

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G000807

ELOISE A. TYSON,
EMPLOYEE

CLAIMANT

AMERICAN FUEL CELL & COATED FABRIC,
EMPLOYER

RESPONDENT

F. A. RICHARD & ASSOCIATES, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 15, 2011

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

Claimant appears Pro Se.

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

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed July 13, 2011. In said
order, the Administrative Law Judge made 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

suffered compensable gradual onset injuries to either her left or right shoulder pursuant to Ark. Code Ann. § 11-9-102(4) (A) (ii) (a).

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.

Therefore we affirm and adopt the July 13, 2011 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 opinion. Ark. Code Ann. §11-9-704(a)(3) states: "If any party is not represented by a lawyer, the administrative law judge shall define the issues to be heard." Here, the Administrative Law Judge characterized the claimant's shoulder injuries as gradual-onset injuries. However, after a de novo review of the record, I find that the evidence suggests that the claimant's shoulder injuries are specific-incident injuries. As the Administrative Law Judge failed to consider the factors necessary for a specific incident injury claim, I find the majority has erred in affirming and adopting an Opinion characterizing the claimant's injuries as gradual-onset.

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 specific-incident shoulder injuries. Most importantly, the claimant presented proof by a preponderance of the evidence that her shoulder injuries 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). Here, all of the claimant's actions, from removing the heavy rolls from the cooler, to placing the heavy rolls on the rack, to pulling the heavy material off of the rolls, to reaching across the table to cut the patterns, could cause shoulder injuries of the type sustained by the claimant.

In fact, the claimant's testimony, elicited on cross-examination, points to a specific incident injury:

Q: When did you first start having problems with your shoulders?

A: October of '09.

Q: Is that when you reported it?

A: That's when I reported it. It had hurt like a day or so before then, and I just figured it would go away...

In testimony elicited by the Administrative Law Judge:

Q: Okay. When did it reach its worst pain?

A: I guess, when like sometimes we would have to reach across the table and cut, and we would have to lay out on it and sometimes I would get stuck across the table. I would have to get somebody to get me off the table, and then sometimes I would get up there, and I would like have to ease my arms and stuff back off the table and get off it.

In Edens v. Superior Marble & Glass, 346 Ark. 487 (2001), the Arkansas Supreme Court held that "identifiable by time and place" meant subject to identification and did not require the claimant to specify the exact time of the occurrence. Here, the

claimant testified and the respondent did not dispute that her injuries occurred while she was moving, rotating, stretching and reaching across heavy rolls of material one or two days before October 1, 2009. In my opinion, this should have been a claim for specific-incident shoulder injuries, and it is error to affirm and adopt the Administrative Law Judge's opinion which merely considers a gradual-onset injury theory.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner