

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H300652**

LORENA TRUJILLO TINAJERO, Employee

CLAIMANT

TYSON POULTRY INC., SELF-INSURED Employer

RESPONDENT

OPINION FILED **DECEMBER 15, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On September 25, 2023, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 1, 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 this claim.
2. The employee/employer/carrier relationship existed on or about November 30, 2021.
3. The respondents have controverted the claim in its entirety.

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

1. Whether claimant sustained a compensable injury on or about November 30, 2021.
2. Whether claimant is entitled to medical treatment.

All other issues are reserved by the parties.

The claimant contends "She injured her right elbow and shoulder while pulling chicken apart

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and is entitled to medical treatment. Claimant reserves all other issues.”

Claimant withdrew her claim regarding the right elbow at the hearing.

The respondents contend that “Claimant did not sustain a compensable injury as that term is defined by Act 796.”

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant 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 June 1, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proof by a preponderance of the evidence that she sustained a compensable injury to her right shoulder on or about November 30, 2021, and is entitled to reasonable and necessary medical treatment for that injury as recommended by Dr. Robert Benafield.

FACTUAL BACKGROUND

After the entry of the prehearing order but prior to the hearing, claimant advised that she wanted to reserve any issue regarding claimant’s elbow injury. Respondent was aware that claimant was not going to proceed with that portion of the claim and would present evidence solely regarding her alleged right shoulder injury.

HEARING TESTIMONY

Claimant testified on November 30, 2021; she was working as a sorter, trimming chicken breasts. She testified that the machine used in doing the trimming had not been working properly for

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a few days and she had difficulty pulling the chicken out of the machine. Claimant testified that as she was pulling a piece of chicken, she felt a burning in her right arm. She told her supervisor about it that day but took a pill and declined to go to the nurse's station. When she returned to work on December 1, she went to the nurse's station and made a report. Claimant does not speak English and the form was completed by someone other than herself. Claimant was definite that she said the pain was in her elbow and shoulder but did not know what was written on the form.

Initially, claimant saw a therapist that came to the plant and treated her shoulder and elbow. When that wasn't working, she went to the doctor on Wagon Wheel Road. She felt the doctor wasn't doing anything to help her. Claimant asked for an MRI because her arm was falling asleep a lot, but the doctor said Tyson wouldn't pay for it. His treatment was limited to anti-inflammatory pills, which worked for a short time, but the pain in her shoulder returned when she stopped taking them.

After finishing a course of physical therapy, the Wagon Wheel doctor discharged her over her objection. Claimant said she worked at light-duty while seeing the doctor and doing physical therapy using only her left hand. When returned to regular duty, claimant was wearing a brace, and her shoulder was burning as well as part of her elbow. Claimant testified that she reported the problem with the burning in her shoulder to the nurse three times, but she was not sent back to the doctor. After the third time she went to her own doctor, which was Dr. Benafield. She has been placed on restrictions and has not used her right shoulder in two months. Because respondents did not send her for additional treatment, claimant has used her husband's health insurance to pay for her treatment.

On cross-examination, claimant said that the only work she had missed was when she had carpal tunnel surgery in February 2023. She maintained that the carpal tunnel and shoulder injury happened on the same day. A couple of days after she hurt her shoulder, she said her arm started to fall asleep. The carpal tunnel surgery relieved the numbness issue in her arm.

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Claimant did not remember drawing a circle around her right elbow as reflected on Respondent's Non-Medical Exhibit #1 and said the handwriting on the form was not hers except for the signature. When shown that the date on the form was December 8, 2021, she was adamant that the injury happened on November 30. She said there were a lot of papers for her to sign, and since they were in English, she didn't think they would do something bad. She was told that it said she had gotten her shoulder and elbow hurt. All of her dealings with the plant nurse, Dana Thompson, involved a Spanish interpreter. While the form correctly said that she had pain in her right elbow, she said that she also told Ms. Thompson that she felt a burning in her shoulder. She had no explanation why the records would not include the report of a shoulder injury because she told them that.

On redirect-examination, claimant said that the doctor was told that she had an elbow and shoulder injury, but the doctor told her that she had to go to the plant to let them know. When she did so, she was told that it was too late because the report had already been sent to the corporation. She did not know what papers she signed because they were in English. She did not remember if the form was filled out before she signed it. Where there was a diagram on the form, she said there was nothing marked on it when she signed it. She also said that she did not fill out Form-N, but she did sign it. Claimant was clear that she reported the injury to her supervisor the day that she was hurt but there was a written report the next day.

On recross-examination, respondent asked claimant about each of the items contained on the form and claimant agreed that most of the information was correct. She said that the form was incorrect in that it failed to mention her shoulder injury, the day it was reported, and the safety measures that could have prevented the accident.

On redirect-examination, claimant said that failing to include the shoulder injury on numbers one, three, and six of the team member's statement of injury was incorrect. Claimant said she was not

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given a copy of the papers that she signed.

Respondent submitted claimant's deposition which was taken on June 7, 2023. In reviewing it, I did not see any pertinent information that differed from the testimony presented at the hearing.

REVIEW OF THE EXHIBITS

The parties submitted few duplicate records in their exhibits. Many reflect claimant's elbow injury was the initial focus of her treatment. Claimant was first treated by ART at the plant; those records mentioned claimant's shoulder in the December 13, 2021, entry "...nothing is stated regarding arm or shoulder discomfort this session." That indicates that something was said in the previous session, and remembered by the therapist, but not noted in the December 10, 2021, record. On the December 17, 2021, report, there is the following: "(p)reviously shoulder was noted to be a secondary issue but may possibly be a referral source for the elbow discomfort; will address both shoulder and elbow today."

Claimant was then referred to Arkansas Occupational Medicine Services, which is commonly referred to by its location on Wagon Wheel Road. She had her first visit there on January 5, 2022. In the section titled "Employer Description Of Accident," PA-C Ceth Dawson recorded: "Ms. Trujillo Tinajero was sorting chicken and felt like she overworked her elbow and shoulder." While under the care of Arkansas Occupational Medicine Services, she was treated conservatively, and released to full duty on June 3, 2022.¹ Little if anything was done to address the shoulder issues.

Claimant then went to her own doctor and had carpal tunnel surgery on February 17, 2023. Following that procedure, she had a steroid injection in her shoulder, and when that didn't bring her

¹ As the issue regarding claimant's elbow was reserved, I did not summarize the records involving the treatment of that injury. I do note, however, that claimant underwent surgery for carpal tunnel after she was released from Arkansas Occupational Medicine Services with no restrictions on the use of her arm. Claimant testified that that surgery eliminated the problem of her arm going to sleep. (TR.18)

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relief, an MRI was ordered. The results of it were recorded in Dr. Robert Benafield's records of August 7, 2023, where it was noted "Patient was seen in follow up for the right shoulder after the MRI. This showed low- grade partial-thickness articular surface tear of the infraspinatus intrasubstance of the distal supraspinatus and some degenerative changes of the AC joint and a type II acromion. In March she had a subacromial injection that only gave her 40% improvement for about two weeks." Dr. Benafield's last note of September 11, 2023, reads "We will try a month of formal physical therapy to the shoulder and if that does not improve then we are going to have to have a discussion about surgical intervention." That visit was two weeks before the hearing.

ADJUDICATION

At the hearing, respondent's position was simply that claimant did not sustain a compensable injury as defined in Arkansas law. After considering all the evidence in this matter, I disagree.

A claimant's testimony is never viewed as uncontroverted, but the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). I found claimant to be credible in her testimony and supported by the documentary evidence.

During cross-examination, claimant was asked at length about the "Team Member Statement of Injury/Illness," (R.X. 2, page 1), a document in English that she (1) didn't complete, (2) couldn't read and (3) wasn't provided a copy to have someone else read to her after she signed it. I believe claimant did mention that she hurt her shoulder at the same time, because the second entry from the therapist that came to the plant where she worked recorded nothing was mentioned about her "arm and shoulder discomfort this session." (Emphasis added). There's no reason to say that unless something about the shoulder had been mentioned in the first session. Add to that the entry at Arkansas Occupational Medicine Services that is the employer's account of the injury that clearly

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mentions a shoulder issue, and I find sufficient evidence that claimant met her burden of proof that she suffered (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630. The objective evidence came later because the medical providers were not treating the shoulder, but rather the elbow. When claimant was released with no restrictions but still had pain in her elbow and shoulder, the doctor she selected diagnosed the problem instead of ignoring it. The medical treatment recommended for claimant's right shoulder at Ozark Orthopedics is reasonable and necessary to treat the compensable right shoulder injury.

ORDER

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Benafield.

Pursuant to A.C.A. § 11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. § 11-9-715(a)(4).

Respondent is responsible for paying the court reporter's charges for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE