NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500021

STEVE CRAWFORD, EMPLOYEE	CLAIMANT
SUPERIOR INDUSTRIES, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 1, 2006

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

Claimant represented by the HONORABLE KENNETH OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed August 10, 2005. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.

2. On October 28, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a comp rate of $360.00 for temporary total disability and $270.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his neck and left shoulder while working for the respondent on October 28, 2004.

5. The claimant has proven by a preponderance of the evidence that his left carpal tunnel syndrome is a result of his work for the respondent.

6. The respondents should pay for the medical treatment for this claimant’s compensable injuries.

7. The respondents should pay temporary total disability to this claimant from December 20, 2004, to a date to be determined.

8. The respondents have controverted this claim in its entirety.

9. The claimant’s attorney is entitled to the maximum statutory attorney’s fee based on the benefits awarded herein.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the August 10, 2005 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2002).

Since the claimant’s injury occurred after July 1, 2001, the claimant’s attorney’s fee is governed by the provisions of Ark. Code Ann. §11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. §11-9-715 (Repl. 1996) with Ark. Code Ann. §11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of $500.00 in accordance with Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

____
OLAN W. REEVES, Chairman

____
SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion. My carefully conducted de novo review of this claim in its entirety reveals that the claimant has proven by a preponderance of the evidence that he sustained a temporary injury to his shoulder in the form of muscle strain on October 28, 2004. However, I find that the claimant has failed to prove that his current shoulder problems for which he now seeks medical benefits are causally related to his compensable shoulder strain. Moreover, I find the claimant has failed to prove that he sustained a compensable neck injury and/or left carpal tunnel syndrome as a result of the October 28, 2004, incident, in that there is no evidence of

a causal connection between the incident and the claimant’s alleged neck problems and/or his carpal tunnel syndrome.

In the process of flipping a mold over, the claimant alleges the mold twisted, causing his shoulder to pop. The claimant stated that he felt immediate stiffness in his left side following this incident. The claimant reported the incident to his supervisor, John West, and sought medical treatment that same day. A clinic note dated October 28, 2004, reflects that Dr. Garland Thorn examined the claimant for his alleged injury and took an x-ray of the claimant’s left shoulder, which showed no dislocation. Dr. Thorn diagnosed the claimant with muscle strain, for which he prescribed Bextra, an arm sling which the claimant was to wear for one week, and he restricted the claimant to no lifting with his left arm for one week. The claimant was not taken off of work at that time.

The claimant was seen the following day at the emergency room of Washington Regional Medical Center by Dr. Steve Rose for persistent left shoulder pain. The claimant denied experiencing elbow, wrist, hand, and finger pain at that time. Further, Dr. Rose noted no deformity, ecchymosis, swelling, hematoma, or muscle atrophy in the claimant’s left shoulder. The claimant’s distal pulse,

distal motor, and distal sensory impulses were intact, and his capillary refill was less than 2 seconds. Dr. Rose confirmed Dr. Thorn’s diagnosis of muscle strain with spasms. The claimant was sent home with medications and told to rest until he returned to work on Monday. Further, Dr. Rose instructed the claimant to keep his left arm in his sling, and not to use his left arm and shoulder for one week.

On November 4, 2004, the claimant returned to Dr. Thorn, who ordered an MRI of the claimant’s left shoulder. This study, which was conducted on November 10, 2004, revealed degenerative changes of the claimant’s acromioclavicular joint without significant mass effect, and arthritic changes of the claimant’s bone marrow edema, indicative of acute inflamation involving the left acromioclavicular joint. Based upon these findings, Dr. Thorn continued the claimant in an arm sling, and further restricted him from the use of his left arm and shoulder.

The claimant was next seen by orthopaedic specialist, Dr. Raye Mitchell. In his clinic note dated November 22, 2004, Dr. Mitchell wrote:

> Steve [the claimant] is seen today. He has an injury to his left shoulder he says occurred at work. He was taken care of by Dr. Thorn. He has a MRI indicating severe AC disease and that is where he hurts.

Dr. Mitchell injected the claimant’s shoulder with Depo-Medrol and Lidocaine, and continued him on light duty for one month. In an addendum to his clinic note of November 22, 2004, Dr. Mitchell wrote:

> Steve also reports that he has a lot of numbness in his hand and wrist pain. He says that this radiates up his arm at times. I don’t know if there’s a relationship between this and his shoulder pain or not but I think given that he’s had complaints of that for a multi-year period of time, an NCV would probably be in order to see if that’s a contributing factor here or see if any roots further up in his shoulder or neck appear to be irritated ... .

On December 14, 2004, the claimant was seen by Dr. Miles Johnson for an EMG/NCV study. These studies revealed moderate to severe left carpal tunnel syndrome, with probable left C5-C6 radiculopathy. In his summary report of his examination of the claimant, Dr. Johnson stated that the claimant had complained of a six month

history of left wrist pain that radiated to his left upper extremity. Dr. Johnson continued his report as follows:

> He notes intermittent numbness involving the left hand, which is frequently present with activities such as driving. There are increased symptoms at night as well. The patient states that the shoulder pain began approximately a month ago when he was working at Superior. **The hand symptomatology has been present for approximately six months**. (Emphasis added)

Two days after this examination, the claimant was taken from work by ambulance to Washington Regional Medical Center due to complaints of face and hand numbness. An MRI of the claimant's cervical spine conducted on December 16, 2004, revealed a small annular protrusion on the left at C5-C6, with left neuroforaminal narrowing at C6. However, there was no obvious neural impingement seen at that level. The following day, December 17, 2004, the claimant was seen by a neurologist, Dr. David Davis. In addition to hand and face numbness, the claimant reported numbness in his left arm and leg, as well as pain in his left shoulder and neck.

Dr. Davis opined that the claimant's left shoulder pain was probably arthropathic, although he could not rule out radiculopathy. Further, Dr. Davis opined that the claimant's neck and shoulder pain were job related, as was his left

carpal tunnel syndrome. Dr. Davis restricted the claimant to minimal pinching or gripping with the left hand, and he stated that there would be problems with the claimant doing heavy lifting or carrying, reaching, pushing, and pulling with his left arm.

The claimant testified that he was terminated from his position with the respondent employer after his December MRI because they could not accommodate his work restrictions.

> A. Well, when I left there I was on restricted duty.
>
> Q. Exactly. And when they made the decision not to cover this under workers' comp, that's when you no longer worked restricted-duty work; isn't that correct?
>
> A. I wasn't allowed to go back. I was told to go home.

The testimony of Ms. Dawn Day, who is the benefits supervisor for the respondent employer, reflects that the claimant was not terminated, but placed on twelve month medical leave of absence. In addition, the testimony of both Ms. Day and the claimant reflects that the claimant was offered FMLA, for which he refused to apply.

In his clinic note dated January 5, 2005, Dr. Mitchell wrote that the claimant had been seen by a neurologist (Dr. Davis) "who told him he didn't think there was a physical reason for his numbness". "We know," continued Dr. Mitchell, "that Steve, from his test, has some moderately severe carpal tunnel syndrome on the left and AC arthropathy on the left. Neither one of these are thought to cause the kind of numbness that he had." Although Dr. Mitchell acknowledged that the claimant's recent electro-diagnostic studies showed osteophyte formation in the claimant's neck which was causing mild C5-C6 radiculopathy, he commented that he had not seen much evidence of this during his clinical examinations of the claimant. Dr. Mitchell stated that he had "taken the attitude" with the claimant that "we should fix things we know are wrong based upon the studies and exam". Noting that the effects of the claimant's shoulder injection were wearing off, Dr. Mitchell stated that the claimant had agreed to undergo a distal clavicle resection and a left wrist carpal tunnel release.

Finally, the medical records reveal that the claimant had a prior history of carpal tunnel syndrome and related problems, as well as prior neck problems. For

example, in March of 1994, the claimant was seen by a neurologist, namely Dr. Michael W. Morse, for tingling, numbness, and pain in his hands with decreased grip strength. In his report dated March 16, 1994, Dr. Morse noted the claimant’s previous diagnosis of right carpal tunnel syndrome by Dr. Bryan Abernathy.

In his clinic note dated January 24, 1994, Dr. Abernathy reported that the claimant had sustained a work related laceration to his right distal bicep region in June of 1993. He further stated that a significant keltoid formation was thought to be the reason for the claimant’s reported symptoms of nighttime pain and daytime numbness, particularly while driving for long periods of time. Noting a positive Tinel’s and Phalen’s on the right, Dr. Abernathy stated that if the claimant’s right carpal tunnel symptoms cleared, but the claimant continued to have discomfort at the site of his keltoid scar, he would need revision surgery. When the claimant’s symptoms did not resolve, Dr. Abernathy referred him for a NCV study. If the results of that study were positive, the claimant would be referred to a neurologist, namely Dr. Larry Weeks.

An NCV study conducted on February 17, 1994, confirmed the claimant’s right carpal tunnel syndrome. On

March 8, 1994, Dr. Weeks reported that the claimant came to see him on February 23, 1994, with complaints of neck, shoulder, and bilateral hand pain. Dr. Week's examination of the claimant again confirmed right carpal tunnel syndrome with cervical involvement, which Dr. Weeks referred to as "double crash syndrome". The claimant reportedly responded well to conservative treatment until he returned to unrestricted activities. Afterwards, his right carpal tunnel condition began to deteriorate.

At the time of a repeat NCV study conducted on July 27, 1994, the claimant was complaining of left-sided carpal tunnel symptoms. Although upon physical examination by Dr. Morse the claimant displayed positive Tinel's and Phelan's and median sensory, the claimant's nerve conduction velocity testing was normal. Dr. Morse opined that the claimant's left complaints were due to overuse and were musculoskeletal in nature, but he stated that the claimant would require surgery for his right carpal tunnel syndrome.

A letter from Dr. Weeks to the respondent dated August 10, 1994, reflects that the claimant had returned to his office on June 22, 1994, complaining of hand pain. Dr. Weeks stated that the claimant's recent nerve pace studies showed abnormalities consistent with right carpal

tunnel syndrome. He further stated that the claimant's orthopedic examination of his cervical spine showed foraminal compression, Jackson compression, maximal foraminal compression, distraction, shoulder depression, and positive shoulder abduction bilaterally. In addition, various muscle groups were positive for palpatation, indicating some type of musculoskeletal involvement in his symptomatology. Dr. Weeks stated that these findings were consistent with a clinical diagnosis of sprain/strain of the cervical spine. Dr. Weeks believed that the claimant was still a good candidate for conservative treatment. Although the claimant was scheduled to return to Dr. Weeks for a follow-up evaluation in two weeks, Dr. Weeks stated that the claimant never returned to his office after his June 22 visit. "[S]o I can only assume," concluded Dr. Weeks, "at this time he is self-released." The claimant testified that he had right carpal tunnel surgery in August of 1994, which he admitted was paid for through workers' compensation.

In September of 2003, the claimant was involved in an ATV accident that resulted in a right leg hematoma. In addition to right leg pain, the claimant complained of neck and left wrist pain at that time. The medical records reflect that the next time the claimant was seen for medical

treatment was at the time of his alleged injury of October, 2004.

By statutory definition, a compensable injury is an accidental injury causing internal or external physical harm to the body, arising out of and in the course of employment, and which requires medical services or results in disability or death. Ark. Code Ann. §11-9-102(4)(A)(i). An injury is only “accidental” if it caused by a specific incident and is identifiable by time and place of occurrence. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase “arising out of the employment” refers to the origin or cause of the accident. Thus, the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

The preponderance of the medical evidence indicates that the claimant sustained a compensable injury to his shoulder in the form of a temporary muscle strain on October 28, 2004. However, the claimant has failed to prove that his current shoulder conditions and related symptoms resulted from that injury. In addition, the claimant has failed to prove by a preponderance of the evidence that he

sustained a compensable injury to his neck at that time, or that he sustained a left carpal tunnel injury as a result of that incident.

First, contemporaneous examinations by Dr. Thorn and Dr. Rose showed no evidence of dislocation or acute injury to the claimant’s shoulder. Therefore, the claimant was diagnosed with muscle strain and released to return to work. When the claimant’s symptoms did not resolve, he returned to Dr. Thorn who ordered an MRI of the claimant’s shoulder. When in the opinion of Dr. Thorn the MRI showed only degenerative changes, the claimant was referred to Dr. Mitchell, who concurred with Dr. Thorn’s interpretation of the MRI, and assessed the claimant with severe AC disease. Thereafter, the claimant’s complaints seemed to focus primarily on his left hand and wrist symptoms.

When on December 16, 2004, the claimant presented to the ER with complaints of face and hand numbness, an MRI of the claimant’s cervical spine revealed a small annular protrusion on the left at C5-C6, with left neuroforaminal narrowing at C6, but no obvious neural impingement at that level. The claimant was seen the following day by a neurologist who opined that the claimant’s left shoulder pain was probably arthropathic, and that the claimant’s neck

and shoulder *pain* were job related. However, a review of the medical records shows that the claimant had complained of similar neck symptoms in February of 1994, at which time Dr. Weeks diagnosed him with “double crash syndrome”. Moreover, an orthopedic examination of the claimant’s cervical spine in the summer of 1994 showed multiple compression problems, as well as other symptoms which were consistent with a cervical strain. Finally, in September of 2003, the claimant was involved in an ATV accident, after which he complained of neck and left wrist pain.

Regarding his contemporary complaints and allegations of injury, the record reflects that claimant’s original report of injury was that of a shoulder injury only. In addition, the only complaint with which the claimant initially presented to Dr. Thorn, and for which he was treated, was his shoulder. The claimant did not report neck related symptoms until December 16, 2004, which was several weeks after the alleged October 28th incident. Further, reports from Dr. Davis from December of 2004, indicate that the claimant has a small annular protrusion at the C5-C6 level, without definite nerve root impingement. Finally, Dr. Crawford’s report of January 5, 2005, reflects that the claimant’s recent MRI showed osteophyte formation

in his neck, which appeared to be causing some radiculopathy at C5-C6. However, the medical records are devoid of objective medical evidence that the claimant sustained a new injury to his neck on the date of his alleged accident. Rather, the medical records reflect that the claimant was experiencing *pain* in his neck, which Dr. Davis attributed to his work activities. However, the record reflects that the claimant had experienced similar symptoms in 1994, at which time he was found to have cervical problems associated with compression. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury to his cervical region that is supported by objective medical findings.

Further, the claimant has failed to prove by a preponderance of the evidence that he sustained a left carpal tunnel injury on the October 28, 2004. First, the claimant was given separate claim forms to fill out regarding each of his alleged injures. The first of these forms, which is dated October 28, 2004, reflects that he sustained a shoulder injury on October 28, 2004, at 7:20 a.m. while flipping a mold. This document was signed by the claimant on the date of the alleged accident. The second form, which is signed by the claimant and dated October 28,

2004, also reflects that the claimant sustained an injury to his shoulder on the date and time in question. However, under the section "briefly discuss the cause of injury", the claimant wrote that in the course of his treatment with Dr. Mitchell, "... I told them ... I was having left wrist pain and my face went numb ..." following the October 28, 2004, incident.

The claimant admitted that he back-dated the second form to reflect that his left wrist pain started on October 28, 2004. The claimant further admitted, and the medical records clearly establish, that the claimant had been having problems with his left wrist for six months prior to his alleged accident of October 28, 2004. In fact, the claimant's first reported left carpal symptoms date back to July of 1994. Thereafter, the claimant has consistently complained of left wrist symptoms up to and after his injury of October 28, 2004. Because the claimant has failed to show a causal connection between his 2004 injury and his left carpal tunnel syndrome, it can not be said that his left carpal tunnel syndrome resulted from a specific incident, especially in light of the fact that the claimant had been admittedly symptomatic for a six month period of time prior to the incident of October, 2004.

Finally, although the claimant has established that he sustained a shoulder strain on October 28, 2004, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from December 20, 2004, to a date yet to be determined.

Diagnostic studies, such as the MRI of the claimant’s left shoulder taken in November of 2004, have confirmed that the claimant has inflammatory arthritis in his left acromioclavicular joint. The claimant’s left shoulder arthropathy was no doubt temporarily aggravated by his injury. However, there was no evidence of rotator cuff tear or significant tendinosis revealed by the diagnostic studies conducted after the claimant’s October 28, 2004, work related incident. And, although the claimant’s left arm was placed in a sling and he was further restricted in the use of that arm, he was not restricted by his treating physicians from working. For example, on November 22, 2004, Dr. Mitchell wrote:

> I injected him with Depo-Medrol and Lidocaine. I will see him back in one month. We will set how this does. I have told him he could continue his light duty work. He says he is okay to continue that.

In mid-December, the claimant presented to the emergency room with complaints of numbness in various places including his face. In his January report, however, Dr. Mitchell stated that neither the claimant's left carpal tunnel syndrome nor his left shoulder arthropathy were known to cause such numbness. Although Dr. Mitchell did not comment about the claimant's ability to work at that time, as previously mentioned, the claimant testified that he was not working at that time. Also as previously mentioned, the claimant admitted that he was on restricted duty when he stopped working altogether. Although the claimant indicated that he had been told not to return to work by his employer, Ms. Day testified that the claimant was given an FMLA packet to fill out after his MRI in December of 2004, and his subsequent denial of workers' compensation benefits, which the claimant never returned. Therefore, the claimant was placed on 12 month medical layoff status, which, according to Ms. Day, secured his employment while allowing him time to heal. Because the claimant was prevented by the respondent employer from working within his restrictions after his workers' compensation benefits were controverted, it might appear that he should be entitled to temporary total disability benefits. However, the claimant was not

totally incapacitated from earning wages during the time in question, as is evident by the fact that his doctors never took him off of work, but merely restricted him to light duty. In addition, the claimant testified that he made a limited effort to find other employment during the time that he has not worked for the respondent employer, thus demonstrating his belief that he could work in some capacity. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that he has been totally incapacitated from working during the time for which he was awarded temporary total disability benefits.

Therefore, for those reasons set forth above, I must respectfully dissent from the majority opinion.

____
KAREN H. McKINNEY, Commissioner