NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605775

BEATRICE L. WILEY, EMPLOYEE	CLAIMANT
ROCK TENN COMPANY, EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 24, 2008

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE DAWN D. BICKER and the HONORABLE JOSEPH H. PURVIS, Attorneys at Law, 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 May 24, 2007. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over the 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 she sustained a compensable injury arouse out of and in the course of her employment by Respondent employer.

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

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

The claimant alleges that she sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury 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 May 24, 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

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right shoulder on or about July 19, 2005. After a de novo review of the record, I find that the claimant did suffer a compensable injury to her right shoulder on or about July 19, 2005 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.

The claimant, who has worked for Rock Tenn for 12½ years, testified that she was injured on July 19, 2005 when she attempted to correct a paper jam in the flat packing machine she was operating. The flat packing machine is at least 15 feet long and 6½ feet tall. The claimant was feeding flat cartons into the machine when it jammed. In an effort to unjam the paper, the claimant reached up and then felt what she described as a "horrific" pain. The claimant testified that she told Paul Broyles, a supervisor, about the injury and that they both went to Broyles' office to fill out paperwork.

One of the claimant's co-workers, Janet Hale, a nine year employee of the respondent, testified that she saw the incident. Ms. Hale testified that she saw the claimant lean over and put her right hand between her legs and also grab her right shoulder with her left hand, as if immediately after struggling with the jammed machine.

A lead man for the respondent, Dale Ruminer, a 26 year employee of the respondent, also testified that he saw the claimant reach up to unjam the flat packing machine and then grab her right shoulder. Mr. Ruminer also testified that the claimant told him her shoulder was injured at that time. Mr. Ruminer also testified that the claimant was off work for some time that day. Mr. Ruminer testified, as did the claimant, that the supervisor that came to talk to the claimant immediately after the accident was Paul Boyles.

According to the medical records, the claimant went to see Dr. Lander Smith on July 27, 2005. During this visit, she stated that the pain to her right forearm "began when she was reaching for an item on July 19." Dr. Lander Smith referred the claimant to Dr. Scott Smith. The claimant received no work restrictions and continued to work for Rock Tenn in the same capacity

until August 17, when she was limited to no lifting over 10 pounds. On August 24, Dr. Scott Smith noted that "she reports continued pain in the right arm, which now radiates into the neck and shoulder." Also in the August 24 record, Dr. Scott Smith noted "right upper extremity pain" and scheduled an EMG. On September 21, the claimant returned to Dr. Scott Smith, again with shoulder pain and was diagnosed with fibromyalgia and was not given any work restrictions. The claimant then visited Dr. Craig Cummins on October 19, 2005, when she again complained of right shoulder pain. Dr. Cummins ordered an MRI of the claimant's spine on October 19. Dr. Cummins interpreted the results of the MRI on November 11, 2005 and referred the claimant to Dr. David Redding, a neurosurgeon. At this time, the claimant underwent a nerve conduction study in an attempt to reveal the cause of the claimant's pain. The claimant was then referred to Dr. Jay Lipke of Ortho Arkansas. It was not until January 27, 2006, that the doctors at Ortho Arkansas were able to diagnose a right rotator cuff tear.

Based on the testimony of the claimant, Ms. Hale, and Mr. Ruminer, it is clear that a specific incident occurred with the claimant and the flat packing

machine on July 19, 2005. Furthermore, it is clear from a review of the medical records that the claimant has presented objective medical findings of a rotator cuff tear injury that caused physical harm and required medical services. The only element which is in controversy is the "arising out of and in the course of employment" element.

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). 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).

Here, the claimant's doctor visit in which she complained of shoulder pain was within 8 days of when the claimant testified the work-related injury occurred.

The claimant credibly testified that she immediately began self-medicating with over-the-counter pain relievers. Additionally, the claimant consistently complained of her arm injury throughout the process, maintaining her "whole arm" hurt. The claimant continued working at full duty almost entirely throughout the time after the injury and the claim process despite complaining of pain. Based on the evidence of record and contrary to the majority, I find that the claimant has met the "arising out of" element, and should not be unduly punished because neither the company doctors nor her private doctors could immediately pinpoint the exact nature of her injury.

In conclusion, I find that the claimant has met the burden of proof by a preponderance of the evidence for a compensable specific incident rotator cuff tear on July 19, 2005 and is entitled to reasonable and necessary medical treatment and disability benefits associated with her compensable injury.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner