

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503369

TOMMY R. PRICKETT, EMPLOYEE	CLAIMANT
SUPERIOR INDUSTRIES INTERNATIONAL, INC., SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 22, 2009

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

Claimant represented by HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed October 27, 2009.

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 not proven by a preponderance of the evidence that he sustained compensable injuries to his neck, shoulders or right arm.

4. Because of the above finding, the issue as to whether Claimant is entitled to reasonable and necessary medical treatment of his neck, shoulders and right arm is moot and will not be addressed.

5. Claimant has proven by a preponderance of the evidence that he is entitled to treatment of his left arm from February 15, 2005 through December 22, 2005, when he reached the end of his healing period.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs & dissents.

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. After a de novo review of the record, I agree with the majority that the claimant did not present objective findings of a right arm injury. However, as I find that the claimant has met all of the required elements for compensable specific incident neck and shoulder injuries and would award benefits accordingly, I must respectfully dissent on these issues.

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. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant testified as follows:

Q. And what happened on February 15, Tommy?

A. They were packing trucks to be put on a machine, and they got where they - over the machine, they had put so many parts on there, it would be so tight you couldn't get them off. And they had a girl that was on that part and she was trying to get it off. So I walked over there and I was going to help her, and I jerked again and it never did move. So then I reared back with both hands and tried to yank it out. And when I did, it was just like someone just shot electricity or sharp pain run up my arm.

Q. Did it just go up one arm?

A. No, not really, but I mean the one that really swoll up was my left one at the time.

Q. Was there any other part of your body that was injured other than just the arms, shoulders?

A. Well, I didn't pay that much attention to it at the time, but later on my arm, shoulders and into my neck began to ache.

The medical evidence confirms objective findings for the cervical injury that the claimant sustained, in that, it documents disc bulging, and osteophyte complex was seen at the C3/4, C4/5, and C5/6, as diagnosed by CT testing performed on May 31, 2007. The claimant has further proven the injuries to his shoulders by objective findings. The claimant suffered a right rotator cuff tear which was surgically repaired by Dr. Allen and was diagnosed with a left-sided rotator cuff, as well. The claimant testified that Dr. Allen did surgery on his left shoulder to correct his problems. Although the respondent alleges that the claimant's injuries to his neck and both shoulders were pre-existing, clearly, the law is that in workers' compensation law, an employer takes the employee as he finds him, and

employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. Oliver v. Guardsmark, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W. 3d 900 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W. 2d 883 (1996). Here, the claimant was symptom-free of any pain to his shoulders and complained of only limited neck pain prior to the injury, and it was not until after the specific incident at work that the claimant needed treatment for his rotator cuff and neck injuries. Therefore, I find that the claimant has proved by a preponderance of the evidence that his injuries were caused by the specific incident at work, and that his current need for treatment is not due to any pre-existing conditions.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner