

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212591

VERNON LOCKETT,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 21, 2005

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

Claimant represented by the HONORABLE NELSON V. SHAW,
Attorney at Law, Texarkana, Texas.

Respondents represented by the HONORABLE WILLIAM G. BULLOCK,
Attorney at Law, Texarkana, Texas.

Decision of administrative law judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed September 13, 2004. The administrative law judge found, "the claimant satisfied by a preponderance of the evidence the elements necessary to establish a compensable injury to his left shoulder." 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

The record indicates that the claimant began working for Cooper Tire & Rubber Company in July 1981. The claimant sought emergency treatment in February 1998 for neck and bilateral shoulder pain after a motor vehicle accident. An emergency physician's impression was "Status post MVC with neck strain." In March 1998, the claimant reported "more discomfort in the trapezius area, near the right shoulder." The record indicates that a chiropractor diagnosed "cervical strain" in March 1998, and that the claimant began a course of chiropractic treatment.

The claimant sought emergency treatment in December 2000 for low back and shoulder pain. The claimant reported that he was involved in another motor vehicle accident, and he complained of soreness in his left shoulder. A physician assessed "tendinitis" in the claimant's right shoulder in July 2001. The claimant underwent right-shoulder surgery in August 2001. Dr. Barry M. Green pronounced maximum medical improvement with regard to the claimant's right shoulder as

of February 11, 2002. Dr. Green assigned an 18% right upper extremity impairment rating.

The parties stipulated that an employment relationship existed on October 1, 2002. The claimant testified on direct examination:

Q. What specifically were you doing when this injury occurred?

A. Well, I was lifting. Well, I was building tires, and I went to pull some cord apart on the tire. The tack varies in the material and we overlap the first ply and second ply. And I reached up to pull the cord out to pull the tire. As I reached out to pull, the cord, it was stuck. When it's stuck, you just don't kind of pull on it because it will stretch the material. You've got to jerk on it. I was jerking the material loose, and I noticed that it had a sharp pain then. As I went ahead and I kept building, and I noticed that pain would increase also when I would pull the beads apart.

Q. Where was this pain occurring?

A. In my left shoulder.

The claimant filled out a WCC Form N on October 1, 2002, stating that he had injured his "left & right shoulders....while building tires...." The claimant provided similar information in an Employee Report of Injury or Illness. A Supervisor's Report on October 1, 2002

indicated, "Vernon strained or pulled something which caused his shoulders to hurt while building tires."

The claimant presented to Dr. Craig E. Ditsch on October 1, 2002:

Mr. Lockett is a 39 year old male that comes in with a history that he developed sharp pain in both shoulders while working today. This is a long, involved history, but apparently he had surgery on his right shoulder for debridement and a decompression. He was off work for a number of months subsequently. He has been back at work at least since August. He apparently was previously building a small tire, but because of changes in his machines he in the last couple of weeks been (sic) building a significantly bigger tire, 16" tire. He has to lift them overhead and he is complaining of pain in both shoulders. He has been told by his orthopedist that his shoulders are "worn out."

The physician's examination revealed "no crepitation or swelling." Dr. Ditsch assessed "bilateral shoulder/trapezius muscle pain." A radiology report on October 1, 2002 showed no radiographic bony or joint abnormality in either shoulder. On October 16, 2002, the claimant complained to Dr. Ditsch that the pain in his shoulders was worsening. Dr. Ditsch referred the claimant to Dr. John P. Young, who saw the claimant on October 22, 2002:

The patient denies any recent injury to the right shoulder in the past. About 1 yr ago I performed a shoulder scope with decompression and he was noted to have a biceps labral fraying which was treated with debridement. He states that now he is having some occasional pain.

Dr. Young assessed "mild pain, status post shoulder scope," and the doctor stated, "I do not see any significant limitations in his shoulder."

Mackie Tiner with Crockett Adjustment informed the claimant on October 25, 2002, "Upon review of the medical documentation received on the above injury as it applies to the Arkansas Workers' Compensation Law, your claim does not meet the criteria for a compensable injury. Therefore, we must deny your claim under workers' compensation. Bills for your initial treatment will be paid. All subsequent charges should be filed with your group insurance."

An MRI of the claimant's left shoulder was taken on November 19, 2002:

Mild hypertrophic degenerative changes are seen at the left acromioclavicular joint but no impingement is appreciated. The acromion has a normal appearance and no abnormalities are seen to suggest impingement. The rotator cuff is normal in signal and there is no evidence of rotator cuff tear. The glenoid labrum appears grossly intact. The bicipital tendon is normally positioned within the bicipital groove. No effusion is seen. No

fracture or dislocation is noted. Surrounding soft tissues are unremarkable.

The resulting impression was "Mild degenerative changes at the left acromioclavicular joint, otherwise normal MRI of the left shoulder."

Dr. Young wrote to the respondent-employer on November 26, 2002:

The patient is a 39 y/o male on whom I performed a right shoulder scope on August 31, 2001. At that point I treated him with a decompression. The patient initially improved and has now gradually improved, however he continues to have some occasional popping in this acromioclavicular joint. He now states that he injured the left shoulder on October 22, 2002 at Cooper Tire. He was referred to me for further evaluation of this left shoulder pain. At that point I felt that he had sustained a left shoulder contusion and we have treated him with physical therapy. He has gradually improved in physical therapy. Due to the fact that this progress was slow to improve, we got an MRI which showed no evidence of impingement and no evidence of rotator cuff tear. It does show that he has mild arthritis of the acromioclavicular joint.

On his physical exam he really had good range of motion and good strength.

I feel that, at this point, I would not recommend any surgical intervention in either shoulder. I feel that the left shoulder does have mild arthritic changes in the acromioclavicular joint, however it is not significantly symptomatic. I do not feel that surgical intervention is warranted at this time. I do think that the natural course of this shoulder is that he will

have intermittent occasional pain. However, again, I do not recommend surgery. From my standpoint I would allow him to return to work as tolerated.

The claimant presented to Dr. C.C. Alkire in January 2003 with complaints of "pain and problems in the right shoulder....He was recently having some problems with his left shoulder, too, but that apparently is not work related according to the insurance company." Dr. Alkire recommended an arthrogram of the right shoulder with a view toward possible additional right-shoulder surgery. The impression from a subsequent right-shoulder arthrogram was "The study is compatible with a small tear of the distal supraspinatus tendon." Dr. Alkire recommended additional surgery on the claimant's right shoulder. Surgery was performed in February 2003.

Dr. Alkire noted on March 3, 2003, "The patient returns for follow-up of injection of left shoulder. He brings today his MRI that he had had a report from last time. It does show he has impingement without a rotator cuff tear. Says if anything his shoulder is feeling a little bit better....I told him today we're just going to let things continue to heal."

Dr. Alkire reported on March 31, 2003, "Patient returns for F/U of left shoulder impingement syndrome. He says that his left shoulder almost hurts now worse than his right shoulder....The left shoulder today shows minimal tenderness to palpation over the anterior acromion with a positive CAR sign....This patient is probably going to need surgery on his left shoulder." On May 20, 2003, Dr. Alkire diagnosed "impingement syndrome with acromioclavicular joint arthritis, left shoulder." Dr. Alkire performed "1. Left shoulder diagnostic arthroscopy. 2. Acromioplasty. 3. Distal clavicle resection." Dr. Alkire stated on July 28, 2003 that the claimant could return to work at light duty.

Dr. Alkire filled out a written form with blanks on December 15, 2003. Dr. Alkire's handwriting appears to indicate that he had observed "objective findings" of "degenerative changes of AC joint (L)." Dr. Alkire wrote "yes" beside the statement, "The injuries of **Vernon Lockett** set out herein are consistent with the job-related injury as described by him to me during the taking of his history. It is my opinion that the injury to his left shoulder is the cause of **Mr. Lockett's** medical complaints."

A pre-hearing order was filed on April 14, 2004. The claimant essentially contended that he sustained an accidental injury to his left shoulder on October 1, 2002. The respondents contended that the claimant could not prove he sustained a compensable injury. The administrative law judge determined that the following issues would be litigated:

- (1) Whether the claimant sustained an injury to his left shoulder that is compensable under the Arkansas Workers' Compensation Act;
- (2) Whether the claimant was entitled to temporary total disability compensation; and
- (3) Whether the claimant was entitled to medical benefits.

The administrative law judge found, in pertinent part:

3. The claimant satisfied by a preponderance of the evidence the elements necessary to establish a compensable injury to his left shoulder;
4. The claimant is entitled to reasonably necessary medical treatment for his compensable left shoulder injury;
5. The claimant is entitled to temporary total disability benefits for the periods of time that he remained in his healing period and totally disabled from working;

The respondents appeal to the Full Commission.

II. ADJUDICATION

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence. Act 796 of 1993, as codified at 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[.]

The employee must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i). In addition, 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).

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 first complained of bilateral shoulder pain in 1998 after a motor vehicle accident. The claimant complained of left-shoulder soreness in 2000 after another vehicular accident. The claimant testified that he hurt his left shoulder after lifting tires on October 1, 2002.

Nevertheless, the evidence of record does not show any objective medical findings establishing a compensable injury to the claimant's left shoulder. The examination of Dr. Ditsch on October 1, 2002 revealed "no crepitation or swelling." X-rays on October 1, 2002 showed no radiographic bony or joint abnormality in either of the claimant's shoulders. An MRI was taken in November 2002, with the findings, "Mild hypertrophic degenerative changes are seen at the left acromioclavicular joint but *no impingement is appreciated* (emphasis supplied). The acromion has a normal appearance and *no abnormalities are seen to suggest impingement.*" The MRI showed no evidence of rotator cuff tear, nor was there any indication of soft-tissue injury. The resulting impression from the MRI was "Mild degenerative

changes at the left acromioclavicular joint, otherwise normal MRI of the left shoulder." The record does not demonstrate that the mild degeneration seen in November 2002 resulted from an October 2002 accidental injury. The Commission notes Dr. Young's subsequent statement in November 2002, "I felt that he had sustained a left shoulder contusion." However, there were no objective physical findings showing such a contusion.

The claimant began treating with Dr. Alkire in January 2003. Dr. Alkire wrote in March 2003 that the MRI showed "impingement without a rotator cuff tear." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). The Commission notes that the only MRI in the record, that is, from November 2002, specifically reported "no impingement." We must therefore assign minimal weight to Dr. Alkire's speculation in March 2003 that the claimant suffered from a left-shoulder impingement. The Commission also notes that Dr. Alkire did not report an impingement in his May 2003 surgical report; nor were there any other reports of objective medical findings shown at surgery.

Finally, the Full Commission notes that the "objective findings" pointed out by Dr. Alkire in December 2003 were "degenerative changes of AC joint (L)." As we have stated earlier, the record does not demonstrate that the degeneration seen in the claimant's left shoulder resulted from an injury occurring on October 1, 2002.

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 denies the claim pursuant to the statutory provisions of Act 796 of 1993. The decision of the administrative law judge is reversed, and this claim is denied and dismissed.

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.