

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G905672

SIOMARA Y. HERNANDEZ RAMIREZ, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT
TYNET CORPORATION, Carrier	RESPONDENT

OPINION FILED DECEMBER 22, 2021

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 R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On October 5, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 28, 2021, and a Pre-hearing Order was filed on that same date. 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. The employee-employer-carrier relationship existed between the parties on June 10, 2019.
3. The respondent has controverted this claim in its entirety.
4. Claimant reserves the issue of temporary total disability benefits.

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

1. Whether the claimant sustained a compensable injury to her right shoulder on June 10, 2019.
2. Whether the claimant is entitled to medical treatment.

Claimant's contentions are:

“The claimant contends that she is entitled to treatment for a compensable right shoulder injury. The claimant reserves all other issues.

Respondents’ contentions are:

“Respondents controvert this claim in its entirety.”

The claimant in this matter is a 29-year-old female who alleges to have sustained a compensable injury to her right shoulder in a specific incident on June 10, 2019. At the time the claimant alleges her injury occurred she was working on a chicken processing line for the respondent. The claimant’s employment with the respondent began on June 4, 2019, six days before the incident she alleges. The claimant was a parttime employee and testified that she had only worked for the respondent two to three days before her alleged incident. The claimant previously had worked for the respondent, but had to leave her employment with the respondent due to the expiration of her work visa. This caused a “two month and some days” gap in the claimant’s employment according to her testimony.

On direct examination the claimant described the events surrounding and the specific incident she alleges to have caused her compensable right shoulder injury as follows:

Q What happened that day?

A I usually come in around 4:00 p.m. and I came in that day to work. It was just like three girls in there: Laura, who usually is at the upper level and then two more, me and this other girl, which she was my sister, at the lower level. We were working like normal and usually the girl at the upper level, I would - - either one of us, my sister or me, would give her a break because there is usually someone always there, so I gave her a break. And then the machine stopped working. Whenever I say the machine, it was this big, old table, like a shaker, and it stopped working while she was at break and it was just me and my sister.

At first we started screaming for help because it was just us up there and usually, you know, the lead and everybody else is down there packing and all of that. So whenever the machine stops working, screaming for help, and we tried to stop - - usually the emergency stop when you push it supposedly it stops the line, but it didn’t. I went and pushed it and it didn’t stop. The chicken just

kept coming and coming. The machine, the shaker that stopped working, I started pushing the chicken. You know, it was coming down and I was trying to push it, but it got to the point where the chicken was like this high (indicating). And I was trying to push it because usually when this happens - - which it happened a lot. This wasn't the first time that this issue happened and we had a report like so many times before with the supervisor and the lead and a lot of times the maintenance guys would come and they would try to fix it and they would tell us that the part was ordered and it just never came.

So I was just trying to push it so we wouldn't end up with a mess to clean up because we were the ones that would have to clean up the chicken off the floor. So what I was trying to do was push the chicken, you know, so it would - - this shaker is connected to some baskets that measure the chicken by pounds and it just brings it down and it puts it in bags and then the line would just put it so the other people could pack it.

So I was trying to push it to make it through the baskets so it would go down, but there was just so much chicken. And whenever I was pushing and just trying to rush it through because, you know, the chicken was falling down where I was and I was trying to push it, I felt a pinch on my shoulder. And, you know, I have done this so many times so I thought, you know, it was just something that would go away.

The claimant testified that she had never previously had any right shoulder problems and that she continued to work her shift. The claimant testified that she had difficulty sleeping that night due to pain. In direct testimony she stated, "... it felt pain. It felt like a pinching kind of." The claimant admitted in recross examination that during a January of 2020 deposition she described her right shoulder as "felt weird" instead of the pain she described in hearing testimony.

The claimant did not return to work on June 11th as she was not scheduled to work. However, the claimant returned on June 12, her next scheduled day. The claimant reported her alleged specific incident injury to her supervisor and was sent to the respondent's nurse's station. Following is a portion of the respondent's nurse's note from that visit:

Subjective: TM presents to OHS with right shoulder pain.

TM reports that Monday 6/10/19 the shaker table stopped working and the chicken piled up. TM reports she pushed the chicken with her hands to keep the line from making a mess. TM reports her shoulder was hurting after pushing the chicken but she thought it would go away but it is continuing to hurt her. TM reports her pain level is 7/10 at this time.

Objective: TM came to OHS with supervisor Kayla King with right shoulder pain from two days ago. TM is polite and cooperative with assessment with grimacing while fully extending arm above head and when moving arm from fully extended at shoulder height to the front. TM was off work for over a month and just reinstated on 6/4/19 so she is still in her first 8 weeks after returning to work.

Assessment: Full ROM with no swelling, crepitus or bruising noted. Equal grip and pinch strength noted bilaterally. Capillary refill < 3 seconds noted to all digits.

Plan: Reduce pain. TM instructed to return to OHS on 6/14/19 @ 6:30 for follow up or sooner if needed.

Heat was applied to the claimant's shoulder which did not provide relief. The claimant was told to heat and ice before and after work.

The claimant was seen again at the respondent's nursing station on June 18, 2019 and June 25, 2019, at which time she reported continued right shoulder pain. On June 26, 2019, the claimant returned to the respondent nurse's station and reported "shoulder has been good tonight and only a pain level of 1/10." The claimant did not want any treatment at that time. The claimant again returned to the respondent's nursing station on July 16, 2019. That report in part states, "TM presents to OHS for follow up of right shoulder pain. TM denies any pain or discomfort at this time." However, on July 23, 2019 the claimant returned to the respondent's nursing station and reported, "Her pain has never stopped as she claimed last week." The report additionally states, "TM wrote and signed a statement to the fact that she purposefully denied pain just so she would not have to come back to OHS at that time due to it being a

waste of her time.” The claimant gave direct examination testimony about the respondent’s nurse’s record regarding her stating that she was no longer in pain as follows:

Q And when you went in - - and this is reflected in the nurse’s notes in the medical records - - but when you went in to talk to the nurse at Tyson and said that you were no longer pain, why did you do that?

A Because I would complain about my pain and the people there wouldn’t really listen to me. And I was in pain and all they would do is give you an ice pack or heat it. And I was mad and tired of actually just wasting my time because They were literally - - whenever I would complain to the Supervisor that I was in pain, she would look at me and say, “Just go to the nurse and get it iced and come back.”

And the way to the nurse is usually really long. You have to walk down the whole plant to get to the nurse and then come back, get all dressed up again, and I just feel like it was just a waste of time of me just icing it there, so I just told them it didn’t hurt anymore because I didn’t want to keep wasting my time getting it iced because it didn’t help.

Q So what made you go back to tell them that actually it was still hurting?

A I just couldn’t - - I just couldn’t with the pain anymore. It was so much of just me keep doing the work and I was in so much pain that I just went back and told them that I was still hurting.

During that July 23, 2019 visit to the nurse’s station the claimant requested that she be seen by the company doctor. On July 31, 2019 the claimant was seen at Arkansas Orthopedics & Sports Medicine in Harrison, Arkansas by Dr. Linn. Following is a portion of that medical record:

SUBJECTIVE: Siomara is a pleasant 26-year-old female here as work comp from Tyson’s. She has been having right shoulder pain since June 10th. She reported it around June 12th. She says that she was on the line alone and was getting behind and pushing chicken down the belt pretty hard. She did not feel an immediate pain but right after work and that evening begin hurting quite a bit and that she reported it two days later when she was back at work. She works there part time three to four days a week and gets 30 hours in. Otherwise she is a hairdresser and has been having a lot of trouble doing haircuts after 3 to 4 hours, she will have quite a bit of pain and it is difficult for her to lift her arm

definitely above her shoulder. She has been using Tylenol and ice and heat. She will try some ibuprofen but it did not seem to help after she went through bottle of it. She has never had trouble with her shoulder before. She denies any numbness or tingling.

ASSESSMENT AND PLAN: Right rotator cuff tendinitis. I have talked with her about the condition. I have recommended steroid injection and she agrees. Her shoulder was prepped with Betadine and alcohol. She was injected with a mixture of lidocaine and Kenalog using the subacromial approach. She tolerates this well. We have given her home exercise program to work on. We will see her back in four weeks for recheck.

The claimant continued to treat with Dr. Linn at Arkansas Orthopedics & Sports Medicine. The claimant's shoulder pain continued without relief from the injection provided to her. At the claimant's August 28, 2019 visit Dr. Linn recommended an MRI of her right shoulder. The claimant underwent an MRI of the right shoulder on December 20, 2019. Following are portions of that diagnostic report prepared by Dr. Shawn Marvin:

FINDINGS: No significant acromioclavicular joint osteoarthritis. No os acromiale.

The rotator cuff is intact. No rotator cuff tendon tear, tendon retraction, or rotator cuff muscle atrophy.

The long head of the biceps tendon rests normally within the bicipital groove. The intra-articular biceps tendon is normal in appearance. No displaced labral tear is present. No glenohumeral joint cartilage defect is noted. The quadrilateral space is normal in appearance.

IMPRESSION:

1. Intact rotator cuff.
2. Intact biceps labral complex.

On January 2, 2020 the claimant was again seen at Arkansas Orthopedics & Sports Medicine by APN James Hankins. The MRI of the claimant's right shoulder was reviewed at that time. The claimant's MRI appears to have been normal, but the claimant still complained of right shoulder pain

even after injections and physical therapy. It was then recommended the claimant undergo a diagnostic arthroscopy.

On May 28, 2021 the claimant underwent a diagnostic arthroscopy performed by Dr. Tarik Sidani. Following are portions of that operative report:

PREOPERATIVE DIAGNOSIS: Right shoulder pain.

POSTOPERATIVE DIAGNOSIS: Bursitis right shoulder

PROCEDURE: Right shoulder arthroscopy diagnostic with arthroscopic debridement and bursectomy

DESCRIPTION OF PROCEDURE: The patient taken to the operative suite and given a general anesthesia. Laid in a lateral recumbent position. All extremities were well padded. The right shoulder was prepped and draped in a sterile fashion. Posterior portal established with an 11-blade scalpel. Trocar was in the glenohumeral joint. A diagnostic arthroscopy was carried out.

Glenohumeral joint showed no instability. Negative drive-through sign. No adhesions. No degenerative change as well. The anterior portal established at this point. The anterior labrum was palpated and was intact. The subscapularis is intact. Superior labrum intact. Biceps anchor showed no swelling or tears. Posterior labrum intact. Inferior pouch showed no loose bodies or synovitis. Rotator cuff was pristine. Essentially a normal diagnostic arthroscopy of the glenohumeral joint.

We then turned our attention to the subacromial space, which did show moderate and dense bursa surrounding the rotator cuff. We performed bursectomies through the lateral portal releasing adhesions between the cuff and the deltoid as well. This exposed the cuff, which showed no tears. There may have been some slight fraying anteriorly. We gently debrided the anterior cuff with a shaver. We then inspected the coraco-achromial arch. It was type 1 in morphology and did not see any obvious signs of impingement there. Therefore we kept the arch intact and did not perform an acromioplasty. We resected additional subdeltoid bursa down the anterior recess and once again inspected the cuff, which showed no tears. Hemostasis was obtained with radiofrequency device in short bursts.

The claimant has asked the Commission to determine if she suffered a compensable right shoulder injury on June 10, 2019 in a specific incident in which she was pushing a mound of chicken with her right arm due to a machine malfunction. The MRI and the diagnostic arthroscopy both show intact rotator cuff and intact biceps labral complex. It appears that the claimant has a pristine right shoulder except for the finding of moderate and dense bursa surrounding her rotator cuff. The claimant is unable to prove the existence of acute injury to her right shoulder as she alleges to have occurred on June 10, 2019. The claimant did undergo debridement and bursectomy but that was due to her moderate and dense bursa surrounding her rotator cuff and not the acute injury she alleges on her second or third day of employment for the respondent. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable right shoulder injury on June 10, 2019.

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 the pre-hearing conference conducted on July 28, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on June 10, 2019.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment.

ORDER

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

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**