

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209177

BARBARA DECKER, EMPLOYEE	CLAIMANT
McKEE FOODS CORPORATION, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED JANUARY 9, 2004

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

Claimant represented by HONORABLE JAY TOLLEY , Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed April 29, 2003.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 15, 2003, and contained in a pre-hearing order filed January 16, 2003, are hereby accepted as fact.
2. The parties' stipulation that claimant drew short-term disability benefits at the rate of \$130.00 per week from August 7, 2002 through October 31, 2002 and that as of November 1,

claimant began drawing long-term disability benefits in the amount of \$120.00 per month is also hereby accepted as fact.

3. The parties' stipulation that respondent is self insured for both group insurance and workers' compensation is also hereby accepted as fact.
4. The parties' stipulation that claimant earned an average weekly wage of \$222.20 which results in a compensation rate of \$148.00 per week is also hereby accepted as fact.
5. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her shoulder while employed by respondent.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the majority opining finding that claimant failed to prove that her gradual onset shoulder injury (rotator cuff tear) was caused by rapid repetitive motion.

Since claimant alleges a gradual onset shoulder injury, she must prove by a preponderance of the evidence that her rotator cuff tear was caused by job duties involving rapid repetitive motion. The specific job duties claimant alleges to have caused her shoulder condition entailed standing on her tip toes and reaching halfway across an assembly line to pull bad "cake" or product "real fast" into a waste barrel. Claimant testified that when she was performing this job duty, she was working as fast as she could. Even Kevin Stevens, production supervisor, testified that on a bad night, employees "may have to pull quite a bit of cake."

Admittedly, claimant was unable to detail exactly how many movements her shoulder had to make per hour or per minute during her shifts. Obviously, claimant did not have to perform these job duties unless the product was defective. Thus, there were times during her shift when she never had to perform this activity. However, in my opinion, the Act does not require that claimant must perform rapid repetitive motion for the entire shift. The Act requires only that the injury be caused by rapid repetitive motion. If claimant tore her rotator cuff as a result of rapidly and repetitively pulling bad cake on one occasion, she is entitled to compensation. Moreover, Dr. Scott S. Cooper, claimant's treating orthopedic surgeon, opined that her job duties were a "major factor" in developing the tear. Additionally, there is no reasonable nonwork-related explanation for claimant's injury.

Based on the above evidence, I find that claimant has met her burden of proof and would, accordingly, reverse the opinion of the Administrative Law Judge.

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SHELBY W. TURNER, Commissioner