

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205308

DEBRA J. MOORE, EMPLOYEE	CLAIMANT
MUELLER INDUSTRIES, EMPLOYER	RESPONDENT
RISK ENTERPRISE MANAGEMENT, CARRIER	RESPONDENT

OPINION FILED DECEMBER 19, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE SHEILA F. CAMPBELL,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE R. KENNY McCULLOCH,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal from an Administrative Law Judge's opinion filed March 11, 2003, finding that the claimant sustained a compensable gradual onset injury to her right arm, and that the respondents were liable for related medical expenses and temporary total disability benefits from August 7, 2001, through April 15, 2002. Based upon our de novo review of the record, we reverse the decision of the Administrative Law Judge.

Based upon our review of the evidence, we find that the claimant has failed to prove by a preponderance of

the evidence that her injury was caused by rapid repetitive motion. The claimant worked for the respondent as a bundle operator. Her job involved moving bundles of copper pipes through a large machine. She operated a panel console on the machine, attached stickers to individual copper pipes, pushed groups of pipes flush to feed them into the machine, and pulled pipes down a conveyor belt to feed them into the machine. These duties required her to walk from one end of the machine to the other at various intervals. The claimant fell and injured her left arm on July 27, 2000. She was off work completely following this injury through September 2000. She apparently worked on light or restricted duty until April 9, 2001. Dr. Moseley's note from that date states that the claimant's left elbow was no longer swollen and did not hurt, and that the claimant was "doing great" and was "back to normal." He released her to regular duty and the claimant returned to work performing her regular duties until September 11, 2001. On that date, the claimant reported a right arm injury to her employer and filled out a Form AR-N and a request for medical treatment. She stated in these documents that she sustained an injury to her right arm on July 1, 2001. The claimant was taken off work because of her right arm injury on September 28, 2001, and returned

to full duty work with regard to that injury on April 15, 2002. After the claimant was taken off work for her right arm injury, she received treatment for both her right arm and her left arm, including surgeries on her left arm on April 22 and November 22, 2002.

In order to establish compensability of an injury, the claimant must satisfy all the requirements set forth in Ark. Code Ann. §11-9-102 (Repl. 2002). See, Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995 (E317744). The claimant does not contend that the injury is identifiable by time and place of occurrence, but that the injury is a rapid repetition motion injury. In order to prevail on a rapid, repetitive motion claim, the claimant must prove by a preponderance of the evidence that he/she sustained an injury causing internal or external harm to the body which arose out of and in the course of their employment and which required medical services or resulted in disability or death; that the injury was caused by rapid repetitive motion; that the injury was the major cause of the disability or need for treatment; and must establish a compensable injury "by medical evidence supported by "objective findings". However, in addition to these requirements, if the injury falls under one of the

exceptions enumerated under Ark. Code Ann. § 11-9-102(5)(A)(ii), the "resultant 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)(Repl. 2002). If an employee fails to establish by a preponderance of the credible evidence any of these requirements for establishing the compensability of the alleged injury, he fails to establish the compensability of the claim and the claim must be denied. Reed v. ConAgra, supra.

In applying the controlling law under Act 796 of 1993 to the evidence in this case, the Commission is to strictly construe the Act. Ark. Code Ann. § 11-9-704(C)(3). Under the gradual onset exception to the specific incident requirement, the claimant must establish a causal connection between her injury and her employment by medical evidence supported by objective findings and she must establish that her injury is the major cause of her disability or need for treatment. We find that the claimant in the present case has simply failed to meet her burden of proof on the major cause requirement.

The claimant contended that her right arm injury resulted from overuse of her right arm due to the left arm

injury. The medical evidence does not support a finding that the claimant sustained a gradual onset injury. The critical time period in this case is the summer of 2001. The claimant asserted that her right arm injury onset date was July 1, 2001. A note dated April 9, 2001, from Dr. Claiborne L. Moseley stated that the claimant's left elbow did not hurt and was not swollen, and that the claimant was back to normal and doing great. Dr. Moseley released the claimant to regular duty. The claimant's contention that she could only use her right arm is contrary to the medical evidence, Dr. Moseley released the claimant to full duty on April 9, 2001. In short, the foregoing evidence does not support the claimant's contention that she was unable to use her left arm during the summer months of 2001 and had to over-use her right arm to compensate. However, even if that had been the case, we do not find that using just one arm would qualify the claimant's job as rapid and repetitive.

In Le v. Superior Industries, Full Commission Opinion filed February 12, 1999 (Claim No. E708248), the Commission determined that the claimant's position required rapid and repetitive motion sufficient to satisfy the Act where the claimant handled approximately 30 tire rims per hour for 50 or more hours per week. She processed

approximately 300 wheels per shift using essentially the same four steps: (1) lifting a wheel rim onto a table, (2) sanding the wheel with a circular motion, (3) deburring the wheel with a pneumatic grinder, (4) lifting the wheel onto a cart or bin. When the plant ran chrome wheels, the claimant was also required to use a four-pound stamper and a five pound shop hammer to mark each wheel. The tasks were clearly repetitive. The Commission applied the analysis of the Court of Appeals in Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998), to determine that the tasks were performed rapidly under the Act.

In Boyd, the Court of Appeals compared the duties of a worker who repeated a four-step metal fabricating process approximately 100 to 125 times per shift to the duties of a delivery man whose repetitive motions were separated by intervals of several minutes in the case of Lay v. United Parcel Service, 58 Ark. App. 35, 944 S.W.2d 847 (1997). In comparing these two situations, the Court of Appeals in Boyd found that the metal fabricating process involving 100 to 125 parts per hour was sufficiently rapid and repetitive to satisfy the requirements of Act 796 of 1993. In this regard, the Court stated:

...[i]n the instant case, the evidence is that the appellant's series of

repetitive motions were performed 115 to 120 times per day separated by periods of only 1.5 minutes, and we do not think that this brief interval rises to a period of "several minutes or more" as stated in Lay. Boyd, Supra, at 83.

In McDonald v. Tyson Foods, Inc., Full Commission Filed June 3, 1999 (Claim No. E713336), the claimant failed to satisfy the elements of proof for a gradual onset injury. In McDonald, the claimant's physicians opined that her work was conducive to or was sufficient to account for the claimant's clinical findings. However, this was insufficient to a finding that the claimant had satisfied the rapid repetitive motion element of proof necessary to prove the compensability of her claim. "Claimant must present more evidence than medical opinions linking her condition to her work." The claimant had failed to satisfy her burden of proof where there was no evidence with regard to the rate of speed within which the claimant performed the tasks of lifting the belts on the machine which she contended was the repetitive task responsible for her injury. On cross-examination, the claimant was asked how long it would take for her to lift the wire belts for bracing, to which she responded:

It depends on what kind of mood you are working in. If you are in a hurry, it's

going to take anywhere from ten minutes, maybe a little longer, but if you are just taking your time - I can't tell you how long it takes, I really can't. Because everybody is different and I haven't been doing that in so long and all.

In Rodman v. ACX Technologies, Full Commission Opinion Filed July 8, 1999 (Claim No. E804579), noted that the Court of Appeals has stated it "must consider the positioning of the part of the body as well as the number of movements the claimant has to undergo to determine if the movement is 'rapid and repetitive'." See, Patterson v. Frito-Lay, Inc., 66 Ark. App. 159, 992 S.W.2d 130 (1999). In Rodman, the claimant failed to prove a gradual onset cervical injury where there was no evidence as to the position of her neck or cervical spine during the repetitive tasks she performed with her upper extremities. The Commission also found that the claimant had failed to prove that the repetitive motions of her upper extremities were performed rapidly under the two-prong test set forth in Malone v. Texarkana Public Schools, because the claimant testified that "she had to be deliberate and careful in performing her job functions, but that she also tried to perform these deliberate and careful moves as fast as she could." The Commission stated that "this testimony does not

satisfy the rapid repetitive motion requirement. There is void from the record any persuasive evidence which would establish the speed at which claimant performed her job duties."

In High Capacity Products v. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998), the Court of Appeals affirmed the decision of the Full Commission finding that the claimant proved by a preponderance of the evidence that her job duties producing electrical meter boxes required rapid repetitive motion. In reaching this decision the Court summarized the following relevant evidence:

Moore, a thirty-eight-year-old woman, worked for appellant for approximately five years. She used an air gun to assemble blocks with a quota goal of one thousand units per day. She was required to assemble each block by using an air-powered appliance to attach two nuts to each block. She would hold the parts of the unit with her left hand and work the air gun with her right hand. She averaged using the air gun to attach one nut every fifteen seconds, according to the testimony of her supervisor. The majority of her time was consumed in this quota assembly. Her job required three maneuvers to be repeated in succession all day: assembling the separate parts, using the air-compressed equipment to attach the parts together with nuts, and throwing the units into a box.

In reaching its decision, the Court commented that "we believe that this is the most compelling case demonstrating

rapid repetitive motion presented to this Court to date.”  
Id. At 962 S.W.2d 831.

Our review of the testimony and the video demonstrates that the speed at which the claimant had to handle the copper pipes was moderate. The arm and hand motions required to manipulate the pipes through the various stages of the processing were not repetitive, but were quite varied and even irregular.

Therefore, after we consider all the evidence, we reverse the decision of the Administrative Law Judge. This claim is hereby denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.