

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H402896

CONNIE ROBERTS, Employee	CLAIMANT
UNIVERSITY OF ARKANSAS FAYETTEVILLE, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED FEBRUARY 5, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by CHARLES H. MCLEMORE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 15, 2025, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 6, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on September 1, 2023.
3. Respondents have controverted this claim in its entirety.
4. The claimant was earning an average weekly wage of \$597.78 which would

entitle her to compensation at the weekly rates of \$399.00 for total disability benefits and \$299.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right arm and shoulder as a result of a gradual onset injury or a specific incident on September 1, 2023.
2. Related medical.
3. Temporary total disability benefits from September 13, 2024 through a date yet to be determined.
4. Attorney's fee.

The claimant contends that she had no problem with her right shoulder and arm until she started doing heavy overhead lifting and pulling and her symptoms with her right shoulder got significantly worse after a particular incident on or about September 1, 2023. Therefore, the claimant contends that her difficulties constitute a compensable injury under one or both definitions under A.C.A. §11-9-102(4). She contends that she has reasonably required medical services for this injury and has been rendered temporarily totally disabled by this injury from September 2, 2023 through a date yet to be determined. She seeks the statutory attorney's fee on all appropriate benefits awarded.

The respondent contends that the claimant reported on April 17, 2024 having an injury to her right shoulder occurring from gradual onset over a period of eight months, which respondent has controverted. Respondent contends that the claimant cannot establish that she sustained a specific incident injury to her right shoulder on September 1, 2023, or that she sustained an injury to her right shoulder arising out of and in the course of her employment from a gradual onset injury caused by both rapid and repetitive

motion. Respondent contends that the claimant has a pre-existing condition in her right shoulder, that the claimant cannot establish that her alleged injury is the major cause of any disability or need for treatment she has, and that if her right shoulder condition were related to a work injury, the claimant cannot establish she has timely filed a claim for her right shoulder condition. Respondent contends that if the claimant's claim was compensable, the respondent cannot be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 6, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right shoulder and arm while employed by respondent.

3. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder and arm as a result of a specific injury while employed by respondent.

FACTUAL BACKGROUND

The claimant is a 60-year-old woman with a GED. Her prior jobs have included working for a printing company in St. Louis for four and a half years; performing building maintenance work for seven years; and in-home care of an elderly woman for six to eight months. Immediately prior to going to work for respondent on August 1, 2021, the claimant had been employed as a groundskeeper for various golf courses for 18 years.

On August 1, 2021, claimant began working for respondent as a groundskeeper. Her job duties were primarily mowing, but she also raked leaves, mulched leaves, and operated a weed eater. On August 18, 2022, claimant was placed in charge of the tool crib at respondent. Claimant was responsible for checking out equipment to employees by noting a part number and putting information into a computer during check out and check in. Claimant testified that she did not use the tools at the tool crib, but instead simply checked them out to workers who needed various tools. She also spent time cleaning tools, fixing tools, sweeping floors, and mopping floors. She testified that the tool crib not only included tools, but many other things such as raincoats, boots, tables, and chairs.

Claimant testified that she had no physical problems performing her grounds-keeping duties with respondent. However, several months after she began working in the tool crib she started noticing problems with her right shoulder.

For several years claimant had sought medical treatment from Dr. Alec Spencer, a chiropractic physician. Medical reports from Dr. Spencer indicate that claimant made various complaints of pain in her shoulders. Claimant attributes those complaints to back and neck pain, not shoulder joint pain.

In a report dated June 29, 2023, Dr. Spencer noted that claimant was having difficulty using her right arm and could not lift anything over her head anymore. He also noted that claimant was having a hard time brushing her hair. He requested an MRI scan for further evaluation. Dr. Spencer's medical reports continue to reference complaints involving claimant's right shoulder. Claimant eventually underwent an MRI scan on her right shoulder on March 12, 2024. The findings on the MRI scan included:

1. High-grade partial-thickness articular surface tear involving the distal fibers of the subscapularis medial subluxation longhead biceps tendon is noted. No muscular atrophy is seen.
2. Low-grade intrasubstance tear involving the conjoined tendon of the supraspinatus and infraspinatus.
3. Tendinopathy of the supraspinatus and infraspinatus.
4. Mild to moderate degenerative changes of the acromio-clavicular joint and Type II/III acromion.

Following this MRI scan Dr. Spencer referred claimant to Dr. Samuel McClatchy at Ozark Orthopaedics. Claimant was initially seen by Dr. McClatchy on April 16, 2024, and he recommended a surgical repair of the claimant's right shoulder.

Claimant has filed this claim contending that she suffered a compensable injury to her right shoulder and arm as a result of a gradual onset injury or a specific incident. She seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Initially, claimant contends that she suffered a gradual onset injury to her right shoulder and arm resulting from her job activities while working in respondent's tool crib.

Pursuant to A.C.A. §11-9-102(4)(A)(ii), injuries that occur over a period of time and are not the result of a specific incident occurring at an identifiable time and place are not compensable unless they are caused by rapid repetitive motion. In order to be awarded benefits for a gradual onset injury the claimant must prove several things: (1) the injury arose out of and in the course of employment; (2) the injury caused internal or external physical harm to the body, which required medical services or resulted in death or disability; (3) the injury was caused by rapid repetitive motion; (4) the injury was the major cause of the disability or need for treatment; and (5) the injury was established by objective findings. A.C.A. §11-9-102(4)(D) and *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998).

With respect to “rapid repetitive motion”, the Courts have established a two-pronged test: (1) the task must be repetitive, and (2) the repetitive motion must be rapid. As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. Even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly. *Malone, supra*.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a gradual onset injury to her right shoulder. Specifically, claimant has failed to prove that she suffered an injury that was caused by rapid repetitive motion.

As previously noted, claimant was responsible for operating the respondent’s tool crib. The tool crib was located in a building which contained various tools as well as other items such as raincoats, boots, tables, and chairs. When an employee appeared at the

tool crib claimant would check out a particular item to that employee and note its status in a computer. When the item was returned claimant would return the item to the inventory and note that in the computer.

Claimant specifically testified as to two items in particular which she dealt with at the tool crib. These two items were barricades and an overhead door. The barricades consisted of two A-frames with a long beam laid across the top of each A-frame. Essentially, these barricades look like a sawhorse and photos of the barricades were submitted into evidence by the respondent. It was claimant's testimony that the A-frame portion of the barricade was stored on a beam that stuck out about 10 to 12 feet long. Claimant testified that the number of barricades checked out daily would vary with some days it being five and other days being two.

Claimant also testified that the tool crib had an overhead bay door for taking equipment in and out of the building. In order to open the door she had to pull on a heavy tow bar chain and it took a great deal of force for her to open the door. Claimant testified that on some days she would open the door up to ten times a day, but other days she might only open the door twice a day.

With respect to her job duties, the following testimony occurred:

Q As far as your other job duties at the tool crib, it varied from day-to-day; correct?

A Correct.

Q So there was no certain movements of your shoulder that you made very single day. It would vary for every shift; correct?

A Yes, sir.

I do not find that claimant has proven that her job duties required her to engage in rapid repetitive motion. As previously noted, the Courts have stated that the tasks must be repetitive and that the repetitive motion must be rapid. In essence, repetitive tasks must be completed rapidly. *Malone, supra*. Here, I find insufficient evidence that claimant's job duties involved repetitive tasks that were completed rapidly. Absent sufficient evidence that she was performing repetitive tasks that were completed rapidly, she cannot establish a compensable gradual onset injury to her right shoulder. Accordingly, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a gradual onset injury to her right shoulder while employed by the respondent.

I likewise find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury as the result of a specific incident identifiable by time and place of occurrence. In her contentions, claimant alleged that she suffered a compensable injury as a result of a specific incident which occurred on or about September 1, 2023. Claimant testified that on this particular day she was opening the overhead door and when she pulled on the chain "it hurt so bad in my shoulder." Claimant testified that she did not know if her shoulder popped, but she could not get the door open and another employee had to open it.

Although claimant originally alleged that this occurred on or about September 1, 2023, at the hearing she acknowledged that she did not know the exact date of the incident but believed it occurred sometime between September and November 2023. Dr. Spencer's medical report contains the following history:

Patient states she is feeling worse since her last visit. Can not lift anything over head anymore and has a hard time just brushing her hair. Said she can hardly work anymore because of it.

At the hearing, claimant testified that the additional problems with her shoulder and difficulty brushing her hair would have occurred within two weeks of when the incident with the door occurred. However, this history in Dr. Spencer's medical records was not between September and November 2023, but instead was noted in Dr. Spencer's medical report of June 29, 2023, several months earlier. In addition, I note that Dr. Spencer at that time went on to state:

Shoulder has progressively gotten worse and can not perform normal ADLs anymore. Will be requesting an MRI again, X-rays taken today of the shoulder and arm were WNL. MRI is needed for further evaluation.

Notably, there is no mention in Dr. Spencer's medical record of that date of any incident of the claimant lifting a door. Furthermore, Dr. Spencer stated that he would be requesting an MRI "again". There is no indication as to when Dr. Spencer had previously recommended an MRI scan.

Not only is there no mention in Dr. Spencer's report of June 29, 2023 of an incident with a door, there is no mention in any of Dr. Spencer's medical reports of the claimant having reported an injury to her right shoulder while lifting an overhead door.

Also significant is Form AR-N signed by claimant on April 23, 2024. That form contains the following description of how claimant was injured:

The employee was pulling chains and lifting tools which she was able to do perfectly fine when she started working in this position. She states that

over the last 8 months she has started to experience symptoms in the right shoulder and bicep and has since been diagnosed with tears in the rotator cuff and bicep. This has affected her ability to perform necessary tasks at work.

While this form was typed by another individual, it was signed by claimant on April 23, 2024.

In addition, prior to hiring Attorney Ellig to represent her, claimant originally proceeded *pro se*. Claimant completed a pre-hearing questionnaire in her own handwriting which she signed on August 26, 2024. In describing her injury, claimant stated:

I started at tool crib on October 18th, 2022. I had no problems with doing any part of my job duties. After about 6 to 8 months of repetitive duties (lifting street barricades above my head to hang on the upper beams & dealing with opening and closing bay door that has problems with pulling a very heavy chain to open & close. I started noticing a lot of pain in my right shoulder & right arm.

Thus, claimant's AR-N which she signed in April 2024 and in her pre-hearing questionnaire in her own handwriting which she signed on August 26, 2024, claimant did not mention any specific incident but instead attributed her problems to the gradual onset injury involving her job duties with respondent in the tool crib.

Finally, I note that claimant was referred by Dr. Spencer to Dr. Samuel McClatchy, an orthopedic surgeon, for an evaluation and he has recommended a surgical procedure. In his report of April 16, 2024, he stated:

She has concerns in regards to her time off of work and has also filed for Workers' Compensation in regards to

this injury. Given that there is no muscle atrophy noted of the subscapularis I discussed with her that this is likely an acute injury rather than something that has been present for years. She does not report a specific injury, but this may be more related to repetitive lifting with her shoulder. (Emphasis added.)

Thus, Dr. McClatchy has opined that claimant's injury is acute in the sense that it has not been present for years, but since no specific injury was reported, it was his opinion that it was related to repetitive lifting. As previously noted, claimant has failed to prove that her job activities required rapid repetitive motion to establish a compensable gradual onset injury.

For the reasons discussed herein, I also find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury as a result of a specific incident identifiable by time and place of occurrence. Claimant indicated that while she did not know the date of the specific incident, she believed it occurred sometimes between September and November 2023. However, Dr. Spencer's report of June 29, 2023 indicates that claimant was having difficulties with her right arm and that she was having a hard time brushing her hair and could not performing normal activities of daily living. Claimant testified that this was within two weeks of the door incident. However, Dr. Spencer's report is dated June 29, 2023. Furthermore, there is no mention of any incident lifting a door in any of the medical reports submitted into evidence. Furthermore, claimant signed Form AR-N on April 23, 2024, and handwrote answers to a pre-hearing questionnaire on August 26, 2024, making no mention of any specific incident. Finally, McClatchy has indicated that claimant's findings are more related to repetitive lifting. Accordingly, I find that claimant has failed to prove a compensable injury

by a specific incident identifiable by time and place of occurrence.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of a gradual onset injury or a specific injury identifiable by time and place of occurrence. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$873.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE