

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H104609**

LACEY PICKLER, EMPLOYEE	CLAIMANT
FIRST NATIONAL BANK, EMPLOYER	RESPONDENT
CHUBB GROUP, INSURANCE CARRIER	RESPONDENT

OPINION FILED **MAY 5, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by DAVID C. JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 15, 2022, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on December 9, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1 as modified and no objection is made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on January 1, 2021.
3. The respondents have controverted the claim in its entirety.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury on or about January 1, 2021.
2. Whether claimant is entitled to medical benefits.
3. Respondents assert an offset for third party payment.

All other issues are reserved by the parties.

The claimant contends that “she sustained a compensable injury to her right shoulder in January 2021, that she is entitled to continuing reasonably necessary medical treatment, and to repayment of any out-of-pocket medical expenses that she has incurred. She further contends that the respondents have now controverted this claim in its entirety.”

The respondents contend that:

“1. The claimant did not sustain a compensable, gradual-onset right shoulder injury during the course and in the scope of her employment. Specifically, the respondents contend that the claimant’s job duties were not both rapid and repetitive in nature for compensability considerations under the Arkansas Workers’ Compensation Act. Furthermore, the respondents contend that the “major cause” of the claimant’s right shoulder problems is not a result of her work activities for the respondent/employer herein.

2. The respondents also contend that they would be entitled to an offset for any group health carrier, disability carrier, and/or unemployment benefits paid to or on behalf of the claimant, should the claimant have applied for and received any said benefits.”

From a review of the record as a whole, including medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a prehearing conference conducted on April 8, 2021 and contained in the prehearing order (as modified at the hearing) filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in January 2021.

FACTUAL BACKGROUND

Before the hearing, claimant announced she was not making a claim for temporary total disability, and as such, there was no reason to calculate the compensation rate for the purposes of this hearing. The pre-hearing order specified the date of injury was January 1, 2021, but respondent understood that the claim was the allegation was of a gradual onset injury instead of one due to a specific incident. Without objection, the pre-hearing order was modified to allege an “on or about” date of injury of January 1, 2021.

HEARING TESTIMONY

Claimant began working for respondent First National Bank of Fort Smith seven years ago as a teller and is now serving as an operations supervisor. She began experiencing physical problems with her right shoulder when she needed to carry bags of coins to and from the vault, or canisters of cash to refill the ATM. She estimated that a standard bag of coins weighed 25 pounds or so, but that weight varied, both higher and lower, than 25 pounds. Claimant said she did not have to carry heavy items every day, but some days, it could be as many as 20 items over the course of the day. She would be required to carry them as little as one foot to as much as 20 feet from the vault to the teller line. She first was treated at Premise Health Care in Fort Smith, and eventually saw Dr. Timothy Garlow at Mercy Clinic in Fort Smith, who placed her on a five-pound weight restriction for her right arm. Claimant’s employment allows her to work within that restriction.

On cross-examination, claimant explained that she did not have a specific incident that caused her shoulder injury, and her claim was a gradual onset injury. Claimant testified that most of the constant lifting was once a week when an armored car brought coins to her bank when there would be approximately 20 bags.

On redirect examination, claimant said that when the armored car made its delivery, she would load 15 to 20 of coins in three to five minutes. The claimant mentioned carrying cassettes to the ATM which were about 15 or 20 pounds apiece. She says she now carries them only with her left arm.

On re-cross examination, claimant affirmed that loading the coins in the vault was a weekly task and took a couple of minutes for the entire week. The cassettes for the ATM were loaded with cash and ordinarily someone was with her. The ATM would have to be refilled once or maybe twice a week.

Rhonda Barger testified for respondent. She was in the courtroom during claimant's testimony, which she verified was accurate. Ms. Barger believed it would take five minutes to move the coins from the armored car into the vault. Ms. Barger estimated that an ATM canister would weigh ten pounds, and the ATM sometimes required a second canister during the week.

Other than the differences in the estimates in the weight of the canisters of cash for the ATM—both of which were above claimant's lifting restriction—the witnesses were not in conflict with each other, and both were very credible witnesses.

REVIEW OF THE MEDICAL RECORDS

As the existence of claimant's shoulder problem is not an issue, but only the compensability of it, a lengthy recitation of the medical records is unnecessary. Claimant had an MRI on her right shoulder on April 22, 2021. The impression was as follows:

1. Partial tear/tendinopathy supraspinatus tendon but no through and through tear, tendinous retraction, muscular atrophy.
2. Fluid in subacromial subdeltoid bursa suggestive of bursitis. Mild hypertrophy acromioclavicular joint.

Dr. Timothy Garlow at Mercy Clinic River Valley saw claimant on October 6, 2021 and after reviewing the x-rays of her right shoulder and the MRI, decided to treat her with an injection of Kenalog. Dr. Garlow recommended the five-pound push, pull, lift limit at work.

In February, 2022, claimant began a course of physical therapy, but the records submitted did not add any additional objective findings.

ADJUDICATION

For an injury to be compensable under the gradual-onset, rapid-repetitive-motion law, a 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) the injury was caused by rapid-repetitive motion; and (4) the injury was a major cause of the disability or need for treatment. *Lay v. United Parcel Serv.*, 58 Ark. App. 35, 40, 944 S.W.2d 867, 870 (1997); Ark. Code Ann. § 11-9-102(4)(A)(ii)(a).

An injury is caused by a rapid-repetitive motion when, as the term naturally suggests, the task or tasks performed are repetitive, and the repetitive motion is done rapidly. *Carlat v. Ark. Highway & Transp. Dep't* 2018 Ark. App. 157, 546 S.W.3d 514. The Arkansas Supreme Court and Arkansas Court of Appeals have held that multiple tasks involving different movements can be considered together to satisfy the repetitive element of "rapid repetitive motion." See *Baysinger v. Air Sys.*, 55 Ark. App. 174, 934 S.W.2d 230 (1996), *Malone v. Texarkana Pub. Schs.*, 333 Ark. 343, 969 S.W.2d 644 (1998), and *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000). As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. *Galloway v. Tyson Foods, Inc.*, 2010 Ark. App. 610, 378 S.W.3d 210, 214. The Court of Appeals has previously required some showing of how rapidly the repetitive actions were performed and observed that "in its ordinary usage, rapid means swift or

quick." *Rudick v. Unifirst Corp.*, 60 Ark. App. 173, 962 S.W.2d 819 (1998). Considering the case law on this issue, and particularly *Lay* and *Carlat*, *supra*, I find that claimant did not establish that her shoulder injury was caused by rapid repetitive movement.

The only activity claimant testified to that could possibly qualify as a rapid repetitive task was unloading bags of coins from an armored truck; other activities claimant mentioned, such as refilling the ATM or bringing coins to tellers, did not involve either rapid or repetitive movement, and are not being considered in deciding this claim. Claimant stated usually there was one delivery of bags of coins, 15 to 20 in number, made each week to the bank where she worked, and some weeks, there was a second delivery of coins. Had claimant been required to move bags of coins constantly during her workday at the pace she did so for three to five minutes once or twice a week, perhaps I could find the activity amounted to rapid and repetitive movement; however, that is not what claimant's job required. As I understand how the appellate courts have interpreted the phrase "rapid repetitive movement" in the context of a workers' compensation claim, unloading 15 to 20 bags of coins over a three-to-five-minute period once or twice a week does not qualify as such.

As I have found the infrequent moving of coin bags does not meet the requirements of rapid and repetitive movement, I do not need to decide if the medical evidence was sufficient to establish that activity was the major cause of claimant's shoulder injury. Respondents' request for an offset due to third-party payments is moot.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable gradual-onset injury on or about January 1, 2021. Therefore, her claim for compensation benefits is hereby denied and dismissed.

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Respondent is responsible for paying the court reporter her charges of \$281.55 for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE