

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205301

PAULA STUHAN, Employee

CLAIMANT

TYSON POULTRY, INC., Self-Insured Employer

RESPONDENT

OPINION FILED APRIL 12, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JEREMY SWEARINGEN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 27, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on January 18, 2023 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 relationship existed between the parties at all relevant times, including August 4, 2020.

Subsequent to the pre-hearing conference the parties agreed to stipulate that claimant earned an average weekly wage of \$580.14 which would entitle her to compensation at the rate of \$387.00 per week for total disability benefits.

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

1. Compensability of injury to claimant's eyes.
2. Payment of medical.

The claimant contends that as a result of her having to wear a mask she developed spasming in her eyes which resulted in the need for medical treatment.

The respondent contends the claimant cannot prove that her alleged symptoms constitute a compensable injury under the Arkansas Workers' Compensation Act. Respondent contends, in the alternative, that the medical benefits claimed are neither reasonably necessary nor related to any compensable injury or condition. Respondent contends, in the alternative, that if the claimant incurred medical expenses or temporary total disability prior to the time she gave notice of an alleged work related injury or condition to respondent, then any pre-notice benefits incurred would not be the liability of respondent (if the claim were even compensable).

From a review of the record as a whole, to include medical reports, documents, stipulated testimony, 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 January 18, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$580.14 which would entitle her to compensation at the rate of \$387.00 per week for total disability benefits is also hereby accepted as fact.

3. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her eyes while employed by respondent.

FACTUAL BACKGROUND

The claimant is 62 years old and she began working for respondent as a bagger operator approximately sixteen years ago. Claimant's job duties included maintaining the bagger so that product was put into the bag in the correct amount and with the proper date. Claimant testified that while running a particular product the employees were given the option of whether to wear a mask or not. As for her decision, she stated:

Sometimes I would wear one, sometimes I wouldn't because sometime it would give me trouble. Sometimes it wouldn't. It would be a burning, stinging, kind of a puffy type of feeling, but nothing bad. Go home, you're good again the next day.

At some point during the Covid pandemic all employees were required to wear masks. Claimant testified:

But when the rule was you couldn't wear the N95 and you had to wear the regular mask, that's when I started having problems. I didn't know what it was, but it was an annoyance. It wasn't that bad. You go home. Problems went away. Come back the next day, troubles again. Not bad.

As time grew, so did the problem. I would go home and it would take longer for my eyes to recover. I

would go back to work, seemed a little more of a problem, so this just kept increasing.

Claimant testified that as time progressed her condition worsened and that at some point she was informed that she needed cataract surgery and she underwent that procedure on both eyes. After the cataract surgery her eye condition again worsened.

The medical records submitted into evidence are somewhat sporadic but do indicate that claimant was seen by Dr. Aniket Sakharpe at Mercy Clinic on June 23, 2021. Dr. Sakharpe noted that claimant had been diagnosed as suffering from blepharospasm by Dr. Renner and had been asked to provide an evaluation from a plastic surgeon perspective. Dr. Sakharpe noted that claimant's twitching became more apparent when she was exposed to bright lights and suggested that claimant use tinted lenses to see if that relieved any of her symptoms. Dr. Sakharpe agreed with Dr. Renner that claimant would not be a good candidate for Botox injections.

On August 12, 2021, claimant was evaluated by Dr. Daniel Sines at Boozman-Hof Regional Eye Center. Dr. Sines noted that claimant has had blepharospasm for over a year and that claimant indicated that it had gotten worse after cataract surgery in March 2021. Dr. Sines recommended and scheduled Botox injections, but on August 13, 2021 claimant called and canceled the scheduled injections.

On December 2, 2021, claimant was evaluated by Dr. Timothy Booker, neurologist. Dr. Booker noted that claimant did not wish to undergo Botox injections and he recommended an MRI scan of the brain. The MRI was performed on December 18, 2021, and was read as showing:

IMPRESSION:

1. Scattered areas of increased signal in the white matter bilaterally compatible with age related white matter disease. No acute abnormalities are seen.

Claimant returned to Dr. Booker on April 14, 2022, and he noted that the MRI revealed scattered white matter consistent with aging, but no acute findings. He also noted that claimant no longer had to wear a mask at work and since that time claimant no longer had any symptoms.

Claimant has filed this claim contending that she suffered compensable injuries to her eyes as a result of wearing a mask at work. She requests payment of medical benefits for that condition.

ADJUDICATION

Claimant contends that wearing a mask while working for respondent resulted in blepharospasm in her eyes. Claimant does not attribute this condition to a specific injury, but rather to the ongoing wearing of a mask. Documentary evidence submitted by the claimant indicates that Benign Essential Blepharospasm is “a movement disorder of the eyelids affecting an estimated 5 out of every 100,000 people. BEB is a condition in which uncontrolled blinking, squeezing, and eyelid closure occur in both eyes without an apparent environmental cause. ‘Benign’ indicates the condition is not life-threatening and ‘essential’ means that it occurs on its own without outside stimulation.” Claimant’s diagnosis of blepharospasm is in the nature of an occupational disease.

An “occupational disease” is defined as any disease that results in disability and

“arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury.” A.C.A. §11-9-601(e)(1)(A). Claimant has the burden of proving by a preponderance of the evidence that a causal connection exists between the occupation or employment and the occupational disease. A.C.A. §11-9-601(e)(1)(B).

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 proof.

In order to prove a compensable injury claimant must show, by the greater weight of the credible evidence, the presence of a causal relationship between her blepharospasm and the wearing of a mask at work. Basically, claimant relates her eye symptoms to the wearing of a mask at work because her symptoms began after she began wearing a mask and the symptoms went away when she no longer wore the mask. I also note that based on stipulated testimony from various witnesses, that at some point claimant complained to her supervisors about her eye spasms and that she attributed those problems to the wearing of a mask.

It is unclear exactly when the claimant’s problems with eye spasms began. The history and the medical report of Dr. Sines dated August 12, 2021 indicates that claimant stated that she had suffered from blepharospasm for over a year and that it had worsened after cataract surgery in March 2021. This would indicate that her problems began in early 2021 or sometime in 2020.

The first medical report submitted into the record is dated June 23, 2021, from Dr. Aniket Sakharpe who saw claimant for a plastic surgical evaluation. That report contains the following history:

According to the patient she has been having the symptoms for long [periods] of time she had this cataract repair done after which this symptoms (sic) have become much worse. She initially noticed a worsening of her some symptoms which was described by the patient has (sic) pain in the eyes after the cataract surgery when she used which she will with a bright light reflecting into the eye. Ever since that time the patient continues to have the symptoms where she starts suddenly having the bilateral eyes kind of twitch and close up on her where she is now bumping into people. These twitching of the eyes and inability to see has been bothering the patient there is no specific trigger that she can remember. There is no specific time of the day that these symptoms are worse at sometimes it is early in the morning sometimes at night. She denies any weakness of the eyes [or] weakness in the eye at the end of the day. She denies specifically that the bright light causing more symptoms. She denies any specific triggers or alleviating factors. According to the patient she is used solar glasses but it did not seem to help her as much. Symptoms are present in a dark room and at night as well as during bright part of the day. There is no specific time of the day they are worse that. (Emphasis added.)

The report also contains the following observations:

The patient also has some chorionic twitching or movement of the upper part of the face which is bilateral. This becomes more apparent when the patient is exposed to bright lights. Patient was wearing a [?] When we remove the cap and had corrected her brow ptosis by fixing her brows her symptoms of this chorionic movement started. There was nothing that we could [do to] make the symptoms go away. At this point we also took a picture where she is having extreme spasm of all the depressors of the brow as well as the upper eyelid. There was no specific trigger for this. (Emphasis added.)

[It should be noted that the above quotes from Dr. Sakharpe's report contain numerous grammatical errors. However, I do not believe these errors materially affect the significance of the history and observation as discussed immediately hereafter.]

The history and observations of Dr. Sakharpe are significant for several reasons. Most notably, there is no mention of the problems being caused by wearing a mask at work or that the symptoms were worse when claimant was wearing a mask at work. In fact, the history in Dr. Sakharpe's report indicates that claimant denied any specific triggers. This matches the definition of Benign Essential Blepharospasm that these conditions occur "on its own without outside stimulation." This history is also important in noting that at times claimant's symptoms were worse early in the morning and other times at night. Thus, there would have been no correlation with claimant's wearing a mask at work. The observation portion of the report indicates that claimant developed symptoms while in the doctor's office and there "was no specific trigger for this."

The next medical report is from Dr. Sines at Boozman-Hof Regional Eye Center. His report contains the following history:

Pt states she has had blepharospasm for over a year. Pt states blepharospasm it (sic) got worse after cataract surgery in 3/2021.

Dr. Sines went on to indicate that claimant's findings were consistent with Benign Essential Blepharospasm. Again, it is notable that Dr. Sines' medical report contains no mention of claimant's eye problems being related to wearing a mask at work.

The first mention of a mask in the medical records is from Dr. Booker's report of December 2, 2021 which states:

Symptoms are as stated intermittent not particularly related anything although in the beginning she thought it may have been related to wearing her mask.
(Emphasis added.)

Given Dr. Sines' history in his report of August 12, 2021 that the blepharospasm had been present for over a year, Dr. Booker's report of December 2, 2021 would indicate that the first medical report mentioning a mask would have been more than a year after those symptoms began.

In finding that claimant has failed to prove a causal connection, I also note that no physician has opined that the blepharospasm was caused or could have been caused by the wearing of a mask. While claimant is not required to offer medical evidence establishing a causal connection, the lack of a treating physician's opinion is a factor that may be considered in determining whether claimant has met her burden of proof.

In summary, while claimant believes that her blepharospasm is related to her wearing a mask at work, she has the burden of proving that a causal connection exists between the wearing of the mask and her blepharospasm. Here, claimant has been diagnosed as suffering from Benign Essential Blepharospasm and according to the definition submitted by the claimant it occurs on its own without outside stimulation. It apparently can be a normal reaction to very bright lights and this was noted in Dr. Sakharpe's report of June 23, 2021. In short, I find insufficient evidence of record proving that there is a causal connection between claimant's wearing of a mask at work and her Benign Essential Blepharospasm. Therefore, I find that claimant has failed to meet her burden of proof.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her eyes while employed by respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$341.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE