

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603049

GEORGE W. DYKES, EMPLOYEE	CLAIMANT
GRANITE MOUNTAIN QUARRIES, EMPLOYER	RESPONDENT
ACIG INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JANUARY 25, 2008

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed March 15, 2007.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the

form of dizziness/chest pain in that there is no medical evidence supported by objective findings regarding this alleged injury.

4. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right shoulder in that he has not shown that the injury arose out of and in the course of his employment by Respondent employer.

5. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of "drawing" of his right arm in that there is no medical evidence supported by objective findings regarding this alleged injury.

6. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of right carpal tunnel syndrome in that he has not shown that the injury arose out of and in the course of his employment by Respondent employer.

7. Because of the above findings, the balance of the issues are moot and will not be addressed.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's opinion. The Majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to prove compensability of any injuries incurred on February 1, 2006. Based upon a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident right shoulder injury as well as a compensable gradual onset right carpal tunnel syndrome injury, and therefore, I must respectfully dissent.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in

disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that the claimant has shown, by a preponderance of the evidence, that he sustained a specific incident shoulder injury. First, the claimant presented proof by a preponderance of the evidence that his shoulder injury arose out of and in the course of employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). The claimant testified that he injured his shoulder while lifting and slinging 25-60 pound

rocks on February 1, 2006. Although the claimant did not stop working until he experienced dizziness and chest pain, the claimant testified that he felt pain in his right shoulder as soon as the dizziness subsided. The claimant also testified that he experienced pain in his right shoulder and right arm at home later that night. Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). I find that the claimant's credible testimony shows that his right shoulder injury manifested almost immediately after the employment incident. The claimant testified that he did not have right shoulder problems before February 1, 2006 and the record is completely devoid of any evidence indicating that the claimant has suffered from shoulder problems in the past.

The Majority erroneously placed great importance on the fact that the claimant's right shoulder injury is not specifically mentioned in the medical records until February 17, 2006. The Arkansas Workers' Compensation Act does not require an immediate diagnosis, and it does not require that the claimant insist that the doctor's history contain the gory details of the occurrence. See Siders v. Southern Mattress Co., 240 Ark. 267, 398 S.W.2d 901 (1966). The court has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection, See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962); Wentz v. Servicemaster, 75 Ark. App. 296, 57 S.W.3d 753 (2001). Here, only two weeks had passed between the employment incident and Dr. Schock's diagnosis of a right shoulder injury. Two weeks is not enough time to break the causal connection, especially in light of the claimant's testimony, supported by the medical records. I find it imminently reasonable for the claimant's doctor to focus on ruling out life-threatening conditions before addressing the

claimant's right shoulder complaints, and I fail to see how Dr. Casper's diligence impacts the claimant's credibility.

The Majority also erroneously disregarded Dr. Schock's medical opinion that the claimant's injury was: "consistent with his mechanism of injury as well as likely to account for his symptoms." There is no requirement that medical testimony be expressly or solely based on objective findings, only that the record contain supporting objective findings. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Here, Dr. Schock's opinion is clearly based on the claimant's credible account of the incident at work and objective medical findings from the tests Dr. Schock ran on the claimant in order to make his diagnosis. As the Commission may not arbitrarily disregard medical evidence or the testimony of any witness, Coleman v. Pro. Transportation Inc., CA 06-525 (Ark. App. 2-7-2007), I find that the Majority has erred by not considering Dr. Schock's opinion. However, I find that Dr. Carle's medical opinion should be given very little weight. Unlike Dr. Schock's medical opinion which is clearly based on the claimant's account of the incident at work and objective

medical findings, it is impossible to determine on what Dr. Carle based his opinion and whether or not it was subjective or objective. Therefore, based on the claimant's credible testimony and Dr. Schock's medical opinion, I find that the claimant has established that his right shoulder injury arose out of his employment by a preponderance of the evidence of record.

Second, the claimant has presented proof by a preponderance of the evidence, supported by objective medical findings, establishing an injury that caused internal or external physical harm to the body which required medical services or resulted in disability or death. In order for an injury to be compensable under Arkansas Workers' Compensation law, the claimant must show an injury causing internal or external physical harm to the body which required medical services or resulted in disability or death Ark. Code Ann. §11-9-102(4)(A)(i). Here, the medical reports show that on February 24, 2006, Dr. Schock diagnosed the claimant with a rotator cuff injury, and treated the claimant with medications and injections, which shows that the claimant suffered an injury

requiring medical services. Also, the claimant must show medical evidence of an injury, supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). Objective findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). The claimant's rotator cuff injury was confirmed by MRI, a test that is not under the voluntary control of the patient, on March 10, 2006, which satisfies the objective findings requirement of Ark. Code Ann. §11-9-102(4)(D). Therefore, I find that the claimant has shown proof by a preponderance of the evidence objective medical findings establishing an injury that caused internal or external physical harm to the body which required medical services.

Third, the claimant has presented proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. In Edens v. Superior Marble & Glass, 346 Ark. 487 (2001), the Arkansas Supreme Court held that "identifiable by time and place" meant subject to identification and did not require the claimant to specify

the exact time of the occurrence. Here, the claimant testified and the respondent did not dispute that his injury occurred while he was removing large rocks from the quarry machinery on February 1, 2006. The claimant has no prior history of right shoulder or right arm injury. Therefore, I find that the claimant has shown by a preponderance of the evidence that his injury was caused by a specific incident identifiable by time and place of occurrence, specifically, while the claimant was removing large rocks from the quarry machinery on February 1, 2006.

I also find that the claimant's right shoulder injury was not idiopathic. An idiopathic injury is an injury that is personal in nature or peculiar to the individual sustaining the injury. Little Rock Convention & Visitors Bureau v. David Pack, 60 Ark. App. 82 (1997); 959 S.W.2d 415(1997). Here, the claimant testified that he became dizzy on the date of injury. While the claimant's dizziness may be an idiopathic condition or a symptom of an idiopathic condition, the claimant is not asking for workers' compensation benefits for dizziness, he is requesting benefits for a specific incident right shoulder injury. The

record is devoid of any evidence indicating that the claimant's dizziness symptom caused his right shoulder injury. The claimant also testified that he has a past history of seizures. If the claimant had a seizure condition, it could be said that his seizure condition was idiopathic. However, the claimant did not testify that he suffered a seizure on the date of injury and the record is devoid of any evidence indicating that the claimant currently has a seizure condition or that a seizure condition caused his right shoulder injury.

It is clear from the claimant's testimony and the payroll records that the claimant returned to work after the specific incident on February 1, 2006. It is also clear from the claimant's testimony and the medical records that the respondent was concerned about the claimant's physical condition after the work-related incident, as the respondent kept requesting that the claimant bring in a doctor's note. Although the claimant testified that he was able to perform his work only with his left arm after the incident, the respondent was apparently not aware that the claimant had suffered a shoulder injury until the claimant told them

about Dr. Schock's diagnosis. At this point the respondent sent the claimant to their workers' compensation doctor, Dr. Carle, who diagnosed the claimant as having a "group health disorder" that caused the claimant's shoulder injury and "releasing him from his worker's compensation case." As stated above, I find that Dr. Carle's opinion carries very little weight. Although the respondent may believe that the claimant suffers from "dizziness" and that "dizziness," rather than the specific incident at work, caused the claimant's shoulder injury, and somehow convinced Dr. Carle to write a letter to that effect, the Majority cannot deny the fact that beyond Dr. Carle's unsubstantiated assertion that the claimant has a "group health disorder," the record is devoid of any evidence that the claimant's shoulder injury is idiopathic.

I find that the claimant has shown, by a preponderance of the evidence, all of the elements of a compensable specific incident shoulder injury. Specifically, the claimant's shoulder injury arose out of and in the course and scope of his employment with the respondent.

Furthermore, the Majority erred in finding that the claimant did not prove a compensable right carpal tunnel syndrome injury. When a claimant requests benefits for an injury characterized by gradual onset, Ark. Code Ann. § 11-9-102(4)(A)(ii)(Supp. 2005) controls, defining "compensable injury" as:

(5)(A)(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of the employment if it is not caused by specific incident or is not identifiable by the time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

A claimant is not required to prove that the condition was caused by rapid repetitive motion when the diagnosis is carpal tunnel syndrome. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still prove that he sustained a carpal tunnel syndrome injury arising out of and in the course of his employment, that a work-related injury is the major cause of his disability or need form medical treatment, and

the compensable injury must be established by objective medical findings. Id.

I find that the claimant has shown, by a preponderance of the evidence, all of the elements of a compensable gradual onset carpal tunnel syndrome injury. The medical records show that the claimant's carpal tunnel syndrome is an injury causing physical harm to the body. Dr. Rutherford's EMG report dated April 10, 2006, provides objective medical findings. The claimant's credible testimony and the corroborating medical records establish that the claimant's carpal tunnel syndrome arose out of his employment and that his employment duties were the major cause of his disability. The claimant credibly testified that his job duties were, basically, shoveling and moving rocks all day long. The respondents did not dispute the claimant's description of his job duties. The record is devoid of any evidence suggesting that the claimant suffered from any right arm problems in the past. As such, I find that the claimant has met his burden of proof by the preponderance of the evidence for a compensable gradual onset right carpal tunnel syndrome injury.

In conclusion, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident right shoulder injury as well as a compensable gradual onset right carpal tunnel syndrome injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner