

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510171

PAULA WHITE,
EMPLOYEE

CLAIMANT

COOPER STANDARD AUTOMOTIVE, INC.,
EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 25, 2007

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

Claimant represented by the HONORABLE SILAS H. BREWER,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL J.
DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed October 11, 2006. 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. The stipulations agreed to by the parties and recited herein are hereby accepted as fact.

3. Claimant's proffered Exhibit "3" is hereby excluded as evidence as it violated the seven day rule outlined in the prehearing order.

4. Claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset cervical injury while employed by the respondents.

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 October 11, 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.

OLAN W. REEVES, Chairman

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, gradual onset injury to her cervical spine. After reviewing the record, I find that the claimant provided credible testimony that she sustained a compensable, cervical injury due to the rapid and repetitive nature of her work in 2004. Additionally, the claimant suffered an aggravation of that condition in 2005, as evidenced by the existence of a herniated disc and muscle spasms. As such, I would have reversed the decision of the Administrative Law Judge.

The claimant worked as a molding press operator from 1996 to September 2004, the date of her alleged injury. This job required her to put rubber inside a press and then using an air gun to pull the mold out of the machine. This had to be performed by using a retractable hose that would be held some 18 to 24 inches above her head. The claimant testified that two people were in charge of removing each mold as they were heavy. The claimant also had to trim parts once the mold was removed. The claimant said the entire process took some six minutes to complete. The claimant testified that this work was performed four hours per day and that the remainder of the day she would be inspecting parts, assembling parts, packing parts and then stacking returnables on a pallet for shipping.

The claimant testified that beginning in September 2004, she began suffering pain in her wrists and upper arm. The claimant said that she was sent to the company doctor and placed on light duty for a week. The medical reports from those visits indicate the claimant was suffering from wrist pain. The initial note, dated, September 15, 2004, indicates that the claimant described the pain as being, "located in the entire wrist." In describing the claimant's other

symptoms, the report indicates that the claimant had no elbow swelling, other range of motion problems, or neck pain. The claimant continued to work despite having some swelling in her arms and in her shoulder.

At some point the claimant's job duties changed and she was required to run another press machine. She was required to put the parts in the machine to be assembled. The parts would go down on a conveyor belt and then two people would get them out of a container and place them on a pallet. The claimant estimated that she would have to lift the 30 pound pans around four times an hour. Around August 2005, the claimant began suffering from swelling in her arm and having pain that radiated from her arm to her shoulder. The claimant returned to the company doctor and was placed on light duty.

The claimant returned to the physician again in August 2005 complaining of pain in her wrist. The physician also noted the claimant was having pain in her neck with movement and had a decreased range of motion. He also noted she had spasms in her trapezius muscle. The claimant was diagnosed with a cervical strain. She returned and complained of pain in her elbow, shoulder and cervical spine. On August 18, 2005, physician's

notes indicate the claimant had been suffering from intermittent wrist pain for one year. Curiously, on August 22, 2005, Dr. Callaway indicated the claimant had been suffering with right arm and wrist pain for only around two weeks. He placed the claimant in a forearm air case and recommended the claimant have a nerve conduction study which returned as normal. On September 22, 2005, the claimant submitted to an MRI, which indicated that the claimant had, "Severe C4-5 and C5-6 degenerative disc disease with osteophyte disc complexes as described above."

The claimant sought medical treatment from Dr. Shahim, whom indicated that the claimant suffered from degenerative changes, a herniation at level C5-6, and pain associated with those findings. The claimant received injections and other treatment to treat the condition. She returned to work in January 2006 but testified she stopped working because of muscle spasms in her arm, shoulder and neck.

The Majority, by affirming and adopting the decision of the Administrative Law Judge, finds that the claimant failed to show she sustained a compensable injury because she allegedly had no cervical complaints in 2004. They further opine that the claimant was

unable to show a causal connection between her neck problems and her work. Finally, they find that the claimant failed to show that her job duties required rapid and repetitive movement to her neck.

After reviewing the record, I find the Majority errs in denying the claimant benefits. While the medical records indicate the claimant complained of wrist pain when she initially sought treatment in 2004, the claimant credibly testified that in 2004 she sustained symptoms to her arm and wrist and upper arms. She further testified that after her two appointments in 2004 her shoulder and arms would still swell. Additionally, when the claimant returned for treatment in 2005 the claimant reported symptoms that radiated up her arm and into her neck. This is consistent with Dr. Shahim's testimony that arm symptoms would be consistent with the nature of the claimant's herniation. Additionally, I note this Commission has seen countless instances in which a claimant suffers from arm and shoulder complaints only to later be diagnosed with a cervical injury. The claimant is not a physician and I find that she provided credible testimony showing the existence of what was ultimately diagnosed as being a cervical injury.

With respect to the claimant's alleged failure to show a causal connection, I find that the claimant credibly testified that the onset of her symptoms were due to work. Though the claimant's diagnostic studies showed degenerative changes, Dr. Shahim testified the claimant also had a herniated disc. Additionally, the claimant was noted to have muscle spasms in her trapezius muscles. When considering the claimant's job duties were both rapid and repetitive in nature, and in my opinion, would have contributed substantially to the claimant's degeneration and condition. In fact, Dr. Shahim specifically testified that repetitive lifting could cause the a condition consistent with the claimant's. Additionally, as the claimant had an onset of symptoms while at work, I find that she has shown the major cause for her injuries is due to her work related activities.

Finally, I address the Majority's argument that the claimant did not show that her job duties required her to move her neck in a rapid and repetitive fashion. 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.

The Court has also determined that a worker who used an air gun to attach bolts at the rate of one per fifteen seconds would be sufficient to constitute rapid and repetitive motion. See High Capacity Prods. V. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998). Additionally, the Court has awarded benefits when a worker performed repetitive motions at the rate of 115 to 120 times per day with 1.5 minute intervals between. See Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998). However, the Court has held that a custodian did not perform rapid repetitive motions, despite repeating motions, because the movements in completing the tasks were different and were separated in time. See Malone, supra. The Court has further determined

that one must, "consider the positioning of the part of the body as well as the number of movements the claimant has to undergo to determine if the movement is 'rapid and repetitive'" Patterson v. Frito-Lay, Inc., 66 Ark. App. 159, 992 S.W.2d 130 (1999).

During her employment, the claimant was required to work in two primary capacities. The first was as a molding press operator which required her to put rubber inside a press machine, remove the mold with an air gun and then trim parts. This entire process only took some six minutes and required her to hold a retractable hose above her head. When looking at the duties required by this job, it is clear the claimant would have to move her neck in a rapid and repetitive nature. Certainly she would have to move her neck to operate the hose and remove the mold. Additionally, she would almost certainly have to move or bend her neck in order to make sure she was trimming parts appropriately.

The claimant testified that her second primary job was put parts in a machine to be assembled, get the parts out of a container, and then lift a 30 pound pan. This was factory type work that, by definition, is rapid and repetitive. Additionally, I find it is simply not logical that the claimant would be able to put parts in

a machine, get them out of a container, or lift 30 pound pans without the movement of her neck.

Finally, the claimant testified that the remainder of her time would be spent inspecting parts, assembling parts, packing parts, and then "stacking returnables." It is difficult to imagine how one could inspect parts, pack or stack parts without moving their neck. While the claimant did not provide testimony regarding how many times she moved her neck, the job description, in itself provides a clear picture that the claimant's job was typical factory work that required lifting and the movement of her neck in a rapid and repetitive nature. As such, I find that the Majority errs in finding that the claimant's job was not rapid and repetitive and that she did not sustain a compensable injury due to that work.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner