

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602358

SHELIA SMITH,
EMPLOYEE

CLAIMANT

KOHLER CO.,
EMPLOYER

RESPONDENT

CRAWFORD & COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 11, 2008

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

Claimant represented by the HONORABLE THOMAS W. MICKEL,
Attorney at Law, Conway, Arkansas.

Respondent represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed August 22, 2007. The administrative law judge
found, among other things, that the claimant proved she
sustained a compensable injury. 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

The record indicates that Shelia Diane Smith, now age 50, was hired at Kohler Company in September 1995. Ms. Smith described her job as "Assembly operator over the line putting faucets together....You build a faucet. You start off with one part. You just build it up from scratch. You use air guns or wrenches and stuff. You build them, water test them, and you pack them out and get ready to ship off." The claimant testified that the assembly parts were "On shelves. You reach up, get your part over on the side, to your right to get a part."

Dr. Doug Coleman noted on November 24, 1999 that the claimant was "complaining of some right anterior shoulder pain. She does repetitive activity at work. She points to an area just over the superior portion of the right trapezius that is aggravated by abduction and external rotation." Dr. Coleman's impression related to the claimant's shoulder was "3) Probably a rotator cuff tendinitis on the right or an overuse syndrome." Dr.

Coleman's treatment plan included "Restricted activity for four days. Return as needed."

The claimant testified regarding an alleged accident in March 2000: "I had been at work on this one line. They had put me on a different line, which the shelves were a lot taller back in 2000, and when I did something popped in my shoulder and my neck....My right shoulder."

Dr. David N. Collins examined the claimant on September 29, 2000:

Ms. Smith is seen for a work related injury to the right shoulder. She is referred by Robert Martin, MD. The date of injury was actually 3/11/00. She describes reaching to a shelf to get a pan of parts. She did this in a jumping, reaching maneuver and felt a pop and burning in the superior aspect of the right shoulder....She denies previous problems of significance. She has received one injection without relief....She has undergone MRI, which is normal. She denies re-injury....Subacromial crepitation present bilateral to a mild degree though not extreme....

RADIOGRAPHS: Acromioclavicular joint views were obtained. Some asymmetry is noted, right compared to left.

Dr. Collins' impression was "1. Work related injury, right shoulder. Possible internal derangement/sprain, right AC joint. 2. Strain, periscapular muscles with residual myofascial pain." Dr. Collins recommended additional diagnostic testing and noted, "The MRI and plain films did

show some inferior spurring compatible with degenerative change."

The impression from a three-phase bone scan of the claimant's right shoulder on October 3, 2000 was "Negative exam." Dr. Collins noted on October 3, 2000, "I do not think that there is an operative lesion and I think she can return to work without restrictions. It is not likely that she is to require further treatment in the surgical realm. There is no evidence of permanent partial impairment at this time and she will be seen as needed. She is released to work without restrictions."

Dr. Collins' impression on December 1, 2000 was "Myofascial pain, work related....From an orthopedic standpoint, there is nothing more to offer her. I would recommend that she see Dr. Safman for further evaluation and treatment and consideration for local injection of trigger points."

The claimant began treating with Dr. Bruce L. Safman on December 21, 2000. Dr. Safman returned the claimant to full duty on January 18, 2001. Dr. Safman stated on April 3, 2001 that he would reassess the claimant in one month, but there appears to be no treatment of record from Dr. Safman

after that date. The claimant testified that "workers' compensation" paid for her treatment with Dr. Collins and Dr. Safman.

The claimant returned to Dr. Coleman on March 19, 2002: "Muscle spasms; upper back and right shoulder. Off and on for a year, worse with activity. She reaches up a lot particularly at work. Dr. Coleman's physical examination showed "muscle spasm in the upper trapezium on the right and lateral neck strap muscle. She has excellent motion in her shoulder." Dr. Coleman's impression included "1) Muscle spasm; back and shoulder."

Dr. Coleman noted on November 7, 2002, "She has palpable spasm in the upper portion of the trapezius on the left, no radicular symptoms. Neurovascularly intact in the upper extremities. Good motion in the shoulder without tenderness." Dr. Coleman's impression was "Neck pain and cervical strain." An MRI of the claimant's cervical spine on December 9, 2002 showed a normal study. Dr. Coleman's impression on December 26, 2002 was as follows: "1) Right shoulder. It must be joint or muscular related. it is not a disk. 2) Hyperlipidemia."

Dr. Robert R. Gullett, Jr. saw the claimant on January 15, 2003:

She has had some problems with her right shoulder for two years. This was originally a Worker's Comp from Koehler Assembly Operations, where she has done constant repetitive work for eight years. Originally she reached up, her shoulder hung, the plant sent her to see Dr. Winston, three visits. He did xrays of her shoulder, anti inflammatory medicines, Celebrex, which did not help. The company sent her to see Dr. Martin in Sheridan who sent her to physical therapy for two months. She relates this made it worse. Worker's Comp then sent her to see Dr. Collins who did xrays, put her at light duty, sent her to a neurologist who put her on some epilepsy medicine. Then Worker's Comp sent her for pain management to Dr. Rutherford who put her on Vioxx for one month, then Celebrex and a tens unit. She had a bone scan done and she relates that the studies there were performed showed she had possibly a torn rotator cuff and what sound like, perhaps, a work up for carpal tunnel syndrome or at least a NCV. Dr. Coleman has seen her. He did a MRI of the C spine and C spine films. She relates pain starts in her shoulder and goes up and down the arm and up to the neck. The index and long fingers go to sleep and wake her up at night....

She works at Koehler Assembly Operations and has worked there for eight years. What she describes to me is very clearly repetitive work....

Dr. Gullett's impression was "Possible carpal tunnel syndrome," and he recommended electro-diagnostic testing. The claimant followed up with Dr. Gullett on February 10, 2003: "I read through the NCV's with her, which basically were normal. She does have symptoms of some burning pain in

her right arm and the numbness and the tingling in her hand. MRI, C spine films were OK....Since she is still having some problems with this I think she needs to be seen by Dr. Verma, who is a rehab and pain specialist, who can help her to evaluate and treat these long standing problems."

Dr. Virendar K. Verma examined the claimant on February 13, 2003 and gave the following impression: "1. Chronic shoulder pain syndrome with signs and symptoms consistent with impingement syndrome with no sign of carpal tunnel syndrome right upper extremity." Dr. Verma recommended conservative treatment.

Dr. Coleman's impression on July 9, 2003 was "Multiple arthralgias." Dr. Coleman referred the claimant to a rheumatologist, Dr. Tamer Alsebai, who examined the claimant on July 22, 2003. Dr. Alsebai noted a two-three week history of low back pain and planned additional diagnostic testing and conservative treatment. Dr. Alsebai's impression on August 13, 2003 was "1) Mechanical low back pain with radiation to the right leg. This is probably consistent with L4-L5 or L5-S1 radiculopathy. 2) Myofascial pain syndrome versus fibromyalgia."

The claimant testified that she eventually began suffering from left shoulder problems because of "Just overusing it....Reaching and pulling. When my right shoulder would get tired I would use my left shoulder a lot more." The claimant testified that she reported her left shoulder problems to her supervisor at the time, Kathy Allen: "I was telling her that my shoulder was swelling up. She didn't say nothing."

The claimant treated with Dr. Tracy T. Phillips on June 21, 2004. The claimant's testimony indicated that she presented to Dr. Phillips on her own without a referral from the respondents. Progress notes from that date indicated that the claimant had complained of left shoulder pain for three to four years. Another handwritten note appeared to show that the claimant felt a sharp pain in her neck and shoulder beginning the previous Sunday. Dr. Phillips' handwritten assessment appeared to be radiculitis and shoulder pain. The claimant followed up with Dr. Phillips on June 24, 2004 for a complaint of pain and swelling in the claimant's left shoulder. An x-ray of the claimant's left shoulder was taken on June 28, 2004: "Three views of the left shoulder show no evidence of fracture or dislocation.

There is suggestion of soft tissue swelling." The impression was "Unremarkable three view left shoulder." The claimant followed up with Dr. Phillips on June 29, 2004 and complained of neck and shoulder pain.

Dr. John Dedman, the claimant's family doctor, examined the claimant on July 2, 2004: "The patient apparently two to three years ago while at work injured her right shoulder, was seen by Dr. Collins, orthopedist in Little Rock, and apparently there was no surgical lesions and the patient was put on various agents including a TENS unit and the patient still does have problems with her right shoulder, more than I would expect, but apparently she is still able to work. About two to three months ago she slowly started having the problem with her left shoulder and she has seen Dr. Phillips on three occasions with the last one on June 29, 2004." Dr. Dedman diagnosed "1. Bilateral shoulder dysfunction - the right started about two or three years ago and the left started about two or three months ago."

An MRI of the claimant's left shoulder was taken on July 12, 2004, with the following impression: "Thickening and partial thickness signal change in the supraspinatus and subscapularis tendon portions of the rotator cuff consistent

with tendinosis." Dr. Gullett's impression on July 16, 2004 was "Tendonitis bursitis left shoulder" and "Probable carpal tunnel syndrome." Dr. Gullett's recommendation included additional diagnostic testing and physical therapy. Dr. Gullett noted on July 30, 2004, "She relates that therapy was not helpful....She has seen Dr. Collins who is a shoulder specialist before. She has been off work for a month. I think clearly is at the very least exacerbated by her job and perhaps even caused by it. I would recommend referral to Dr. David Collins who is a noted shoulder specialist for evaluation of her left shoulder."

The claimant filled out a respondent-employer Group Health Plan Disability Claim Form on August 4, 2004. On the Disability Claim Form, the claimant indicated that she was first disabled and unable to work on the morning of June 18, 2004, and that the first treatment for the sickness or injury was with Dr. Phillips on June 21, 2004. The claimant checked boxes indicating that her condition was work related and that her disability was due to an injury. To the question "Where did accident occur?", the claimant wrote, "Pain and swelling increased over time until it became impossible to function." On the Physician's Section of the

Form, Dr. Dedman indicated that the claimant had begun having left shoulder pain 3-4 months earlier. Dr. Dedman described the following limitation: "Cannot use left shoulder 2° pain."

Dr. Collins saw the claimant on August 16, 2004:

She is reporting left shoulder pain for the last 3-4 months. The onset was gradual and insidious. She specifically reports no injury. She works in assembly....

I reviewed the MRI of the left shoulder and the report. This was done at the I-530 Imaging Center on 7/12/04. There are signal changes within the rotator cuff. There are signal changes within the AC joint.

Dr. Collins gave the following impression: "1. Left shoulder pain, etiology uncertain. Rule out significant occult osseous or osteoarticular lesion. 2. Rule out full thickness or significant partial thickness rotator cuff tear....She will undergo triple phase bone scan as well as arthrography of the left shoulder. Treatment plan will be forthcoming." Dr. Collins informed Dr. Gullett on August 17, 2004, "It is difficult to explain her pain on the basis of clinical examination and the existing imaging studies. We will go a step further and include a bone scan, as well as arthrography."

Dr. Ronnie M. Fenton performed an x-ray left shoulder arthrogram on August 23, 2004: "I'm unable to see any evidence of narrowing of the supraspinatus space. I do not see evidence of a partial-thickness or full-thickness tear of the rotator cuff. The biceps tendon appears to be in its normal location." Dr. Fenton's impression was "Negative left shoulder arthrogram. There do appear to be some osteoarthritic changes about the left AC joint."

Dr. Collins reported on August 23, 2004:

Ms. Smith returns in follow up of triple phase bone scan and arthrogram. The reports and imaging studies are negative in terms of abnormalities. Bone scan shows no abnormal uptake. There is no leak on the arthrogram.

We are unable to identify mechanical cause of shoulder pain at this time. She is so advised. She is placed on a therapeutic exercise program. Until there is more clear evidence of mechanical problem that may be amenable to surgical treatment, conservative care is the best course.

I would recommend that she return to work without restriction, letting comfort be her guide.

Should she require additional follow up with an orthopedic surgeon she could return to see Dr. Gullett or Dr. Rosenzweig at our clinic for non-operative treatment of the shoulder.

Dr. Dedman's diagnosis on September 26, 2005 included the following: "4. Musculoskeletal dysfunction, i.e. left shoulder since 2001, right shoulder since spring 2004, upper

back muscle discomfort, weak knees - very possibly occupational induced."

The claimant testified on direct examination:

Q. Did they do any job rotation on you in the early part of 2006 that made your symptoms worse?

A. Yes, sir, that's when I was over at the pull out shower heads, when I had to tighten the aerators and use the air tightener on the aerators, because you had to put the weight on the machine when you get your aerators on.

Q. When did you first notice that both your right and your left shoulders were hurting together this time around?

A. Into part of January. Both of them was hurting pretty bad.

Q. Did you take this problem to your supervisor and let them know?

A. I talked to my supervisor....he just kind of laughed it off.

The parties stipulated that the employment relationship existed on February 1, 2006. The record indicates that the claimant presented to Dr. Dedman's office on February 13, 2006: "Pt c/o both shoulders hurting & swollen - wants inj both shoulders. 1. Appt Dr. Gullett today." Dr. Gullett saw the claimant on February 13, 2006: "Complaining of pain in both shoulders for two weeks duration, but worse since Thursday of last week, 2/9/06. She relates very painful,

loss of movement, no numbness or tingling....Xrays of both shoulders, ap, are basically normal." Dr. Gullett's impression was "Acute tendonitis bursitis of the shoulders, left more than right....I will take her off work this week." Dr. Gullett's treatment included a subacromial injection of the claimant's left shoulder.

The claimant followed up with Dr. Gullett on February 20, 2006:

The injection helped only minimally. Still marked restriction of movement. She has seen multiple doctors about shoulder problems for many years. I first saw her on 1/15/03 for problems with her right shoulder for two years duration, which was originally a Worker's Comp injury from Kohler assembly operations. I firmly believe that this is a continuation of this problem. She had a period of time in which she had fewer problems, but overall I think this is a continuation....I will be closing my practice in about two weeks....I will make her an appointment to see Dr. Lytle and proceed appropriately from there.

Dr. Gullett diagnosed "tendonitis bursitis of the shoulders, left more than right."

The claimant filled out a Form AR-N, Employee's Notice Of Injury, on February 24, 2006. The claimant reported that she had injured "Both shoulders" on "2-1-0 (sic)." The claimant appeared to write the following in discussing the cause of injury: "The moving of shower to bagging mach. The

movement is different (sic) causing pain in shoulders due to previous injury (sic)."

According to a Workers Compensation - First Report Of Injury Or Illness, the employer was notified on February 24, 2006 of an injury occurring February 1, 2006: "EE states moving a new machine caused her shoulder to hurt went shower to bagging machine."

The claimant filled out another Disability Claim Form on April 6, 2006. The claimant indicated that she was first disabled and unable to work beginning February 10, 2006: "Pain and swelling increased over time until it became impossible (sic) to function." The claimant indicated that her condition was work-related and that her disability was due to an injury. On April 11, 2006, Dr. Dedman completed a Physician's Section of the claimant's Disability Claim Form. Dr. Dedman diagnosed "acute tendonitis both shoulders." To the question, "Is condition due to injury or sickness arising out of patient's employment?", Dr. Dedman wrote, "unknown." Dr. Dedman also did not know the extent or duration of the claimant's disability.

Dr. William F. Blankenship reported on April 28, 2006:

This lady presents to the clinic on 4/28/06 complaining of her neck and both shoulders. She

states she has been having trouble with her cervical spine and right shoulder since 2000 when she injured it at work. She was seen and treated by Dr. Gullett for this. In 2002 her left shoulder started bothering her. She has had physical therapy. This has not helped. She was also given a TENS unit by her Workers Comp carrier at the time and was told to keep it. She states that later her Workers Comp claim was denied. She has also had several MRI's on her shoulder. Dr. Collins has injected her shoulder between 2000 and 2002 on the Workers Comp injury. She has also had injections in the left shoulder, as well. She has been told she did not need surgery. Dr. Collins released her to light duty. However, according to this lady, she has not worked since February of 2006....

The x-rays she brought with her from Dr. Paulk's office consist of an AP view of both shoulders. These films were dated 4/24/06. No bony pathology is seen on the AP of the right shoulder or of the left shoulder. Also, on both of these films there is no periarticular calcifications. In addition, from Dr. Paulk's office dated the same day, a lateral view of the cervical spine was made. The integrity of the intervertebral disc spaces is well maintained at all levels. The only abnormality seen is some osteophyte formation off the anterior inferior margin of the body of C6.

Today, an axillary lateral of both shoulders reveals no bony pathology or periarticular calcifications.

An AP view of the cervical spine was made. There is normal alignment. I do not see any evidence of abnormal widening or narrowing of the lateral intervertebral joints. Left and right obliques reveal no fractures or foraminal encroachment.

Dr. Blankenship gave the following impression: "1. Cervical spine pain. 2. Bilateral shoulder pain." Dr.

Blankenship's recommendations included the following: "2. Regarding her work status, I don't think at this time I can recommend her being off work. I have advised her to go back to her family doctor, who has taken her off work from that standpoint."

An MRI of the claimant's right shoulder was taken on May 15, 2006, with the following impression: "1. Minimal subdeltoid bursitis. 2. Slight infraspinatus tendinosis but no evidence of rotator cuff tear. Otherwise normal."

An MRI of the left shoulder was taken on May 15, 2006:

The bony structures are intact. Glenohumeral joint space appears well maintained. The acromioclavicular joint is hypertrophied with thickening and increased signal of the joint capsule and marrow edema in the periarticular clavicle and to a lesser extent in the periarticular acromion. Trace amount of fluid is seen surrounding the hypertrophied acromioclavicular joint capsule which causes minor impingement on the myotendinous junction of the supraspinatus....There is trace fluid in the subdeltoid bursa....

IMPRESSION:

1. Active acromioclavicular arthritis causing minor impingement on the myotendinous junction of the supraspinatus.
2. Minimal subdeltoid bursitis.
3. No rotator cuff tear and otherwise normal examination of the shoulder.

The claimant returned to Dr. Blankenship on May 18, 2006:

Today on re-examination I don't find any change in her physical findings with reference to her cervical spine or shoulders from her last visit. Neurological examination is normal.

Since being here last Ms. Smith has had an MRI of the cervical spine, which was reported as an essentially normal study. In addition, an MRI of the left shoulder shows some active AC arthritis causing minor impingement on the myotendinous junction of the supraspinatus and some minimal subdeltoid bursitis. Likewise, the MRI of her right shoulder reports only minimal sub deltoid bursitis with slight infraspinatus tendinosis. Also, no cuff tear was noted on the left shoulder.

In addition, this lady complains of some mid clavicle pain when she moves her left shoulder. No swelling or deformity is noted about this area.

X-rays of the left clavicle were made and I don't see any bony pathology.

Dr. Blankenship recommended, "Because she has had persistent problems in the left AC joint area, I am going to recommend she see Dr. Hudson in this clinic for possible orthopedic surgical intervention for her left AC joint complaints."

The claimant filled out two OrthoArkansas "Shoulder history sheets" on or about May 24, 2006. The claimant wrote on one history sheet that she had suffered from left shoulder pain for about six years and that there had not been a recent injury. The claimant wrote on another history

sheet that she had suffered from right shoulder pain for six years and that there had been a recent injury to her shoulder: "shoulder popped while stretching to reach for parts while working on assem. line."

Dr. Stephen A. Hudson noted on May 24, 2006, "On examination today, she has some mild swelling over the acromioclavicular joint and is tender over the acromioclavicular joint anteriorly....I reviewed her MRI. It shows moderate degenerative change of the acromioclavicular joint, but no evidence of a full thickness rotator cuff tear....We discussed doing a subacromial decompression and distal clavicle resection. She agrees with this, so we will schedule this for outpatient basis."

Dr. Hudson performed surgery on June 13, 2006. The pre-operative diagnosis was "Left shoulder impingement and acromioclavicular arthropathy." Dr. Hudson performed the following procedure: "Left shoulder arthroscopy with subacromial decompression, mini-open rotator cuff repair of the supraspinatus tendon, and a mini-open distal clavicle resection, and placement of intra-articular pain pump for postoperative pain control." The post-operative diagnosis

was "Left shoulder impingement, acromioclavicular arthropathy, and tear of the supraspinatus tendon."

The claimant followed up with Dr. Hudson on July 18, 2006:

She reports that she is doing well and making good progress....At this point, I am going to start doing active range of motion and strengthening. I told her that this will take 4-6 weeks to really resume her full strength in the shoulder. She is asking about work, and I told her she could go back to light duty of no lifting more than 5 pounds with the left arm and no overhead activity with the shoulders. She is in discussions with her work place on whether this is a work-related injury or not. I told her that I think this is consistent with a work type of injury when she is doing overhead lifting and overhead activity on a constant basis, but I did not see her initially after her original injury so I cannot comment on the direct causation at this point.

Dr. Hudson noted on September 11, 2006, "She is asking about work. She does repetitive overhead work with this arm, and I am not sure she is ready for this yet. I will see her back in two months and see how she is doing at that point and see if we can advance her to full work duty." Dr. Hudson assessed "Improving status post rotator cuff repair of the left shoulder."

An MRI of the left shoulder was taken on December 14, 2006, with the following impression:

1. A rotator cuff repair has been performed since the previous examination along with an anterior acromioplasty and distal clavicle resection.
2. There is a small subacromial effusion that appears to communicate with a small pocket of fluid along the articular surface of the musculotendinous junction of the posterior supraspinatus tendon through a tiny full-thickness defect at the musculotendinous junction.
3. There is a small focus of increased signal along the articular surface of the posterior supraspinatus tendon. This may represent focal tendinopathy or postoperative change.

Dr. Hudson stated on December 20, 2006, "3. I do not think I have any further options for her. I think this may be as good as it is going to get. She may not get complete improvement of her symptoms. 4. She is asking what she could do work wise and I just counseled her that I do not think she should be doing overhead activity with this arm but should be able to lift and use the arm below shoulder level. 5. I will see her back as needed if she has any further pain or problems."

Dr. Hudson assessed "Status post rotator cuff repair of the left shoulder." The claimant testified that she surgery performed by Dr. Hudson "took the constant pain away, I'll put it that way, but I cannot raise it and use it very well." Following the release by Dr. Hudson, the claimant

continued to follow up at Paulk Family Clinic for complaints of bilateral shoulder pain.

A pre-hearing order was filed on February 16, 2007. The claimant contended that she sustained "gradual shoulder injuries as a result of her job duties." The claimant contended that she was entitled to medical treatment and temporary total disability benefits. The respondents contended that the statute of limitations barred the claim. The respondents contended that the claimant "did not sustain a compensable shoulder injury. Her present condition is a recurrence of a preexisting condition. Alternatively, in the event of an Award, there is no medical documentation to support indemnity benefits."

A hearing was held on May 25, 2007. Counsel for the respondents contended, among other things, that the claimant did not sustain a compensable gradual onset injury "though indication is she had a specific incident injury." The respondents contended that the claimant's problem was preexisting and was "associated with arthritis, bursitis, and tendinitis."

An administrative law judge (ALJ) found that the claimant proved she sustained a compensable injury. The ALJ

directed the respondents to pay medical expenses and temporary total disability benefits. The respondents appeal to the Full Commission.

II. ADJUDICATION

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

- (i) An accidental injury causing internal or external physical harm to the body ...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;
- (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....
 - (b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

Ark. Code Ann. §11-9-102(4) further provides:

- (E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(i) For injuries falling within the definition of compensable injury under subdivision (4)(A)(i) of this section, the burden of proof shall be a preponderance of the evidence; or

(ii) 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.

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). "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).

An administrative law judge found in the present matter, "2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102." The Full Commission finds that the claimant did not prove that she sustained an accidental

injury which was caused by a specific incident identifiable by time and place of occurrence.

The claimant began working as an assembly operator for the respondent-employer in 1995. The claimant testified that "something popped" in her right shoulder at work in March 2000. The record indicates that the respondents paid benefits for an alleged accidental injury occurring on March 11, 2000. Dr. Collins subsequently began treating the claimant for a work-related injury to the right shoulder. Dr. Collins noted on October 3, 2000, "I do not think that there is an operative lesion and I think she can return to work without restrictions....She is released to work without restrictions."

The claimant contends on appeal that she sustained "specific injuries to both shoulders on February 1, 2006, per a Form AR-N signed by the Claimant and dated February 24, 2006." The Full Commission recognizes that the claimant submitted a Form AR-N on February 24, 2006 and attempted to report that she injured "both shoulders" at work on February 1, 2006. A First Report Of Injury Or Illness was also submitted on February 24, 2006: "EE states moving a new

machine caused her shoulder to hurt went shower to bagging machine."

Following Dr. Collins' release of the claimant on October 3, 2000, the preponderance of evidence does not demonstrate that the claimant sustained an accidental injury caused by a specific incident and identifiable by time and place of occurrence on February 1, 2006 or any other date. Dr. Phillips noted in June 2004 that the claimant had "felt a sharp pain in her neck and shoulder beginning the previous Sunday." In August 2004, however, the claimant did not report a specific incident. The claimant instead asserted that "Pain and swelling increased over time until it became impossible to function." Dr. Collins noted in August 2004, "The onset was gradual and insidious. She specifically reports no injury." This evidence does not demonstrate that the claimant sustained an accidental injury which was caused by a specific incident identifiable by time and place of occurrence.

The parties stipulated that the employment relationship existed on February 1, 2006. The record does not show, however, that the claimant sustained an accidental injury on February 1, 2006 or any other date (following Dr. Collins'

October 3, 2000 release). The claimant's testimony did not describe an accidental injury which was caused by a specific incident identifiable by time and place of occurrence. The claimant informed Dr. Dedman on February 13, 2006 that both of the claimant's shoulders were hurting and swollen, but Dr. Dedman did not record a specific incident. Neither can we glean from the Form AR-N on February 24, 2006 or the First Report Of Injury filed the same day that there was a specific incident which was identifiable by time and place of occurrence which injured the claimant's shoulders bilaterally. The Full Commission attaches more weight to the claimant's disability statement dated April 6, 2006: "Pain and swelling increased over time until it became impasable (sic) to function."

The preponderance of evidence in the instant matter simply does not show that the claimant sustained an accidental injury to her shoulders which was caused by a specific incident and identifiable by time and place of occurrence. The Full Commission therefore reverses the administrative law judge's finding that there was a compensable specific incident. A recurrence exists when the second complication is a natural and probable consequence of

a prior injury. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 925 S.W.2d 179 (1996). The instant claimant does not contend that her symptoms in either shoulder are a recurrence of the reported 2000 injury, and the evidence does not otherwise show that the claimant sustained a recurrence in 2006 or at any other time following Dr. Collins' release in 2000.

In the pre-hearing order, the claimant contended that she sustained "gradual shoulder injuries as a result of her job duties." The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained compensable gradual shoulder injuries. Beginning in 1995, the claimant testified, she began performing assembly-line work for the respondents putting together faucets. The claimant testified that the job required reaching overhead. Dr. Coleman noted in 1999 that the claimant performed "repetitive activity at work." Dr. Coleman noted in 2002, "She reaches up a lot particularly at work." Dr. Gullett stated in 2003 that the claimant had performed "constant repetitive work for eight years." The claimant testified that her left shoulder began hurting in 2003 because of "reaching and pulling." The claimant

treated at length for complaints of pain in both shoulders and she eventually underwent left-shoulder surgery in 2006.

In analyzing whether an injury is caused by rapid repetitive motion, the standard is a two-part test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. *Holland Group, Inc. v. Hughes*, 95 Ark. App. 369, ___ S.W.3d ___ (2006), citing *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). The repetitive tasks must be completed rapidly. *Westside High Sch. v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002).

The instant claimant agreed on direct examination that she was "required to keep a certain pace" at work. Nevertheless, neither the claimant's testimony nor the medical records showed how rapidly the claimant's stated repetitive actions were performed. There was no evidence that the repetitive actions described by the claimant were performed rapidly. Without such a showing, the claimant's claim is not compensable. *Hughes, Id.*, citing *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000).

The Full Commission therefore finds that the claimant did not prove that she sustained a compensable gradual injury causing physical harm to either her left or right

shoulder. The claimant did not prove that a compensable injury was the major cause of the disability or need for treatment for either shoulder. The claimant also did not prove that she surgery performed by Dr. Hudson was causally related to a compensable injury.

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. We therefore reverse the opinion of the administrative law judge. Because the Full Commission finds that the claimant did not prove she sustained a compensable injury, the respondents' statute of limitations defense is moot. 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's opinion. The majority, reversing the

Administrative Law Judge's award of benefits, has concluded that the claimant did not establish that her shoulder injuries arose either as a result of a specific incident or as a gradual onset injury. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that she sustained compensable gradual onset shoulder injuries as a result of her job related activities, and therefore, I must respectfully dissent.

The claimant was employed as an assembler in the respondent's water faucet production factory. The claimant went to work for the respondent in 1995, and at the time she reported her current injury in February 2006, had been employed there for 11 years. The claimant testified that during this entire time, she worked as a water faucet assembler.

When asked to describe her basic job duties, the claimant testified as follows:

- A. You build a faucet. You start off with one part. You just build it up from scratch. You use air guns or wrenches and stuff. You build them, water test them, and you pack them out and get ready to ship off.

Q. Now before you build them you have to assemble all the parts?

A. Yes, you assemble all the parts.

Q. How do you go about doing that?

A. You've got a body, then you've got covers, you've got the handles, and you put them all together.

Q. Where are those items located?

A. On shelves. You reach up, get your part over on the side, to your right to get a part.

Q. How tall are you?

A. 5'2".

Q. In relation to your eyes, were there a lot of shelves? Tell me in relation to your eyes, eye level. Where were these shelves located, below or eye level?

A. Up above because a lot of shelves you had to tiptoe to get to.

Q. This is something that you did eight hours a day and more?

A. Yes.

Q. You'd get a break in the morning, break in the afternoon?

A. Yes.

Q. And a lunch break?

A. Yes.

Q. Thirty minutes?

A. Back then we was given forty-five minutes in 2002. A year ago we started thirty minute lunch breaks.

Q. So you would do this reaching all day long?

A. Yes, sir.

Q. You were reaching above your head?

A. Yes.

Q. Were you required to keep a certain pace at that job?

A. Yes, we - - they always wanted us to at least have 105% back then?

Q. That's 105% of what?

A. It depends on how many people is on a line putting the faucets together.

Q. How many parts would go into one of these faucets?

A. It depends on what faucets you're putting together.

Q. Can you give me a range? Was it between 2 and 10 or 4 and 20?

A. Ten parts for a faucet or 50 parts to a faucet.

Q. This all required you to reach and put stuff together?

A. Yes.

Q. This was the same job you had all the way through 2004?

A. Yes, sir.

The claimant testified that her job duties changed somewhat in 2004, but she still performed basically the same job duties as she had been doing for the previous nine years. However, she was moved to an entirely different area to work in what was called "subassembly." She described her new job duties as follows:

A. Subassembly, you're putting like a - - I had these showerheads set at a table. I put these parts in the shower heads, and then I put them back in a box, taped them up, put them on a shelf.

Q. Where did the parts come from?

A. The parts came from the warehouse. The guy that delivered them put them on the shelf for me. I would go over and get them off the shelf and put them on the line.

Q. As far as the shelf, in relation to your eyes, was it above or below?

A. Above my eyes. I had three shelves above my head.

Q. Did you have shelves below you as well?

A. Yes, sir.

Q. How would you get up to those upper shelves, were you still reaching?

A. I was reaching.

Q. Did you have a step stool or anything like that to help you?

A. No.

Q. This was the job they gave you when you came back from being off with your left shoulder in 2004?

A. Yes, sir.

Q. Okay. And was that the job that you performed up until the time that you ceased work out there?

A. Yes, sir.

- Q. Did they ever change your job in any way?
- A. Well, yes, sir, when someone was off and they needed a person on another machine, I went to that. I used to put parts together. We put stoppers together. I did assembly bagging. I went to the bagging subassembly and did the pullout shower heads.
- Q. What's that?
- A. The pull-out shower heads, you have to put more pressure putting the aerators on. That's where the water comes out of it.
- Q. Okay. And when you have to tighten it. . .
- A. They had a tightener and you had to put a lot of pressure on it. I used my left side to put the pressure on it.
- Q. And so you're seated trying to put this pressure on this?
- A. Yes, sir.
- Q. This isn't something you stand up to do, but you're doing it, and does it stretch your shoulder when you do this?
- A. Yes, sir.

Q. Is it that you're trying to squeeze a part in it to get the top into place?

A. It's tightening.

Q. You were able to do this job okay before at least a period of months after the switching?

A. Now which job?

Q. Now this would be the job in 2004 after you came back from seeing Dr. Collins in subassembly jobs?

A. Yes.

Q. And is that the job that you had up until the time you last worked out there?

A. Yes, sir.

Q. Would they sometimes rotate you onto other jobs?

A. Yes, sir.

Q. Did they do any job rotation on you in the early part of 2006 that made your symptoms worse?

A. Yes, sir, that's when I was over at the pull out shower heads, when I had to tighten the aerators and use the air tightener on the aerators, because you had to put the weight

on the machine to get your aerators on.

Q. When did you first notice that both your right and your left shoulders were hurting together this time around?

A. Into part of January. Both of them were hurting pretty bad.

The central issue in this claim is whether the claimant met the requirements of Ark. Code Ann. §11-9-102 (4) (A) (ii) (a). That is, whether the claimant demonstrated she sustained a nonspecific injuries to her shoulders caused by rapid repetitive motion. The Courts have held on numerous occasions that to be entitled to receive benefits under the relevant section of the Workers' Compensation Act for gradual onset injuries, the job must involve both rapid and repetitive motion. According to the Arkansas Supreme Court in Malone v. Texarkana Public Schools, 33 Ark. 343, 969 S. W. 2d 644 (1998), for claimants to prevail, they must show the tasks involved in their employment required repetitive motion, performed rapidly. I find that the rapid and repetitive nature of the claimant's job duties and performance were established by her credible and unquestioned testimony, which clearly described tasks

which are not only repetitive but which are required to be performed rapidly. While the claimant's job duties varied slightly over her time with the respondent, it was readily apparent that all of her jobs required an extensive amount of work with her hands and included extensive reaching over her head. Clearly, this was a repetitive environment which can cause development of repetitive motion injuries. Additionally, the respondent offered into evidence a document which purports to be a job description of the claimant's duties. Under the Summary section of that position's description, it states the worker, "performed repetitive bench or line assembly operation to mass produce water faucets or other plumbing products."

As for the element of rapidity, the testimony of the claimant clearly establishes that her job was rapid. Her testimony in this regard is set out below:

- Q. All right. Now, the bagging, I wanted to ask you about that. Bagging is what you did at the job before 2004, correct, or was that something you did with subassembly?
- A. That was with subassembly back in 2004.

Q. And these would be putting parts into plastic bags?

A. Yes.

Q. And it would take the same reaching that you described previously?

A. Yes, sir.

Q. And you recall on average in a day how many of these bags you would do?

A. Anywhere from 2,000 to 3,000 a day.

I find that even if only the lower range of the claimant's estimated quota is accepted, 2,000 bags per 8-hour shift corresponds to approximately 250 bags per hour or approximately one every 15 seconds. Given the numerous hand and arm movements required to perform this task, I cannot understand how the majority can classify this motion as anything but rapid. Even if it is assumed that the claimant exaggerated the number of bags per shift and it was only half as many as she said, that still corresponds to one bag per every 30 seconds. Once again, I cannot see how the majority can classify this level of activity as anything but rapid.

Based on the claimant's credible testimony and the respondent's job description outlining the claimant's job duties, I find that the preponderance of

the evidence of record clearly establishes that the claimant routinely engaged in rapid and repetitive motion while performing her job duties. The majority's determination otherwise is clearly in error.

Furthermore, although not specifically addressed by the majority, the respondent has also argued that the claimant is not entitled to benefits because of the statute of limitations. I firmly state that I find the statute of limitations do not apply to this case and does not act as a bar to this claim.

The claimant testified extensively regarding her job duties and problems she had with her shoulders over the years. In 2000, the claimant testified that she had a specific incident injury to her right shoulder. She testified was attempting to reach overhead to find some parts when she felt a popping sensation in that shoulder. The claimant reported this as a job-related injury and the respondent accepted liability for it and provided the claimant medical treatment. She was diagnosed with a right shoulder strain which resolved after treatment.

As the years went by, the claimant occasionally sought medical treatment for shoulder

problems, usually involving her right shoulder. By 2004, the claimant had received some treatment for pain in both of her shoulders. However, the extensive medical records regarding this treatment do not demonstrate that the claimant had sustained any lasting injuries to her shoulders. For example, an MRI of the claimant's left shoulder taken on July 12, 2004, did not find any evidence of a rotator cuff tear and no abnormalities other than some thickening consistent with tendinitis. Prior MRI's and bone scans of the right shoulder likewise did not find any specific injuries or abnormalities.

The respondent's reliance upon the statute of limitations is based on the claimant's 2000 compensable right shoulder injury and her 2004 complaints of left shoulder pain. They contend the current claim arose from those injuries, and was not filed in a timely manner. However, the respondent's argument in this regard is not valid. The claimant's 2000 injury was a specific incident injury which the claimant reported to her employer and which resolved after medical treatment was provided by the employer. The current claim is not in any way related to that injury. While it is true

that the claimant did complain of some shoulder pain in both of her shoulders in 2004, I note that the diagnostic testing performed at that time did not find any specific abnormalities in either of the claimant's shoulders. However, a 2006 MRI of the claimant's left shoulder exhibited evidence of an impingement which the claimant's doctor related to her job-related activities. In fact, the results of the 2006 diagnostic testing eventually resulted in a left shoulder surgery being performed on the claimant. I, therefore, find that the bilateral shoulder injuries the claimant reported to the respondent employer in 2006 were of a different nature and constitute a new claim entirely unrelated to the past complaints she may have had regarding her shoulder problem.

I also note that the Court of Appeals has previously dealt with the question as to when a gradual onset injury occurs. In Pina v. Wal-Mart Stores, Inc., 91 Ark. App. 77, 208 S. W. 3d 236 (2005), the Court of Appeals held the statute of limitations begins to run when a scheduled injury becomes apparent to the claimant. The Court went on to conclude the relevant date for determining when the statute of limitation

began to run was the date the claimant notified her employer of the injury. See also, Cottage Café v. Collette, 94 Ark. App. 72, 226 S. W. 3d 27 (2006).

In the present case, the claimant testified that she realized that her shoulder problems were job related after seeing her doctor in early 2006. That testimony is corroborated by the February 20, 2006 report from Dr. Robert Gullett, a Little Rock orthopedist, who correlated the claimant's injuries with her job activities. The claimant then provided the respondent an AR-N reporting an injury to them on February 24, 2006. Since the present claim was filed shortly after the respondent's Form 2 controverting the claim, I do not think there is any basis for asserting the statute of limitation.

In conclusion, I find that the claimant has established by a preponderance of the evidence her entitlement to workers' compensation benefits based upon gradual onset injuries to her shoulders. The majority's determination that the claimant's job was not sufficiently rapid is not supported by the evidence of record and is clearly erroneous.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner