

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204212

JOHNNY R. HAYES,
EMPLOYEE

CLAIMANT

WAL MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JULY 26, 2023

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL C. STILES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 29, 2022. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

Johnny Ray Hayes, now age 59, treated at Midwest Orthopaedic Institute on February 5, 2013:

John Hayes is a 49-year-old right-hand-dominant gentleman who sustained an injury on 2/4/13. He states he is the

operations manager at Northern Illinois Fence in Cortland. He was using a Bobcat to clear the snow so that his employees would not get injured. While he was trying to get out of the Bobcat he slipped and fell. He struck the L1-2 area against a prominent hard area on the Bobcat and fell also onto his right elbow, axially loading his shoulder. He states that he felt as though something ripped in his shoulder. He noticed that he could not really move his arm after he fell.

The patient has some pain at his right elbow as well....

RADIOGRAPHIC EVALUATION: Multiple views of the right elbow show posterolateral olecranon spurring which is mild.

A physician's impression was "1. Right shoulder weakness likely associated with rotator cuff tear. 2. Elbow contusion which is presently asymptomatic."

The claimant testified that he became employed with the respondents in May 2021. The claimant testified that he initially worked in the respondent-employer's Receiving Department, "Unloading freight and putting it on the conveyor belt." After several months, the claimant testified, he began unloading trucks for the respondents, a "quantity of 700 boxes an hour, 7,000 a night." The claimant testified that he unloaded trucks 11 hours daily, three days per week.

The claimant testified on direct examination:

Q. And what happened to your right elbow as you worked for Walmart?

A. It progressively started hurting more and more as I'm lifting heavier freight off the floor and repetitive motion is basically the way I saw it....I was hurting more and more in my right elbow as I was doing repetitive motion, unloading the freight out of a semi.

- Q. Can you describe the motion that you were making?
- A. From right to left, right to left, keeping my feet in place.
- Q. And that was using both hands?
- A. Yes....
- Q. And how did the box get off the truck?
- A. From me picking the box up and me putting the box on the conveyor.
- Q. So you were standing in the truck?
- A. Yes....The conveyor belt was manually operated where I could bring it in and out of the semi, so it would be right next to me as I am unloading.
- Q. And when you began having these issues with your right elbow, did you report it to anybody at work?
- A. Yes, I reported it to Heather Mays about freight being heavy and having to pick it up off the floor, can we do something about it, it's really bothering my arm....
- Q. And did you speak to anyone else about your right arm hurting?
- A. Yes. Tim Wicks I believe is his last name.
- Q. And who is he? What's his position?
- A. Manager at Walmart. He was someone that I reported to, also, like Heather Mays.
- Q. And did he respond to you in any way when you reported it?
- A. He also took photos, said he would e-mail higher up and see if we could get this changed because it is an issue, and we understand that it is hurting your arm, and that's what they told me and it never – it never worked out. I had no response from them afterward.
- Q. So your job was never changed?
- A. No....
- Q. When do you believe that you began complaining of your arm?
- A. Around November of 2021.

Q. And between November of 2021 and January of 2022, how did your arm do?

A. It was in pain every night. I had to wear a brace on my arm. I had to take Tylenol every day. It was not a good feeling, and it was pulling pain in my right elbow....

Q. And the receiving department, is that the department you were in in January of 2022?

A. Yes.

The parties stipulated that the employee-employer-carrier relationship existed on January 20, 2022. The claimant testified on direct examination:

Q. What happened on January 20th?

A. Me and my wife went to Home Depot to get some building materials to do a small project, and I reached out to grab a sheet of plywood and I pulled it and something pulled in my arm and snapped and popped, and it went from all the way to my wrist and it – I could not extend my arm. I could not pull my arm to my chest.

Q. And was that – the feeling that you felt, was that in your right elbow?

A. Yes.

According to the record, the claimant treated at Mercy Hospital Northwest Arkansas on January 20, 2022. The claimant's Chief Complaint was "Arm pain (Pt was carrying piece of plywood and felt 'pop' in R arm. Hx of previous ligament repair in shoulder)."

Dr. Clarence J. Dye examined the claimant on January 20, 2022:

Patient is a 58-year-old man who presents for right arm pain. Patient reports he was at work today and was moving boxes had a pop in his right upper arm with acute onset of pain has been moderate to severe and worse with extension of his arm....

Right upper extremity neurological exam is intact including sensation to light touch to thenar, medial palm, lateral dorsum of hand, and medial dorsum of hand....

Elbow with no tenderness. No gross deformity, no swelling, no warmth, and no erythema. Full active ROM with flexion and extension....

He was given a prescription for hydrocodone for breakthrough pain and fitted with an arm sling and will need to follow-up with a doctor from the Mercy doctor finder service with possible need for orthopedic referral and further imaging if continued symptoms.

Patient reported improvement on reexamination and agreeable to discharge. Denied new complaints....

Dr. Dye diagnosed "Pain of right upper arm (Primary)." A nurse noted on January 20, 2022, "Pt stated he was lifting plywood and heard a pop in his elbow then it started hurting. Pt states he can bend his right arm but not straighten it out." Dr. Dye signed a note on January 20, 2022 which indicated, "John Hayes is able to return to work on: 01/26/2022."

The claimant e-mailed representatives of the respondent-employer on January 21, 2022:

Hi guys I have some bad news I was lifting some plywood last night and I either broke my arm or tore tendons in my right arm I went to the ER they told me I probably tore a tendon or ripped a bicep muscle they were not able to go a MRI and was told to go to a regular physician to get a appointment with a specialist due to the fact that I have previous surgery on my arms, I called this morning and talked to Alicia in HR and she told me to go and file a claim on Sedgwick I'm pretty sure I did it right I have the claim number the emergency room doctor

told me to take off work at least until Wednesday I will let you know the outcome after I see a orthopedic specialist, I would come back to work regardless of the pain but I am unable to straighten my arm so I don't think I would be any good, I'm not sure what the outcome is going to be but I will keep you informed Thank you.

An APRN noted on January 26, 2022:

John presents in clinic with his spouse to establish care and for his ED follow up. He was seen in the ED January 20th with complaints of right arm pain. He might have injured himself at work. He admits to throwing boxes at work, so he's dealt with mild pain and swelling to his right upper arm for the past month. He also might have injured himself the day of his ED visit. He states he was moving a sheet of plywood while at Home Depot. He also mentioned having history of rotator cuff surgery bilaterally.

No imaging was performed. He was prescribed Norco for pain relief, which he did not pick up. He continues having sharp pain along his right elbow, with radiating pain down to his right wrist and right shoulder....

Musculoskeletal exam: muscular tenderness noted along right medial epicondyle.

The diagnosis on January 26, 2022 included "Right arm pain." The APRN stated on January 26, 2022, "He may return to work Monday, February 14th."

Dr. Jeffrey Johnson provided a Patient Care Summary on February 10, 2022:

1. Mr. Hayes was exceedingly frustrated with our front office today about the fact that he was not having an MRI today. He is also very frustrated that he was not contacted about the clinic being canceled although again at the end of the clinic visit my office manager visited with him about our attempts to contact him.

He was also frustrated that I would not fill out his extensive Sedgwick FMLA paperwork today before he left the office. I spoke with both he and his accompanying family member that this is not going to be filled out in lieu of me seeing other patients but I be happy to give him a work note that states he has a 10 pound limit on his right arm pending the results of his MRI. His working diagnosis is medial epicondylitis. I would recommend an MRI as below....

Vicki provided him with a 10 pound limit on his right arm. He told her specifically "it was a waste of time to have been sent here." He was also quite frustrated with me and I addressed this directly. He was frustrated about his weight, about the delay because of the weather, and about the fact that he was not having an MRI today. I spoke with both he and his family member that other providers do not send people to other doctors offices with orders for imaging studies but that he was referred here for a consultation and I would recommend an MRI because of the "pop" in his medial elbow.

I understand that his job does not have limited duty. My working diagnosis is medial epicondylitis and I am giving him a 10 pound limit pending his MRI report especially given the fact that he has no swelling, no ecchymosis, and full elbow range of motion.

2. With respect to the main reason that he is here, his medial elbow pain. My working diagnosis is medial epicondylitis as his exam is consistent with this. I do think that it is worth obtaining a MRI arthrogram of his right elbow given the "pop" on 1/22/2022 when he picked up a sheet of plywood.

I would recommend the MRI be done at Washington Regional....I will order an MRI arthrogram of the right elbow to evaluate medial elbow pain and "pop."

3. He also mentions that he has pain in his shoulder and he asked if the work-up would be examining that. We will request records from Dr. Glasgow regarding his shoulder specifically I need to know if she did a tendon transfer from the elbow to his shoulder which may be what he is describing.

I offered to send him to a shoulder doctor. At the moment, we will hold off on this.

4. I will see him back when the MRI is complete. We discussed that that would not be the same day of the study. X-rays are not required on return.

Dr. Andreas Chen examined the claimant on March 1, 2022:

A 58-year-old right-hand dominant male, who works at the Wal-Mart distribution center, who presents today for evaluation of his right upper extremity. He states that he was lifting a sheet of plywood on 01/20/2022 when he felt a pop and had significant pain that radiated from the medial aspect of his elbow to the shoulder and from the radial aspect of his elbow to his wrist. Since then, he has been having pain and a bump over the medial aspect of the elbow. Of note, he previously had a dislocation of his right shoulder which required a labral repair and rotator cuff repair at an outside institution. He notes that he has been having significant pain in the medial aspect of the elbow that radiates to his pinky and his small fingers. He is here today for evaluation and care....
EXTREMITIES: Right upper extremity examination reveals no gross deformities. He does have what appears to be an avulsion of his medial flexor pronator mass *** the medial epicondyle. He is significantly tender to palpation over the medial epicondyle. He has significant pain with palpation of the ulnar nerve....
IMAGING: AP and lateral of the right elbow were reviewed from previously revealing no fractures or dislocations. No arthritic changes are noted.

Dr. Chen assessed "A 58-year-old male with a potential avulsion of his right flexor pronator mass from the medial epicondyle versus medial epicondylitis. He also likely has right cubital tunnel syndrome." Dr. Chen planned additional diagnostic testing, and occupational therapy.

An occupational therapist noted on March 4, 2022, "Patient reports he was at Home Depot, lifting a piece of plywood when he felt a 'pop' in his right UE. He had an immediate onset of pain. Of note, he had right

shoulder surgery about 8 years ago. Since the injury, he complains of numbness and tingling in the RF and SF. He describes the pain in his ulnar elbow and this is sensitive to touch.” It was also noted on March 4, 2022, “Patient does work at Walmart. He is currently off on FMLA. His job requires heavy lifting.” The occupational therapist reported, “It does appear he had swelling/bulge in flexor mass of the forearm.”

An MRI of the claimant’s right elbow was taken on or about March 15, 2022 and was compared with radiographs from January 26, 2022. The following impression resulted:

1. Medial epicondylitis with associated high-grade partial-thickness undersurface tear of the common flexor tendon at its humeral attachment.
2. Insertional biceps tendinosis with high-grade partial-thickness tear of the short head of the biceps tendon at its insertion on the radial tuberosity. Adjacent focal grade 1 strain of the supinator muscle medially.
3. Additional mild tendinosis of the distal triceps and common extensor tendon origin.

The claimant continued to receive occupational therapy visits.

The claimant followed up with Dr. Chen on April 1, 2022:

A 58-year-old male, who presents back today for evaluation of his medial elbow. He has been having pain there. Still he recently underwent a nerve conduction study and MRI of his elbow. He is here today for further evaluation and care.

PHYSICAL EXAMINATION: Right upper extremity examination reveals a palpable step-off due to the flexor pronator mass avulsion just distal to the medial aspect of the elbow....

MRI of his elbow reveals an avulsion of his medial flexor pronator mass. It was retracted by approximately 1 cm. I do not notice a UCL tear.

Nerve conduction studies from Dr. Barbara Bess from 03/30/2022 were reviewed revealing decreased velocities at 39.4 m/sec in right ulnar nerve. No diminishment in amplitude is noted. He has no EMG changes noted.

Dr. Chen assessed "A 58-year-old male with right cubital tunnel syndrome and an avulsion of his right flexor pronator mass. **PLAN:** I told him that he has 2 things going on. We can fix those at the same time. What I can do is an in-situ cubital tunnel release. During that same procedure, I can repair of the flexor pronator mass. It is not going to be 100% though, but hopefully it will help him with that pain."

Dr. Chen performed surgery on April 11, 2022: "1. Right cubital tunnel release. 2. Right flexor pronator origin avulsion repair." The pre- and post-operative diagnosis was "1. Right cubital tunnel syndrome. 2. Right medial epicondylitis." The claimant received follow-up treatment after surgery.

Dr. Chen noted on July 1, 2022:

50-year-old male, who is now almost 12 weeks out from his surgery, he has been doing good, he is still sore, he is still weak on his elbow. He states that it feels like he gets stiff especially in the mornings. He is unable to fully extend his elbow. He notes that he has pain especially when he is using a nail gun. He also notes that when he is slapping something, it hurts him significantly over the medial aspect of the elbow. He has not done any therapy as he is without insurance. He currently has an attorney to try to get on Workman's Comp....

PLAN: The patient tells me that he was having significant pain in his right medial aspect of the elbow before his final injury on 01/28/2022. He states that he was doing significant repetitive motion of lifting of boxes and had been lifting 7000 boxes in an 11-hour shift. This may have contributed to his injury over the medial aspect of the elbow. Currently, he is unable to do the same type of work as that requires a significant amount of repetitive motion and significant amount of resistance on the elbow and may impair the repair. I told him I do not think that he would be able to qualify for government disability as he would be able to do other jobs, but he would have significant difficulty going back to his previous job. I do think that this will get better and I think that he will get stronger, but it will take some time. There is a long delay prior to undergoing a surgery. Let us see him back in another two months for repeat evaluation.

Dr. Chen assessed "A 58-year-old male, 11-1/2 weeks status post right cubital tunnel release and right flexor pronator repair."

A pre-hearing order was filed on August 4, 2022. According to the text of the pre-hearing order, the claimant contended that he was "entitled to medical treatment and temporary total disability benefits for his right upper extremities (sic) injury. Claimant reserves all other issues."

The parties stipulated that the respondents "have controverted the claim in its entirety." The respondents contended, "1. The respondent contends the claimant, who was hired on May 24, 2021 did not sustain a compensable gradual-onset elbow injury (that culminated on January 20, 2022) as defined by Arkansas law. According, the claimant is not entitled to any benefits whatsoever. 2. The respondent has denied and controverted this claim in its entirety; thus, the respondent has not paid any benefits to or

on behalf of the claimant as a result of his purported right elbow injury. 3. The claimant's supposed injury did not occur out of and in the course and scope of the claimant's employment for the respondent employer. 4. The respondent respectfully contends that the claimant's job for the respondent employer was neither rapid nor repetitive. 5. The claimant is not entitled to any benefits herein, as the claimant's need for medical treatment, if any, is unrelated to the supposed gradual-onset injury that culminated on January 20, 2022. Instead, the claimant's current ailments and need for medical treatment, if any, is related to any unrelated and/or pre-existing condition. 6. In the alternative, if it is determined the claimant sustained a compensable injury, then the respondent hereby requests a setoff for all benefits paid by the claimant's group health carrier, all short-term disability benefits received by the claimant, all long-term disability benefits received by the claimant, and all unemployment benefits received by the claimant. 7. The respondent reserves the right to amend and supplement its contentions and position after additional discovery has been completed."

The parties agreed to litigate the following issues:

1. Whether claimant sustained a compensable injury on January 20, 2022.
2. If compensable, whether claimant is entitled to temporary total disability benefits and medical benefits.
3. Compensation rates.
4. Attorney fees.

The claimant followed up with Dr. Chen on September 8, 2022:

A 59-year-old male, who is now 5 months out from his surgery. He has been doing poorly. He continues to have pain over the medial and lateral aspects of the elbow. Unfortunately, due to his insurance status, he has been unable to go to therapy visits, but he states that he is getting workman's comp approved right now. He notes that his thumbs have also been triggering - this is not related to his workman's comp....

He has not done any therapy. Usually, I do send people to Therapy after a flexor pronator repair. I would like for him to be therapy (sic). I would like him to sign up for Mercy Financial Aid if he is ineligible for Workman's Comp. I do think that this is a Workman's Comp injury though. I am going to send him to Therapy for the medial and lateral aspects of the elbow. I ultrasounded his elbow. He does have significant inflammation and signal over the lateral epicondyle, but not over the medial epicondyle. I want to see him back in another 6 weeks for repeat evaluation to see how is therapy is doing. He wants to wait until he gets insurance to get his trigger fingers taken care of. I told him I can give him an injection at that point.

Dr. Chen assessed "A 59-year-old male, with right medial and lateral epicondylitis even after a flexor pronator repair."

After a hearing, an administrative law judge filed an opinion on December 29, 2022 and found that the claimant failed to prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides in pertinent part:

(A) "Compensable injury" means:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion....

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "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. 2012).

Ark. Code Ann. §11-9-102(4)(Repl. 2012) further provides in pertinent part:

(E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). "Major cause" means "more than fifty percent of the cause," and a finding of major cause shall be established

according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

An administrative law judge found in the present matter, “2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable gradual-onset injury on January 20, 2022.” The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. The claimant became employed with the respondents in May 2021. The claimant testified that he unloaded boxes for the respondents at a rate of “700 boxes an hour,” and the claimant described his work as involving “repetitive motion.” The claimant testified that he wore a brace on his right arm.

The parties stipulated that the employee-employer-carrier relationship existed on January 20, 2022. The claimant testified that he was away from the respondents’ workplace at the time of the alleged injury. The claimant testified that while shopping at Home Depot, “I reached out to grab a sheet of plywood and I pulled it and something pulled in my arm and snapped and popped, and it went from all the way to my wrist and it - I could not extend my arm.” The claimant testified that he felt immediate pain in his right elbow.

The evidence does not demonstrate that the claimant sustained an injury causing physical harm to his right upper extremity which arose out of

and in the course of employment. The claimant has the burden of proving such an injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(Repl. 2012) and Ark. Code Ann. §11-9-102(4)(E)(ii)(Repl. 2012). The phrase “arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of the employment” refers to the time, place, and circumstances under which the injury occurred. *J. & G. Cabinets v. Hennington*, 269 Ark. 789, 600 S.W.2d 916 (1980). In the present matter, the alleged injury to the claimant’s right elbow occurred while he was lifting a piece of plywood away from the workplace. A nurse noted on January 20, 2022, “Pt stated he was lifting plywood and heard a pop in his elbow and it started hurting.” The claimant informed the respondent-employer on January 21, 2022, “I was lifting some plywood last night and I either broke my arm or tore tendons in my right arm[.]” An APRN noted on January 26, 2022, “He states he was *moving a sheet of plywood at Home Depot* [emphasis supplied].” An injury which occurred at Home Depot was not an injury arising out of or in the course of the claimant’s employment with the respondents.

Additionally, Dr. Chen reported on March 1, 2022, “He states that *he was lifting a sheet of plywood* on 01/20/2022 when he felt a pop and had significant pain that radiated from the medial aspect of his elbow to the shoulder and from the radial aspect of his elbow to his wrist.” Dr. Chen

described a nonwork-related injury which did not arise out of or in the course of the claimant's employment with the respondents. An occupational therapist noted on March 4, 2022, "he was at Home Depot, lifting a piece of plywood when he felt a 'pop' in his right UE." The occupational therapist did not describe an injury arising out of or in the course of the claimant's employment with the respondents. In any event, Dr. Chen performed a right cubital tunnel release and right flexor pronator avulsion repair on April 11, 2022. Dr. Chen reported in part on September 8, 2022, "I would like him to sign up for Mercy Financial Aid if he is ineligible for Workman's Comp. I do think that this is a Workman's Comp injury though." It is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, Dr. Chen's opinion that "this is a Workman's Comp injury" is not supported by the record and is entitled to minimal evidentiary weight. The weight of probative evidence demonstrates that the claimant did not prove he sustained a compensable injury. The claimant was shopping at Home Depot on January 20, 2022 and felt a "pop" in his right elbow while grabbing a piece of plywood. This injury occurred away from the workplace and did not arise out of or in the course of the claimant's employment with the respondents.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

O. MILTON FINE II, Special Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter, "ALJ") found that Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable gradual-onset injury on January 20, 2022.

The preponderance of the evidence supports a finding that the claimant suffered a compensable gradual onset injury to his right elbow.

A.C.A. §11-9-102(4)(A)(ii)(a) reads:

(4)(A) 'Compensable injury' means:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. ...

To receive benefits for a gradual onset injury, the claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) that the injury was caused by rapid and repetitive motion; (4) the injury was a major cause of the disability or need for treatment; and (5) that the injury was established by medical evidence supported by objective findings. *Pulaski County Special School District v. Stewart*, 2010 Ark. App. 487 (2010).

The claimant's right elbow injury satisfies the criteria for a gradual-onset compensable injury. The issue here is whether the claimant's injury arose out of and in the course of his employment. Regarding his job duties, the claimant testified as follows:

- Q. And after that job, what did you do?
- A. I went to the receiving dock, unloading semis, and that would be the whole semitruck of boxes, floor to ceiling, unloading those manually onto a conveyor belt.
- Q. And did you do just one semitruck a night or more?
- A. It could be up to four. It would be a multiple – it would be quantity of 700 boxes an hour, 7,000 a night.
- Q. And how many hours at a shift did you work?
- A. We would have – I was on duty for 11 hours.
- Q. And how many days a week did you work?
- A. Three days a week; Saturday, Sunday, and Monday.
- Q. And so during those 11 hours, was there any other duty that you had other than unloading the truck?

A. No.

Q. And how heavy would these boxes be?

A. Anywhere from half a pound all the way to 65 pounds, 70 pounds. They were not marked. They're not weighed. They were just – some were heavy, some were not.

The claimant testified that he reported that he was having issues with his right elbow to Heather Mays, Tim Wicks, who was a manager, and Brent, an operations manager. According to the claimant, he began complaining about the pain in his elbow around November of 2021. In addition to reporting his injury, the claimant wore a sports brace on his right elbow when he worked which, according to the claimant, was visible.

Objective findings of an injury are present in this matter in the form of a high-grade partial-thickness undersurface tear of the common flexor tendon at its humeral attachment and an insertional biceps tendinosis with high-grade partial-thickness tear of the short head of the biceps tendon at its insertion on the radial tuberosity. The claimant's treatment included a right cubital tunnel release and right flexor pronator origin avulsion repair. The claimant's work-related injury was the sole reason for him to seek treatment for his right elbow.

Finally, the claimant's injury was caused by rapid repetitive motion. As described above, the claimant unloaded 7,000 boxes in an 11-hour period without any other intervening job duties. I find that the claimant's duties

required rapid repetitive motion and this motion caused his right elbow injury. Thus, I find that the claimant sustained a compensable, gradual-onset injury.

I am aware that the claimant sustained an injury lifting a piece of plywood at Home Depot. However, it is unlikely that lifting a three-quarter inch piece of plywood would cause the resulting injury to the claimant's elbow if it were not already compromised by his work injury. Prior to working for the respondent-employer, the claimant had no problems with his right elbow. Thus, I find that the claimant's work injury was the major cause for the claimant's need for treatment.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained a compensable gradual onset injury to his right elbow.

M. SCOTT WILLHITE, Commissioner