BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512666

DARLENE SISEMORE, EMPLOYEE	CLAIMANT
COOPER POWER SYSTEMS, INC., EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED JUNE 5, 2007

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

Claimant represented by the HONORABLE LAURA J. MCKINNON, Attorney at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals an administrative law judge's opinion filed August 22, 2006. The administrative law judge found, among other things, that the claimant proved "she exacerbated a pre-existing condition in her right shoulder requiring medical treatment and surgery as a result of her work activities." 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 prove she sustained a compensable injury.

I. HISTORY

Darlene Francis Sisemore, age 44, testified that she began working for the respondent-employer in June 1998. Ms. Sisemore testified, "When I first started, I was with a temporary service. And then I was just working on the line. Then they made me setup lead. and then from there, I was soldering. And then I was a trainer, then soldering and material handler." The claimant testified that she began experiencing shoulder symptoms as a result of "changing dies and soldering." The claimant testified on direct examination:

> Q. Did you - there's been sort of - sort of some - and it went all over the place in your deposition - there's some discrepancy as to whether it was a specific incident or gradual or both.
>
> A. Uh-huh.
>
> Q. But do you remember what brought on your pain?
>
> A. When I was changing the die. I call it cranking....I'm - I'm short, and when I was up there cranking the die, my shoulder popped....

Q. We have July ‘04.

A. Uh-huh.

Q. Does that sound about right?

A. That’s - yeah, pretty close....

Q. And when you got hurting, were you working on a line?

A. Uh-huh.

Q. What was the line called?

A. Soldering line....

Q. And what were you soldering?

A. Fuses.

Q. Little bitty things?

A. Yes....Little - looks like - some of them look like the pencil leads. Some of them’s pretty small.

Q. Are they on a conveyor belt? On a table?

A. A table....

Q. On the soldering line, how does that involve using your arms; particularly, your right arm and shoulder?

A. I get my solder - I got to have my feet on something, because if I don’t, they go to sleep. So I had to put my chair down, and then I solder....

Q. And you're holding your arms straight out in front of you? How high? Up low?

A. Well, I have to hold it - when I pick up my iron, I have to - I hold my iron like that (indicating).

Q. Is that about shoulder height?

A. Uh-huh....You know, solder, it - it's just back and forth.

Q. So you're having to raise your shoulder?

A. Uh-huh. All the time.

Q. Are you right- or left-handed?

A. I'm right-handed.

Q. What's - what is the motion that you do while you're soldering? You were starting to show it to us then, but, exactly what are you doing?

A. Well, with my left hand, in the - I pick up the element, and I have my cable in my little holder. I pick up my iron, and I solder. I put it down. Do it over and over and over like that again (indicating).

Q. And you have to reach forward to solder?

A. Uh-huh.

Q. And you're having to have your arm up high enough that you're sort of twisting it down, like you turn a teacup down?

A. Yeah....

Q. Okay. And how often would you have to do that?

A. Well, just is where I can put out fifteen to nineteen, almost two thousand a day....

Q. You're soldering the element onto the cable?

A. Yes.

Q. And the cables come in bunches of a hundred?

A. Uh-huh.

Q. And you can do them in a half hour?

A. I can do some less than - in - a hundred less than 30 minutes, some of them.

Q. Okay. And there's how many a day?

A. Oh, the line is always full, but I can usually - on - on the coils, I can do almost 2,000 a day, but, on the element, I get anywhere, like fifteen, sixteen hundred done a day....

Q. When you're doing the coils, are you still having to elevate your arm and your shoulder up?

A. Oh, yeah....

Q. What about the soldering made your shoulder hurt?

> A. It just - it just hurts. I got to where I was dropping my iron, and it just hurt real bad.
>
> Q. Was it rapid? Was it hard to keep up?
>
> A. Oh, yes.
>
> Q. Tell me about that.
>
> A. I stop often, like I said, because they want you to get out so many, and there's a lot of time I'd come back in early from lunch just to - to try to keep - you know, keep going.
>
> Q. What happens if you got behind?
>
> A. You'd get in trouble.

Dr. C. Vandergriff signed the following note on August 16, 2004: "Please excuse the above patient from soldering until further notice." James Raynor, senior safety and environmental engineer for the respondent-employer, testified that he received a report of injury on August 16, 2004.

In a Form AR-3 Physician's Report dated August 18, 2004, the claimant stated that she soldered 10 hours daily and she complained of right hand pain radiating to her right shoulder. The record indicates that Dr. Gary L. Moffitt diagnosed tendinitis of the wrists and forearms. Dr.

Moffitt prescribed medication and returned the claimant to work with instructions to "limit gripping both hands."

Nerve conduction studies were performed on August 20, 2004, with the following impression: "Normal examination. There is no evidence of carpal tunnel syndrome on the right side. There is no electrodiagnostic evidence of a right upper limb mononeuropathy, brachial plexopathy, or cervical radiculopathy."

Dr. Moffitt noted on September 1, 2004, "She complains of pain with range of motion testing of her shoulder, but she has normal range of motion." Dr. Moffitt noted on October 22, 2004, "She is still having symptoms on the right side, but they are mostly localized in the shoulder and she is actually tender overlying the deltoid bursa....I think she does have a deltoid bursitis....She is advised she may continue to work with the same restrictions. She is to be seen again on November 1."

A physical therapist noted on November 5, 2004, "She states that when she was sitting in a meeting she had a 'exploding' type pain in her right shoulder."

Dr. Moffitt reported on November 15, 2004:

> At the request of and authorization by Cooper-Kearney, we are seeing Ms. Darlene Sisemore. Ms. Sisemore is seen today for recheck for tendinitis of the right wrist and forearm. She also is having a problem with a right deltoid bursitis. She has been in therapy. She says it seems to be making her shoulder worse. Her wrists are not causing her as much trouble. She is tolerating her job.
>
> On examination, weight is 242 pounds, pressure is 120/80, pulse is 60. She is in no distress. There is mild tenderness to palpation of the right deltoid region, but she has normal range of motion of the shoulder. There is no swelling present. Sulcus sign is negative. Saw sign is negative. She has normal upper extremity reflexes. Grip is good. Tinel's is negative.
>
> Her condition is stable. I don't think any further treatment is likely to improve her condition. It is recommended that she continue her home exercises. She is released to work at full duties. She has no return appointment and no permanent impairment.

Dr. Vandergriff signed the following note on December 13, 2004: "Please excuse the above patient from soldering at work for 1 week."

The claimant began treating with Dr. Matthew J. Coker on December 28, 2004:

> She has been seen by the physical therapist and workers' compensation

physician and was felt to have tendinitis of the right forearm and shoulder. She was given a steroid injection approximately 3 months ago into the right shoulder which she states did not help at all. She was in physical therapy for approximately 2 weeks and states again that this did not give her much improvement and therefore was referred to our office for evaluation and care....

There is no crepitance at the AC joint....

No x-rays were taken. She does have a MRI which she brought in and was reviewed. There is a report of possible partial rotator cuff tear versus complete rotator cuff tear. I do not see obvious complete tear on the exam today. She did not have an arthrogram performed at the same time. She does have a little fluid in the subacromial bursa which is consisted (sic) with the bursitis for which she had the injection a few months ago....

1. I have explained to the patient that it can take up to 4-6 weeks of therapy to see significant improvement in this and think because her motion is well enough with good enough strength at this point that she does not have an obvious significant rotator cuff tear. I think the therapy would be the way to go....
2. I explained to her the fact that she has some tendinosis over the origin of the mobile wad which causes irritation especially with extension of the wrist and rotation of the forearm which she performs every day in her work and we can help this with some stretching

> exercises, some anti-inflammatories again and a counter force brace to be worn over the forearm. She will learn these exercises when she goes to therapy for her shoulder. I have asked her to undergo light duty at work at this point. Due to the fact that these conditions are likely due to flareup from overuse and she is a relatively short person (that could be affecting the shoulder significantly) and working with the solder iron with the bigger cable could also be affecting the tennis elbow, I have asked her to do light duty until she comes back to see me and hopefully at that point she will be doing well enough so that we could progressively her activities (sic) from there. If she is not significantly better, then we will talk about possibly reinjecting the shoulder versus a subacromial decompression and inspect the rotator cuff at that time to see if it needs to be repaired. We can also do a steroid injection for the tennis elbow if necessary.

Dr. Coker gave the following impression: "1. Right rotator cuff tendinitis or impingement for which she has undergone therapy. 2. Tennis elbow."

Dr. Coker gave the claimant a slip for light duty/restricted work on December 28, 2004.

Dr. Coker re-evaluated the claimant's right shoulder on June 20, 2005: "She presents today with a complaint of increased pain in the right shoulder despite therapy. She

states that the pain is now going up into the neck and has had some numbness and tingling in her right hand now for about three weeks....She denies any further injuries to the shoulder." Dr. Coker gave the following impression: "Right shoulder impingement with partial rotator cuff tear, possible labral tear but at this time, it appears that she does have a significant problem with the C-spine and I would like her to be evaluated by a spine specialist to get there (sic) opinion on how much of the pain is coming from the neck as opposed to the shoulder and try to get some idea of if the shoulder is a significant problem and indicates the need for distal clavicle resection, acromioplasty and inspection of the rotator cuff."

Dr. Coker noted on June 27, 2005, "Patient's report from Dr. Raben is that there is no significant problem with her c-spine. He feels that the majority of the pain is coming from her shoulder....Plan will be to undergo distal clavicle resection acromioplasty and inspect the rotator cuff tear with possible repair, if necessary. This will be scheduled at the next available slot."

The claimant testified that she was off work beginning June 30, 2005.

Dr. Coker performed the following surgical procedure on July 11, 2005: "1. Distal clavicle resection. 2. Acromioplasty of right shoulder." The pre-operative diagnoses were, "1. Right shoulder acromioclavicular arthrosis, with impingement. 2. Right rotator cuff tear." The post-operative diagnosis was, "Right shoulder acromioclavicular arthrosis, with impingement."

The claimant testified that she was off work until October 19, 2005. The claimant testified that she returned to a different job for the respondent-employer, i.e., "auto bagging."

Dr. Coker signed the following note on or about January 17, 2006: "This letter confirms that my medical records, chart, and narratives regarding the above patient are supported by objective findings and are stated within a reasonable degree of medical certainty." Dr. Coker also signed the following on or about January 17, 2006: "Based upon some objective medical findings and within a reasonable degree of medical certainty, it is my opinion that Darlene Sisemore sustained a work-related injury on or about the above date, which was the major cause of the patient's need

for medical treatment and any resulting disability." The "above date" referenced by Dr. Coker was "DOI: 7/15/2004."

Dr. Coker wrote to the claimant's attorney on February 3, 2006:

> In response to your letter asking for a report on Darlene Sisemore's condition and prognosis, as well as the treatments given up to this point, Ms. Sisemore is, as you recall, a 43 year-old female who presented for the first time back in December of 2004. At that time, she had been treated for right shoulder pain and elbow pain by a physical therapist as well as either a doctor or nurse practitioner for the worker's compensation clinic, but with no improvement in the pain, therefore she was referred to me. Clinically, I felt that she had some impingement of the right shoulder as well as some tendonitis. She did undergo an MRI that showed at least a partial thickness tear of the supraspinatus tendon if no (sic) a complete tear. She was also found to have some AC joint arthritis. This was treated with an injection into the subacromial space and continued physical therapy, because I do not believe she had a long enough period of therapy to determine whether or not that would help her. This did not help, and subsequently underwent a distal clavicle resection and acromioplasty in July of 2005. At that time, we did inspect the rotator cuff as well that showed no significant degenerative tissue. There were no complete tears, no soft spots indicating a significant partial tear, but she did have some tendonitis. There

> was no further intervention necessary for the rotator cuff itself, but she did require the distal clavicle resection and acromioplasty due to the impingement of the shoulder. Post operatively, she was restricted as far as her activities at work until she came back to see me on the 17th of October, when we let her go back to work without restrictions. She had been progressing well with physical therapy, still had a little discomfort, but I expected this to continue to improve. The temporal association of the pain in the shoulder with injury at work in July of 2004, indicates that it was work related. Some of the arthritic changes may have been present before, but were asymptomatic. Therefore, I believe the impingement and rotator cuff tendonitis to be associated with work conditions and injury....

A pre-hearing order was filed on February 23, 2006. The claimant contended, among other things, that she sustained "a compensable shoulder, spine, extremities injury arising out of and in the course of employment with the respondent on or about July 15, 2004. This was a specific incident injury with an alternative only contention of gradual onset." The respondents contended, among other things, that the claimant did not prove she sustained a compensable injury.

The parties agreed to litigate the following issues: "1. Compensability of the claimant's injuries to her

shoulder, back, neck and both upper extremities. 2. Related medical. 3. Temporary total disability from June 30, 2005, to October 19, 2005. 4. Attorney's fees. 5. Failure to report a back injury."

Dr. Moffitt wrote to the respondents' attorney on May 1, 2006:

> This letter is in response to your letter dated 04-20-06 in regards to Darlene Sisemore. Thank you for sending the information that you did. I have reviewed it in its entirety. It appears to me that Dr. Coker found that she had osteoarthritic spurring present at the time of surgery. There is no evidence of any rotator cuff inflammation or tear. The operative procedure that he performed dealt with the spurs.
>
> From what I remember, Mrs. Sisemore did bench top soldering and used a bench top punch press. Her work did not really involve any significant overhead work. Because of this, I feel that it is unlikely that her work caused these spurs, and I also feel it is unlikely that her work significantly aggravated this condition. Instead, I feel that the spurs occurred as part of the osteoarthritis disease process and was the major cause of her problems....

The parties deposed Dr. Coker on May 23, 2006. The respondents' attorney questioned Dr. Coker:

> Q....do you have any history of a specific incident or just a cumulative

trauma situation regardless of what's going on here?

A. I believe it - well, let me try to phrase that in a different way. As far as a cumulative trauma, I don't believe there was a specific incident. It was not necessarily a cumulative trauma but more of an overuse type thing which could be similar.

Q. But I guess the point I'm trying to ask is, you don't have any history of a specific accident identifiable by time or place?

A. Not in my recollection or in my notes....

Q. And when you say impingement of the shoulder, what do you mean by that, sir?

A. Impingement is a condition where you irritate the rotator cuff tendons for the most part. That's what we're talking about. There are bone spurs involved that develop over time and with time that puts pressure on the rotator cuff causing tendonitis. That's the best way to describe it at this point....

Q. As far as the impingement we've talked about, and we're talking about prior to the time you did surgery ... basically those are based on tests in which - is there anything you see that reflects impingement or anything you hear or feel?

A. There are some findings with impingement. I mean, it's difficult to say. Nothing specific to impingement.

Okay. It’s mostly pain with certain activities, pain with certain maneuvers during the physical exam. There are such things
as crepitus that you can feel, but that’s not always painful. There is arthritis at her AC joint which was certainly true, but a lot of people have arthritis at that joint without pain.

Q. Sure. Did you have any findings of crepitus?

A. Yes. She had some soft tissue crepitus.

Q. Okay. And how do you define crepitus?

A. It’s just a popping or some people have described it as crunching in the area of the shoulder with motion.

Q. Is that something you can hear or you can feel?

A. You can feel usually.

Q. And did you, in fact, feel it on Ms. Sisemore?

A. Yes. Yes. Sorry.

Q. Did you ultimately perform an arthroscopic procedure on Ms. Sisemore on or about July 11, 2005?

A. It was an open procedure.

Q. Okay. And tell me what your findings were with this procedure.

A. Sure. The procedure was a distal clavicle resection and an acromioplasty. We made an anterior superior approach to the shoulder to the AC joint. To that point, we noticed obviously arthritis at the AC joint which, as I stated, just about everybody will get with large osteophytes. She also had some osteophytes inferiorly. She had osteophytes along the - which are bone spurs along the anterior acromion which is the end of the shoulder blade joint right out here
where the AC joint is connected to and we decompressed that by taking the bone spurs out....

Q. As far as the osteophytes, those are degenerative conditions, aren't they?

A. They are. For lack of a better term, yes.

Q. In others (sic) words, it's nothing brought on by trauma? I should have asked it that way.

A. No. Nothing brought on by trauma. It's something that occurs over time.

Q. And then as far as the other finding, I think that was on - you had two findings. As far as - or was that all the findings, just osteophytes?

A. At the time of surgery, that was all. We did inspect the rotator cuff. We inspected it visually and by palpation....She may have had a partial tear, but no significant partial tear or complete tear of the rotator cuff. Actually there was no tear to the rotator cuff.

Q. So the rotator cuff was within normal limits. Is that correct?

A. Yes.

Q. So the only findings you had were findings that came on over time, degenerative such as the osteophytes. Is that right?

A. Yes....

Q. Any other positive or abnormal findings when you got into surgery?

A. No.

Q. After the surgery then, what did you determine was the cause of Ms. Sisemore's pain since we had a normal rotator cuff?

A. A normal rotator cuff. Even with the normal rotator cuff, you still have impingement of the shoulder. You still have irritation there; and therefore, at that point, I would say it was impingement of the shoulder was still the finding
or still the cause of the pain, and if you go further down the road, the surgery did help to a degree with the pain. It helped significantly with the pain and that gives you an indication that that was the problem as well....

Q....I'm trying to find out what abnormal findings that were causing Ms. Sisemore's shoulder problem?

A. The - well, the impingement would be primarily the osteophytes.

> Q. And once the osteophytes are taken away, hopefully that was the cause of the pain, and therefore, you've reduced that?
>
> A. Correct....
>
> Q. Now, as we said before, as far as the impingement or the spurring, those are degenerative conditions not connected with the employment, are they?
>
> A. They - right. They occur over time. In other words, they were there. They were probably there in her left shoulder at this point....
>
> Q. You don't actually know what her job was to know how much shoulder movement is involved in that job. You're just relying on her history?
>
> A. Correct....

The claimant's attorney questioned Dr. Coker:

> Q. Can you tell me your opinion as to whether the overuse made the bone spurs become symptomatic or in some other way accelerated the degenerative process?
>
> A. I don't think the degenerative process was accelerated. The bone spurs were there and they were there before. I don't think they changed that much over a few months time compared to the years that they had been developing. The - and this is where I go back to the temporal association with the pain beginning with this particular job that she was doing as causing the inflammation or at least - at least adding to the inflammation or being part

> of the problem with the inflammation in the shoulder. I do believe - I mean, just based on history, I do believe that the work and the overuse all had part to do with it, all had something to do with it.
>
> Q. Can you agree with me that the work and the overuse made the bone spurs symptomatic, made them hurt?
>
> A. Yes. They made them hurt. They didn't cause the bone spurs, but I believe that's what made it symptomatic at least by history ....

A hearing was held on June 27, 2006. Issue No. 1 from the pre-hearing order was amended, to wit: "Compensability of the claimant's right shoulder." The claimant reserved the issue of compensability for her back, neck, and upper extremities.

The claimant testified with regard to her shoulder, "It's hurting so bad, it's just the whole - from the fingers, all the way up to my shoulders. It's - it's just a constant pain all the time."

The respondents' attorney cross-examined the claimant:

> Q. Again, just exactly how did you hurt your shoulder, and what were you doing when you hurt your shoulder?
>
> A. I was changing a die, and I was cranking - cranking the die, and it popped.

Q. And so when - when you say, "it popped," can you describe what you mean by "it popped"?

A. I heard something up in here (indicating), and it just-just went all over my arm.

Q. So you were operating some hand crank?

A. Yes. It's connected to the die.

Q. Okay. And you were just doing the - you were just cranking, and you just felt a pop. Is that right?

A. Yes.

Q. Okay. And that's how your shoulder hurt?

A. Uh-huh. Yes....

Q. And that happened on one specific time. Is that right?

A. After it - it hurts whenever I done that. Yeah....

Q. Okay. So you're telling us today that your shoulder started hurting because of a specific accident. Is that right?

A. Yes.

The administrative law judge found, in pertinent part:

5. The claimant has proven by a preponderance of the evidence that she exacerbated a pre-existing condition in her right shoulder requiring medical

> treatment and surgery as a result of her work activities. See discussion above.
> 6. The respondents should pay for all reasonable and necessary medical treatment for this claimant's right shoulder injury.
> 7. The claimant has failed to prove by a preponderance of the evidence her entitlement to temporary total disability. See discussion above.

The respondents appeal the administrative law judge's finding of compensability. The claimant cross-appeals the ALJ's finding that the claimant was not entitled to temporary total disability compensation.

II. <u>ADJUDICATION</u>

The claimant contended that she had sustained a "specific incident" injury and alternately contended that she had sustained an injury as a result of "gradual onset." The claimant implicitly testified that she had sustained an injury as a result of a specific incident. Yet, there is no probative evidence of record demonstrating that the claimant sustained an "accidental injury" caused by a specific incident pursuant to the provisions of Ark. Code Ann. §11-9-102(4)(A)(i). The administrative law judge instead opined that the claimant "met all the criteria to prove a gradual onset type injury to her right shoulder." The claimant on

appeal does not contend that the sustained an accidental injury in accordance with Ark. Code Ann. §11-9-402(A)(i); however, the claimant does ask the Full Commission to appeal the administrative law judge's finding of compensability. We again note the claimant's alternate contention at pre-hearing that she had sustained a "gradual onset" injury.

Ark. Code Ann. §11-9-102(4)(A) defines "compensable injury":

> (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
> (a) Caused by rapid repetitive motion....

The Arkansas Supreme Court has established a two-part test for interpreting "rapid repetitive motion": (1) The tasks must be repetitive, and (2) the repetitive motion must be rapid. As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. *See, Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly. *Malone, supra*.

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). The claimant's burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4)(E)(ii). "Major cause" means more than fifty percent (50%) of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The administrative law judge found in the present matter, "The claimant has proven by a preponderance of the evidence that she exacerbated a pre-existing condition in her right shoulder requiring medical treatment and surgery as a result of her work activities." The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder.

The claimant began working for the respondent-employer in June 1998. The claimant described her workplace soldering duties: "I pick up the element, and I have my cable in my little holder. I pick up my iron, and I solder. I put it down. Do it over and over and over like that again....I can put out fifteen to nineteen, almost two thousand a day." The Full Commission again notes the claimant's contention that she sustained a compensable injury to her right shoulder. The claimant expressly reserved the issue of compensability for alleged injuries to her back, neck, or upper extremities. Even if the claimant's described work duties entailed rapid repetitive motion of the claimant's upper extremities, a finding which we do not make and are not required to make, the record does not show that the claimant's work for the respondents resulted in rapid repetitive motion to her right shoulder. Nor did the claimant's other work duties, that is, punch pressing, changing die, or set up, require rapid repetitive motion to the right shoulder.

Neither Dr. Vandergriff nor Dr. Moffitt opined that the claimant's work was requiring rapid repetitive motion to the claimant's right shoulder. Dr. Coker thought that the

claimant had "overused" her right shoulder, but he did not opine that the claimant's work required rapid repetitive motion of the shoulder. Dr. Coker testified that he did not know how much shoulder movement was required in the claimant's job. The preponderance of the evidence before the Commission does not demonstrate that the claimant sustained an injury to her right shoulder which caused physical harm and arose out of and in the course of employment as the result of rapid repetitive motion.

The burden is on the claimant to show, among other things, that a causal connection exists between the injury and the employment. *Horticare Landscape Mgmt. v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002). The statutory requirement that a compensable injury must be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Ark. Code Ann. §11-9-102(4)(D), *supra*; *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The record before the Commission in the present matter does not demonstrate that the claimant established a compensable injury by medical evidence supported by objective findings. Electrodiagnostic testing in August

2004 showed, among other things, no evidence of a brachial plexopathy. Dr. Moffitt noted normal range of motion in the claimant's shoulder in September 2004. The Full Commission recognizes that Dr. Coker first reported an "impingement" in the claimant's right shoulder when he began treating the claimant in December 2004. Dr. Coker performed surgery in July 2005. Dr. Coker's post-surgical diagnosis was "Right shoulder acromioclavicular arthrosis, with impingement." Dr. Coker testified that the claimant had not torn her rotator cuff. Dr. Coker opined that the claimant had an "impingement" in her shoulder, but he agreed that the impingement and spurring were "degenerative conditions" not connected with the claimant's employment. Dr. Coker testified upon questioning from the claimant's attorney, "I don't think the degenerative process was accelerated. The bone spurs were there and they were there before." Dr. Coker's testimony corroborated the findings of Dr. Moffitt, to wit: "It appears to me that Dr. Coker found that she had osteoarthritic spurring present at the time of surgery. There is no evidence of any rotator cuff inflammation or tear. The operative procedure that he performed dealt with spurs....I feel that it is unlikely that her work caused

these spurs, and I also feel it is unlikely that her work significantly aggravated this condition. Instead, I feel that the spurs occurred as part of the osteoarthritis disease process and was the major cause of her problems."

The Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings. Specifically, the Full Commission finds that the bone spurring, osteophytes, and impingement described by Dr. Moffitt and Dr. Coker were degenerative conditions. These degenerative conditions were not the result of rapid repetitive motion to the claimant's shoulder. We recognize Dr. Coker's testimony that he felt "soft tissue crepitus" in the claimant's right shoulder, although Dr. Coker also stated in December 2004, "There is no crepitance at the AC joint." Nevertheless, the evidence does not demonstrate that the claimant sustained "crepitus" in her right shoulder caused by rapid repetitive motion arising out of and in the course of her employment with the respondents. The notes signed by Dr. Coker in January 2006 with regard to "objective findings" are entitled to minimal weight. We also note Dr. Coker's testimony, "In the MRI, there was some increased fluid in the bursa, the subacromial

bursa in the shoulder." The evidence does not demonstrate that increased fluid in the bursa resulted from rapid repetitive motion in the claimant's shoulder.

Finally, the Full Commission finds that the claimant did not prove the alleged compensable injury was the major cause of the disability or need for treatment. We again note Dr. Moffitt's opinion that the claimant's condition was degenerative and not the result of an injury. Dr. Coker testified that the degenerative condition in the claimant's shoulder was "nothing brought on by trauma." The claimant testified that surgery did not improve the condition in her shoulder. The claimant testified, "It's hurting so bad, it's just the whole - from the fingers, all the way up to my shoulders. It's - it's just a constant pain all the time."

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii)(a). The claimant did not prove she sustained an injury causing physical harm to her right shoulder which arose out of and in the course of employment and was caused by rapid repetitive motion. The claimant did not establish a compensable injury by medical evidence

supported by objective findings. The claimant did not prove by a preponderance of the evidence that the alleged compensable injury was the major cause of her disability or need for treatment. The Full Commission therefore reverses the opinion of the administrative law judge. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion, which reverses the February 23, 2006, opinion of the Administrative Law Judge finding the claimant sustained a compensable shoulder injury but was not entitled to temporary total disability benefits. After a de novo review of the record, I find that the claimant has shown she sustained a compensable injury and that

she is entitled to temporary total disability benefits. As such I would have affirmed the portion of the Administrative Law Judge's decision regarding compensability but reversed the portion denying temporary total disability benefits.

The claimant has alleged that she sustained a compensable injury to her right shoulder. She asserts that in her eight years of employment with the respondent, she has performed a variety of repetitive motion tasks involving her right arm which has caused her to develop a shoulder impingement. In addition to the repetitive nature of her employment, the claimant cited at least two specific instances involving lifting or cranking which caused a worsening of symptoms.

The Majority finds that the claimant did not establish that her shoulder condition was compensable. They argue that there were no objective medical findings sufficient to establish an injury and that any actual physical problem the claimant suffered from was not the result of her employment-related activities.

The criteria for establishing a compensable gradual onset injury as alleged by the claimant in this

case, are set out in Ark. Code Ann. §11-9-102 (4)(A)(ii), (D) and (E)(ii). In summary, the Act requires that the claimant 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; (3) the injury was the major cause of the disability or need for treatment; (4) the nature and extent of the injury must be established by objective medical findings; and (5) the injury must be caused by rapid and repetitive motion. Cottage Café, Inc, v. Collette, 94 Ark. App. 72, ___ S. W. 3d ___ (2006).

In order to determine the compensability of the claimant's injury, it is necessary to review the type of job she performed. The nature of the claimant's work and her job duties is outlined in her testimony and that of a corroborating witness, as well as a video recording of her job being performed by other employees.

The respondent's factory makes electric components used in electric transmission lines and

similar equipment. The claimant’s role in this manufacturing process was as a trainer and assembler. When a new employee was brought into the assembly area, the claimant’s first duty was to provide this employee some basic instruction on how to perform whichever tasks were assigned. After demonstrating the proper techniques to the new worker, the claimant would then return to one of her other duties. These duties included soldering, punch press operation, and changing dies in the punch presses. The claimant testified that once a new employee was performing the job, she would return to examine his or her technique every 15 to 20 minutes. After this review and inspection, she would return to her job duties.

Apparently, the most frequent job performed by the claimant was soldering. This required her to remove a bundle of wires from a bin, arrange them on her table, and hold a soldering iron in her right hand while she soldered the wires together. This activity involved a series of motions which would be repeated over and over throughout the workday. According to the claimant and Susan Collins, another witness at the hearing, there

was no specific quota but the workers were expected to solder 1,500 to 2,000 wire harnesses per shift.

The claimant also testified that, from time-to-time, she would operate a punch press. This activity required picking up smaller pieces of material, placing them in the press, and activating it. Once again, this activity was rapidly performed over the length of time the person was operating the press.

The other job frequently performed by the claimant was the replacement of dies in the presses. The number of times this task was performed varied from day-to-day and might be done once or twice a day, to as often as five or ten times per day. This job involved the loosening of several bolts in the press and then the removal of the die. The die was a rectangular piece of metal measuring several inches to a foot on each side. After removing one from the machine, the replacement die would be inserted and bolted into place. On the video recording of an individual replacing a die, the gentleman doing the work was shown unbolting several nuts and vigorously pulling on others to tighten the

drill into place. He then worked a crank device to raise the die up so that it could then be used.

The claimant testified that her body size was a factor in the strain placed upon her shoulder in performing the above activities. The claimant is just under 5'0" tall and weighs 246 pounds. She stated that because of her short stature, she had to strain to reach the wire harnesses and bundles while working. Likewise, when replacing the dies, she had to reach well above her head to crank the die into place as well as to pull on some of the wrenches while bolting and unbolting the dies.

All of these jobs described by the claimant and Ms. Collins, and demonstrated on the video recording, clearly establish that her job was rapid and repetitive in nature and that the job duties required use of her shoulder. The video recording, which the claimant and Ms. Collins both agreed was an accurate representation of the claimant’s job duties, demonstrates that soldering required 20 to 25 seconds to complete a cycle. The cycle involved 10 to 12 different hand movements. When that cycle is repeated over and

over throughout a workday, I do not see how it can be characterized as anything other than rapid and repetitive. I further do not understand how it can be concluded that the job duties did not require the use of the claimant’s shoulder. The punch press job also appeared to be very repetitive and is performed at even a faster pace. The remaining job, that of changing dies, also involves a considerable amount of gripping, twisting, and turning of nuts and bolts, as well as repeatedly turning a crank and pulling downward very hard on a large wrench. Further, the gentleman performing this job in the video recording appears to be moving at a rapid pace. Obviously, the longer it takes to change out the die, the longer it would take for the production of parts to resume.

The Majority asserts that the claimant somehow fails to meet her burden of proof because her physicians did not expressly categorize her work as being rapid and repetitive. However, I know of no case that requires a physician to give such an opinion for a gradual onset claim to be compensable. Furthermore, I note that Dr. Coker specifically opined that the

claimant’s condition was consistent with overuse and that overuse and activity caused inflammation in her shoulder, thereby causing her to become symptomatic.

The respondent emphasized repeatedly during trial testimony that there was no quota on the respondent’s employees. However, it is obvious from the video recording that the jobs were being performed as rapidly as the workers could perform them, and still meet acceptable levels of quality. Further, the claimant had been performing these tasks for approximately nine years at the time she reported her injury.

In order to prevail, the claimant must also establish the existence of an injury as supported by the presence of objective medical findings and that the injury was the major cause of her disability or need for treatment. The Majority finds the claimant did not meet these requirements. However, I believe the medical evidence in this case clearly establishes both requirements. The doctor who primarily treated the claimant for her shoulder impingement condition was Dr. Matthew Coker, a Fayetteville orthopedic surgeon. Dr.

Coker began treating the claimant in December 2004 and continued seeing her at least through August 2005, and performed surgery on her shoulder on July 11, 2005. In addition to his treatment notes and narrative reports, he discussed his treatment of the claimant in a deposition which is included in the record. Several times in that deposition, he was asked about objective findings supporting the existence of the claimant's impingement syndrome. At one point, he was asked about whether the claimant's examination revealed crepitus. His reply was as follows:

> A. Yes. She had some soft tissue crepitus.
> Q. Okay. And how do you define crepitus?
> A. It's just a popping or some people have described it as crunching in the area of the shoulder with motion.
> Q. Is that something you can hear or you can feel?
> A. You can feel usually.
> Q. And did you, in fact, feel it on Ms. Sisemore?
> A. Yes. Yes. Sorry.

Dr. Coker also explained that fluid was found in the area of the claimant's shoulder:

Q. At one point, Doctor, did you find some fluid on the bursa?
A. In the MRI, there was some increased fluid in the bursa, the subacromial bursa in the shoulder.
Q. And would that result in some deltoid bursitis?
A. Bursitis in the shoulder, whether it's deltoid or subacromial, those bursas, a lot of them connect, but it's, yes, in that area in the shoulder.
Q. The fluid that you saw in the MRI, is that a subjective finding?
A. That's an objective finding.
Q. It could not be faked?
A. Not at that – the only way it would be faked would be to have it injected in there."

Dr. Coker also explained the significance of the fluid by stating that it was an indication of inflammation and its presence was usually the result of activity:

Q. And as far as the fluid in the bursa, is that a degenerative finding?
A. It's an indication of inflammation in the bursa, in that regional of the shoulder. I wouldn't necessarily classify it as degenerative.

Q. What can cause that inflammation?

A. The – there – the main thing we’re talking about is the impingement again of the shoulder. It’s – tendinitis or inflammation can be caused by, you know, an injury to the shoulder, overuse of the shoulder. Any kind of infection would cause inflammation.

Q. Will age also cause that or just the wear and tear of life?

A. It – even with – if you’re talking about like arthritis and those sorts of things, yes. Arthritis can cause inflammation such as those but it’s usually associated with activity.

Obviously, Dr. Coker’s examination of the claimant revealed objective findings. Specifically, crepitus and bursal fluid. Even of more significance is Dr. Coker’s explanation that the fluid is most likely the result of activities involving the claimant’s shoulder. As he also explains in his deposition and in his operative note of July 11, 2005, the claimant had numerous bone spurs and osteophytes in her shoulder area. According to Dr. Coker, when the tissues in the shoulder became inflamed from overuse, they came into

contact with the bone spurs, causing pain, further inflammation, and impingement. The only possible corrective measure for this condition would be to remove the bone spurs so that the inflammation would recede and the claimant could resume normal shoulder movement.

Dr. Coker's medical report and his deposition reflect that the claimant had a condition confirmed by objective evidence. He also makes it clear that, in his opinion, the claimant's condition was caused by her employment. In a letter dated January 17, 2006, he stated that the claimant has sustained a work-related injury and the major cause of her medical treatment and resulting disability was her job-related accident. This opinion was reiterated in more detail in a letter dated February 3, 2006. In that letter, he stated as follows:

> The temporal association of the pain in the shoulder with injury at work in July of 2004, indicates that it was work related. Some of the arthritic changes may have been present before, but were asymptomatic. Therefore, I believe the impingement and rotator cuff tendinitis to be associated with work conditions and injury.

While medical opinions regarding causation are not necessary to establish a compensable injury, it is

certainly evidence that can be considered and should carry considerable weight. In this case, the treating physician most familiar with the claimant's case was firmly of the opinion that the claimant's injury was caused by her repetitive-motion job. Dr. Coker's opinion is supported by the findings during his surgery.

In my opinion, the evidence establishing that the claimant sustained a compensable injury is overwhelming. The claimant's job description, as corroborated by Ms. Collins and the video recording, clearly establish that her job was highly repetitive and was performed rapidly. That is sufficient to meet the requirement set out by the Arkansas Supreme Court in Malone v. Texarkana Public Schools, 33 Ark. 343, 969 S. W. 2d 644 (1998). I, therefore, would have affirmed the Judge's finding regarding compensability.

Finally, I would have awarded the claimant temporary total disability benefits. The first physician the claimant saw for treatment of her condition was Dr. Kathleen Vandergriff, her personal care physician. Dr. Vandergriff directed that the claimant not do any soldering work until further notice.

Those restrictions were kept in effect by Dr. Gary Moffitt, the physician chosen by the employer, until he released the claimant to return to work on normal duty on November 15, 2004. However, since the claimant continued to suffer from the same problems, and the respondent refused to provide her further medical treatment, she saw Dr. Coker. In his report of December 28, 2004, Dr. Coker recommended that the claimant resume light-duty work.

It is not clear from the testimony whether the claimant, in fact, returned to light duty at this time. However, the claimant's undisputed testimony was that she was not working from June 30, 2005 through October 19, 2005. This period runs from slightly before her shoulder surgery through the recovery from that procedure. Since the claimant was clearly within her healing period and was under Dr. Coker's light-duty restrictions, and the respondent had not provided her with suitable employment, I believe she would be entitled to temporary total disability benefits during the period in question. Even in their reply brief, the respondent does not contend that they were providing the

claimant suitable employment during this time. They merely note that Dr. Coker's restrictions were for light duty only and that she was, therefore, not totally disabled. Clearly, if an injured worker is not able to return to their former employment because of temporary restrictions during the healing period, the worker is entitled to receive temporary total disability benefits. To hold otherwise would be clearly contrary to the Workers' Compensation Act.

In summary, I would have affirmed the Administrative Law Judge's finding that the claimant sustained a compensable injury to her right shoulder. However, I would have reversed the Administrative Law Judge's denial of temporary total disability benefits and awarded TTD benefits between June 30, 2005 and October 19, 2005.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner