NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801328

LILA MOORE,
EMPLOYEE CLAIMANT

LABARGE, INC.,
EMPLOYER RESPONDENT

HARTFORD UNDERWRITERS, INS. COMPANY,
INSURANCE CARRIER RESPONDENT

OPINION FILED JUNE 12, 2009

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

Claimant represented by the HONORABLE MARK J. FREEMAN, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney 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 November 24, 2008. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

> 1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 18, 2008, and contained in a pre-hearing order filed June 18, 2008, are hereby accepted as fact.
>
> 2. The claimant failed to prove the existence of a causal relationship between her objectively shown difficulties and her alleged specific work related incident.

3. The claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury in this matter.

4. That other issues in this matter are not unnecessary to decide due to the lack of a compensable injury.

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 November 24, 2008 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.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The majority, by affirming the Administrative Law Judge, finds that the claimant failed to prove that she sustained a compensable injury to her left shoulder in an employment-related accident on June 10, 2008. Based upon a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable specific incident left shoulder injury on June 10, 2008, and therefore, I must respectfully dissent.

History

The claimant worked for the respondent as an assembler, where she assembled machinery parts for the respondent. The claimant testified that on January 10,

2008, she was using a manual crimp tool, similar to a large set of pliers, to attach some heavy metal braiding wire to a board when she heard a pop in her left shoulder and felt tingling down her left arm with numbness in her fingers. The claimant went on break and called her doctor. The claimant testified that she went to her supervisor and told her that she had hurt her left shoulder.

On January 17, 2008, the claimant presented to Dr. Joseph Ricciardi of Orthopaedic and Sports Medicine Clinic of Northwest Arkansas. Dr. Ricciardi diagnosed the claimant with a rotator cuff tear, bursitis, and impingement of the left shoulder. On January 24, 2008, the claimant underwent an MRI scan of her left shoulder. The MRI report stated:

> There is... a laminated appearance of the supraspinatus tendon and anterior infraspinatus with fluid between the superficial and deep fibers. This may represent a interstitial tear or subacute strain. There are also findings compatible with impingement.

The claimant testified that she had a condition she referred to as "malposition of the scapula", and that this condition existed for approximately five years prior to this claim. The claimant testified that prior

to January 10, 2008, she did not "have a whole lot of problems" with her left shoulder and that her left shoulder condition "ached some." The claimant testified that the pain she felt for this injury was different than she had felt before, as her arm was numb after the present injury.

On March 6, 2008, in a residual capacity questionnaire, Dr. Ricciardi states that his diagnosis is

> 1. Rotator cuff, left shoulder, 2. Bursitis left shoulder, 3. Impingement left shoulder... Pain and weakness on resisted rotation of left shoulder, (+) impingement test, MRI-proven tears of supra and infraspinatus portions of the rotator cuff. A Type II/III acromion and degenerated AC joint are also noted... patient needs surgery now.

Dr. Ricciardi goes on to state:

> My considered medical opinion, with a reasonable degree of certainty is that [the claimant's] rotator cuff tear is work-related and not in any way associated with a diagnosis of pre-existing so-called scapular malpositioning.

Discussion

I find that the claimant has shown, by a preponderance of the evidence, that she sustained specific incident left shoulder injury. In order to

prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment caused by a specific incident, identifiable by time and place of occurrence and (2) that the injury caused internal or external harm to the body which required medical services supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16). Mickel v. Engineering Speciality Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). First, the claimant has presented objective findings of an injury that caused physical harm to the body which required medical services. The January 24, 2008 MRI report stated:

> There is... a laminated appearance of the supraspinatus tendon and anterior infraspinatus with fluid between the superficial and deep fibers. This may represent a interstitial tear or subacute strain. There are also findings compatible with impingement.

As fluid between the superficial and deep fibers as well as an impingement and a tear are not within the voluntary control of the claimant, I find that the

January 24, 2008, MRI demonstrates objective medical findings of the claimant's left shoulder injury.

Next, the claimant presented proof by a preponderance of the evidence that her injuries arose out of and in the course of employment caused by a specific incident identifiable by time and place of occurrence. 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 credibly testified that her left shoulder was injured on January 10, 2008 when she was assembling a piece of heavy, braided wire when she injured her left shoulder. The claimant testified that she immediately reported the injury to her supervisors. The claimant was then sent to Dr. Richter who referred her to Dr. Ricciardi. The January 17, 2008 medical records from the visit to Dr. Ricciardi states that the injury occurred "while working, lifted boards using crimp tools and injured left shoulder."

Although the claimant testified that she had prior shoulder problems, there is no indication that the claimant's prior shoulder problems ever rose to the

severity that was experienced on January 10, 2008. There is no mention of a rotator cuff tear prior to January 24, 2008. There is no evidence that the claimant failed to give a full report of prior existing shoulder problems to Dr. Ricciardi before he stated his opinion of the cause of the injury. Dr. Ricciardi stated: "[w]ithin a reasonable degree of medical certainty that (the claimant's) rotator cuff tear is work-related and not in anyway associated with a diagnosis of pre-existing so-called scapular malpositioning." I find that Dr. Ricciardi's medical opinion and the claimant's credible testimony show that the work activity the claimant was engaged in caused the injury.

In conclusion, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable specific incident left shoulder injury on June 10, 2008, and therefore, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner