

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F910343

DELORES SHAW, EMPLOYEE	CLAIMANT
RHEEM MANUFACTURING, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 17, 2011

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

Claimant represented by the HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed August 6, 2010.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. On all appropriate dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$410.00 for total disability and \$308.00 for permanent partial

disability, should such benefits have been appropriate.

4. The claimant has failed to prove that she sustained a compensable injury to her left shoulder, as that term is defined by Ark.Code Ann. §11-9-102(4)(A)(ii)(a).
5. The respondents have denied the occurrence of any compensable injury to the claimant's left shoulder and controvert this claim in its entirety.

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

After my de novo review of the entire record, I must respectfully dissent from the majority opinion, because I find that the claimant proved that she sustained a compensable left shoulder injury, for which she is entitled to medical and indemnity benefits and an attorney's fee.

The claimant contended that she sustained a compensable left shoulder injury while performing rapid and repetitive motion at work, for which she sought treatment in July 2009. The Administrative Law Judge, and therefore the majority, found that the claimant did not prove that her rapid and repetitive job caused her left shoulder injury.

In order to prevail upon a claim for a compensable injury under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the claimant must prove by a preponderance of the evidence that she sustained an injury caused by rapid repetitive motion. The claimant must prove internal or external harm to the body which arose of out of and in the course of their employment and which required medical services or resulted in disability or death. The claimant must also prove by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment. Ark. Code Ann. Sec. 11-9-102(4)(E)(ii). Finally, the claimant must establish a compensable injury by medical evidence supported by objective findings. Ark. Code Ann. Sec. 11-9-102(4)(D).

The majority, in affirming and adopting the opinion of the Administrative Law Judge, found that the claimant has proven injury to her shoulder, supported by objective findings in the form of the MRI and Dr. Heim's surgical observations, which required medical services. The claimant testified that she was required to manually load a press, push one or two buttons, and then manually unload it, from 185 to more than 300 times per hour, for an entire shift. This translates to slightly more than 3 complete operations a minute up to more than five operations per minute. The claimant's work is rapid and repetitive.

Causation in this claim is straightforward. The claimant was moved from an automatic press to a manual one. After almost six months doing this rapid repetitive work, which involved intensive use of her entire upper extremities, including her shoulders, she first developed pain in her hands and then in her left shoulder. She did not have shoulder pain prior to this, except for an episode twenty years prior, which she related to her work on a manual press and which she explained resolved when she moved to an automatic press. There is no evidence of other activities or injuries which could be responsible for her problems. Dr. Loyd related her troubles to her work, as evidenced by his restriction of her from using hand pedals for two weeks on the first visit about her shoulder and by his giving her the workers' compensation paperwork to complete. The

claimant consistently related her problems to the manual press.

The Administrative Law Judge, whose opinion was affirmed and adopted by the majority, stated that if the claimant's work contributed to the impingement syndrome sufficiently to cause a tear, there would be an immediate increase in pain. The claimant did, indeed, have an increase in pain, from no pain to noticeable pain to pain sufficient to send her to the plant nurse. The claimant even testified that she recalled working the press when she had the "most pain." Dr. Heim stated that the claimant had left shoulder impingement syndrome, which caused the rotator cuff tear. The claimant did have pre-existing osteoarthritis, but there is no mention in the record of shoulder pain prior to her second visit to the plant nurse, other than a brief episode twenty years ago. The claimant worked without shoulder pain until June 2009.

There is no inconsistency in the claimant's reporting of her pain. She had pain in her thumb and wrists in early May, and, in early June, was complaining of shoulder pain, as well. The medical records note that her complaints began in early June, as well. The claimant is not alleging a specific incident. There was no single incident which caused her rotator cuff to tear, and it is reasonable that there is no specific date of onset.

Furthermore, the Administrative Law Judge's opinion,

affirmed and adopted by the majority, stated that "the initial MRI showed the presence of significant arthritic changes and defects involving the acromioclavicular joint of the claimant's left shoulder." The only mention of the results of the only MRI was in Dr. Heim's notes, that it "showed rotator cuff tear as well as AC arthritis." The Administrative Law Judge extrapolated much from these nine words. Dr. Heim's opinion was that the arthritis was "probably ... impinging on the supraspinatus tendon resulting in a tear."

The Administrative Law Judge's opinion, affirmed and adopted by the majority, also stated that the claimant did not report her problem until she saw the nurse on July 9, 2009. There is nothing sinister about this fact. She developed shoulder pain after May 4, 2009, when she saw the plant nurse about her thumb and wrist pain which she related to work, and before July 9, 2009, when she saw the plant nurse reporting that her left-sided pain had moved up to involve her shoulder too. In fact, the claimant testified that she scheduled the second appointment with the nurse in June. She stated at the hearing that her shoulder pain began at the end of May or beginning of June. She made an appointment in June for the beginning of July, for pain which developed over time.

I fail to see the significance the Administrative Law Judge's opinion, affirmed and adopted by the majority, placed

upon the claimant's testimony that she told Dr. Loyd on July 22, 2009 that her shoulder had hurt for "several weeks." "Several weeks" is consistent with her testimony that her shoulder pain began at the end of May or beginning of June.

Lastly, the Administrative Law Judge's opinion, affirmed and adopted by the majority, appears to expect the claimant herself to have made a determination of causation at the time she saw Dr. Loyd and Dr. Heim. The claimant has operated a press for twenty-five years. She is not a doctor. She did relate her problems to her manual press work to the plant nurse, and she related her shoulder symptoms to the original pain in her left hand. At the second nurse visit, there would be no reason to repeat the work-relatedness to the nurse, nor would there be reason for the nurse to re-record it. Dr. Loyd did address the claimant's work, limiting her use of hand pedals, on that first visit. Her visit to him was an extension of the visits to the nurse, which were based on pain she related to the manual presses. Dr. Loyd also noted that the claimant's hand symptoms were tolerable as long as she was using an automatic press. The claimant did relate her problems to work, to Dr. Heim. Causation was not an issue for Dr. Heim. His concern was to correct the defect in her shoulder by addressing the impingement and tears.

Taken together, the evidence shows that the claimant worked without shoulder pain, despite her osteoarthritis, until

the end of May and beginning of June 2009, when she developed pain which did not resolve. She saw the plant nurse and the plant doctor, and then an orthopedist, relating her pain to her work. The claimant was diagnosed with impingement syndrome and rotator cuff tear, which was surgically repaired. The claimant had been engaged in rapid and repetitive work, involving the intense use of her upper extremities, including her shoulders, since the end of 2008. She related her pain to that work, and she testified that she recalled one instance in particular when she was using a manual press and experienced the "most pain."

I find that the claimant has proven the element of causation and of major cause. But for the rapid and repetitive work on the manual presses, the claimant's pre-existing acromioclavicular arthritis would have remained asymptomatic, as it had for the twenty years she had worked on an automatic press, since the last time she worked on a manual press and had symptoms. But for the rapid and repetitive work, the claimant's arthritis would not have impinged on the supraspinatus tendon causing pain and a rotator cuff tear, requiring surgical repair. "But for the work-related injury in this case, there would have been no disability or need for treatment." Parker v. Atlantic Research Corp., 87 Ark. App. 145, 153, 189 S.W.3d 449, ___ (2004).

The claimant should be entitled to medical benefits, as the care by Dr. Heim was reasonable and necessary medical

treatment. Dr. Heim's care resulted in a resolution of her symptoms and her return to work. The claimant should also be entitled to temporary total disability benefits from December 7, 2009, the date of her surgery, through February 1, 2010, the date she was released to return to work. The claimant should also receive an award of an attorney's fee, as the claim was controverted and the assistance of an attorney was necessary.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner