

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F704145**

ELLA SWINEY, EMPLOYEE	CLAIMANT
UNIVERSITY OF ARKANSAS AT LITTLE ROCK, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT

**OPINION FILED JUNE 3, 2008**

Hearing before the HONORABLE ELIZABETH W. HOGAN, on March 5, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. 11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on March 15, 2007, at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$186.00/\$154.00 in the event this claim is found to be compensable. Some medical expenses have been paid by the claimant's group health carrier, Qual-Choice.

The claimant contends she gradually developed symptoms with her right shoulder, arm, and hand as a result of her job duties as a housekeeper. Eventually, she had carpal tunnel syndrome (CTS) surgery and treatment for impingement syndrome of the shoulder by Dr. David Rhodes. She seeks payment of medical expenses and temporary total disability benefits from March 16, 2006 to a date yet to be determined.

The respondents contend there is no causal relationship between the claimant's job duties and her present condition. Dr. Rhodes' report of April 9, 2007 indicates a one-year history of symptoms with her hands and his report of July 2, 2007 indicates there was no history of a shoulder injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with the deposition of Sandra Vail incorporated by reference. Administrative forms and medical bills have been omitted from the exhibit packets. The Commission has two sets of forms – numbered and alphabetized. The numbered, or administrative forms, cannot be used in evidence of any fact stated in the report, Ark. Code Ann. §11-9-529(c). The alphabetized forms, AR-N, AR-C, AR-W, etc. can be used in evidence.

The following witnesses testified at the hearing: the claimant and her supervisor, Joseph Abbate. Sandra Vail is Mr. Abbate's supervisor.

The claimant, age 48 (D.O.B. June 27, 1959) has a tenth grade education. She denied any prior injuries to her upper right extremity and maintains that Dr. Rhodes' reports are in error. In the past she has worked as a housekeeper, warehouse order filler, nursing home aide, and laundress. She began work for the respondent-employer on July 3, 2006 performing janitorial duties at the law school. Her last day of work was March 15, 2007.

She saw her physician on March 15, 2007 for a gynecological problem and mentioned that she was having pain in her right arm for the past three to four months. However, Dr. Rhode's report shows a one year history of symptoms.

The claimant filled out an AR-C with the human resource department in April but her claim was denied.

Joseph Abbate testified there were four people employed in the custodial department and employees from the maintenance department would assist the custodians if there was a special function at the law school. The claimant had not complained of any problem performing her job prior to the time she filed her claim.

Mr. Abbate was the claimant's supervisor for about 3-1/2 months. The claimant left on March 15, 2007 for an appointment with her gynecologist and never returned to work. He doesn't recall the claimant ever reporting an injury to him. He received medical leave slips by fax and forwarded those to his supervisor, Sandra Vail, and to Robin Deen at Human Resources.

Mr. Abbate indicated he discontinued communication with the claimant after she filed a claim. Mr. Abbate testified he met with the claimant in Robin Deen's office to complete paperwork.

In her deposition, Sandra Vail testified she is the Assistant Director of the physical plant of UALR. Her office is located in the old Rick's Armory building. Joe Abbate's office is located at the law school and he reports to Ms. Vail.

The claimant was hired July 4, 2006. On average, she missed 4 days a month, using her sick leave. In April, 2007 Mr. Abbate contacted Ms. Vail, informing her that the claimant wanted to file a workers' compensation claim. Ms. Vail referred Mr Abbate to Robin Deen in Human Resources. The claimant signed the claim form on April 6, 2007. Thereafter, medical reports were received concerning CTS.

Ms. Vail did not recall any contact from the claimant about the injury or about returning to work.

#### **DOCUMENTARY EVIDENCE**

The claimant filled out an AR-N form on April 6, 2007, reporting overuse of the right arm on March 15, 2007. The Public Employee Claims Division form shows she notified Robin Deen on April 5, 2007. The accident was described as follows, "tried to pick up mop bucket. Had pain in arm

– pain continued – asked doctor about it durring (sic) visit for other reason.”

At page 12 and 13 of the claimant’s exhibits, the claimant provided a list of her job duties.

### **MEDICAL EVIDENCE**

The claimant is right-hand dominant.

The claimant saw her physician, Dr. Casper on March 15, 2007 to discuss some medical problems unrelated to this claim. While she was there, she mentioned symptoms the Doctor interpreted as “slight tingling in the thenar distribution of her right hand. Pulse/sensation otherwise normal except for slight decreased sensation of the right thumb.”

An EMG/NCV study, conducted March 29, 2007, was ordered by Dr. Casper. The report shows a history of “numbness, tingling in her right hand off and on for some time... She does custodial work and has a couple of floors that she cleans by herself... she has significant myofascial pain in her traps, occipital neuralgia.” Testing was interpreted as abnormal, showing moderate to severe right carpal tunnel syndrome.

The claimant was referred to Dr. David Rhodes for surgery on April 27, 2007. His report of April 9, 2007 shows a history of right hand pain and numbness for the past year. This means her symptoms began in April, 2006 which predates her employment with the respondent-employer beginning in July, 2006. He commented “I have spoken with the patient and reviewed her on the job duties. It is my opinion that greater than 50% of the patient’s symptoms are related to her job, which required repetitive motion of the hands.” On June 18, 2007 the claimant complained to Dr. Kevin Collins of neck pain and headaches.

On July 2, 2007, Dr. Rhodes recorded a history of right shoulder pain with overhead lifting. “She denies any specific traumatic event. She is also complaining of continued numbness and tingling in her fingers.” He diagnosed impingement syndrome. An MRI scan taken July 11, 2007 showed, “marked tendinosis of the supraspinatus tendon.” Dr. Rhodes prescribed steroid injections and physical therapy.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a gradual incident identifiable by time and place of occurrence

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or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements.

Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

According to the history of injury appearing in Dr. Rhode's reports, the claimant's CTS symptoms began prior to her date of hire. Her shoulder symptoms were not reported until after she left work and no history of injury was identified. Therefore, I find her present condition did not arise out of and in the course of her employment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-claimant existed among the parties on March 15, 2007.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that she sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge