

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H108467**

SAMUEL PEREZ, Employee	CLAIMANT
CARGILL, INC., Employer	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, Carrier	RESPONDENT

**OPINION FILED AUGUST 25, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

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

Respondents represented by LAURA J. PEARCE, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On May 31, 2022, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 5, 2022, and a Pre-hearing Order was filed on January 6, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. On June 28, 2021, the relationship of employee-employer-carrier existed between the parties.
3. The respondents have controverted this claim in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether claimant sustained a compensable injury to his right shoulder as a result of a gradual onset injury culminating on June 28, 2021.

2. Whether claimant is entitled to medical treatment.

Claimant's contentions are:

“Claimant contends he is entitled to medical treatment for his arms, hands, shoulders and neck. He also contends he is entitled to temporary total disability benefits. The claimant reserves all other issues.”

Respondents' contentions are:

“Respondents contend that claimant's injuries do not meet the requirements as to compensability under act 796. Respondents contend that claimant failed to notify respondents of a work-related injury that he alleges occurred on June 28, 2021.”

The claimant in this matter is a 44-year-old male who alleges to have sustained a compensable injury to his right shoulder as a result of a gradual onset injury culminating on or about June 28, 2021. The claimant was employed by the respondent at the time he alleges a gradual onset right shoulder injury while hanging turkeys in a turkey processing facility.

On direct examination, the claimant was asked about the beginning of his symptoms as follows:

Q Okay. And how long had you been working in that area when you began having symptoms in your right shoulder?

A I was – I don't remember the exact dates, but I was working and as I was working, all of a sudden I started feeling really tired. And then after that all of a sudden I started feeling a burning sensation. I felt a burning sensation if my arm, my shoulder, my elbow, my hands.

Q Which arm?

A More so the right.

Q Okay. And was it just the right shoulder or was it both shoulders?

A More in this one, but both of them here. More in this one (indicating).

Q And which one is that one?

A The right.

Q Okay. And do you know how long you had been working in the chiller area when that happened to you?

A From when they moved me over there?

Q Yes.

A I'm sorry. I don't remember exactly.

The first medical record introduced into evidence is a report from the respondent's nursing station. The report, in part, states:

Chief complaint: Pain in bilateral shoulders, arms including elbows, hands and fingers with tingling in small fingers and lateral hands and lower arms to elbow. No change.

The report does not indicate more pain in the right shoulder than the left as the claimant testified existed; instead, pain bilaterally in the shoulders and all of the claimant's upper extremities bilaterally. The claimant was treated with ice, ibuprofen and placed on a 50% reduction in his work.

The claimant was again seen at the respondent's nursing station on July 19, 2021, with the same complaints of pain bilaterally in the shoulders, arms, including elbows, hands, and fingers. On July 21, 2021, the claimant again had the same complaints of pain, but additionally reported "new pain in posterior thoracic back since Friday, no new injury."

On July 22, 2021, it appears that the claimant did not report to work that day. A medical record from that date states in part:

HPI: HPI Narrative Per Laura Rodriguez; EE called, he did not come to work today due to increased tingling in shoulder blade.

The claimant was instructed to go to the Arkansas Occupational Health Clinic. A physician's report is found at Claimant's Exhibit 1, Pages 14 and 15, which was authored by Ceth Dawson, PA, dated July 22, 2021. That report indicates the claimant complained of "pain in both elbow, both pinky fingers and traps." Following is the "Diagnosis/Treatment Rendered" portion of that report:

1. Unspecified disturbances of skin
2. Pain in left elbow
3. Pain in right elbow

Patient was given methylprednisolone IM and bilateral elbow pads. Patient may take otc NSAIDs and alternate with APAP as needed. We discussed activity modifications with gradual return to former activity. Patient will follow up with us in 1 week for recheck.

On July 26, 2021, the claimant was again seen at the respondent's nursing station.

Following is a portion of that report:

#### Chief Complaint

Laura Rodriguez interpreting, EE returns to work to report increased pain and bruise (appears to be 2 to 3 days old) in area just below the right scapula. Continued pain to BUE including shoulders and elbows with tingling to bilateral 5<sup>th</sup> digit. He has not worked since Wednesday, 07/21/2021.

#### HPI

HPI Narrative. He reports the pain to be a 10/10 and tells me he is not sleeping well. He denies injury/trauma to area, he also denies massage to area. He requests to return to clinic. EE relates noted hand tremors to be nervous.

The claimant was then sent that same day to the Arkansas Occupational Health Clinic and was seen by Amanda Bell, NP. A physician's report from that visit is found at Claimant's Exhibit 1, Pages 19 and 20, and in part states:

Today's Recheck: Patient states that he is concerned about a bruise that has developed in his right side of ribs. Both elbows, pinky fingers and traps have slightly improved.

Diagnosis/Treatment Rendered

1. Unspecified disturbances of skin
2. Pain in left elbow
3. Pain in right elbow

Bilateral elbow pain, B 5<sup>th</sup> finger parasthesias. -Improving.  
Patient reports bruising/swelling to right ribs.

The claimant was released to return to work with restrictions at that time.

The claimant was referred by Dr. Konstantin Berestnev of the Arkansas Occupational Health Clinic for bilateral NCV testing of his upper extremities on August 2, 2021. On August 17, 2021, the claimant was seen by Dr. Miles Johnson at Northwest Arkansas EMG Clinic and underwent a neurological evaluation and electrodiagnostic testing of his upper extremities bilaterally. Following is a portion of that report:

CHIEF COMPLAINT: Pain, numbness and tingling in upper extremities.

HISTORY OF PRESENT ILLNESS: Patient is a 44-year-old right-handed male with a 3-month history of medial elbow pain bilaterally. He has numbness and tingling in the fourth and fifth digits and medial palm in the right greater than left hand. There is some grip weakness. Does have some neck pain but denies any radiation. Patient has been seen by Dr. Berestnev and is referred for electrodiagnostic testing of the bilateral upper extremity.

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SUMMARY: Bilateral median motor studies are normal. Ulnar elbow conduction velocities are decreased bilaterally recording over the ADM and FDI. Median and lunar

orthodromic sensory latency difference is normal bilaterally. Radial sensory response is normal bilaterally. EMG examination of the bilateral upper extremity revealed reduced recruitment in the FDI bilaterally.

ASSESSMENT: Moderate bilateral ulnar neuropathy at the elbows. There is no electrodiagnostic evidence of radiculopathy, plexopathy, generalized peripheral neuropathy or other peripheral nerve entrapment syndromes.

PLAN: Patient has been counseled regarding the above finds and has been instructed to schedule a follow-up appointment in your office for further evaluation in order to utilize these results in the treatment/management of their condition.

The claimant presented himself to the St. Francis Community Clinic in Springdale on February 18, 2022, and was seen by Anne Sheen, PA. Following are portions of that medical record:

Reason for Appointment

1. Pt C/O left arm pain, numbness and tingling X 6 months, pt is taking med non helping

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General Complaint

44 y/o M presents with c/o persistent Rt arm pain. States the pain starts by his shoulder blade and radiates down his Rt arm. He denies known injury. States the pain has been worsening and he now gets tingling/numbness in the arm. He has tried taking mobic and flexeril without improvement of his sx's. He admits to stress and depression, when asked. He has met w/BHC who referred him to psych but they were not able to contact him for appt.

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Assessments

1. Anxiety with depression – F41.8
2. Trapezius muscle spasm – M62.838 (Primary)

One March 16, 2022, the claimant was again seen by Anne Sheen, PA. Following is a portion of that medical record:

Reason for Appointment

1. Patient c/o right arm numbing and tingling on hand x 6 months.

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General Complaint

44 y/o M presents with continued c/o Rt posterior shoulder pain with radiation down Rt arm. He has been seen for this previously and trialed prednisone, NSAIDs, and muscle relaxers without relief. I referred him to PT but they were not able to reach him to schedule appt.

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General Examination

General appearance NAD, well developed and well nourished.

Face: symmetrical.

Neurologic Exam alert and oriented x 3, NC's II-XII grossly intact.

Skin: Normal, no rash, good turgor.

Peripheral Pulses: normal (2+) bilaterally.

Musculoskeletal: Large knot/spasm noted proximal to RT scapula – very ttp. Pt reports limited ROM of Rt shoulder d/t pain. States pain radiates up his neck w/movements of his shoulder. No spinous abnormalities noted to neck or bony abnormalities noted to bil shoulders, arms.

Assessments:

1. Trapezius muscle spasm – M62.838 (Primary)

2. Right arm pain – M79.601

3. Paresthesia of right upper extremity – R20.2

On March 24, 2022, the claimant underwent an MRI of the right shoulder without contrast at MANA Medical Associates. Following is a portion of Dr. Benjamin Lowery's diagnostic report:

FINDINGS:

Bursal surface fraying of the supraspinatus and tendinopathy is seen. The infraspinatus is intact and

demonstrates normal signal. The subscapularis is intact and demonstrates normal signal. The long head biceps tendon is intact and demonstrates normal signal. No muscular atrophy is seen.

Mild degenerative changes of the acromioclavicular joint are seen. A type II acromion is identified. Increased signal seen in the anterior labrum consistent with an underlying tear. The glenohumeral articular cartilage is well-maintained.

**IMPRESSION:**

1. Tear involving the anterior labrum
2. Bursal surface fraying of the distal fibers of the supraspinatus.

It is the claimant's burden to prove he sustained a compensable gradual onset injury to his right shoulder culminating on or about June 28, 2021. The claimant is unable to do so. While the claimant does have objective medical evidence of derangement in his right shoulder, including a tear involving the anterior labrum as seen in the diagnostic report from the claimant's March 24, 2022, MRI of the right shoulder; he is unable to prove the required causal connection between the objective medical findings and the gradual onset injury he alleges. It is true that the early medical records, including the very first medical record introduced by the claimant, do report right shoulder difficulties, but they do so in the form of a description of bilateral shoulder pain and including pain complaints regarding the claimant's arms, elbows, hands, and fingers bilaterally. The claimant's complaints were a pain bilaterally in his complete upper extremities including his bilateral shoulders. It is nonsensical that a tear in the claimant's right anterior labrum and bursal surface fraying of the distal fibers of the supraspinatus would cause all of the bilateral pain the claimant describes in medical records and in testimony. The claimant's complaints regarding these multiple bilateral body parts continued at least up until August 17, 2021, when the claimant underwent a bilateral NCV testing at the hands of Dr. Johnson.



The claimant's description in testimony about how his symptoms first began is also unusual for a gradual onset right shoulder injury in that the claimant alleges a suddenness in the onset of symptoms. Following is a portion of the claimant's cross examination testimony:

Q Okay. And you had testified earlier today that when you made the complaint that you were having some problems with your body, you listed a whole bunch of body parts; correct?

A Yes.

Q Okay. And did they all start hurting at the same time?

A Yes.

Q And was there any particular thing you did when you realized that all these body parts started hurting?

THE INTERPRETER: The interpreter would like a repeat of the question.

MS. PEARCE: Was there any particular thing he was doing when he realized all of this body parts were hurting.

THE WITNESS: Hanging.

Q [BY MS. PEARCE]: But was there a moment in which you said, "Hey, everything hurts"?

A Yes.

Q And there was one particular moment that you can recognize when you thought that?

A I don't understand that.

Q. Is there one moment when you thought to yourself, "Hey, I think I may have just hurt myself"?

A Yes.

Q And you can identify that point in time?

A I couldn't tell you the time, but, yes, I did feel it.

Q Okay. And you are here today because of a right shoulder injury; correct?

A Yes.

The claimant's direct examination testimony is very similar in that all of his difficulties came on at once or as he described "sudden" as follows:

Q Okay. And how long had you been working in that area when you began having symptoms in your right shoulder?

A I was – I don't remember the exact date, but I was working and as I was working, all of a sudden I started feeling really tired. And then after that all of a sudden I started feeling a burning sensation. I felt a burning sensation if my arm, my shoulder, my elbows, my hands.

The claimant introduced his own deposition taken on April 12, 2022, as Claimant's Exhibit 2. The claimant, in that deposition, describes when all of his bilateral body parts began to cause pain and the suddenness of the pain as follows:

Q Did everything start hurting at the same time or did one part of your body start hurting before the others?

A It was all at the same time.

Q And was there any – was there any fall or injury or day that you picked up a turkey strangely that you can remember that started all of this?

A Well, not really. I mean I picked the turkeys up off of the belt, but, yeah.

Q So just one day you started hurting from your neck all the way down to your hands on both sides without any incident, injury; correct?

A Well, yeah, but I was hanging turkeys, so I just thought, well, it was probably tiredness.

Q And do you know how long you had been feeling that way?

A All day.

Q How long before the day that you went and you told Jesus and Aurelio, how long before then can you remember feeling that way?

A Well, I think it had been about two weeks.

Q Had you had problems with your shoulders before that day?

A No.

Q Or I guess before the two-week period. Sorry.

A Well, it just started all of a sudden.

It appears that the claimant experienced all of his bilateral complaints of pain in one sudden moment roughly two weeks before he reported the problem. It is confusing as to how a gradual onset injury caused by rapid and repetitive motion would express itself in multiple bilateral body parts all in the same sudden moment. This does not seem reasonable for the claimant's current allegation of a right shoulder injury that was gradual in its onset. It might seem reasonable if a specific incident had occurred; however, here we have no evidence of that and the claimant himself contends no such event occurred.

On July 26, 2021, nearly a month from the date the claimant alleges his gradual onset right shoulder injury to have culminated, the claimant reports and demonstrates a bruise "just below the right scapula." The claimant had not worked for the respondent since July 21, 2021. The medical record from the respondent's nurses station states "EE returns to work to report

increased pain and bruise (appears to be 2 to 3 days old) in an area just below the right scapula.” At that time, the claimant did continue to complain of bilateral upper extremity difficulties. The claimant denied any injury or trauma to the bruised area and related “hand tremors to being nervous.”

On cross examination, the claimant was asked about the bruise he reported and demonstrated on July 26, 2021, as follows:

Q Okay. Did you visit the nurse on July 26<sup>th</sup> with a large bruise on the backside of your shoulder?

A Yes.

Q And what caused that bruise?

A I think it was because of my right arm because it was swollen.

Q What was swollen?

A The back, the shoulder blade.

Q And did you have a bruise?

A Yes.

Q And can you describe the bruise for us.

A It was like a purple color.

Q And can you explain to us exactly where it was without just showing us on your body. Can you do it in words, please.

A Right here on the back where the shoulder blade is and it was swollen.

Q And do you have any idea – did you suffer any injury, fall, incident that would have caused that bruise at that time?

A I woke up that way because I couldn't even lay on that side.

Q Okay. And you don't remember any additional incident at work that caused that?

A No.

Q Okay. Had you worked the day before the bruise showed up?

A I had been hurt for several days.

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Q Okay. What days of the week did you work? Did you have a set schedule?

A No.

Q So do you recall taking off several days before going to the nurse and showing her that bruise?

A Yes. I was reporting at the nurses station.

Q Did you show them that bruise?

A Yes.

Q Okay. But you had been out of work for several days before reporting that bruise to the nurses.

A I would ask for vacation days and they said, "You are not authorized," Chuy. Suzanna said to get vacation days.

In the deposition introduced by the claimant taken in April 2022, the claimant was asked by the respondent's counsel about the bruising he both reported and demonstrated on July 26, 2021, to the nurse at the respondent's nursing station as follows:

Q Okay. At some point you went to the doctor or the nurse – I'm sorry, you went to the nurse – and you had a bruise, a pretty big bruise on you. Do you remember that?

A Yes, when that happened. There was a bruise and it was really big and black.

Q And where was the bruise specifically on your body?

A Here (indicating).

Q Okay. I need you to use your words, though.

A Oh, oh, okay. So behind my arm like under my shoulder blade.

Q And how did you get that bruise?

A I don't know. I talked to the nurse about it to get a test, but she said, no, not unless a supervisor allows it.

Q Did it hurt?

A Well, it hurt inside. Not really outside. That is how I realized that something was going on and I asked my wife, "Can you look? It is hurting me back there." And she said, "Yeah, you've got a black spot. What is it?" And I said, "I don't know."

Q By the time that that bruise showed up, you had already been going to the nurses station and the doctors for a little while; right?

A I was going to them, but the doctors weren't doing anything.

Q But when you went and you talked to the doctors about the bruise, that was the first bruise that you had had?

A That was the first time.

Q And you didn't fall or bump into anything or any other way that you got that bruise?

A No.

Q As we sit here today, do you know what caused that bruise?

A Well, when I had it, I would have liked to have found that out, but they didn't want to take me to the doctor to ask.

Q Okay. How long did you have that bruise?

A A week.

Q And what makes you think that that was related to the condition that you were already having with your hands and your shoulders and your arms?

A Well, I thought maybe a bone had come out of place. When I had that, I went to the nurse and I said, "I need to go get treatment to heal this," and she said, "Not unless a supervisor approves it."

It is also quite unusual that the claimant could sustain a large bruise in the area that he is alleging a compensable injury culminating on or about June 28, 2021, on July 26, 2021, and have no idea where or why the bruise originated. This is particularly so when the injury is alleged to be gradual onset in nature and is primarily made of a torn anterior labrum that he alleges occurred when at a sudden point in time multiple other body parts began to cause pain bilaterally.

The claimant has failed to prove his alleged compensable gradual onset injury to be compensable by a preponderance of the evidence. It is his burden, and he is unable to meet it. The claimant's testimony and appearance in person was contradictory to reason at many points and evasive. I simply do not believe the claimant is a credible witness in this matter and the facts do not support his allegations of a compensable gradual onset right shoulder 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 his 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 the pre-hearing conference conducted on January 5, 2022, and contained in a Pre-hearing Order filed January 6, 2022, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right shoulder as a result of a gradual onset injury culminating on or about June 28, 2021.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment for his alleged compensable injury.

**ORDER**

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

**IT IS SO ORDERED.**

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**ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**