

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106460

CARL R. STROUD,
EMPLOYEE

CLAIMANT

SB POWER TOOL CO.,
EMPLOYER

RESPONDENT

TRAVELERS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 26, 2003

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE PHILLIP CUFFMAN,
Attorney at Law, Maumelle, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an opinion and order filed by
the Administrative Law Judge on January 2, 2003. In that
opinion and order, the Administrative Law Judge found that
the claimant proved by a preponderance of the evidence that
he sustained a compensable aggravation of his preexisting
cervical spine condition on January 18 or 19, 2001. After
conducting a de novo review of the entire record, and for
the reasons discussed herein, we find that the decision of
the Administrative Law Judge must be reversed.

The claimant has been employed by the respondent since approximately 1979 or 1980 in the manufacture of power saws. The claimant originally worked in painting, but testified that for approximately the last 11 years, he had worked in "set-up."

The claimant testified that, when he awoke on January 19, 2001 at home after sleeping approximately eight hours, he began experiencing pain in his neck with numbness in his right upper extremity. The claimant was ultimately diagnosed with disk abnormalities at the C5-6 and C6-7 levels of the spine for which Dr. Wayne Buffett performed a discectomy and two level fusion surgery on April 18, 2001. The claimant concedes that he did not begin to experience his symptoms at work, and the claimant acknowledges that his injury was not caused by a specific incident and is not identifiable by time and place of occurrence. However, the claimant asserts that he sustained a gradual onset work-related injury which combined with a preexisting condition to require treatment.

After reviewing the record, the Administrative Law Judge appropriately found that the claimant's injury was not caused by a specific incident or identifiable by time and place of occurrence. In addition, the Administrative Law

Judge found that the claimant failed to establish that rapid and repetitive motion was a required part of the claimant's job duties. Nevertheless, the Administrative Law Judge found that the claimant has established by a preponderance of the evidence that he sustained a compensable aggravation of his preexisting cervical spine condition on January 18 or 19, 2001.

As a threshold matter, we note that an "aggravation" is a new injury resulting from an independent incident. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W.2d 893 (1996). An aggravation, being a new injury with an independent cause, must meet the statutory requirements for a compensable injury. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). There are only two types of statutorily recognized compensable neck injuries. Those injuries are injuries caused by a specific incident and identifiable by time and place of occurrence, and injuries which are not caused by a specific incident and are not identifiable by time and place of occurrence but which are caused by rapid repetitive motion. See Ark. Code Ann. § 11-9-102(4)(A)(i) and (ii)(a). Therefore, the Administrative Law Judge clearly committed legal error in finding that the claimant failed to establish that his

injury was caused by either a specific incident or by rapid repetitive motion, but that the claimant has nevertheless established a compensable gradual onset neck injury. Since there is no dispute that the claimant's neck problems at issue were not caused by a specific incident and are identifiable by time and place of occurrence, the claimant can only establish a compensable gradual onset neck injury if he can establish the statutory requirements for an injury caused by rapid repetitive motion. See Hapney v. Rheem Mfg. Co., 342 Ark. 11, 26 S.W.3d 122 (2000).

In determining the definition of "rapid repetitive motion," the Commission must consider that multiple tasks involving different movements can be considered together to satisfy the repetitive element of rapid repetitive motion. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Moreover, the Arkansas Supreme Court has devised a two-part test to determine whether an injury is caused by rapid and repetition motion: (1) the tasks performed must be repetitive and (2) the repetitive motion must be rapid. Id.; Hapney, supra.

In the present case, the only repetitive work task which any witness described with any degree of clarity is the claimant's job duty of hanging pieces of steel on a

conveyor at a rate of 30 to 40 pieces per hour (i.e., hanging one piece of steel on average every one and one-half to two minutes). The claimant agreed with the claimant's attorney's assessment that the claimant's job as a "set-up man" included a number of things in addition to hanging steel, but the claimant failed to provide any elaboration what those tasks were except to note, by way of example, that "if a winder ran out of wire, I'd wire it back up, but mostly it was hanging metal."

Mr. Lee further elaborated that a set-up operator is present to do some tooling changes, to un-jam machines, and to re-load the machine and set it back up if the wire ran out. In addition, Mr. Lee testified that the set-up person would also relieve operators when operators needed to be relieved to perform personal functions.

On this record, and even considering the testimony regarding the claimant performing multiple job tasks, we find that the claimant has failed to establish that his job duties as described involved repetitive motion that is "rapid."

Because we find that the claimant has failed to establish by a preponderance of the evidence that his job duties for the respondent required rapid repetitive motion,

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we are constrained to find that the Administrative Law Judge's award of benefits in this case must be, and hereby is, reversed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.