

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F910665

MEGAN J. GOLDWOOD,
EMPLOYEE

CLAIMANT

CROWN POINT HEALTH & REHAB CENTER,
EMPLOYER

RESPONDENT

CYPRESS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 19, 2011

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

Claimant represented by the HONORABLE M. SCOTT WILLHITE,
Attorney at Law, Jonesboro, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 2, 2010. The administrative law judge found that the claimant did not prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable injury. We find

that the claimant proved she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Megan Jo Cox Goldwood, age 38, testified that she became employed as a certified nursing assistant for the respondent-employer in June 2008. The parties stipulated that an employment relationship existed on October 24, 2009. The claimant testified, "We were getting patients up for dinner and we went down to get my last gentleman up and when we got him up out of the bed and put him - went to put him in the wheelchair, I felt a sharp pull in my arm - in my left arm."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on October 24, 2009. The Accident Information section of the Form AR-N indicated that an accident had occurred at 3 p.m. on October 24, 2009 and that the claimant had injured her "arm." The claimant wrote, "I don't know what caused (sic). I didn't do anything different."

The claimant received emergency medical treatment on or about October 24, 2009, at which time it was noted, "Presented to ER with c/o pain entire left arm. Has been

increasing in pain since 3 p.m. Was at work when symptoms began but no out of ordinary lifting or trauma. States fingers have turned cold and blue about 30 minutes ago, now pink and warm, radial pulse palpable. History: Fatty cell tumor, upper left arm."

An x-ray of the claimant's cervical spine was done on October 24, 2009, with the impression, "Normal cervical spine." An x-ray of the claimant's left humerus was also done on October 24, 2009, with the finding, "Normal Left Humerus." A physician's handwritten impression on or about October 24, 2009 appears to have been "L medial neuritis." The treatment plan appears to have included medication and no lifting/pulling/pushing until follow-up. A nurse's note at Fulton County Hospital on October 24, 2009 indicated, "No lifting pushing or pulling until released by Dr. Lie."

A progress note at Ozarks Medical Center on October 29, 2009 indicated that the claimant reported she "hurt her L arm at work Saturday." The claimant complained of pain in her left arm and shoulder. Dr. Terry Green, an orthopedic specialist, corresponded with Dr. Kam Lie on November 3, 2009:

Thank you for sending Megan to see me. She is an interesting case. She does have evidence of a

torn bicep tendon. She has a bunching of her bicep on the left and extreme tenderness. I think it is less likely that the rotator cuff is torn. For now, I recommend that she be in a sling. We will order an MRI of her shoulder and upper arm. I am not so sure what we are going to do as far as her treatment at this time. I will keep you informed after we see her once that MRI has been completed.

An MRI of the claimant's left shoulder was done on
November 17, 2009:

There are degenerative changes involving the acromioclavicular joint. There is a downpointing acromion, causing abnormal signal in the rotator cuff. The glenohumeral joint reveals some mild degenerative changes, rather pronounced in a patient of this age, raising the question of whether she lifts weights, or possibly was a gymnast, etc. I do not see a full-thickness tear of the rotator cuff, but there is certainly tendinosis present.

Impression

1. Degenerative changes involving the acromioclavicular joint with a downpointing acromion, causing rather pronounced rotator cuff inflammation/tendinosis.
2. Some early degenerative changes of the glenohumeral joint, rather pronounced for a patient of this age, with abnormal signal in the superior labrum, as well as the inferior labrum. The patient may have had some previous dislocation or possibly chronic dislocations of the shoulder. I do not see an acute fracture at this time.

An MRI of the claimant's left upper arm was taken on
November 17, 2009:

HISTORY: The patient reports some pain and swelling of the distal biceps area after a lifting injury....

FINDINGS: The biceps muscle and tendon, brachioradialis, and other muscles and tendons of the distal upper arm and across the elbow appear to be intact. There is no significant edema or fluid collection. The elbow joint space is well maintained. The humerus and proximal ulna and radius are unremarkable.

Impression
No significant abnormality.

The claimant followed up with Dr. Green on November 23, 2009:

She still has some pain in her left shoulder....There is no hemorrhage around her shoulder now. She has good range of motion of her shoulder without too much difficulty.
X-RAYS: Personal review of the MRI is a little equivocal. I think there are some changes in the rotator cuff.

Dr. Green diagnosed "Rotator cuff tear, at least a partial tear - left shoulder (840.4). **RECOMMENDATIONS:** Start general active and passive range of motion exercises for the shoulder. Recheck in four weeks. Consider return to work in approximately four more weeks."

Dr. Green signed a slip on November 23, 2009 which indicated the claimant "may not return to work until after evaluation at next appointment scheduled on December 21, 2009." An addendum note by Dr. Green on November 24, 2009

indicated, "She reminds me that this was a work-related injury. She hurt herself lifting a patient."

A physical therapy evaluation on December 1, 2009 stated, "Pt works as CNA at Crown Point & injured her shoulder while getting a resident up." The physical therapist observed the claimant's left upper extremity and reported "visible edema in both biceps & triceps up into shoulder." A physical therapist noted on December 4, 2009, "several areas of muscle spasm, edema L bicep to trcp."

The claimant followed up with Dr. Green on December 21, 2009: "She has had some improvement in her shoulder. She has had privilege of physical therapy. Now, more of the pain is in the elbow. **EXAM:** The exam reveals that it is tender in the region of the elbow and in the regions of the bicep's insertion, distally. **X-RAYS:** Elbow (four views) do not show pathology." Dr. Green diagnosed "Ruptured distal insertion of the biceps - left elbow" and recommended a left elbow MRI.

An MRI of the claimant's left elbow was taken on December 23, 2009:

FINDINGS: A marker denotes the area of tenderness. In this area, there is some minimal edema in the subcutaneous soft tissues and adjacent musculature.

Otherwise, the soft tissue structures are unremarkable. There is no acute fracture or dislocation. There is a small amount of fluid in the joint space, likely physiologic. The bone marrow signal is maintained.

Impression

Mild edema in the soft tissues that correlate with the palpable area of concern/tenderness. Otherwise, unremarkable MR of the elbow.

The claimant testified that she returned to her regular work duties for the respondent-employer on February 13, 2010. The claimant testified, "I didn't do any lifting that first weekend and the next weekend when I worked, I still really didn't do - I didn't do any lifting, but I started doing stuff like emptying the trays in the dining room and that's when my arm started to hurt really bad again." The claimant testified that she was physically unable to return to work beginning February 20, 2010. "I can't use my left arm," the claimant testified.

The claimant was seen at Salem 1st Care on February 22, 2010. It was noted that the claimant complained of left arm pain, "Hurt arm at work lifting trays in the dining room. Sat after lunch 2/20/10." The claimant was assessed with "Left biceps tendonitis" on February 22, 2010. A handwritten notation appeared to indicate that the claimant was taken off work.

The claimant was seen at Salem 1st Care on March 8, 2010 and was assessed with left shoulder strain and left rotator cuff impingement. A handwritten note appeared to indicate that the claimant was taken off work and also appeared to state, "in my opinion injury is work related."

Dr. John H. Scribner noted on April 8, 2010, "We have referred Megan Goldwood (08/09/72) to be seen by Dr. Spencer Guinn on April 12, 2010 at 10:40. Dr. Guinn is an orthopedic doctor and will be handling the next steps in the care of her left shoulder."

The claimant testified that she was not allowed to see Dr. Guinn.

A pre-hearing order was filed on May 24, 2010. The claimant contended that she sustained an injury to her left upper extremity on October 24, 2009 "as a result of a specific incident while she was helping a resident get up for supper." The claimant contended that she was entitled to medical benefits. The claimant contended that she had been unable to work since the accident and was entitled to temporary total disability benefits "from October 24, 2009 to the present and attorney's fees." The respondents

contended that there was not an accidental injury and that there were no objective medical findings.

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury to her left upper extremity.
2. Whether the claimant is entitled to reasonably necessary medical treatment.
3. Whether the claimant is entitled to temporary total disability benefits.
4. Whether the claimant is entitled to a controverted attorney's fee.

A hearing was held on September 20, 2010. At that time, the claimant contended that she aggravated her initial injury after returning to work on or about February 20, 2010. The claimant contended that she was entitled to temporary total disability benefits from October 24, 2009 until February 13, 2010, and a second period of temporary total disability benefits from February 20, 2010 until a date to be determined. The claimant testified that the pain she felt in her left shoulder and arm were "about the same" and had not decreased.

An administrative law judge filed an opinion on December 2, 2010. The administrative law judge found, among other things, that the claimant did not prove she sustained a compensable injury. The claimant appeals to the Full Commission.

II. ADJUDICATIONA. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i) (Repl. 2002).

The employee must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). 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).

An administrative law judge found in the present matter, "4. Claimant has not proven by a preponderance of

the evidence that she sustained a compensable injury to her left upper extremity on October 24, 2009[.]” The Full Commission does not affirm this finding. The Full Commission finds that the claimant proved she sustained a compensable injury to her left arm and left shoulder. The parties stipulated that an employment relationship existed on October 24, 2009. The claimant testified that she felt a sharp pull in her left arm while she was performing employment services for the respondents, *i.e.*, getting a patient up for dinner. The claimant signed a Form AR-N, Employee’s Notice Of Injury, on October 24, 2009. Although the Form AR-N did not specifically mention the lifting incident, the claimant did report that she had injured her arm at work. The initial medical report on October 24, 2009 corroborated the claimant’s testimony that her left arm had begun hurting at work. The initial medical report stated, “Was at work when symptoms began but no out of ordinary lifting or trauma.” The claimant admitted that she could have been more specific in filling out the Form AR-N but also testified that she did not consider her regular lifting duties to be un-ordinary.

A medical note on October 29, 2009 indicated that the claimant had injured her left arm at work the previous Saturday. The claimant also complained of pain in her left arm and left shoulder. Dr. Green began treating the claimant on November 3, 2009 and reported "a bunching of her bicep on the left and extreme tenderness." An MRI of the claimant's left shoulder on November 17, 2009 showed degenerative changes in the acromioclavicular joint. Dr. Green reported on November 23, 2009, "Personal review of the MRI is a little equivocal. I think there are some changes in the rotator cuff." Dr. Green diagnosed "Rotator cuff tear, at least a partial tear." A physical therapist treated the claimant on December 1, 2009 and reported "visible edema in both biceps & triceps up into shoulder." A physical therapist saw the claimant on December 4, 2009 and noted "several areas of muscle spasm, edema L bicep to trcp." An MRI of the claimant's left elbow on December 23, 2009 revealed "mild edema in the soft tissues." The claimant was diagnosed with left shoulder strain on March 8, 2010, at which time it was noted, "in my opinion injury is work related."

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to her left shoulder, arm, and elbow. The accidental injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on October 24, 2009. The claimant established a compensable injury to her left arm and left shoulder by medical evidence supported by objective findings. These objective findings included bunching of the biceps on the left; rotator cuff tear; visible edema in the biceps and triceps up into the left shoulder; muscle spasm in the left biceps and triceps; and edema as shown in the MRI of the claimant's left elbow. We find that these objective medical findings were causally related to the compensable injury.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the

employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant must prove by a preponderance of the evidence that she is entitled to requested medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable injury to her left shoulder, arm, and elbow. We therefore find that the claimant proved the medical treatment of record was reasonably necessary in connection with her compensable injury. Dr. Scribner referred the claimant to Dr. Guinn for care of the claimant's left shoulder. The Full Commission therefore finds that the claimant proved she was entitled to at least one appointment with Dr. Guinn. Such an appointment is reasonably necessary in connection with the claimant's compensable injury.

C. Temporary Disability

The Full Commission has found that the claimant proved she sustained a compensable to her left shoulder, which is a non-scheduled injury. Temporary total disability for a non-

scheduled injury is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The Full Commission has also found that the claimant proved she sustained a compensable injury to her left arm and elbow, a scheduled injury. An employee who has suffered a scheduled injury is to receive temporary total disability benefits during her healing period or until she returns to work regardless of whether she has demonstrated actual incapacity from earning wages. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of her injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

The Full Commission has found in the instant matter that the claimant proved she sustained compensable injuries to her left shoulder, arm, and elbow on October 24, 2009. The claimant was given work restrictions of no lifting, pulling, or pushing on October 24, 2009. The claimant testified that restricted work was not available with the respondent-employer. We therefore find that the claimant

was entitled to temporary total disability benefits beginning October 25, 2009 until February 13, 2010, when the claimant returned to work. The evidence demonstrates that the claimant was totally incapacitated from earning wages during this period and had not returned to work.

The claimant testified that she returned to regular work for the respondent-employer on February 13, 2010. The claimant testified that her work duties caused pain in her left upper extremity beginning February 20, 2010. The claimant testified that she was unable to work beginning February 20, 2010 and that she was physically unable to use her left arm. The claimant was taken off work during medical visits dated February 22, 2010 and March 8, 2010. The evidence therefore demonstrates that the claimant remained within a healing period, was totally incapacitated from earning wages, and did not return to work beginning February 20, 2010. The claimant proved she was entitled to temporary total disability benefits beginning February 20, 2010 until a date to be determined.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury to her left shoulder, arm, and elbow.

We reverse the administrative law judge's finding that the claimant did not prove she sustained a compensable injury. The claimant proved that the treatment of record provided for her left shoulder, arm, and elbow was reasonably necessary in connection with the compensable injury. The claimant proved she was entitled to at least one visit with Dr. Spencer Guinn. The claimant proved she was entitled to temporary total disability benefits from October 25, 2009 until February 13, 2010. The claimant proved she was entitled to temporary total disability benefits beginning February 20, 2010 until a date to be determined. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

My review of the evidence demonstrates that the claimant completed a for AR-N on the date of the alleged incident. She wrote on the form in the section where it says to discuss the cause of the injury, "I don't know what caused it. I didn't do anything different." When the claimant reported to the emergency room several hours later, the history states that the claimant was at work when her symptoms began but nothing out of the ordinary occurred and she had no lifting and no trauma.

Further, the records of Dr. Green contain a notation the claimant reminded him her injury was work related. She attributed that the fact that Dr. Green had a bad memory. It is curious to me why the claimant felt it was necessary to remind Dr. Green of this if she told him this on her first visit with him. Dr. Green's records would certainly contain information in that regard.

Therefore, after considering the evidence of record, I find that the claimant has failed to meet her

burden of proof. Accordingly, I respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner