

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512949

MARY A. SMITH, EMPLOYEE	CLAIMANT
AMERICAN FUEL CELL & COATED FABRICS, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED APRIL 22, 2009

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

Claimant represented by HONORABLE MICHAEL WHITE, Attorney at Law, North Little Rock, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed July 14, 2008.

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 agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder by either specific incident or gradual onset.

4) The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right wrist by either specific incident or gradual onset.

The claimant alleges that he 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 that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

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 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 failed to prove compensability of any injuries incurred on July 15, 2005. Based on a de novo review of the record, I find that the claimant has met her burden of proof by the preponderance of the evidence for a compensable specific incident right shoulder injury as well as a gradual onset carpal tunnel injury to her right wrist, and therefore, I must respectfully dissent.

_____ The claimant worked for the respondent as a fuel cell assembler. She was responsible for assembling and painting fuel cells and fuel cell parts. The claimant testified that she was responsible for painting each of the fuel cell's panels for one hour each. The claimant testified

that she painted the panels by hand using a standard paintbrush.

I. Specific Incident Right Shoulder Injury

The majority errs in finding that the claimant did not prove a compensable shoulder injury. 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).

I find that the claimant has shown, by a preponderance of the evidence, that she sustained a specific

incident right shoulder injury. First, the claimant presented proof by a preponderance of the evidence that her right shoulder injury arose out of and in the course of employment. 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 testified that she injured her right shoulder while she was under a fuel cell and a steel rod caught her shirt causing her to twist to become free. 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). The court has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962);

Wentz v. Servicemaster, 75 Ark. App. 296, 57 S.W.3d 753 (2001). The first medical record in the record is a letter from Dr. Gati, an orthopedic specialist, to Dr. Patrick Antoon, the claimant's family physician. The claimant presented to Dr. Gati on August 23, 2005, 6 weeks after the initial injury. This means that the claimant presented to Dr. Antoon and was referred to Dr. Gati less than 6 weeks prior to August 23, 2005. The claimant testified that she did not have shoulder problems before this incident and the record contains no evidence indicating that the claimant has suffered from such shoulder problems in the past. I find that the claimant's credible testimony shows that her right shoulder injury manifested so soon after the July 15, 2005 employment incident where the claimant was trapped under a fuel cell that there is a causal connection between the incident and the manifestation of the injury.

Second, I find that the claimant has presented proof by a preponderance of the evidence, establishing an injury that caused internal or external physical harm to the body which required medical services. The medical records indicate the claimant was forced to undergo surgery on April 19, 2006, to repair the damage in her right shoulder,

establishing that the injury caused internal physical harm to the claimant requiring medical services.

Third, the claimant has presented objective medical findings supporting her compensable injury. Objective findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). Here, the medical records show that on April 19, 2006, the claimant underwent a right shoulder surgery in relation to her shoulder impingement syndrome. During the surgery, Dr. D'Orsay Bryant noted an "extremely thick, fibrotic bursa" and removed this tissue, which satisfies the objective findings requirement of Ark. Code Ann. §11-9-102(4)(D). Therefore, I find that the claimant has shown objective medical findings of her right shoulder injury.

Lastly, the claimant has presented 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. Here, the claimant testified that she was injured when her shirt became caught on a steel rod under a fuel cell she was assembling on July 15, 2005. The claimant testified that she had to struggle to free herself from the rod, and thus injured her right shoulder in the process. The

respondent presented no evidence contesting this. Therefore, I find that the claimant has met all the elements for a specific incident right shoulder injury.

II. Carpal Tunnel Syndrome

In this claim, there is also the issue of the claimant's carpal tunnel syndrome. Ark. Code Ann. § 11-9-102(4)(A)(ii) 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. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition

The Arkansas Supreme Court has interpreted this statutory language to mean that a claimant is not required to prove that her condition was caused by rapid repetitive motion when the diagnosis is carpal tunnel syndrome. Kildow v. Baldwin Piano and Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

The claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. §11-9-102(4)(D) "Objective findings" are those that cannot come under the voluntary control of the patient.

Ark. Code Ann. §11-9-102(16). Once the presence of a gradual onset injury is established by objective medical findings, a claimant must prove by a preponderance of the evidence that the injury arose out of and in the course of the employment and caused internal or external physical harm to the body.

Ark. Code Ann. § 11-9-102(4) (A) (ii). For gradual onset injuries, the claimant must also show that the injury was the major cause of the disability or need for treatment.

Ark. Code Ann. § 11-9-102(4) (E) (ii).

First, the claimant has proved by a preponderance of the evidence that the gradual onset injury arose out of and in the course of the employment and the injury was a major cause of the disability or need for treatment. The claimant credibly testified that her job duties included having to disassemble, paint and then reassemble fuel cell parts. The claimant testified that her job required her to paint each of the 14 panels on a fuel cell for a full hour by hand with a standard paintbrush. The record contains no evidence that any other activity is the cause of the claimant's carpal tunnel syndrome. Furthermore, it was during the time period when the claimant worked for the respondent that the claimant became aware of her CTS. Based on the claimant's credible testimony, I find that the CTS

injury arose out of the claimant's employment and that the injury was the major cause of the claimant's disability or need for treatment.

Next, the gradual onset injury must cause internal or external physical harm to the body, established by objective medical findings, which required medical services or resulted in disability or death. It is clear from the medical records and the claimant's credible testimony that the claimant's CTS required medical services, including carpal tunnel release surgery on October 4, 2005 and February 22, 2006. Furthermore, the claimant has presented medical evidence supported by objective findings. On August 29, 2005, Dr. Mayra Alfonso interpreted the nerve conduction survey of the claimant's right upper extremity and stated the claimant had "evidence of moderate carpal tunnel syndrome", recommending a surgical evaluation. This conclusion satisfies the objective medical findings requirement, as it is based on a nerve conduction survey which is not within the voluntary control of the claimant. I find that the claimant's injury caused internal or external physical harm to the body, which required medical services or resulted in disability and which is supported by objective medical findings.

In conclusion, I find that the claimant has shown, by a preponderance of the evidence, all of the elements of a specific incident right shoulder injury. Additionally, I find that the claimant has met her burden of proof by the preponderance of the evidence for a compensable gradual onset right carpal tunnel syndrome injury, and therefore, I must respectfully dissent.

PHILIP A. HOOD, Commissioner