

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407742

MARIA CONTRERAS, EMPLOYEE

CLAIMANT

TYSON POULTRY,  
A SELF INSURED EMPLOYER

RESPONDENT

**OPINION FILED MAY 7, 2007**

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

Claimant represented by HONORABLE EDDIE WALKER, JR.,  
Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE MELISSA LEE, Attorney at  
Law, Springdale, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the  
Administrative Law Judge filed July 31, 2006.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 6, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On June 6, 2003, the claimant earned wages sufficient to entitle her to a weekly compensation benefit of \$236.00 for total disability and \$177.00 for permanent partial disability.

4. On June 6, 2003, the claimant sustained a compensable injury to her left shoulder.

5. There is no dispute at the present time over the claimant's entitlement to workers' compensation benefits for her compensable left shoulder injury. Apparently, all such benefits have or are being paid.

6. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury to her neck or cervical spine in the employment related accident of June 6, 2003.

7. The respondents have denied that the claimant sustained a compensable injury to her neck or cervical spine on June 6, 2003, and have controverted her entitlement to any benefits attributable to such an injury.

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.

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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion, finding that the claimant did not sustain a compensable neck injury. On July 31, 2006, an Administrative Law Judge issued an opinion finding that the claimant did not sustain a compensable neck injury. Prior to the hearing, the respondents agreed that the claimant had sustained a compensable shoulder injury on the same date in which the claimant is alleging her cervical injury occurred. The parties agreed that the respondent was paying for related medical and temporary total disability benefits related to that injury. However, the respondents denied liability for the claimant's neck injury. In his decision, the Administrative Law Judge dismissed the claim, finding that he did not find the claimant's testimony regarding the neck injury to be credible. He further opined that the medical records failed to initially make mention that the claimant suffered from a neck injury. The Majority now affirms and adopts the decision of the Administrative Law Judge as their

own. However, after a de novo review of the record, I find that the decision of the Administrative Law Judge should have been reversed.

The claimant, who has a sixth grade education, is from Salvador, and required an interpreter, appeared to have great difficulty in understanding the questioning throughout the hearing. Nonetheless, she testified that on June 6, 2003, she was working in the packing department, when she injured her neck and shoulder. The claimant described the incident as follows,

Q. What were you doing?

A. Grabbing the poultry, the birds, and throwing it in there, in the box, and I went ahead and pushed it again and that's when I got a kink in my left side, next to my neck.

Q. What part or parts of you body got hurt, got injured?

A. When the supervisor asked me that it wasn't right, I told her I feel it's right and I went ahead and pushed it again and that's when I got a kink in my left side, next to my neck.

Later the claimant described the incident more fully. She indicated that she was packing a box of livers that would not close because the bags of liver were swollen. She told her supervisor that the box would not close, but the supervisor told her to continue. The claimant said she was forcing a box closed when she felt an onset of pain in her neck and shoulder. The claimant said she reported the incident and her injuries on the same day of the occurrence.

The claimant said she had never been treated for neck problems prior to this incident. She said she had conversations with, Edward Fox, Registered Nurse, but that he would sometimes have to get Maria Sanchez to interpret for them.

Edward Fox also testified. He said the first time he met with the claimant was around November 25, 2003. He testified the claimant had complained of a shoulder problem and that she asked to wait until after the holidays to pursue medical treatment. He said that he met with the claimant again on December 11, 2003, and her case was initiated. He said Sanchez interpreted for the claimant. He

said that he attended all doctor's visits with the claimant from December 2003 to February 23, 2004. He said that throughout those visits he never heard the claimant complain of neck pain. Instead he only heard her complain of shoulder pain. He said that he had no knowledge that the claimant complained of neck pain for the time period of December 2003 to April 2004.

The medical records reveal that the claimant received treatment for pain in her right hand July 2003. The next medical report is dated December 11, 2003, and indicates that the claimant was injured on June 6, 2003. The report provides the claimant was complaining of left shoulder pain and indicates that the claimant was restricted from full use of her left hand. She was also prescribed Flexeril and Vioxx. The doctor's note further indicates that the claimant had suffered from sporadic problems since the time of the accident. The report provides, "Further history indicates the pain is now going up the left side of her neck and under her arm, the left side of the thoracic cage." (Emphasis added.) X-rays of the claimant's shoulder returned

as normal and she was diagnosed with musculoskeletal pain in her left shoulder. The doctor opined that the claimant would need a follow-up in two to three weeks and that if she had not improved by that point, she would need physical therapy and a steroid injection.

On January 7, 2004, the claimant was treated again. The physician, noted, "She still has a palpable muscle spasm in her left supraspinatus area, close to the nape of her neck." She was given an injection of Depo-Medrol and instructed to rest her left upper extremity and return in three weeks. On January 28, 2004, the claimant continued to present with pain. She was noted to have a muscle spasm in the left rhomboid around T4-5. The physician prescribed the claimant physical therapy. He also indicated that Fox would need to evaluate the claimant's work station to help make sure the claimant was working in a position which kept her left arm close to her body. On February 27, 2004, Dr. Cooper indicated the claimant would be placed on permanent restriction. He further indicated that if the

claimant was to have a flare-up in symptoms she would need to be put on one-armed duty until her symptoms resolved.

On July 16, 2004, the claimant was again treated. She reported that she had fallen and suffered a "flare up" of her left shoulder pain. The claimant's x-rays returned as normal and the claimant was given physical therapy for a period of three weeks. On August 9, 2004, the claimant submitted to an MRI. The claimant's clinical history on the diagnostic report was noted to be "Neck and shoulder pain."

The claimant was noted to have multilevel stenosis. She was also noted to have a midline disc protrusion. The report provides,

1. MULTILEVEL CENTRAL CANAL AND NEURAL EXIT FORAMINAL STENOSIS IS DEMONSTRATED SECONDARY TO A COMBINATION OF END PLATE OSTEOPHYTE FORMATION, ANNULAR BULGES AND IN THE LOWER CERVICAL SPINE OSSIFICATION OF THE POSTERIOR LONGITUDINAL LIGAMENT.
2. A MIDLINE DISC PROTRUSION IS DEMONSTRATED AT THE C4-5 LEVEL. NO FREE DISC FRAGMENT IS DEMONSTRATED.
3. THERE IS NO PATHOLOGIC CERVICAL CORD SIGNAL INTENSITY CHANGE OR SYRINX DEMONSTRATED.

On September 8, 2004, Dr. Tomlinson, indicated the claimant was being treated for a followup on a herniated nucleus pulposus. The claimant was diagnosed with cervical spondylosis and left shoulder rotator cuff tendonitis. Another note from the same day indicates that the claimant was improving after having physical therapy for her neck. On October 6, 2004, Dr. Tomlinson referred the claimant for treatment by a spine specialist.

On November 23, 2004, the claimant was treated by Dr. Kelly Danks. Dr. Danks indicated that the claimant suffered from diffuse cervical spondylosis at C5-C6 and C6-C7. Dr. Danks further diagnosed the claimant with protrusions at C4-5 and C5-6 but indicated there was no, "significant stenosis" at C5-6. Dr. Danks indicated,

I think most of her symptoms are coming from his (sic) arthropathy. She also has a neck pain that could be from her cervical degenerative disease. I have not recommended any cervical treatment at this time. I have recommended that she be placed on an antiinflammatory, (sic) which I gave her a prescription for Bextra. I am not sure if her present symptoms in her neck are related to her original injury...

On January 12, 2005, Dr. Robert J. Tomlinson, Jr., prescribed the claimant physical therapy for her neck and periscapular pain. He released her to return to work but restricted her from performing work at or above her shoulder. As of February 9, 2005, Dr. Tomlinson released the claimant to return to work but indicated she was, "at a crossroads whether she returns to work and do her work versus having a decompression." On February 23, 2005, Dr. Tomlinson opined the claimant had been given the option of having surgery, which she declined, and that she could return to work with the restrictions of no lifting or carrying more than five pounds, and no repetitive work at or above her shoulder level. The claimant was also assigned an impairment rating of 6% to the body as a whole for weakness in her shoulder girdle. Finally, Dr. Tomlinson noted the claimant might need further medical care if she wanted to undergo decompression in the future.

The Majority's decision to deny benefits appears to be based on the finding that the claimant was somehow inconsistent with regard to the symptoms she experienced

after the incident in question. The Majority also seems to be placing great emphasis on the fact that the claimant's initial doctor's visits did not specifically indicate she suffered from neck pain. However, after reviewing the record, I found the claimant to be very credible with regard to the occurrence of the injury and her symptoms afterward. Furthermore, I found the objective findings of the claimant's injury were consistent with the nature of her injury and corroborated her testimony. Furthermore, as the respondents admit the incident occurred, I find that it is simply illogical to conclude that the claimant's cervical injury did not occur due to the incident described by the claimant. As such, I would have reversed the decision of the Administrative Law Judge.

The claimant has the burden of proving her compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(I) (Repl. 2002). A "compensable injury" is one "arising out of and in the course of employment." Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2002). Ark. Code Ann. § 11-9-102(4)(D) provides, "[a] compensable

injury must be established by medical evidence supported by "objective findings" as defined in subdivision (16) of this section." "Objective findings" are "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16); Carman v. Haworth, Inc. 74 Ark. App. 55, 45 S.W.2d 408 (2001). In order to prove a compensable injury, the claimant must prove, among other things, a causal relationship between his employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). However, medical evidence is not required to prove that the cause of an injury was work-related. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). The requirement that a compensable injury be established by medical evidence supported by objective medical findings applies only to the existence and extent of the injury. Cross v. Magnolia Hosp. Reciprocal Group, 82 Ark. App. 406, 109 S.W.3d 1435 (2003); Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

I find that the claimant's testimony was consistent with her reports of neck pain as seen in the later doctor's notes. On December 11, 2003, Dr. Moffitt noted the claimant was suffering from shoulder pain that was now going into her neck. The claimant specifically related her pain to an incident in which she was packing work in June of 2003. The physician also noted the claimant had given a history of having problems on and off since that time. Furthermore, on the claimant's visit on January 7, 2004, the claimant was noted to have muscle spasms near the nape of her neck, which is also consistent with the claimant having suffered a neck injury related to the June 2003 injury. Likewise, the claimant's MRI revealed a disc protrusion at level C4-5 which would also be in accordance with the injury she described.

Perhaps what is most confusing is that the respondents have stipulated the claimant suffered from a shoulder injury in June 2003. Furthermore, there is absolutely no other explanation for the onset of the claimant's complaints. In my opinion, to now conclude the

claimant is somehow inconsistent in her complaints is simply an oversimplification of the facts in the case. Furthermore, it simply ignores the evidence showing the claim is compensable.

The claimant waited until December 2003 to seek treatment for the shoulder injury, yet the respondents accepted liability for treatment of that condition. Yet, now for some reason, they assert that the claimant was somehow not credible because she had a delay in seeking treatment for her neck condition. Certainly the respondent's acceptance of the shoulder condition would indicate the claimant's account of events was credible. Likewise, it is apparent the claimant started treatment for both treatments around the same time. As such, the only logical conclusion is that the claimant's shoulder and cervical condition were both caused by the incident in June 2003.

The Majority places great emphasis on the fact that the claimant was seen twice in July and that the doctor's notes from those visits contain no mention of the claimant's neck pain. However, I find this to be of no

consequence. The claimant testified that those visits were for treatment of a separate injury to her hand. Likewise, the medical reports do indicate the claimant was seen for treatment of her hand and thumb. As such, it is not surprising that any complaints of neck pain were omitted, as that was not the focus of treatment.

Ultimately, it is clear the claimant's cervical injury was due to the incident in June 2003. In my opinion, this is exactly the type of worker that Workers' Compensation is supposed to help. Yet, because the claimant returned to work and had a delay in seeking treatment, her claim is being denied. The claimant credibly testified she reported the injury. The medical reports are all consistent with the claimant sustaining an injury at the same time period and the respondents have already accepted liability for an injury to the shoulder that occurred simultaneously. Furthermore, the medical reports are consistent with the claimant's testimony that beginning June 2003 she suffered sporadic problems with both her shoulder and her neck. The existence of the claimant's cervical injury was shown both

by the presence of muscle spasms and a herniated disc. As there is no evidence the claimant had problems prior to the incident in June, the respondents admit the claimant was injured to some extent in the incident, and the objective findings are consistent with the injury described by the claimant, the only logical conclusion is that the claimant's cervical injury was due to the incident in June 2003.

Therefore, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner