 2007, and a Prehearing Order was filed on that same date. A copy of the Prehearing Order was marked as Commission Exhibit "1", and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including July 15, 2005.

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- 3) Claimant's temporary total disability rate is \$331.00 per week and the claimant's permanent partial disability rate is \$250.00 per week.
- 4) All issues not outlined herein are specifically reserved.

At the full hearing, the parties agreed to litigate the following issues:

- 1) Whether claimant sustained a specific incident compensable injury to her right shoulder on July 15, 2005. In the alternative, whether claimant sustained compensable gradual onset injuries to her right shoulder.
- 2) Whether claimant sustained a specific incident compensable injury to her right wrist on July 15, 2005. In the alternative, whether claimant sustained compensable gradual onset injuries to her right wrist.
- 3) Whether respondents are liable for reasonable and necessary medical treatment provided to the claimant for her injuries.
- 4) Whether claimant is entitled to TTD from the date she last worked to a date to be determined.
- 5) Notice defense.

At the full hearing, the claimant contended she sustained a compensable injury to her right shoulder on July 15, 2005. In addition, claimant contended she sustained a compensable injury to her right wrist as a result of the July 15, 2005, incident. In the alternative, claimant contended that she sustained gradual onset injuries to her right shoulder and right wrist. The claimant contended that she is entitled to all reasonable and necessary medical treatment, temporary total disability benefits, permanent partial

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disability benefits, and attorney's fees. The claimant reserved all other issues.

At the full hearing, the respondents contended that the claimant did not report an injury while she worked at AmFuel and has affirmatively raised the notice defense. Respondents also contend that the claimant did not sustain work related injuries to either her right shoulder or right wrist as a result of a specific incident or gradual onset.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder by either specific incident or gradual onset.
- 4) The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right wrist by either specific incident or gradual onset.

DISCUSSION

The claimant testified she began working for the respondent in October of 2004. Approximately nine months later, on July 15, 2005, the claimant testified that she injured her right wrist and right shoulder as a result of an incident at work. The claimant testified as follows regarding the incident in which she alleges caused her right shoulder and right wrist problems:

Q Now, Mary, tell the Judge what happened on or about July 15, 2005.

A I was working in my department, down under the cell. When I went to turn around to pull down my material that I have to work with, and when I got under there, there is a steel rod that goes between there and thing is like a train with a little opening to get up under there. I went to turn to pull it down real hard because you have pull it hard to make it stick. When I went to pull the other side down with both hands, my shirt got caught on the steel rod and I had to turn to try to wiggle it out. When I went to come out from under there, that's when I hurt my shoulder.

Q So, Mary, are you saying that you had to kind of jerk yourself to get loose from that? Is that correct?

A Yes, sir.

Q When that happened, did you feel anything?

A Yes, sir, a sharp pain.

Q A sharp pain? Where was the pain?

A In my shoulder blade on my right shoulder.

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Q Did you feel pain anywhere other than in your right shoulder?

A Right down along my right arm.

Q Did it go on down into your hand or wrist?

A Yes, sir, in my hand and wrist.

Q What were you feeling in that hand and wrist?

A Tingling and burning.

(T. pp. 14-15, lines 16-25 & 1-19).

The claimant testified that she did not immediately seek medical attention; however, the claimant testified she did first go see a doctor on August 1, 2005. The claimant testified that on August 1, 2005, she saw Dr. Antoon, but then later went to see Dr. Gati. The claimant testified that ultimately Dr. Gati performed carpal tunnel syndrome surgery and then later she began seeing Dr. Bryant. The claimant testified that Dr. Bryant also performed carpal tunnel surgery on her. The claimant testified that Dr. Bryant also ultimately performed surgery on her shoulder. The claimant also treated with Dr. Alfonso and received electro diagnostic tests.

The medical records show the claimant underwent right carpal tunnel release surgery on October 4, 2005, right shoulder arthroscopic surgery on April 19, 2006, and left shoulder arthroscopic surgery on May 31, 2006.

The claimant has filed this claim contending she suffered compensable injuries

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to her right shoulder and right wrist by either specific incident or gradual onset.

ADJUDICATION

First, claimant contends she suffered compensable specific incident injuries to her right shoulder and right wrist while working for the respondents on July 15, 2005. Claimant's claim is for injuries caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- 1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
- 2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- 3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102 (16), establishing the injury;
- 4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

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 meet her burden of

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proving by a preponderance of the evidence that she suffered any compensable injuries which arose out of and in the course of her employment with the respondents.

The evidence in the record shows that the claimant testified she sustained injuries on July 15, 2005, while working for the respondent; however, she continued to work for over two weeks before going to a doctor on August 1, 2005. One of the first medical records contained in the record after the claimant's alleged July 15, 2005, incident, was a report from Dr. Kenneth Gati dated August 23, 2005, found at Claimant's Exhibit 1, page 2, wherein Dr. Gati states:

Ms. Smith comes today to clinic for evaluation of her right shoulder and chest wall. She is a 48-year old female complaining of right-sided pain. She feels like it comes from her neck and down into her side. The patient also reports pain out in her shoulder. She denies any known trauma (emphasis added) and denies any known numbness or tingling.

In addition to the medical reports not corroborating the claimant's allegation that her injuries arose out of and in the course of her employment, I found the claimant's own testimony to be highly suspect and not credible. For instance, claimant testified that she told Dr. Gati of the alleged incident on July 15, 2005, and could not explain why it did not make it into Dr. Gati's report. Clearly, Dr. Gati's report is in direct contradiction to the claimant's testimony regarding the onset of her alleged symptoms.

The claimant's testimony is also suspect when comparing her statements to the

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report of Dr. Alfonso dated August 29, 2005, and contained at Claimant's Exhibit 1, page 3, which states:

Pt. is a 48 yr old woman sent in consultation by Dr. Gati for electrodiagnostic study. Pt. reports having history of an injury on 7/28/05 when she was getting dress [sic] and suddenly developed pain on her right arm and right breast. Pt. reports pain in the right arm and shoulders, than [sic] extends to the right hand.

This medical record from Dr. Alfonso is again in direct contradiction to the claimant's testimony. Also, once again, the claimant when reporting her problems to Dr. Alfonso never mentioned any work related trauma on July 15, 2005. It must be noted that the claimant acknowledges she did not seek medical treatment until August 1, 2005, which is much closer in time to the July 28, 2005, injury the claimant described to Dr. Alfonso. At times, even the claimant admitted that she did not have an onset of pain in her shoulder or arm until the incident where she was getting dressed for work on July 28, 2005:

Q Did anything occur while you were getting a dress?

A I was going to work.

Q And did you experience an onset of pain while you were getting a dress?

A Yes, sir.

Q Was that the first time that you had had pain in your shoulder or your arm?

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A Yes, sir.

(T. pg. 21, lines 4-12).

After the testimony above, the claimant then would go back and change her testimony that she had an onset of pain on July 15, 2005. The claimant's own waffling testimony and the medical reports lead this examiner to find that the claimant has failed to prove by a preponderance of the evidence that she sustained any compensable injuries arising out of or in the course of her employment with the respondent.

The claimant has also alleged gradual onset injuries to her right wrist and right shoulder. Arkansas Code Annotated § 11-9-102(4)(A)(ii) states:

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;

A.C.A. § 11-9-102(4)(E)(ii) states:

For injuries falling within the definition of compensable injury under subdivision (4)(A)(i) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

Still, for the claimant to prove a compensable gradual onset injury to either her right wrist or right shoulder, the claimant would have to prove by a preponderance of

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the evidence that her injuries arose out of and in the course of her employment. As stated above, and for the reasons outlined herein, I find that the claimant has failed to meet her burden of proof by a preponderance of the evidence with regard to her injuries arising out of and in the course of her employment. Therefore, I also find that the claimant has failed to prove by a preponderance of the evidence that she sustained compensable gradual onset injuries to either her right wrist or right shoulder.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered compensable injuries to her right wrist or right shoulder by either specific incident or gradual onset. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb