

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604687

PATRICIA LEACH,  
EMPLOYEE

CLAIMANT

OZARK DELIGHT CANDY CO.,  
EMPLOYER

RESPONDENT

UNION STANDARD INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 9, 2007

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

Claimant represented by the HONORABLE EVELYN E. BROOKS,  
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE WILLIAM C.  
FRYE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed December 5, 2006. In  
said order, the Administrative Law Judge made the  
following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties  
at the pre-hearing conference conducted on  
July 5, 2006, and contained in a pre-hearing  
order filed that same date, are hereby  
accepted as fact.
2. Claimant has failed to prove by a  
preponderance of the evidence that she  
suffered a compensable injury to her right

shoulder and elbow while employed by the respondent.

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 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 covered by the Act; however, the claimant has failed to establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the December 5, 2006 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's opinion, finding that the claimant is not entitled to receive medical or temporary total disability benefits because she did not sustain a gradual onset injury while in the course and scope of her employment. More specifically, the Majority found that the claimant failed to prove that her job required rapid and repetitive motion. Based upon a de novo review of the record in its entirety, I find the claimant suffered a compensable, gradual onset injury. As such, I must respectfully dissent.

By affirming the Administrative Law Judge's opinion, the Majority found that the claimant's job requirements did not consist of rapid and repetitive motion. However, the claimant testified that as a cook, her job duties entailed various activities, which entailed rapid and repetitive motion.

The Court has previously determined that an injury caused by rapid and repetitive motion must be evidenced by tasks that are repetitive and that the repetitive motion itself must be performed rapidly. Malone v. Texarkana Public Schools, 333 Ark. 343, 969

S.W.2d 644 (1998). The Court has further indicated that multiple tasks may be considered together in determining whether the repetitive requirement is met. Baysinger v. Air Systems, Inc., 55 Ark. 174, 934 S.W.2d 230 (1996). However, the Court has also determined that in instances where the duties or tasks are separated by intervals that are several minutes long, the work is not rapid and repetitive. Lay v. United Parcel Service, 58 Ark. App. 35, 944 S.W.2d 867.

In order to manufacture the candy, pots were filled with a syrup mixture and placed on a regular kitchen stove to heat. After a period of time sugar was added to the mixture and it was necessary for this to be stirred. The claimant testified that this stirring process took approximately three to four minutes and that she primarily stirred with her right arm. After a mixture was cooked the pot was taken off the stove and placed in a "sling" at the end of a bungee cord. This sling was used to hold the pot while the syrup mixture was poured into molds. According to claimant's testimony, each pot would fill 14 molds. After the mixture was poured into the mold, sticks were placed in the mold and the candy was allowed to cool. After the candy had cooled it was taken out of the mold and the

excess candy was chipped off each piece with a plastic knife. According to claimant's testimony it would take approximately five to six minutes to "chip" a tray of suckers. After chipping the suckers were placed on a cooling rack and used pots were placed in a dishwasher.

As various mixtures were ready, this process continued throughout the day. Claimant performed these job activities with a partner with one stirring various batches while another worked in a room chipping the excess candy. According to claimant she and her partner would make some 32 to 35 batches of candy per day.

The claimant testified that she felt pain in her elbow almost a year prior to having it treated. The claimant testified that the rapid and repetitive motion that her job required to during all fourteen years of her employment with the respondents, caused her injury to her right elbow and shoulder. Furthermore, Dr. Heinzelman, and orthopaedic surgeon, treated the claimant for tennis elbow. In his deposition, Dr. Heinzelman testified that the major cause of the claimant's injury was the repetitive daily activity that she was involved in at work. It is therefore evident that the claimant suffered from a gradual onset injury.

The respondents argue that the claimant must have sustained this injury while bowling. In fact, the claimant had been bowling three games, once a week while her arm was hurting. However, the claimant testified that she had not started to bowl until after she had already begun complaining about the pain in her arm. Furthermore, the claimant testified that she had to eventually quit bowling due to the pain in her arm.

As such, it is evident that the claimant proved by a preponderance of the evidence that she sustained a gradual onset injury. More specifically, the claimant established that the work that she performed was rapid and repetitive. Therefore, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner