

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403867

GLADYS LEFFLER,  
EMPLOYEE

CLAIMANT

BAXTER INTERNATIONAL, INC.,  
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 31, 2006

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

Claimant represented on appeal by the HONORABLE MATT  
STONE, Attorney at Law, Mountain Home, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed August 1, 2005. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. Ms. Lefler alleges that she received  
a gradual right shoulder injury sometime  
in "the middle of 2003," as a result of  
her job activity at Baxter.
2. Ms. Leffler was employed by Baxter  
on or about April 12, 2004 and all relevant  
times herein. Her average weekly wage in  
mid-2003 was \$371.20 entitling her to weekly  
compensation rates of \$247.00 and \$182.00

if she is seeking disability benefits.

3. Claimant first reported shoulder problems to Baxter on April 15, 2004. With minor exceptions, Ms. Leffler was on medical leave of absence from Baxter for four months prior to April 12, 2004, while recuperating from bilateral carpal tunnel surgeries.

4. As a result of her shoulder problem, Ms. Leffler has received private insurance benefits in the form of short term disability benefits and has applied for medical benefits.

5. Ms. Leffler has failed to prove by a preponderance of the evidence that she sustained a compensable right shoulder injury. Specifically, Ms. Leffler has failed to establish by a preponderance of the evidence that her right shoulder problems arose out of her employment duties at Baxter International.

6. Because Ms. Leffler has failed to prove by a preponderance of the evidence that she sustained a compensable right shoulder injury, the respondents' notice defense under Ark. Code Ann. § 11-9-701 is moot.

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.

The claimant alleges that she 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.

Therefore we affirm and adopt the August 1, 2005 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.

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OLAN W. REEVES, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

The Majority is affirming and adopting an Administrative Law Judge's decision which held that the claimant could not establish a causal connection between

her shoulder condition and her employment. Based upon my de novo review of the record, I find that the claimant did meet her burden of proof in this regard and that the Majority's decision is in error. I therefore respectfully dissent from their findings.

The claimant has alleged that she received a nonspecific shoulder injury. She stated that she first began having problems with her shoulder in mid 2003, and that it grew progressively worse. The claimant was off work from December 2003 through early April 2004, (with the exception of a few days that the claimant attempted to return to work) because of her carpal tunnel syndrome.

The claimant testified that her shoulder had been bothering her at the time she stopped working because of her carpal tunnel syndrome. She further testified that, while she was off recuperating from her carpal tunnel injury and related surgery, her shoulder injury improved. However, after her return to work in April 2004, her shoulder problems returned and she began having difficulty functioning.

The claimant testified that she advised Dr. Thomas Knox, the physician treating her carpal tunnel syndrome, of her shoulder pain sometime after he began

treating her for her carpal tunnel syndrome. However, Dr. Knox's medical records do not reflect an entry regarding the claimant's shoulder problems until his progress note dated April 12, 2004, when he states that claimant has "a new complaint of significant and increasing pain in the shoulder which is bothering her substantially."

Ark. Code Ann. §11-9-102(4) (A) provides that a claimant can establish a compensable, nonspecific injury if it can be shown that there is an injury causing harm to the body caused by rapid, repetitive motion. A compensable injury must also be established by medical evidence supported by objective findings (Ark. Code Ann. §11-9-102(4) (D)). In addition, a claimant seeking compensation benefits for a gradual onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. (Ark. Code Ann. §11-9-102(4) (A) (ii) and (E) (ii)). See Holland Group, Inc. v. Hughes, \_\_\_ Ark.

App. \_\_\_, \_\_\_ S.W.3d \_\_\_, Arkansas Court of Appeals,  
(June 14, 2006).

In the present case, the Administrative Law Judge found that the claimant's job required rapid and repetitive motion. In my opinion, the Administrative Law Judge's finding in this regard was entirely correct. The claimant and her coworkers testified that during the period in question, she was working on the machine called the "ultra bagger" which required her to perform approximately 700 operations an hour. In addition, while working on the bagger, she was required to reach across a conveyor belt approximately one foot wide and, while using her right arm, pull a plastic bag onto a fitting on the machine. Clearly, this job activity required her to frequently extend her right arm, placing stress on her shoulder joints and tendons. This clearly is the type of activity which could have caused the claimant's shoulder injury.

The nature and extent of the claimant's injury was also verified by objective findings. After the claimant complained of shoulder problems to Dr. Knox, he directed that she undergo an MRI. This test was performed on her on August 9, 2004. After reviewing the MRI scan, Dr. Knox stated in his progress note of August

12, 2004, that the claimant's MRI reflected significant inflammatory changes around the rotator cuff and biceps tendon, consistent with significant impingement. After this diagnosis, Dr. Knox referred the claimant to Dr. Todd Oliver, a Mountain Home orthopedic surgeon. Dr. Oliver operated on the claimant's shoulder on October 15, 2004, and in his operative note of that date stated his observation of a frayed rotator cuff, the presence of a prominent subacromial spur and other abnormalities, and described his repair of those conditions. The findings set out by Dr. Knox, the MRI scan, and Dr. Oliver's observations clearly satisfy the requirement of establishing objective medical evidence of an injury.

Likewise, there is little doubt that the claimant's injury was the major cause of her disability and need for treatment. Dr. Oliver set out in his treatment note that the claimant's MRI provided proof of an impingement, which he surgically treated.

An Administrative Law Judge found that the claimant established all of the required grounds of establishing a compensable injury except for showing that her injury arose out of and in the course of her employment.

In making that finding, the Administrative Law Judge noted the absence of any mention of the claimant's shoulder problems in Dr. Knox's notes prior to April 12, 2004, and referred to Dr. Knox's letter of September 9, 2004 in which he states that "it would be hard" to state with any degree of medial certainty that the claimant's work activities caused the problem with her shoulder.

I find that the Administrative Law Judge placed too much emphasis on the lack of notations regarding the claimant's shoulder and Dr. Knox's letter of September 9, 2004. In this regard, I note that on August 19, 2004, Dr. Knox authored a letter in which he stated: "I do believe her work activities aggravate her condition, and would therefore state that her work activities are the major cause, greater than 50%, of her need for treatment."

Both the August 19<sup>th</sup> letter and the September 9<sup>th</sup> letter were addressed to Ms. Vera Alsterberg, who is apparently the claims adjuster for the respondent's administration company. Dr. Knox's change of opinion was apparently the result of a letter he received from Ms. Alsterberg (a copy of which is in the record) in which she poses two questions to the doctor. The first question notes that the claimant had been off work for

unrelated medical problems for four months prior to the shoulder complaint and, secondly, states: "Ms. Leffler could not identify any job that she did that would have caused her problem with her shoulder. How was this related to her work activities?" In Dr. Knox's September 9, 2004 letter, he acknowledges having received Ms. Alsterberg's letter and revises his opinion from his August 19, 2004 letter.

My concern is that Ms. Alsterberg premised her question on an incorrect factual statement which Dr. Knox relied upon in stating his later opinion. Ms. Alsterberg's assertion that there was no job the claimant performed that could have caused her problems with her shoulder is directly at odds with the Administrative Law Judge's finding that the claimant was engaging in a rapid and repetitive job in her work on the ultra bag machine. At the hearing, not only did the claimant extensively testify that her work on this machine caused her to develop shoulder problems, she also called as a witness a coworker who testified that he suffered similar problems when working on the same machine.

In my opinion, Dr. Knox's opinion in his letter of September 9, 2004, was based upon an incorrect

history provided him by the respondent's claims adjuster. Consequently, I would attach little weight to his opinion set out therein. I find his earlier report of August 19, 2004 to be more persuasive, in that, it was based upon both his physical examination of the claimant and the nature of her employment, which he should have been aware of, since he had been treating her for a compensable carpal tunnel syndrome prior to that time.

I also attach little significance to the failure of Dr. Knox to mention that the claimant was complaining of shoulder problems in his treatment notes. The claimant first saw Dr. Knox in November 2003 for treatment of her carpal tunnel syndrome. At that time, Dr. Knox was seeing the claimant for treatment of this condition and, by December 2004, the claimant had stopped working. As the claimant testified, her shoulder problems substantially resolved during the time she was not working. I would not find it surprising that during this time she had not complained to Dr. Knox of shoulder problems.

In any event, I do not see that it makes a great deal of difference in whether the claimant did or did not complain of shoulder problems to Dr. Knox. The

relevant facts are that the claimant did start complaining of shoulder problems shortly after she returned to work in April 2004. In my opinion, the claimant offered sufficient evidence to establish that her shoulder condition was the result of her rapid, repetitive job which she had been performing for several months prior to stopping work in December 2003. I find that she has met all of the requirements for establishing a compensable, nonspecific shoulder injury, and that she should be awarded all appropriate benefits. For that reason, I respectfully dissent from the Majority's denial of this claim.

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SHELBY W. TURNER, Commissioner