

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION IV

CA07-916

February 27, 2008

MARIA CONTRERAS  
APPELLANT  
V.

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F407472]

TYSON POULTRY COMPANY  
APPELLEE

AFFIRMED

In this workers' compensation case, the parties stipulated at the hearing before the administrative law judge that appellant, Maria Contreras, suffered a compensable injury to her left shoulder on June 6, 2003. Two of the issues before the ALJ were whether Contreras also sustained a compensable injury to her neck on that date, and whether she was entitled to medical services at appellee's expense from June 6, 2003, forward for that injury. The ALJ found that Contreras failed to prove that she had sustained a compensable injury to her neck or cervical spine in the employment-related incident of June 6, 2003, and her claim for benefits was therefore denied. The Commission affirmed and adopted the ALJ's decision. Contreras now appeals to this court, arguing that the Commission erred in determining that she failed to prove that she also sustained a cervical-spine injury

when she suffered an admittedly compensable injury to her left shoulder on June 6, 2003. We affirm the Commission's decision.

#### *Standard of Review*

In *Second Injury Fund v. Exxon Tiger Mart*, 70 Ark. App. 101, 104, 15 S.W.3d 345, 347 (2000) (citations omitted), this court set forth the standard of review concerning the sufficiency of the evidence:

In determining the sufficiency of the evidence to support the findings of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we will affirm if those findings are supported by substantial evidence, *i.e.*, such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Commission.

#### *Hearing Testimony*

Contreras testified at the hearing that she was hurt in June 2003 while she was working in the packing department at Tyson. She said that she was packing the poultry in a box and shoving the box on down the line; that she got a "kink" in her left side, next to her neck; that her neck and shoulder began hurting at the same moment; and that she reported it immediately, and again approximately two to three months later. Contreras denied that she had ever had neck problems prior to June 2003. She explained that she went to see Dr. Gary Moffitt in July 2003 because of her right hand; that her neck and shoulder were hurting in July 2003; that she received treatment for her neck and left shoulder in July 2003; but that when she went to Dr. Moffitt in July 2003 it was only her hand that was hurting at the time. Contreras said that she complained of neck pain when

she saw Dr. Craig Cooper. The record reflects that Contreras saw Dr. Cooper from December 2003 through February 2004.

Edward Fox, a registered nurse who worked at Tyson, testified that the first time he met Contreras was around Thanksgiving in November 2003, when she came to the nurse's station complaining of shoulder pain. Fox said that she was offered medical treatment at that time, but that she asked to wait through the holiday. Fox saw Contreras again on December 11, 2003, when her case was initiated, and he was present when her "Team Member's Statement of Illness" was filled out on that date. Fox said that he attended all of Contreras's doctor visits from January 2004 until February 23, 2004, and that he did not recall Contreras making any complaints regarding neck pain, only left-shoulder pain. Fox stated that he did not have any information that Contreras complained specifically of neck pain from December 2003 to April 2004, and that he was not involved in her case after April 2004. Fox said that prior to August 2004, there was no mention of any neck pain in the nurse's notes.

On cross-examination, Fox testified that he had seen notes in Dr. Cooper's records that mentioned muscle spasms near the nape of Contreras's neck during one of the examinations, but that he did not recall Contreras complaining about her neck. He said that Dr. Cooper regularly examined Contreras's neck on all of her visits, and he did not know why Dr. Cooper would have done so if Contreras was just complaining about shoulder pain. Fox stated that the company document that was completed when Contreras reported her problem did not establish when the accident happened, and that he

arrived at the specific date of June 6, 2003, as the date of the accident because that was what Contreras told him, although she did not give him a specific event.

#### *Medical Evidence*

The medical records submitted from Dr. Moffitt indicated that Contreras saw him in July 2003 with complaints of pain in her right hand. Contreras saw Dr. Cooper on December 11, 2003, with complaints of left-shoulder pain; his notes indicated a June 2003 date of the injury, although it was his understanding that it was an off-and-on situation, and that further history now indicated that pain was going up the left side of her neck and under her arm. Dr. Cooper noted that most of the pain on palpation seemed to be over the supraspinatus area, and that Contreras indicated that the most discomfort was in the lateral posterior aspect of her shoulder. Dr. Cooper's assessment was musculoskeletal left-shoulder pain, and he modified Contreras's work for two to three weeks to limit the use of her left hand and arm. Dr. Cooper noted on January 7, 2004, that Contreras had full range of motion to her shoulder, but still had a palpable muscle spasm in her left supraspinatus area, close to the nape of her neck, and he again diagnosed left-shoulder pain/spasm. On January 28, 2004, Contreras stated that her shoulder was much better, but there was still some pain in the back of her shoulder that got worse with use; Dr. Cooper noted a muscle spasm in the left rhomboid at about T4-5; and he noted that he could not state for certain that arthritis was not an aggravator of this problem. As of February 27, 2004, Contreras reported that she was doing better; Dr. Cooper noted that

her left-shoulder pain had resolved, with no tenderness to palpation; and he released Contreras to work with restrictions to avoid using her left arm when it bothered her.

Contreras was seen by Dr. Robert Tomlinson for left-shoulder pain on July 16, 2004. His notes indicated that Contreras had fallen about three months before onto her outstretched left arm, and since that time her pain had flared up around her left shoulder blade, with pain in the lateral aspect of the proximal humerus. He diagnosed her with chronic scapulothoracic myofascial syndrome and rotator-cuff tendinitis with long head of the biceps tendinitis. Dr. Tomlinson released Contreras to work, not to exceed forty hours per week. On August 4, 2004, he ordered an MRI of her cervical spine. The MRI was performed on August 9, and its impression was “multilevel central canal and neural exit foraminal stenosis demonstrated secondary to a combination of end plate osteophyte formation, annular bulges and in the lower cervical spine ossification of the posterior longitudinal ligament. A midline disc protrusion is demonstrated at the C4-5 level. No free disc fragment is demonstrated.”

Dr. Tomlinson saw Contreras again on August 18, 2004, at which time he recommended physical therapy. He stated in a letter to Tyson nurse Georgia Russow that because Contreras’s symptoms initially began a year ago while working “pack out,” he believed her injury to be work related. On September 8, 2004, Dr. Tomlinson noted that Contreras was seen for cervical spondylosis and rotator-cuff tendinitis on the left side; that she had therapy on her neck as well as intermittent traction and some shoulder therapy; that she was doing better; and that he returned her to work without restriction. Contreras

was seen by Dr. Tomlinson on October 6, 2004, after she complained that her pain returned after she began working six days per week; he restricted her work to no more than forty hours per week and recommended that she be evaluated by a spine specialist.

On November 23, 2004, Contreras was seen by Dr. Kelly Danks, a neurosurgeon, who noted that she complained of pain over the left shoulder and left acromioclavicular joint, as well as on range of motion of the shoulder; that Contreras flexed, extended, and laterally bent her neck without Lhermite or Spurling's phenomenon; and that the MRI revealed diffuse spondylosis at C5-6 and C6-7, a protrusion of the disc at C4-5 as well as C5-6, with no significant stenosis at C5-6, and no abnormality of the spinal cord. Dr. Danks concluded that most of the symptoms were from shoulder arthropathy, that the neck pain could be from the cervical-degenerative disease, and that he was unsure if Contreras's present neck symptoms were related to her original injury.

On January 12, 2005, Dr. Tomlinson limited Contreras's work to nothing repetitive at or above the shoulder. Contreras returned to Dr. Tomlinson on February 9, 2005, where he determined that she was at a crossroads as to whether she returned to work or had a decompression. On February 23, 2005, Dr. Tomlinson noted that Contreras did not want to have a decompression at that time, and he ordered that she do no lifting or carrying greater than five pounds, with no repetitive work at or above the shoulder level.

*ALJ Opinion*

In his opinion, the ALJ found that the medical evidence amply demonstrated the actual existence of various physical defects or damage involving Contreras's neck or cervical spine, with such physical damage being supported by objective findings, including radiographic studies and visual observations by physicians. However, the ALJ stated that Contreras had to also establish, pursuant to Arkansas Code Annotated section 11-9-102(4)(A)(i) (Supp. 2007), the existence of a causal relationship between her neck and cervical-spine problems and her employment, and that the only direct evidence proving a causal relationship between the two was from her own testimony, which the ALJ specifically found was lacking in credibility because it was inconsistent and contradictory to previous statements regarding her symptoms immediately following the accident in June 2003.

In determining that Contreras's testimony was not credible, the ALJ noted that Contreras did not mention any neck symptoms during her initial course of treatment with Dr. Moffitt in July 2003, and that there was no mention of symptoms involving the neck until six months later when Contreras was seen by Dr. Cooper. The ALJ found that the lack of a close temporal relationship between the June 6, 2003 accident and the first manifestation of any symptoms indicative of a neck injury had to be considered in light of the nature of the defects and physical damage shown on the MRI study, which included osteophyte formation on the end plates of various cervical vertebra, ossification or calcium deposits in the posterior longitudinal ligament, and degenerative annular bulging or loss of elasticity of various of Contreras's cervical intervertebral discs. The ALJ noted that all of

those conditions were degenerative and progressive in nature and develop over a long period of time as a result of systemic changes and cumulative stress or micro-trauma.

The ALJ found that the only objective defect involving Contreras's cervical spine that would normally be considered as being caused by a specific or singular traumatic event would be the mid-line disc protrusion of the C4-5 intervertebral disc, but that the evidence failed to show the onset of symptoms indicative of that type injury within a reasonably close period of time following the employment-related accident of June 6, 2003. The ALJ noted that although Dr. Cooper subsequently noted some complaints or symptoms in the area of Contreras's neck or cervical spine from December 2003 through February 2004, the symptoms observed were not particularly indicative of the occurrence of a C4-5 disc protrusion; that no such diagnosis was made; and that even the objective findings of muscle spasms in the left supraspinatus muscle and left rhomboid were not particularly diagnostic of such an injury, but rather more likely to represent only some type of muscular or soft-tissue sprain or strain.

The ALJ found that the first mention of any symptoms indicative of a C4-5 disc protrusion were not noted until Dr. Tomlinson's July 16, 2004 evaluation, which occurred after Contreras fell onto her outstretched left arm in approximately April 2004, and that prior to that evaluation, Contreras's symptoms had improved, if not resolved, as reported by Dr. Cooper on February 27, 2004. The ALJ found that the trauma of the fall described in Dr. Tomlinson's notes could have produced the subsequently observed disc protrusion at C4-5 and any symptoms it generated.

The ALJ also relied upon Dr. Danks's evaluation, where he indicated that all of Contreras's shoulder and upper extremity difficulties were due to shoulder arthropathy and unrelated to any injury to her neck or cervical spine. While Dr. Danks indicated that Contreras's neck pain could be attributable to her multi-level cervical degenerative-disc disease, he indicated that he saw no evidence of any radiculopathy or cervical defect amenable to surgical intervention and stated that he was not sure if Contreras's present symptoms in her neck were related to her original injury. Based upon this evidence, the ALJ determined that Contreras had failed to prove that she sustained a compensable injury to her neck or cervical spine and denied her claim for benefits.

*Argument and Analysis*

On appeal, Contreras argues that her visits to Dr. Moffitt concerned a separate injury involving her right hand; therefore there was no reason to complain about her neck during those visits. She also notes that there were no complaints to Dr. Moffitt about her shoulder during those visits, but that appellees have accepted that injury as compensable. Contreras's shoulder injury is not before this court, as it was accepted as compensable. Furthermore, it is logical to conclude that if the injury occurred in June 2003, Contreras would have complained about it when she was seen by Dr. Moffitt in July 2003 instead of waiting until December 2003 to register such a complaint.

Contreras also points out that Dr. Cooper's December 11, 2003 note indicated that pain was going up the left side of her neck. However, as the ALJ points out in his opinion, those complaints had resolved by the end of February 2004. The MRI revealed

many degenerative changes that had taken place over an extended period of time. The MRI indicated one injury, the mid-line disc protrusion of the C4-5 intervertebral disc, that could have been caused by a specific or singular traumatic event; however, that MRI occurred after Contreras's fall onto her left arm and shoulder in April 2004.

Furthermore, the ALJ specifically found Contreras's testimony as to the causal connection between the June 2003 injury and her cervical spine and neck injuries to lack credibility. It is not this court's function to determine credibility of witnesses. *Second Injury Fund v. Exxon Tiger Mart, supra*. We hold that the ALJ's findings are supported by substantial evidence.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.