

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F909423

LOIS JOHNSON,
EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS FOR MEDICAL
SCIENCES (UAMS),
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 11, 2011

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant, *pro se*, appeals an administrative law judge's opinion filed August 10, 2010. The administrative law judge found that the claimant failed to 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. The claimant proved that she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

The record indicates that Lois Johnson, age 48, was hired at University of Arkansas for Medical Sciences in January 2006. Ms. Johnson testified that she was a Registered Nurse. The parties stipulated that an employment relationship existed during June 2009. The claimant testified that she sustained an accidental injury on June 18, 2009. The claimant testified, "I was - we were cleaning up this patient, and I had a co-worker working with me, and after we got through cleaning her up, we pulled her up in bed, and as I pulled her up, I felt something in my arm, and it sounded like a pop, but I felt it. And, after I cleaned her up, I remember rubbing my shoulder, saying I heard something pop in my arm, you know, and it was kind of painful for the moment, and I rubbed it and shook it off, and we were very busy, and I washed my hands, after my co-worker did, and we went on down the hall, you know."

Chandra Nicole Garrett testified that she was working with the claimant at the time of the specific incident: "I

know it was in June, and summer months, I'm pretty sure I was probably there....Shortly after turning the patient, then we pulled the patient up, where we had a wedge; we removed the wedge, and we were pulling the patient up, and she was just like, ohhhh, and she kind of moved her shoulder around, and I was like, yeah, she is heavy. And then she was, like, that kind of hurt, might have pulled something."

Sandra Evans, a staff nurse for the respondent-employer, testified that she could not recall whether she was working with the claimant on the date of the injury. Ms. Evans testified, "She did tell me, at the end of June, that she had hurt her shoulder, pulling on a patient."

The claimant testified that she sought treatment with Dr. Shahid Shah, her primary care physician, on June 30, 2009. The record indicates that a Registered Nurse saw the claimant on June 30, 2009 and noted, "C/O Right upper arm pain/muscle spasm. Had injury 3 weeks ago she states....Lifted patient 3 weeks ago and hurt right shoulder." A musculoskeletal exam showed "joint swelling" and pain in the claimant's right shoulder with deep palpation.

Dr. Shah signed a note on June 30, 2009 indicating that the claimant could return to work on July 3, 2009. The claimant's testimony indicated that she took personal leave from work beginning in July 2009, and that she returned to work on August 6, 2009. The claimant testified that her right shoulder condition worsened on August 6, 2009: "I was working with another tech, which is a co-worker, and I hurt my arm again....Lifting and turning on a patient." Pauline Johnson testified that she helped the claimant turn a large patient on August 6, 2009: "When we grabbed the patient, it was just me and her, and she was getting ready to pull her up, and she said, ahhhh, and she stopped in the middle of pulling the patient up in bed. So, she - I asked her what was wrong, and she said that she hurt her shoulder. And I stepped out of the room and called for somebody to come and help us pull the patient up in bed."

The record indicates that the claimant did not work after August 6, 2009.

The record indicates that the claimant saw Dr. Shah on August 11, 2009: "Lifted patient 7 weeks ago and hurt right shoulder." Dr. Shah's musculoskeletal exam showed "joint swelling" and "pain in anterior right shoulder with deep

palpation." The treatment plan included physical therapy and "No lifting objects greater than 5 lbs for 1 month with right arm."

On August 12, 2009, the claimant was evaluated for Occupational Therapy Services. The treatment diagnosis was Right shoulder injury, onset date May 20, 2009. An occupational therapist noted on or about August 12, 2009, "Patient states that shoulder started hurting in May & has gotten progressively worse."

The claimant testified that she returned to work at light duty for two days and that afterward, "My boss called and told me that I could no longer work under light duty, because there was no such thing." The claimant testified that Rowena Garcia was her boss.

Virginia King testified that she was the respondent-employer's senior human resource consultant and administrator for workers' compensation. Virginia King testified that she was first made aware of an employment-related injury "on 9/1 of '09, when Ms. Johnson gave me a call."

Rowena Garcia testified that she was a clinical service manager for the respondent-employer. The respondents' attorney questioned Rowena Garcia:

Q. What is the first date on which you heard anything about Ms. Johnson claiming an on-the-job injury?

A. 9/1/09....

Q. Did you have a conversation with her in the morning?

A. Yes.

Q. What was the nature of that conversation?

A. To inform her that she was being put on Leave of Absence....Because the FMLA time had run out, and I was informed that I needed to go ahead and put her on Leave of Absence....

Q. Did you have a conversation with her - another conversation on the same date?

A. Yes, sir.

Q. And how did that come about?

A. She had informed me that she had probably hurt her shoulder at work.

Q. Now, tell me, when did that occur?

A. Oh, it was later on the evening, after four (4:00)....

Q. Okay. Did you ever receive any kind of complaint, any kind of claim or notice, that the claimant had re-injured her shoulder on August the 6th?

A. No, sir....

Q. Did she ever turn a report in to you before 9/1 of '09?

A. No, sir.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on or about September 22, 2009. The claimant wrote on the Form AR-N, "I was try (sic) to pull a pt up in bed that was bed ridden with one of my coworker (sic) who is name (sic) Chandra Garrett. Chandra had been bothered with problem (sic) and I overexerted myself to try & help her." The claimant appeared to write that she "pulled up patient and heard a pop." The claimant did not provide a Date of Accident on the Form AR-N.

The claimant filled out a Public Employee Claims Division Employee's Report of Accident on September 22, 2009, indicating that the date of the alleged specific incident was June 17, 2009. The claimant wrote that she reported the accident to her supervisor, Rowena Garcia, on July 14, 2009.

On October 1, 2009, Dr. Shah signed a Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act). The Certification identified the restriction "no heavy lifting with right arm"

and indicated, "Patient is a Registered Nurse at a hospital and there is no light duty activity available for patient to do. She has to lift and move patients in beds and assist other healthcare staff lifting patient (sic)."

Rowena Garcia filled out a form for the respondents on October 2, 2009 and wrote, "I was not notified of injury until 9/1/09. FMLA about to terminate."

The record indicates that on October 5, 2009, the Public Employee Claims Division received a Worker's Compensation - First Report Of Injury Or Illness. The First Report Of Injury indicated that the date of injury was June 17, 2009. The Date Employer Notified was "Unknown." The First Report indicated that the claimant's injury was a strain to the arm/shoulder which occurred while "pulling pt. up in bed....pulling pt. up in bed & heard a 'pop.'" The First Report indicated that the Date Administrator Notified was September 1, 2009.

Dr. Charles A. Clark began treating the claimant on November 11, 2009:

Lois is a very pleasant 47 y/o who back in June lifted a pt and felt something pop in her shoulder. It was not real bad at that point in time, but slowly got worse in the ensuing several wk to the point where she had trouble sleeping at

night on it, trouble lifting it up, and feels like she is losing strength in her shoulder and arm....

X-RAY: I have looked at radiographs. They show a fairly large anterior spur and AC joint narrowing, but a normal glenohumeral joint.

Dr. Clark's impression was "Impingement, R shoulder."

Dr. Clark injected the claimant's shoulder and noted, "I will see her back here after an MRI of the R shoulder is completed. She is R hand dominant and it is causing her problems with her job at this point in time. She works at UAMS as a nurse."

An MRI of the claimant's right shoulder was done on November 16, 2009, with the following impression:

1. Tears involving the supra and infraspinatus tendons. These appear to be partial but high-grade. Associated tendinopathy is seen.
2. Abnormality along the superolateral aspect of the humeral head with subchondral cyst. Hill-Sachs deformity is suspected.
3. Labral pathology worrisome for labral tears.
4. Glenohumeral joint arthritis accelerated for a patient this age group.
5. Type III acromion.

Dr. Clark noted on December 1, 2009, "The MRI confirmed a rotator cuff tear and a slap lesion. PLAN: I have recommended surgical intervention." Dr. Clark reported on December 17, 2009, "Ms. Johnson is a 47-year-old who injured her right shoulder with resultant loss of abduction and

strength. It did not respond to conservative therapy. An MRI was obtained which was read as a rotator cuff tear. Recommendation is made for arthroscopic evaluation and treatment." Dr. Clark performed surgery on December 17, 2009: "Arthroscopy of the right shoulder with a glenohumeral chondroplasty and superior labrum anterior and posterior lesion resection, subacromial bursectomy, anterior acromioplasty, and distal claviolectomy with rotator cuff debridement." The post-operative diagnosis was "Partial rotator cuff tear. Superior labrum anterior and posterior lesion. Glenohumeral osteoarthritis impingement and acromioclavicular joint arthritis."

The claimant testified that she benefitted from the surgery performed by Dr. Clark.

Dr. Clark reported on March 10, 2010, "I am going to go ahead and let her return to work on Monday, 03/22/10 unless she has problems between now and then. I am going to put her on Tramadol and Flexeril to take at night. She is doing a home program with therabands. If she has problems between now and then, I would be happy to see her back. Otherwise, I will release her on that date to return to full and unlimited activity. There is no swelling present. The

wounds are well healed. She is neurologically intact and functionally with respect to the shoulder she is doing very well."

A pre-hearing order was filed on March 19, 2010. The claimant contended, among other things, that she injured her right shoulder while lifting a patient on June 19, 2009. The claimant contended that she was entitled to reasonably necessary medical treatment, temporary total disability benefits, and fees for legal services. The respondents contended that the claimant did not sustain a compensable injury. The respondents contended that in the event of an award, they would not be liable for benefits or expenses "prior to receipt of notice of this claim on September 22, 2009."

The parties agreed to litigate the following issues: "Compensability, notice, medical expenses, temporary total disability benefits, and fees for legal services."

A hearing was held on May 12, 2010. At that time, the claimant contended that she sustained an aggravation of her shoulder on August 6, 2009. The claimant contended that she was entitled to temporary total disability benefits from August 14, 2009 through March 21, 2010.

An administrative law judge filed an opinion on August 10, 2010. The administrative law judge found that the claimant failed to prove she sustained a compensable injury.

The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

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).

The claimant has the burden of proving 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).

In the present matter, an administrative law judge found that the claimant failed to prove she sustained a compensable injury. The Full Commission reverses this finding. The claimant has been employed as a Registered Nurse for the respondent-employer since January 2006. The parties stipulated that an employment relationship existed during June 2009, and the claimant testified that she sustained an accidental injury on June 18, 2009. The claimant testified that she felt a "pop" in her shoulder turning a hospital patient in bed. Chandra Garrett testified that she was working with the claimant on the date and question and corroborated the claimant's testimony. Sandra Evans testified that she claimant told her "she had hurt her shoulder, pulling on a patient."

The medical evidence corroborates the claimant's testimony. A Registered Nurse in Dr. Shah's office noted on June 30, 2009, "Lifted patient 3 weeks ago and hurt right shoulder." Dr. Shah noted on August 11, 2009, "Lifted patient 7 weeks ago and hurt right shoulder." Dr. Clark reported on November 11, 2009, "Lois is a very pleasant 47 y/o who back in June lifted a pt and felt something pop in her shoulder." Dr. Clark again reported in December 2009

that the claimant had injured her right shoulder. Ark. Code Ann. §11-9-102(4)(A)(i) does not require, as a prerequisite to compensability, that the claimant identify the precise time and numerical date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). Instead, the statute only requires that the claimant prove that the occurrence of the injury is capable of being identified. *Id.* In the present matter, the record indicates that the claimant sustained an accidental injury in June 2009, and that the occurrence of the injury was capable of being identified.

The Full Commission finds that the instant claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved by a preponderance of the evidence that she sustained an accidental injury causing physical harm to her right shoulder. 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 or about June 18, 2009. The claimant established a compensable injury by medical evidence

supported by objective findings. These objective findings included the joint swelling noted by Dr. Shah and the abnormalities shown in the November 16, 2009 MRI of the claimant's right shoulder. These objective findings were causally related to the accidental injury.

The claimant did not prove by a preponderance of the evidence that she sustained a compensable aggravation on August 6, 2009. An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998), citing *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). We recognize the claimant's testimony, corroborated by Pauline Johnson, that the claimant "hurt my arm again" while lifting and turning a patient on August 6, 2009. Nevertheless, the medical evidence does not demonstrate that the claimant sustained physical harm to her right shoulder on August 6, 2009. Dr. Shah saw the claimant on August 11, 2009 and did not report an injury occurring on August 6, 2009. Instead, we reiterate Dr. Shah's note on August 11, 2009, "Lifted patient 7 weeks ago and hurt right shoulder." There is no other medical evidence of record demonstrating that the

claimant sustained physical harm to her right shoulder on August 6, 2009.

The preponderance of evidence does not demonstrate that the claimant sustained an accidental injury on August 6, 2009 which caused physical harm to her right shoulder. The Full Commission's finding that the claimant did not sustain a compensable injury on August 6, 2009 does not affect the claimant's entitlement to reasonably necessary medical treatment and temporary total disability benefits for the compensable injury which occurred on or about June 18, 2009.

B. Notice

Ark. Code Ann. §11-9-701(Repl. 2002) provides:

(a) (1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury....

(b) (1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

In the present matter, the Full Commission has determined that the claimant proved she sustained a compensable injury to her right shoulder on or about June 18, 2009. However, the record does not show that the employer had knowledge of the injury until September 1, 2009. Virginia King, the respondents' human resource consultant and workers' compensation administrator, testified that the claimant did not notify her of the injury until September 1, 2009. Rowena Garcia likewise testified that the claimant did not report an injury to her until September 1, 2009. The First Report Of Injury received on October 5, 2009 corroborated the testimony of Ms. King and Ms. Garcia that the claimant did not report a work-related injury until September 1, 2009. The Full Commission therefore finds that the respondents are not responsible for worker's compensation benefits prior to September 1, 2009.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on or about June 18, 2009. The claimant proved that the treatment of record for her right shoulder was reasonably necessary in

accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). Said reasonably necessary medical treatment included the surgery provided by Dr. Clark on December 17, 2009. However, the respondents are not responsible for the claimant's medical treatment until September 1, 2009 and following. The evidence demonstrates that the claimant remained within a healing period and was totally incapacitated from earning wages beginning August 7, 2009 until March 22, 2010. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Because the respondents were not notified of the compensable injury until September 1, 2009, the respondents are only liable for temporary total disability benefits beginning September 1, 2009 until March 22, 2010.

Kenneth E. Buckner was the claimant's attorney of record until August 25, 2010. Mr. Buckner is therefore entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). Counsel is not entitled to an additional fee, pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002), for the *pro se* claimant's prevailing on appeal to the Full Commission.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.