

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403780

SHARON HASSLER,
EMPLOYEE

CLAIMANT

THOMAS & BETTS CORPORATION,
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 19, 2005

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

Claimant represented by the HONORABLE JOHN BARTTELT,
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE LAWRENCE WHITE,
Attorney at Law, Memphis, Tennessee.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed December 13, 2004. The administrative law judge found that "On March 23, 2004, the claimant sustained an injury arising out of and in the course of her employment." The administrative law judge found that the claimant proved she was entitled to temporary total disability compensation and reasonably necessary medical

treatment. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings.

I. HISTORY

Sharon Lynn Hart Hassler, age 45, testified that she began working for Thomas & Betts Corporation in May 2003. The parties stipulated that the employment relationship existed on March 23, 2004. The claimant testified:

Q. And tell us how you were injured on that date.

A. I was taking this part out of the water and I was picking it up to drain it and when I did my shoulder popped....

Q. Was it just one part that you were lifting out of this water?

A. Yes, sir, it was.

Q. Okay. And do you know how much this part weighs?

A. With water, I'd say around 40 pounds....

Q. Tell us exactly what happened when you got hurt.

A. I was taking this part that was full of water out and I was picking it up to drain the water out of the tank and when I did my shoulder popped.

Q. Which shoulder?

A. My right shoulder.

Dr. Michael D. Lack examined the claimant on March 25, 2004 and reported, "Ms. Hasler has worked at Thomas & Betts for a year in assembly. She was lifting parts when her right shoulder popped. This occurred on Tuesday....She is complaining of some tingling in the 3rd and 4th fingers of her right hand....She is diagnosed as a shoulder strain." The findings from an x-ray of the claimant's right shoulder on March 25, 2004 were "The joint is maintained. AC joint is preserved. Scapula appears grossly normal. CONCLUSION: Normal."

An MRI of the claimant's right shoulder was taken on March 30, 2004, with the following conclusion: "Evidence of mild tendinosis in the supraspinatus tendon, that may be related to the AC joint. Please correlate clinically. Small amount of fluid signal is seen in the subacromial bursa."

Dr. Lack apparently assessed on April 1, 2004, "MRI shows a downward sloping acromion with some tendonitis. No tear." Dr. Lack assessed "tendinitis," and the claimant continued to follow up with Dr. Lack.

A claims representative informed the claimant on April 14, 2004, "We will agree to pay your medical expenses incurred through 04/14/04, however, we will not be able to authorize further treatment under this claim (sic) and recommend that you file any additional billing, you may incur, with your group health insurance carrier."

The claimant was subsequently referred to an orthopedic specialist, Dr. Brian G. Dickson, who stated on April 29, 2004, "X-rays show no obvious bony abnormalities. MRI shows mild tendinosis in the supraspinatus tendon that may be related to the AC joint." Dr. Dickson assessed "right shoulder impingement." Dr. Dickson treated the claimant conservatively, but the claimant reported no improvement.

The claimant agreed on cross-examination that she began having neck pain after she saw Dr. Dickson. The conclusion from an MRI of the cervical spine without contrast on May 12, 2004 was "Mild degenerative disc bulging level C5 through C7, without significant spinal or neuroforaminal stenosis, however."

Dr. Dickson stated on May 18, 2004:

Sharon's MRI of her neck shows bulging discs at C5-C7 with mild degenerative changes in these without significant spinal or neuroforaminal

stenosis. I am still really unsure where her pain is coming from. I don't think she is going to need an orthopedic surgery. I am going to get her in to see Dr. Braden and see if he would want to do a nerve study or has any other options. I will see her back as needed.

Dr. Terence A. Braden, III, an osteopath and physical medicine & rehabilitation specialist, noted on May 20, 2004, "The shoulder examination does not reveal any evidence of distinct abnormality." Dr. Braden noted the following after physical inspection: "Cervical lordosis is slightly decreased. Shoulder heights are equal but she needs cueing to relax the right shoulder. I don't see any evidence of atrophy or fasciculations in the RUE or LUE. No swelling. No hyperhydrosis in the arm." Dr. Braden stated that the claimant's pain was "out of proportion to the usual musculoskeletal injury that is seen." Dr. Braden referred the claimant for injection therapy.

Dr. K. Dewayne Eubanks provided a neurological consultation on June 29, 2004:

I have reviewed her MRI scan on CD-ROM. I am concerned that it does not appear that they went all the way through the disc space on C7-T1. In addition, they did not label levels and there is no topogram anywhere, so I am assuming that the bottom level is C7-T1, because I believe I can see a small bit of the T1 rib. I do not see any frank disc herniation, etc. The foramen all look

spacious from C6-C7 up. There is some mild narrowing of the canal on the axials at C5-C6 but I do not think it is significant. The sagittals look fine at that level and axials are typically exaggerated in terms of stenosis on MRI.

Dr. Eubanks' impression was "I am really suspicious about a C8 radiculopathy and I cannot rule out presence of compression in the foramen at C7-T1 based on this study. I am going to ask Dr. Braden to perform EMG-NCV's to evaluate this and also, have a myelogram specifically looking at the C7 and the C8 roots on the right. I will see her back when those are done...." The claimant testified that she was unable to pay for electrodiagnostic testing and a myelogram.

A pre-hearing order was filed on July 20, 2004. The claimant contended that she "suffered a compensable injury on or about March 23, 2004 and is entitled to workers compensation benefits." The respondents contended that the alleged injury "was not the major cause of the claimant's shoulder pain, if any pain does exist. The MRI done March 30, 2004, revealed only degenerative changes which would have necessarily pre-existed the alleged date of injury. Furthermore, it is the contention of the employer that there are no objective findings of traumatic injury, or any other

injury which would support the employee's allegations of pain and claims for benefits" pursuant to Act 796 of 1993.

After a hearing, the administrative law judge found that the claimant sustained an injury "arising out of and in the course of her employment" on March 23, 2004. The administrative law judge found that the claimant was entitled to temporary total disability and reasonably necessary medical treatment. The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i). The

claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i).

In the present matter, the Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings. The claimant testified that her right shoulder "popped" as the result of a specific incident on March 23, 2004. Although Dr. Lack diagnosed "shoulder strain" on March 25, 2004, Dr. Lack did not report any findings of swelling, bruising, or any other objective medical findings. An x-ray taken on March 25, 2004 was entirely normal. An MRI study on March 30, 2004 revealed "evidence of mild tendinosis in the supraspinatus tendon, that may be related to the AC joint....Small amount of fluid signal is seen in the subacromial bursa." The Full Commission does not find that the "mild tendinosis" and "small amount of fluid signal" shown on MRI are objective findings establishing a compensable injury to the claimant's right shoulder occurring on March 23, 2004. Nor did any treating physician or specialist so find.

Dr. Lack assessed on April 1, 2004, "MRI shows a downward sloping acromion with some tendonitis. No tear."

Dr. Lack did not attribute his finding of "downward sloping acromion" to the March 23, 2004 specific incident. Dr. Lack did attribute the "tendinitis" in the right shoulder to the alleged accidental injury, and the Full Commission does not find that this degenerative condition established such an injury. Dr. Dickson, an orthopedic specialist, found "no obvious bony abnormalities" on x-ray and "mild tendinosis" as shown on MRI. Dr. Dickson did not report a "downward sloping acromion." We recognize that Dr. Dickson assessed "right shoulder impingement;" however, Dr. Dickson reported no objective findings from diagnostic studies or his physical examination of the claimant.

The claimant agreed on cross-examination that she began suffering from neck pain after treating with Dr. Dickson. The claimant did not testify that she injured her neck or cervical spine as a result of the specific incident occurring on March 23, 2004. Nor does the record indicate that the claimant injured her neck or cervical spine as a compensable consequence of the alleged injury to her right shoulder on March 23, 2004. In any event, a cervical MRI on May 12, 2004 showed degenerative disc bulging and did not establish a compensable injury to the claimant's right

shoulder. The claimant relies on Dr. Braden's May 20, 2004 report of "slightly decreased" cervical lordosis. This report does not establish a compensable injury to the claimant's right shoulder. The Commission notes from Dr. Braden's examination that there were no objective medical findings establishing an injury to the claimant's right shoulder; Dr. Braden specifically reported "no evidence of atrophy" in the claimant's right upper extremity and "no swelling."

Dr. Dickson stated in May 2004, "I am still really unsure where her pain is coming from. I don't think she is going to need an orthopedic surgery." Finally, the Commission notes Dr. Eubanks' suspicion in June 2004 that there was an abnormality in the claimant's cervical and thoracic spine. Even if additional testing did confirm an abnormality in the claimant's cervical or thoracic spine, such evidence would not establish a compensable injury to the claimant's right shoulder.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings. The Full Commission therefore reverses

the opinion of the administrative law judge. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I respectfully dissent from the majority opinion, which reverses the decision of the Administrative Law Judge (ALJ), finding that Claimant's March 23, 2004 established that she sustained a compensable injury by medical evidence supported by objective findings. I would affirm the ALJ's finding that Claimant is entitled to temporary total disability compensation and reasonably necessary medical treatment.

The Majority found that Claimant's injury to her shoulder was not supported by objective medical findings. I disagree and find that Claimant's injury is supported by objective medical evidence. First, Claimant's primary care

physician stated affirmatively that Claimant's injury was work related. Claimant's MRI revealed that she had a small amount of subacromial bursa fluid along with evidence of mild tendonosis and a downward sloping acromion. Later, Claimant was referred to Dr. Dickson who ordered a cervical MRI. That MRI revealed that a mild degenerative disk bulging at levels C-5 through C-7. These findings are objective and not capable of being manipulated by the Claimant. Likewise, the record is void of any evidence that Claimant was suffering from any of these conditions prior to her work injury.

For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner