

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400676

CHARLES CLARK,
EMPLOYEE

CLAIMANT

SPRINGDALE POLICE DEPARTMENT,
EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WCT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 22, 2008

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 J. CHRIS
BRADLEY, Attorney at Law, North 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 August 16, 2007. 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 May 16, 2007
and contained in a pre-hearing order filed May 17,
2007, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance
of the evidence that he suffered a compensable
injury to his shoulders 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 August 16, 2007 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

The majority is affirming and adopting an Administrative Law Judge's decision that the claimant's job was not rapid and repetitive. For the reasons set out below, I must respectfully dissent from the majority opinion.

Except for a two-year period in the mid-1990's, the claimant was employed by the Springdale Police Department from 1976 until 2005. From 1995, when the claimant returned to work for the respondent, he worked as a 911 dispatcher. According to the claimant's testimony, this job involved repetitive typing and similar data entry tasks, frequently answering telephones, and reaching to open a door allowing others access into the dispatch area. The operation of the phone system, according to the claimant's estimate, required him to reach and push buttons from five to thirty times per hour. He was also repeatedly opening the door which required him to extend his body forward and reach to push a button, activating the door's opening system.

In 2003, the claimant reported to his immediate supervisor that he was beginning to have

problems in his hands and arms. Eventually, the respondent accepted a claim for benefits based upon injuries to the claimant's wrists and elbows and have paid him appropriate benefits, including surgical releases of the carpal tunnel in his wrists and the cubital tunnel in his elbows.

From the medical records, it appears that he first complained of shoulder pain to Dr. Ronald Bertram, a physician with the Veteran's Administration, in early 2004. Later, he came under the treatment of Dr. Marsha Hixson, an orthopedic surgeon in Little Rock Arkansas, who first noted a complaint from him regarding shoulder pain in July 2006.

The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant's job was not rapid and repetitive. I find that determination not only to be in error, but also contrary to the stipulations of the parties. As indicated above, the respondent has previously accepted liability for a compensable, gradual onset injury to the claimant's wrists and elbows. That acceptance is confirmed by a stipulation to that effect set out in the Administrative Law Judge's decision, making it a finding of fact. As the Courts of this state have interpreted the Workers' Compensation Act, a gradual onset injury is compensable

if it is an injury causing internal or external physical harm to the body, arose out of and in the course of employment, is not caused by a specific incident or identifiable by time or place of occurrence, and is caused by rapid, repetitive motion. Westside High School v. Patterson, 79 Ark. App. 281, 86 S. W. 3d 412 (2002).

While being rapid and repetitive is not an essential element of a carpal tunnel injury, in order for the claimant's elbow condition to be compensable, his job must have involved rapid and repetitive motion. Since the respondent has stipulated that his elbow injuries were compensable, it appears to me that they are also stipulating that the job was performed rapidly and repetitively. Since the claimant, based upon the stipulation, has already satisfied the standard, I cannot find it to be appropriate for the Administrative Law Judge or the Full Commission to review the issue *sua sponte*. I find that the respondent has already agreed that the claimant's injury was the result of rapid and repetitive motion and there was no need for proof to be offered on that point again. Therefore, I find that the job was rapid and repetitive and that the claimant has satisfied his burden in this regard.

The remaining issue would be whether or not the claimant's shoulder condition was the result of his job-related activities. I find there to be little question that it was. The claimant had no medical history of having shoulder problems prior to 2003. His job activities at that time clearly involved use of his hands and arms with frequent reaching and grasping. As the claimant described his job station and duties, it is obvious that his work area was not ergonomically designed and that, consequently, considerable stress was then placed on his arms and shoulders. This is clearly evidenced by the admittedly compensable injury to his wrists and elbows. It is logical that the same cause that resulted in problems at both of those joints would likewise cause problems at his shoulder joints.

In conclusion, I find that the claimant has met all of the requirements for a compensable gradual onset shoulder injury.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner