

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H304477**

CHRISTY S. MASON, EMPLOYEE	CLAIMANT
MUELLER INDUSTRIES, INC., EMPLOYER	RESPONDENT
SAFETY NATIONAL CASUALTY CORP., INSURANCE CARRIER	RESPONDENT
SEDGWICK CLAIMS SVCS., INC., TPA	RESPONDENT

OPINION FILED AUGUST 12, 2024

Hearing before Administrative Law Judge Steven Porch on July 19, 2024, in Forrest City, Arkansas.

Claimant was represented by Mr. Mark Peoples, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

A full hearing was held on this claim on July 19, 2024. A prehearing telephone conference took place on May 15, 2024. A prehearing order was entered on that date and subsequently entered into evidence as Commission Exhibit 1. 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. An employer/employee/carrier relationship existed among the parties on May 31, 2023, when Claimant allegedly sustained a compensable injury to her right shoulder.
3. Respondents have controverted this claim in its entirety.

4. The Claimant's average weekly wage is \$557 which entitles her to temporary total disability benefits of \$372 and permanent partial disability benefits of \$279 weekly.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable right shoulder injury by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment and related expenses, including mileage and out of pocket expenses.
3. Whether Claimant gave proper notice of her injury to Respondent/Employer.
4. Whether Claimant is entitled to temporary total disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

A. Claimant Contentions.

Claimant contends that she sustained a compensable injury to her right shoulder on or about May 31, 2023; entitled to temporary total disability benefits from June 26, 2023, through January 28, 2024; entitled to medical treatment relative to her work injury; and a maximum controverted attorney's fee.

B. Respondent Contentions.

The Claimant allegedly injured her right shoulder at work on May 31, 2023. X-rays and an MRI show only pre-existing arthritis. There is no acute process and no objective medical findings. The Claimant did not sustain a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, and other matters properly before the Commission, 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.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven by the preponderance of the evidence that she sustained a compensable right shoulder injury by specific incident.
4. Based on my previous finding, the remaining issues of reasonable and necessary medical treatment, notice of injury, temporary total disability benefits, and a controverted attorney's fee are all moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record consisted of Claimant's Exhibit 1, Medical Records, that consists of 15 pages, Respondent Exhibit 1, medical records, accident, and sickness records, consisting of 9 pages, and Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages. I have also blue-backed Claimant's and Respondents' post-hearing briefs. I also had the opportunity to hear the testimony and observe the demeanor of the Claimant, Christy Mason, and Joe Huggins, former lead man for Respondent/Employer, who were the only two witnesses in the full hearing.

The Claimant worked as a machine operator for Respondent/Employer. Claimant suffered an alleged injury to her right shoulder while changing out the rollers on her machine on May 31, 2023. When changing the rollers on her machine Claimant heard a pop in her right shoulder. Joe Huggins, a former lead man for Respondent/Employer, was near the Claimant, with his back facing her, when he heard a pop. Mr. Huggins turned around and asked Claimant if

she was alright. The Claimant responded that it was her shoulder and that she was fine. Mr. Huggins did observe Claimant rubbing her right shoulder immediately after the pop sound. Nevertheless, the Claimant continued working for Respondent/Employer until June 26, 2023, when she woke up and her shoulder was stiff. She complained about her shoulder pain to Jim Haynes, her line supervisor, on June 27, 2023.

Claimant received an MRI at the Cross Ridge Community Hospital on July 3, 2023. The report found no rotator cuff tear. See Claimant's Exhibit 1, pages 2-3. Claimant also testified that she reported her alleged injury to Brenda Kelly, Human Resource Manager for Respondent/Employer, on July 10, 2023. A form AR-2 was filed on July 17, 2023, denying the claim. The Claimant argues, during the full hearing, that she has objective findings of an injury in the form of adhesive capsulitis. To substantiate this finding, the Claimant points to a November 3, 2023, medical note from the Delta Orthopaedics and Sports Medicine Clinic. This note was created by Dr. Michael Hood. See Claimant's Exhibit 1, pages 8-14. Respondents argue that adhesive capsulitis is not a compensable injury.

Claimant submitted a post-hearing brief on July 29, 2024, alleging that the objective findings were now a mild supraspinatus and infraspinatus tendinopathy as well as mild right AC joint osteoarthritis. Claimant further argues that these findings coupled with her testimony regarding her pain, discomfort, and loss of use of her shoulder carry the burden of proof. Respondents also submitted a post-hearing brief arguing that tendonitis and osteoarthritis are both inconsistent with being caused by a specific injury and would not produce the "pop" that Claimant alleges occurred on May 31, 2023.

Adjudication

A. Whether Claimant sustained a compensable injury to her right shoulder by specific incident.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant’s alleged injuries, defines “compensable injury”:

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort

through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

I find by the preponderance of the evidence that Claimant has not proven she has sustained a compensable right shoulder injury with objective findings. The Claimant received an MRI on July 3, 2023. Claimant's Exhibit 1, pages 2-3. The MRI report reveals degenerative findings only. More specifically, the report reveals no rotator cuff tear, the subscapularis and teres minor tendons are intact, no rotator cuff muscle bulk edema or fatty atrophy, no significant glenohumeral joint effusion, and no paralabral cysts. Claimant's Exhibit 1, pages 2-3. In other words, the report shows no swelling or anything else that can be labeled as an objective finding for a specific incident. I credit this report created at the Cross Ridge Community Hospital and signed by Dr. Dana J. Coker.

Nevertheless, the Claimant initially points to "adhesive capsulitis" in a medical record from Delta Orthopaedics and Sports Medicine, prepared by Dr. Michael Hood, as the objective finding for her right shoulder injury. Claimant's Exhibit 1, pages 8-14. This record was created November 3, 2023, more than five months after the injury date. This report runs counter to the July 3, 2023, MRI report. Where the MRI shows degenerative issues, Dr. Hood's report shows adhesive capsulitis or frozen shoulder. I do not credit Dr. Hood's report. The nature and remoteness of the diagnosis of adhesive capsulitis from the actual May 31, 2023, date of injury, does not lend itself to a work-related incident by specific incident. And I find that it is not. I further find that the most accurate and telling record of Claimant's alleged injury is the July 3,

2023, MRI report. This report is closer in time and gives a more accurate depiction of Claimant's condition.

In this respect, the Claimant now turns her attention to the July 3rd MRI report and argues through her post-hearing brief that the objective findings were a mild supraspinatus and infraspinatus tendinopathy as well as mild right AC joint osteoarthritis. See also Claimant's Exhibit 1, pages 2-3. Claimant further argues that these findings coupled with her testimony regarding her pain, discomfort, and loss of use of her shoulder carry the burden of proof. Respondents counter these claims in their post-hearing brief by arguing that tendonitis and osteoarthritis are both inconsistent with being caused by a specific injury and would not produce the "pop" that Claimant alleges occurred on May 31, 2023. I agree with the Respondents' argument.

Tendonitis and osteoarthritis are degenerative conditions but could be caused by repetitive movements, not by a single specific incident as alleged here. Moreover, nothing in the record including Claimant's own testimony, demonstrated that her job involved any rapid repetitive motion that would create the alleged shoulder injury. Thus, I would, given all the factors including Claimant's job functions, be hard-pressed to find that Claimant's injury was due to repetitive work-related actions. For this reason, I believe the Claimant has decided to argued vigorously that her injury was the result of a specific incident; and that is the official issue for this claim.¹ And as previously stated, the alleged right shoulder injury had no objective findings per the July 3rd MRI report. The report revealed degenerative conditions that I find are not work-related. It is the Claimant's burden to prove she had "objective findings" of an injury

¹ Rapid repetitive motion was never made an issue in this claim. Thus, it will not be addressed beyond this point.

due to a specific work-related incident and she has not met that burden. Thus, her claim must fail.

Miscellaneous Issues.

Based on my previous finding that Claimant's right shoulder injury is not compensable, the issues regarding reasonable and necessary medical treatment, notice of injury, temporary total disability benefits, and a controverted attorney's fee 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