

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201791

LAVEARN MOODY, EMPLOYEE	CLAIMANT
ADDISON SHOE CO.,/MUNRO & CO., SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT CO., TPA	RESPONDENT

OPINION FILED DECEMBER 23, 2008

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

Claimant represented by the HONORABLE JOE M. ROGERS,
Attorney at Law, West Memphis, Arkansas.

Respondent represented by the HONORABLE ROBERT L. HENRY,
III, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

This matter is currently before the Full
Workers' Compensation Commission on remand from the
Arkansas Court of Appeals. In an opinion dated November
5, 2008, the Arkansas Court of Appeals reversed the
decision of the Full Commission, which had affirmed and
adopted the decision of the Administrative Law Judge and
remanded this case to the Full Commission for
proceedings consistent with their opinion. After a de
novo review of the record and pursuant to the Court of
Appeals mandate, the Full Commission makes the following

findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. On or about February 7, 2002, the relationship of employee-employer existed between the parties.

3. On or about February 7, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$259.00/\$194.00, for temporary total/permanent partial disability.

4. The claimant has proved by a preponderance of the evidence that she suffered a compensable gradual onset injury to her shoulders pursuant to Ark. Code Ann. §11-9-102(4) (A) (ii).

5. The claimant has satisfied the "major cause" requirement for gradual onset injuries as set forth in Ark. Code Ann. 11-9-102(4) (E) (ii).

6. The claimant has presented objective medical findings of her shoulder injuries as required by Ark. Code Ann. 11-9-102(4) (D).

I. HISTORY

_____The claimant, Lavearn Moody, is a 55-year-old married female with a high school education. She began work for the respondent employer, Addison Shoe Company, as a heel padder in 1972, and worked there continuously for 30 years until June of 2002. During this time, she worked 5 days a week from 7:00 a.m. to 3:30 p.m. with 30 minutes off for lunch, a 15-minute break in the morning, and a 10-minute break in the afternoon. She described her job duties during this entire 30-year period as follows:

- Q. "Now as a heel padder, we need to go through and have you describe what you did on a daily basis. And just generally tell your Judge what you did, and then we'll go into more details.
- A. I would go on the floor and pull a rack of shoes. And I would get this rack to my table. And I would get it there, I would take the heel pads off, separate them right and left, lay them down. And then I would pick the shoes up off the rack.
- Q. And ... your job was to

put pads in the shoes?

A. Yes.

Q. When we're talking about pads, are we talking about insoles that went inside the shoes?

A. Yes.

The details of her job duties each day included picking up 5-gallon containers of glue and cleaning fluid and filling a coffee-size can with glue and a coffee-size can with cleaning fluid at her work station (3' wide x 2' deep), where she would stand during the work day. She picked up the containers manually with her right hand and poured contents into the smaller cans with both hands, which would take about 2 seconds for each container. She would then carry the smaller can to her work station, which would take about 2 seconds. She would then walk a short distance and pull the rack of shoes back to her work table using her hands and arms, which took approximately 10 - 15 seconds. She would then reach up and get a pack of heel

pads from the shoe rack with her right hand and return them to her work table, which took about 2 seconds, take it apart by pulling a rubber band off with her right hand, in about 1 second, and then separate them into a stack for right and left shoes, and place them on her work station in about 2 seconds.

She would then pick up 3 shoes in one hand and 3 shoes in the other hand from the bottom shelf of the rack (4 shelves) and place them on her work table in approximately 2 seconds and commence to put the heel sole in by laying a pad in her left hand and then, with a brush in her right hand, dip it into glue, and brush the pad she was holding in her left hand for 3 - 5 seconds, then insert the glued pad with her right hand into the shoe and press it to the bottom of the shoe and hold it for approximately 2 - 3 seconds to make sure it sticks, and then repeat this task for the rest of the shoes at her work station. She would then place these 6 shoes with insoles inserted back on the bottom shelf of the rack using 2 hands with 3 shoes per hand, which took

about 3 seconds. She would then repeat this process for each of the 4 shelves of the shoe rack, working from the bottom of the case to the top. She would then push the rack approximately 5 feet back into a line and let it dry, a process which took about 10 seconds, and then repeat the process continuously during her work day. Ms. Moody testified it would take approximately 5 minutes to complete a rack from start to finish and she would complete 80 to 90 racks in a day, working alone.

On January 17, 2002, the claimant went to see Dr. Jacobs because her right hand and arm had been hurting and she could not stand the pain any longer. She went to see Dr. Jacobs after reporting to her supervisor, Richard Jones, who authorized her to seek medical attention. She saw Dr. Jacobs again on February 6th and 7th, 2002, and completed and signed a Form N report, stating she had injured her arm and hand picking up shoes. She reported and described the pain as starting first in her hand and, approximately 2 weeks later, spreading to her arm. Dr. Jacob's record, dated

February 8, 2002, reflected that the claimant wanted to be off due to pain and swelling in her arm. Dr. Jacobs then referred the claimant to an orthopedic surgeon, Dr. Ball, in Jonesboro, on February 20, 2002. The claimant continued to see Dr. Ball for a period of time and remained off work after seeing Dr. Ball. Dr. Ball's records were introduced and revealed the claimant was treated and evaluated on February 20, 2002, February 27, 2002, April 1, 2002, May 8, 2002, and underwent diagnostic testing per instructions from Dr. Ball on March 18, 2002, March 20, 2002, and March 22, 2002, which revealed abnormal nerve conduction studies in both upper extremities. Dr. Ball treated the claimant with pain medication and anti-inflammatory pain injections and diagnosed her condition as overuse syndrome and post traumatic tendinitis of the right arm, and discussed the option of surgery. Thereafter, the claimant was referred to Dr. Bourland in Memphis, Tennessee, by respondent-carrier, who treated her with medication and pain injections in both hands. Dr. Bourland opined that

surgery could not be assured to help.

In the meantime, the claimant had attempted to return to work, but could not perform her duties, so she was laid off and referred back to Dr. Ball by her supervisor. Dr. Ball saw her on July 9, 2002, and diagnosed her problems as being caused by 30 years of overuse and opined that the claimant would not be able to perform factory work and recommended one-handed work and, if that was not available, then she should remain off work and be treated by Mr. Paul Cooper for tendinitis and radial tunnel syndrome three times per week for four weeks. The claimant underwent this therapy and Dr. Ball directed continued off-duty, if one-handed work was not available. The claimant remained off work and was seen again by Dr. Ball on October 7, 2002, who opined she probably could not return to factory work. He saw her again on January 15, 2003 and February 17, 2003, and recommended that she not return to factory work because of right arm pain and soreness and medical treatment only by Dr. Jacobs.

The claimant saw Dr. Jacobs in February of 2004 and he referred her to Dr. Spencer Guinn, an orthopedic surgeon in Jonesboro, who she first saw on February 27, 2004. Dr. Guinn obtained an MRI of her right shoulder after obtaining a history from the claimant of right arm pain radiating into her upper arm and shoulder, and hard work her whole life, which revealed a complete rotator cuff tear in the right shoulder for which she underwent surgery on April 9, 2004.

The record reveals that the claimant last worked for the respondents in June of 2002, because she couldn't use her right arm and they had no one-handed duty. From that time until her rotator cuff tear was diagnosed, she did no more work and stayed at home. She basically performed no manual task or household activities because she was pretty much restricted to left-hand use and was not physically able to perform housework because of pain in her arm and shoulder. She described the pain as beginning in her hand, moving into

her forearm, and up to her shoulder. The claimant denied any activity outside work before February 2002 that caused her to hurt her arm and shoulder, as well as any repetitive work or strenuous work outside her job. The claimant testified that the shoulder surgery helped with the pain in her arm and allowed her to have significantly better use of her arm and shoulder and, prior to that, the other medical treatment she had did not help her significantly at all.

In addition to the complaints to her right arm and shoulder, the claimant also had problems with her left arm. This started in January of 2002, but got worse when she was put on one-hand duty by Dr. Ball. She testified that she was unable to work for the respondents after being treated by Dr. Jacobs, Dr. Ball, and Dr. Bourland in 2002 and 2003. The claimant testified that she suffered from depression from 1998 until she last worked in 2002 but, despite suffering from depression, she was able to do her job, and it was the pain in her arms that kept her from working. Dr.

Guinn submitted a medical report diagnosing the claimant as having a torn rotator cuff, subacromial impingement, and degenerative joint disease. He opined that these conditions were documented by physical exam, x-rays, and an MRI, and that, in his opinion, based on a reasonable degree of medical certainty, her medical condition was related to her work.

In his deposition, Dr. Guinn stated the claimant revealed a long history of right shoulder pain on her first office visit and that the pain radiated into her shoulder and upper arm, which he stated was very common for the condition he found, and that this type condition was known to cause pain and tingling into the lower arm also. Dr. Guinn testified that his report reflected that the claimant had related that her shoulder pain began as a work-related condition and he felt this was a reasonable explanation based upon her description of her job. He further testified that it was consistent, in his opinion, that her hard working conditions caused the rotator cuff tear. Dr. Guinn

testified that she reached the end of her healing period on December 17, 2004, as far as her right shoulder was concerned.

I. ADJUDICATION

The Full Commission finds, based on the above facts in evidence and pursuant to the mandate of the Court of Appeals, that in addition to satisfying the rapidity element, the claimant has also proved by a preponderance of the evidence all other elements necessary for a finding of compensability. 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:

(4)(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...

The test for what constitutes "rapid repetitive

motion" was set out by the Arkansas Supreme Court in Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W. 2d 644 (1998) as a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. First, the claimant has proved by a preponderance of the evidence that her job duties were repetitive. The claimant credibly testified that it took her approximately 5 minutes per rack to perform her job gluing and inserting soles into shoes and that she could complete 80 to 90 racks per work-day, which, due to 25 minutes of break time totaled 7 hours and 35 minutes of work-time. The claimant described her job duties (after she prepared the glue and cleaning cans and obtained the cart full of 4 shelves of shoes) as follows: 2 seconds to reach up on the shoe cart and obtain a pack of heel pads with her right hand and arm and return them to her work table; 1 second to take the pack apart with both hands by removing a rubber band; 2 seconds to separate the pads with her hands for right and left shoes; 2 seconds to pick up 3 shoes in each hand from a shelf on the rack and place them on her work table; 3 -5

seconds to place a pad in her left hand with her right and apply glue to it with a brush in her right hand; 2 - 3 seconds to insert the sole into the shoe and press it down to stick it to the shoe with her right hand, for a total of approximately 12 seconds per shoe or 72 seconds for 6 shoes and then repeat the process for the other 3 shelves of shoes for a total of 288 seconds or 4.8 minutes per rack of shoes. The evidence of record, therefore, shows that, at 90 racks per day, 4.8 minutes per rack, 6 pairs of shoe per rack, 12 seconds per shoe, 6 motions per shoe, the claimant is making repetitive moves approximately every 2 seconds for each shoe padded during her work-day, clearly repetitive motion sufficient under Malone.

Second, the claimant has proved that she sustained internal physical harm and has produced objective medical evidence regarding the existence and extent of her injuries as required by Ark. Code Ann. §11-9-102(4)(A)(ii) and Ark. Code Ann. 11-9-102(4)(D). The medical evidence of record clearly shows that diagnostic testing performed on March 18, 2002, March 20, 2002, and

March 22, 2002, revealed abnormal nerve conduction studies in both of the claimant's upper extremities.

Third, the claimant has proved by a preponderance of the evidence that her injuries "arose out of and in the course of her employment" with the respondent employer. While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522, 524 (1999); Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Here, the claimant credibly testified as to the rapid and repetitive nature of her work, which she performed for the respondent for over thirty years. The claimant's treating doctor related her injury to her work duties. It would be error to find that the claimant's condition didn't arise out of and in the course of employment where there was little, if any, evidence to suggest the injury was caused by anything other than work.

Lloyd v. United Postal Services, 9 S.W.3d 564 (Ark. App. 2000).

Finally, the evidence of record clearly shows that the claimant has satisfied the "major cause" requirement of Ark. Code Ann. §11-9-102(4)(E)(ii), which states:

For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the 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.

"Major cause" means more than fifty percent (50%) of the cause. Ark. Code Ann. §11-9-102 (14)(A). As stated above, the claimant gave credible testimony as to the rapid and repetitive nature of her job duties which caused her shoulder injuries. There is no evidence of record indicating that the claimant suffered from any pre-existing conditions or sustained any injuries after which would necessitate analysis of the percentage of disability or treatment attributable to the claimant's compensable

injuries. The claimant's credible testimony regarding her injuries coupled with the corroborating medical record is sufficient to satisfy the "major cause" requirement.

III. CONCLUSION

Based on our de novo review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission finds that the claimant proved that she sustained compensable gradual onset shoulder injuries and is entitled to past and future reasonably necessary medical treatment and temporary total disability benefits from the date of injury until a date yet to be determined.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500 in accordance with Ark. Code Ann. §11-9-715(b)(2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.