

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H404308

VERLENCIA GATEWOOD, EMPLOYEE	CLAIMANT
TRINITY RAIL MAINTENANCE SERVICE, EMPLOYER	RESPONDENT
ACE AMERICAN INS. CO, CARRIER/TPA	RESPONDENT
BROADSPIRE SERVICES, INC., TPA	RESPONDENT

OPINION FILED MAY 28, 2025

Hearing before Administrative Law Judge, Steven Porch, on April 11, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant represented herself, *Pro Se*, Jonesboro, Arkansas.

Respondents were represented by Mr. Jason Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on April 11, 2025. A prehearing telephone conference took place on January 22, 2025. A prehearing order was entered on January 23, 2025, and subsequently entered into evidence as Commission Exhibit 1, without objection or amendment. The parties confirmed the stipulations and the issues at the hearing. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer/employee/carrier/TPA relationship existed among the parties on December 14, 2023, when Claimant allegedly sustained a compensable gradual onset injury to her right shoulder.
3. Respondents have controverted this claim in its entirety.

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury by gradual onset to her right shoulder.
2. Whether Claimant is entitled to reasonable and necessary medical treatment and related expenses, including mileage and out of pocket expenses.
3. Whether Claimant is entitled to Temporary Total Disability (TTD) from June 6, 2024, to a date to be determined.¹
4. What is Claimant's average weekly wage and TTD compensation rate.²

All other issues are reserved.

CONTENTIONS

Claimant contends that she has injuries to her shoulder, neck and arm from painting a railcar with a paint brush. She also contends that she obtained a fungus injection from the rainwater that accumulates in the shop area.

Respondents contend the Claimant did not suffer a compensable injury and is unclear which benefits are being requested. Respondents also contends that there are two injuries alleged which seem to be separate, distinct, and should not be considered under the same claim number.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

¹ Claimant clarified that she was never off work due to her shoulder injury but was terminated on June 6, 2024, for allegedly abandoning the job. However, the Respondents allege illegal drug use as the basis for the termination. Nevertheless, the Claimant is seeking TTD from the time she was fired, June 6, 2024, to a date to be determined.

² The parties could not reach an agreement as to average weekly wage and compensation rates which has now become an issue for the Commission to resolve.

2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven that she has sustained a gradual onset right shoulder injury with objective findings.
4. Based on my findings of no compensability, the remaining issues of reasonable and necessary medical treatment, temporary total disability benefits, and average weekly wage along with compensation rates are moot and will not be addressed in this opinion

CASE IN CHIEF

Summary of Evidence

The record is made up of Commission Ex. 1, Pre-Hearing Order Filed January 23, 2025, consisting of 5 pages total, Claimant did not properly enter any exhibits into the record. Respondents did not enter any evidence into the records. Forms AR-C, AR-2, and AR-1 will be blue-backed and made a part of the evidentiary record. The Claimant was the only witness testifying at the full hearing.

Claimant was employed as a career painter for the Respondent/Employer. The Claimant started working for the Respondent/Employer in June 2023 doing touch up work on rail cars. The Claimant would touch up five to seven cars daily, five days a week, ten hours a day. These rail cars were 50 feet long. On December 14, 2023, the Claimant's right shoulder became worse, so she told Respondent/Employer about her right shoulder pain. The Claimant did not go and see a doctor, rather she took paid time off to give her shoulder time to heal and continued painting rail cars. However, the Claimant's pain in her right shoulder reached a fever pitch on June 3, 2024. This resulted in a call to HR about her right shoulder pain. The Claimant then sought treatment at a medical clinic recommended by Respondent/Employer on June 4, 2024. The Claimant was drug tested at the clinic and was positive for marijuana.

The Claimant, according to her testimony, was terminated for neglecting/abandoning her job immediately after her doctor's appointment. Respondents dispute this narration and alleges she was fired for testing positive for drugs. The Claimant did not provide any medical records whatsoever showing objective findings of a right shoulder injury.

Adjudication

A. Whether Claimant sustained a compensable injury to her right shoulder by gradual onset.

Regarding regular injuries sustained by gradual onset, Ark. Code Ann. § 11-9-102(4)(A)(ii) & (a) (Repl. 2012) reads:

(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 and is identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion.

In addition to rapid repetitive motion, a claimant seeking workers' compensation benefits for such a gradual-onset injury must prove that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(A)(ii) & (E)(ii) (Repl. 2012). In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court held that there is a two-part test for determining whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. If the first element is not met, the second is not reached. *Id.*; *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Moreover, "even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly." *Malone, supra*.

Claimant has not proven by the preponderance of the evidence that she has sustained a compensable injury to her right shoulder by gradual onset. The Claimant must first prove an injury that arose out of and in the course of her employment. The Claimant has failed to prove a right shoulder injury. Though she testifies she has a right shoulder injury, she has not entered one scintilla of medical evidence into the record demonstrating that such an injury exists. Trans. p. 18, lines 18-25, thru p. 19, line 1. The Claimant did go to a medical clinic, but she does not remember the name of it. Trans. p. 15, lines 2-25, thru p. 16, lines 1-18. While at the unnamed clinic, she was not administered an x-ray for Claimant's alleged right shoulder injury. See Trans. p. 17, lines 1-2. The Claimant testified that the clinic prescribed pain medication that she didn't take. Trans. p. 19, lines 13-25, thru p. 20, lines 1-2. Moreover, there is no evidence of pain medication being prescribed.

In summary, the Claimant did not enter any medical records into evidence whatsoever. When I asked Claimant at the end of the hearing what does she feel she has proven today. Trans. p. 53, lines 4-14. Claimant stated, "To be honest, I don't feel like I've proven anything." *Id.* I concur with her statement. Thus why, I must find that the Claimant has not proven by the preponderance of the evidence that she has sustained a compensable injury to her right shoulder by gradual onset.

MISCELLANEOUS ISSUES

Based on my previous findings that Claimant has failed to prove she sustained a work-related right shoulder injury by gradual onset, the remaining issues regarding reasonable and necessary medical treatment, temporary total disability benefits, are moot and will not be addressed in this opinion.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge