

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401435

MARK S. HUFF, EMPLOYEE	CLAIMANT
A B C SUPPLY COMPANY, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED AUGUST 30, 2005

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

Claimant represented by HONORABLE M. SCOTT WILHITE, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed December 8, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury to his right shoulder as the result of a specific incident identifiable in time

and place of occurrence at the workplace on January 20, 2004. Specifically, the claimant has failed to establish an injury supported by objective and measurable findings as required by the Act.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I respectfully dissent from the Majority opinion affirming and adopting the Administrative Law Judge's December 8, 2004 opinion.

The claimant has alleged that he suffered an injury to his right shoulder on January 20, 2004. At the time of his injury, the claimant was employed by the respondent employer as a delivery driver in their construction supply business. On the date in question, the claimant stated that he had lifted a bundle of shingles and carried them out to a customer. In lifting the bundle, which the claimant testified weighed approximately 80 pounds, he threw them over his shoulder and noted an onset of pain. He further testified that he expected the pain to go away when he put the shingles down but it did not. Instead, his shoulder continued to hurt through the rest of the day and the following day.

The injury occurred on a Tuesday. On the following Thursday, the claimant advised his immediate supervisor of his shoulder injury.

Respondent employer referred the claimant to Dr. Darlene Antosh, a general practitioner in Jonesboro, Arkansas. The claimant first saw Dr. Antosh on January 28, 2004. In her report of that date, she set out a history of the claimant's job related injury, diagnosed him as suffering from shoulder strain, and directed that he undergo x-rays and prescribed him certain medications. She also provided him a shoulder immobilizer and limited his activities. The x-ray, which was performed later the same day, did not reveal any abnormalities in the claimant's shoulder.

The claimant next saw Dr. Antosh on February 3, 2004. After noting that he was still suffering pain in the shoulder, she directed him to undergo physical therapy at the American Physical Therapy Center under the direction of Dr. Jim Keller. When the claimant's symptoms did not markedly improve after a few weeks of physical therapy, Dr. Antosh directed that he undergo an MRI scan of his shoulder.

The MRI scan was performed on March 29, 2004. The radiologist report of that date did not note any tear in the claimant's rotator cuff but did find minimal cystic

degenerative changes in his humeral head and an amount of subacromial bursal fluid.

Dr. Antosh later referred the claimant to Dr. Claiborne Moseley, a Jonesboro orthopedist. The claimant first saw Dr. Moseley on May 19, 2004. On that date, Dr. Moseley injected his shoulder area with Marcaine, Lidocaine, and Triamcinolone and directed that he return to physical therapy. The claimant returned to see Dr. Moseley on July 1, 2004. By this time, the respondent insurance carrier had ceased paying the claimant's medical and disability benefits. Apparently, the claimant requested Dr. Moseley prepare a medical report regarding any status of his injury and indicating that he was still unable to work. Dr. Moseley evidently took exception to this request and discharged the claimant from his care. In his medical report of July 1, 2004, Dr. Moseley recounts his conversation with the claimant regarding his request for information and also notes that he now has full passive range-of-motion. He also indicates that Dr. Keller believed the claimant had essentially normal function in his shoulder. In the conclusion of this report, Dr. Moseley referred the claimant

to Dr. Henry Stroope, another Jonesboro orthopedic surgeon for further evaluation.

The claimant saw Dr. Stroope on July 13, 2004. In his report of that date, Dr. Stroope notes that the x-rays of the claimant's shoulder indicated AC joint arthrosis cystic changes. His review of the claimant's shoulder MRI scan reflected supraspinatus tendonopathy. Later, Dr. Stroope would sign a statement to the effect that he believed, "to a reasonable degree of medical certainty" that the claimant's work injury of January 20, 2004 resulted in an injury to his right shoulder and that the presence of the injury was supported by the presence of objective findings. Dr. Stroope further recommended that the claimant undergo surgery to repair the damage he had ascertained.

The Administrative Law Judge, after reviewing the evidence introduced at the hearing, found that the claimant could not establish that he suffered a compensable injury. This holding was based, to a great degree, upon the Judge's conclusion that there was no objective evidence supporting the existence of a physical injury to the claimant. The Judge's opinion also suggests that the claimant was exaggerating his pain symptoms. However, in my opinion the

Administrative Law Judge has not given sufficient weight to the opinion of Dr. Stroope and his Opinion should therefore be reversed.

Dr. Stroope's report of July 13, 2004 clearly sets out objective findings to support the existence of an injury. That is, Dr. Stroope found that the claimant had tendonopathy and noted the presence of bursal fluid in the claimant's shoulder as found in the MRI. I believe that these are clearly objective findings which are sufficient to satisfy the requirements of the statute. Further, Dr. Stroope has opined, to a reasonable degree of medical certainty, that the detected abnormalities are the result of a job related accident. On that basis, it is my opinion that the claimant has met his burden of establishing a compensable injury.

While I realize that Dr. Moseley discharged the claimant, I do not believe that his final report should be given any great weight since he was obviously very angry with the claimant over his request for additional information. Dr. Moseley mentioned in his medical report that the claimant had spoken with "a number of attorneys," conduct which the doctor obviously disapproved. Also,

Dr. Moseley's July 1, 2004 report referred to a conversation with Dr. Keller, the claimant's physical therapist. Before this time, Dr. Keller's physical therapy notes frequently commented on the claimant's progress and how hard he was working. However, after the conversation with Dr. Moseley, the reports from Dr. Keller began to reflect negatively on the claimant. In my opinion, Dr. Moseley prejudiced Dr. Keller's view of the claimant.

For the foregoing reasons, I must respectfully dissent. The Administrative Law Judge's decision should be reversed and the claimant should be awarded the requested temporary disability benefits as well as additional medical treatment by, and at the direction of, Dr. Stroope.

SHELBY W. TURNER, Commissioner