

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204645

BOBBIE PEEL,  
EMPLOYEE

CLAIMANT

WHIRLPOOL CORPORATION,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED OCTOBER 4, 2004

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

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

Respondents represented by HONORABLE TOM HARPER, JR.,  
Attorney at Law, Fort Smith, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal part of an Administrative Law  
Judge's opinion filed September 15, 2003. The  
Administrative Law Judge found "The claimant has proven by  
the greater weight of the credible evidence that she  
sustained a compensable injury to her right shoulder during  
the course of her employment with respondent. Specifically,  
she has proven by medical evidence, supported by objective  
findings, the actual existence of a physical injury to her  
right shoulder in the form of supraspinatus tendinitis with  
a possible partial tear or puncture of the supraspinatus  
tendon. She has further proven by the greater weight of the  
credible evidence that this physical injury arose out of and

occurred in the course of her employment with this respondent, was caused by rapid repetitive motion, and resulted in internal physical harm to her body. She has further proven that this employment related injury was the major cause of her current need for treatment and her current temporary disability." After conducting a *de novo* review of the record, the Full Commission finds that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable right shoulder injury. Therefore, we reverse the opinion of the Administrative Law Judge.

I. History

The claimant, 52 years old, has worked various line jobs at Whirlpool since September 27, 1999. The claimant maintains that she sustained a compensable right shoulder injury while working for the respondents. She primarily attributes this injury to "end capping" job duties, which she contends involved rapid repetitive motion. During her deposition, and the hearing, the claimant described "end capping," "taping," and various other job duties that she performed during the course of her employment with the respondents. In addition, the respondents provided a

videotape that demonstrated the claimant's "end capping" and "taping" job duties.

On March 7, 2000, Dr. Shawn S. Miller treated the claimant for complaints of pain to her right shoulder. At this time, the claimant was diagnosed with "right subacromial bursitis." Dr. Miller wrote, " I think this is chronic. I do not think this is the acute pain she is experiencing. Ms. Peel (the claimant) does not desire to have any steroid injections. She says she is pretty much phobic about needles, so we will try to treat her conservatively."

Although the claimant was seen by several doctors between August 2001 and October 2001 due to problems with her wrist and elbow, there are no other medically documented problems with the claimant's right shoulder until October 31, 2001. At this time, the claimant complained to a Whirlpool nurse that she was having right shoulder pain, which was treated with an ice pack. A review of the claimant's medical records showed that she was not examined by a physician for complaints of shoulder problems again until February 26, 2002. At this time, Dr. Brian H. Rodgers wrote:

The patient comes in saying that she injured her right shoulder. In talking with her this has been a long term problem. She was here August of 2001 with a similar injury, indicating that at that point and (sic) time her most significant problem was with her right elbow and a ganglion cyst in the right wrist. She says that she did not really get her right shoulder dealt with, however, this has been bothering her on a regular basis since then...

Dr. Axelsen arranged AP and axillary views of the claimant's right shoulder, which were taken on March 7, 2002, with the following conclusions:

X-rays of the right shoulder showed AC joint arthritis. The glenohumeral joint looked normal. The acromiohumeral distance looked normal. There may be a small spur on the underside of the acromion."

Pursuant to the aforementioned diagnostic testing , Dr. Axelsen diagnosed the claimant with "right subacromial bursitis," and he wrote the following in medical notes which were also dated March 7, 2002:

The patient has stated multiple times today that she thinks her right shoulder injury is a Worker's Comp. injury. She states to me that it has been hurting since her elbow hurt her. I have looked back on my records, both at her fill in and my initial note on her and I don't see any indication that she mentioned her shoulder at that time, therefore I really don't have an opinion as to whether her shoulder is a Worker's (sic) Comp. injury related to her start of pain in her right elbow in the past.

In progress notes dated April 16, 2002, Dr. Heim wrote in part:

Bobby returns and her right shoulder and right elbow are still giving her difficulty. I have reviewed an x-ray that was done on March 6, 2002, showing inferior spurs, which I believe are giving her a rotator cuff tendinitis. More specifically, she has a tendinitis of the supraspinatus tendon. I feel she also has a lateral epicondylitis, which is a tendinitis involving the common extensor tendon. Both these are amenable to surgery, but certainly surgery is not mandatory. They are certainly consistent with a right hand dominate person doing physical activity.

I think these problems are job related... I think her primary problem is her rotator cuff tendinitis. Because of strength and motion I do not think she has a rotator cuff tear..."

A subsequent MRI report dated January 24, 2003 showed the following impression of the claimant's right shoulder:

Acromioclavicular hypertrophy. Acromial spur inferiorly appears to impinge on the supraspinatus tendon. There is also fluid in the subacromial bursa which makes this suspicious for focal perforation or focal tear of the... supraspinatus tendon.

A pre-hearing order was entered in this case on April 8, 2003. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing which was held June 17, 2003. Immediately prior to the commencement of the hearing the additional issue of the effect of the notice provisions

of Ark. Code Ann. §11-9-701 on the claimant's entitlement to benefits attributable for her alleged compensable shoulder injury was added by agreement of the parties. By agreement of the parties the issues to be litigated and resolved on June 17, 2003, were limited to the following:

1. Whether the claimant sustained compensable injuries to her right hand, right elbow, and right shoulder during 2001 and 2002.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability from March 26, 2002 through a date yet to be determined, and attorney's fees.

3. Whether the claimant unjustifiably refused suitable employment.

4. Whether the claimant is barred from receiving benefits for her shoulder difficulties, if held compensable, that accrued prior to May 25, 2002, pursuant to Ark. Code §11-9-701.

The claimant contended she was injured during the course and scope of her employment by repetitive motion injury. The claimant is entitled to draw temporary total disability benefits from March 27, 2002 until a date yet to be determined; that the claimant is entitled to medical treatment. Further, that the respondents have a job

available within the restrictions of the claimant but have refused to put her back to work.

In contrast, the respondents contended that the claimant did not receive the compensable injury, or injuries, as alleged; alternatively, that the claimant's job activity at Whirlpool was not rapid and repetitive; that the claimant did not prove compensable injuries by medical evidence supported by objective findings; that the claimant's alleged injuries were not the major cause of her need for treatment and/or alleged disability; Dr. Heim's recommended surgery for an arthritic acromial spur is not reasonably or necessarily related to a compensable injury. Further, a compensable injury is not the major cause of the claimant's need for surgery or any alleged disability as a result. Alternatively, the claimant is not entitled to temporary total disability benefits because at all times, she was offered employment within her medical restrictions but refused same. In WCC File E801598, the claimant contended bilateral hand injuries in 1994, which was subsequently settled by Joint Petition for \$10,000. Claimant had surgery on her left wrist by Dr. Heim and in 1997, he advised claimant against repetitive activity with either wrist.

After a hearing before the Commission, the Administrative Law Judge, found "the claimant has proven by the greater weight of the credible evidence that she sustained a compensable injury to her right shoulder during the course of her employment with respondent. Specifically, she has proven by medical evidence, supported by objective findings, the actual existence of a physical injury to her right shoulder in the form of supraspinatus tendinitis with a possible partial tear or puncture of the supraspinatus tendon. She has further proven by the greater weight of the credible evidence that this physical injury arose out of and occurred in the course of her employment with this respondent, was caused by rapid repetitive motion, and resulted in internal physical harm to her body. She has further proven that this employment related injury was the major cause of her current need for treatment and her current temporary disability." The respondents appeal to the Full Commission.

## II. Analysis

Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4) (A), defines a "compensable injury as":

(ii) 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[.]

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Malone, citing Baysinger v. Air Systems, Inc., 55 Ark. App. 174, 934 S.W.2d 230 (1996). However, proof of rapid repetitive motion is not required when a claimant contends that she sustained a compensable carpal tunnel syndrome injury. Kildow v. Baldwin Piano, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); Ark. Code Ann. § 11-9-102(16). Finally, 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); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

Although the Administrative Law Judge determined in the present case that, "The claimant has established by the greater weight of the credible evidence the existence of a causal relationship between the claimant's employment for the respondents and her current right shoulder difficulties in the form of supraspinatus tendinitis with a possible partial tear or puncture of the supraspinatus tendon," there is insufficient evidence to support such a finding. Specifically, it is noted that the claimant's development of acromioclavicular hypertrophy and the inferior acromial spur would not represent conditions associated with the claimant's employment with the respondents. Rather these changes appear to be the result of progressive degenerative arthritis and have developed over an extended period of time, as this condition and related symptoms were present as early as March of 2000. It is noted that this diagnosis coincides with Dr. Axelsen's subsequent diagnosis of "right subacromial bursitis." Specifically, the subsequent diagnostic testing and findings presented by Dr. Axelsen show that the major cause of the claimant's shoulder difficulty has resulted from progressive degenerative

arthritis in the form of "right subacromial bursitis" instead of her employment-related activities. More specifically, it is noted that the videotape of the claimant's job activities of "end capping" and "taping," and her description of these activities show that although these duties are somewhat repetitive, they are not rapid in nature. Therefore, the claimant has failed to show by a preponderance of the evidence that her work activities in the form of "ending capping," "taping," or any other job duties are of such "rapid and repetitive" nature so as to result in injury to her right shoulder. It is further noted that although Dr. Heim maintains that the claimant's shoulder difficulties are work-related, he even writes in notes dated October 8, 2002, "The spur off the inferior surface of the right acromion is wholly consistent with her age, she is 51 now." We find from this evidence that this condition was the result of degenerative arthritis. Moreover, it is also noted that the claimant admitted during deposition that Dr. Heim reached this conclusion that her injury was work-related based upon information provided to him by her concerning her work activities. As we noted supra, the claimant's work activity was not rapid and

repetitive. Therefore, we minimize the weight to be accorded to Dr. Heim's opinion.

Based upon our *de novo* review of the entire record, we find that the claimant has not shown by the preponderance of the evidence the existence of a casual relationship with her work activities and the difficulties with her shoulder. Nor has the claimant shown that any of her work activity was of such "rapid and repetitive" nature so as to result in injury to her shoulder in accordance with Act 796 of 1993. As such, it must be found that the claimant has failed to show by a preponderance of the evidence that her shoulder difficulties arose out of and in the course of her employment with the respondents.

Because we find that the claimant has failed to establish by the preponderance of the evidence that any of her work activity for the respondent required rapid repetitive motion, 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:

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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 opinion. I find that the Administrative Law Judge's finding that Claimant has proven the existence of a compensable injury to her shoulder caused by rapid and repetitive motion during the course of her employment should be affirmed. Based on my de novo review of the record, I find that Claimant has presented sufficient evidence to prove the requirements for a compensable injury as required by Ark. Code Ann. § 11-9-102(4) (A) (ii) (a).

Claimant, a 52 year old woman, has worked various line jobs at Whirlpool since September 27, 1999. She testified that she sustained a compensable shoulder injury due to her duties with Respondent which she contended were rapid and repetitive.

I find that the Claimant has proven the occurrence of a physical injury to her shoulder by the existence of medical evidence supported by objective findings. Claimant's medical records establish that her right shoulder difficulties take the form of supraspinatus tendinitis. Dr. Heim's diagnosis supports Claimant's subjective complaints and is consistent with Claimant's plain x-rays and an MRI study that was conducted on January 24, 2003. Dr. Heim's reports state that it is his expert opinion that the claimant's employment

activities played a causal role in producing the right supraspinatus tendinitis and possible tear or perforation of her tendon. In his report of April 16, 2002, Dr. Heim states that he thinks Claimant's condition is "definitely work related." Alternatively, Dr. Axelsen voiced no opinion concerning the cause of Claimant's right shoulder problems.

Likewise, I also find that Claimant's duties with Respondent were rapid and repetitive. During Claimant's various positions with Respondent, her duties included "end capping" and "taping." The Claimant testified that her problems with her right shoulder began in August of 2001. The medical evidence is clear that the Claimant was experiencing complaints with her right shoulder as early as March 7, 2001, which is only a little over five months following her hire date with Respondent. At that time, Claimant's shoulder difficulties were diagnosed as taking the form of subacromial bursitis, which involves the same area of the shoulder joint as the subsequently diagnosed supraspinatus tendinitis. However, the mere fact that the Claimant's difficulties are in part due to a degenerative arthritic condition, does not prevent an aggravation of her preexisting condition from constituting a compensable injury. Specifically, I find that Claimant's aggravation of her preexisting condition is the result of the rapid and repetitive motion of the Claimant's

arm. Any movement of Claimant's arm at the shoulder would cause the arthritic bone to rub against the supraspinatus tendon and thereby irritate and possible even partially tear or puncture the tendon.

The Claimant, during her deposition, when asked what her position was with Respondent when her right shoulder symptoms began, described her job duties as follows:

A. I had to tape one - - I had to tape the little part of that goes through the two doors, the little cardboard, styrofoam, that goes between the two doors. I was using three tape machines on those doors. And on the last machine I had to put two pieces of long tape and put it at the top of the refrigerators and pull it all the way back to make sure that the doors were secure.

Q. Was that above shoulder level?

A. Yes, it was.

Q. How many times a day did you do that?

A. I believe we --at least 600 times because I think we ran - between the I.D.I.s and the con doors we ran about 600 doors a night.

Q. So 600 times a day you were using your arms above shoulder level?

A. Yes.

Q. Including your hands?

A. Yes.

Q. And you were taping stuff on top of the doors?

A. Yes, taping and pulling.

Q. And what were you pulling?

A. I was pulling the two doors together and taping them to the very top of the refrigerator so that when they went up the ramp they wouldn't come off.

Based on Claimant's testimony regarding this position, she was lifting her arms above shoulder level 75 times per hour, assuming she worked an eight-hour shift. Therefore, I find that this frequent and prolonged employment-related movement was the major cause of her need for medical treatment and for any disability which she has experienced as a result of this condition.

Based on the foregoing, I find that Claimant has established by a preponderance of the evidence that she sustained a compensable injury to her right shoulder caused by her job duties that were rapid and repetitive. Accordingly, I would affirm the opinion of the Administrative Law Judge and must respectfully dissent.

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SHELBY W. TURNER, Commissioner