ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CA06-1220

May 9, 2007

DEL EADS
APPELLANT

V.

ROGERS GROUP, INC. and
SPECIALTY RISK SERVICES
APPELLEES

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION [NO. F400932]

AFFIRMED

This is a workers' compensation case. The appellant Del Eads began working for appellee Rogers Group on September 16, 2002. During the first three months of his employment, he performed ground maintenance. Thereafter, he worked one month operating a forty-ton dump truck with power steering and an automatic transmission, which he used to haul rock to a crusher. In January 2003, he began working in "stripping" where he operated a thirty-five-ton dump truck that did not have power steering and did not have an automatic transmission, which Eads testified forced him to use his left arm to steer the truck and his right arm to shift gears.[1]

To perform the "stripping" job, he operated the truck in the following manner: he picked up rock at the excavation site from a trackhoe, hauled it approximately two-hundred

[1] The Commission incorrectly found that Eads, during this time, was driving a truck with power steering and an automatic transmission.

yards, unloaded it at the dumping site, backed up and turned around, and drove back to the excavation site to repeat the process, which he did "between fifty and one hundred" times a day. Eads testified that each time he reached the excavation site, he had "to turn the truck around in the road, which was probably a 25-foot long truck and a 35-foot wide road, so I'd have to pivot it three or four times to actually get it to turn around." According to Eads, each back and forth "pivot" required five revolutions of the steering wheel, and he had to use his left shoulder repetitively to perform this task. He conceded that he expended most of his effort with his left shoulder at the excavation site rather than at the dumping site, which did not require him to make as many pivots with the truck. At the dumping site, "I just had to pull forward and make a half u-turn [to] back up."[2] While he testified that he did not believe that he was using his left shoulder in a repetitive fashion while driving, he still had to hold on to the steering wheel with his left arm to maneuver around large rocks or other obstacles. He testified that he worked between twelve and fourteen hours each day.

After performing the "stripping" job for four months, Eads testified that in May 2001 he noticed that his left shoulder was swollen and sore. He denied that a specific incident caused his injury, and instead testified that steering the truck caused him pain. He reported these problems to the plant operator and then scheduled an appointment with Dr. Robert Wilson. Eads was seen by Dr. Wilson on May 6, 2003, and complained of neck and shoulder

---

[2] The Commission also incorrectly found that Eads had to back the truck up at only one end of the trip—at the excavation site.

pain that radiated down his left arm. Dr. Wilson recommended prescription medication and a cervical MRI, which was normal, and then referred Eads to Dr. Mark Powell, an orthopedic surgeon.

Dr. Powell first saw Eads on August 21, 2003, at which time Dr. Powell recommended a left shoulder MRI. The shoulder MRI revealed "chronic tendonitis with suspicion for a small but complete tear without retraction of the supraspinatus muscle or tendon, moderate degenerative joint disease of the AC joint and chronic impingement in abduction." Dr. Powell assessed "left shoulder partial versus complete rotator cuff tear and left shoulder impingement." In January 2004, Dr. Powell visited with Eads about surgical options. Eads returned to Dr. Powell on August 11, 2005, complaining that his shoulder had recently worsened. Eads had no explanation or cause for the increased symptoms. Dr. Powell recommended another shoulder MRI, and in his August 11, 2005, notes stated that:

> I discussed with him that more likely than not he has an acute exacerbation of his previous work related injury sustained in May, 2003, and it is within a reasonable degree of medical certainty that his left shoulder problem is work related.

The administrative law judge found that Eads proved by a preponderance of the evidence that he sustained a compensable gradual-onset injury to his left shoulder and that he was entitled to the medical treatment recommended by Dr. Powell. The Commission reversed.

Eads has appealed, contending that there is a lack of substantial evidence to support the Commission's decision that he did not suffer a compensable gradual-onset injury to his left shoulder. He contends that the evidence demonstrates that he suffered an injury to his left

shoulder while engaged in the rapid and repetitive motion of steering his truck while backing up and pulling forward multiple times in succession, every five to ten minutes, twelve to fourteen hours per day. He further argues that while he may not have engaged in rapid and repetitive motion during the five to ten minute drive in between stops, the drive was not a break as he was still required to use his left arm to steer the truck. He argues that the only rest for his left arm occurred during his restroom breaks and lunch. Eads alternatively contends that, even if the five to ten minute drive was considered a break, his movements at each stop still meet the definition of rapid and repetitive. Despite some inaccurate factual findings by the Commission, we hold that substantial evidence supports its decision, and we affirm.

In reviewing a decision of the Commission, we view the evidence and all reasonable inferences in the light most favorable to its findings. *Magnet Cove Sch. Dist. v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003). The Commission's findings will be affirmed if supported by substantial evidence. *Id.* Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*; *see also Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The issue on appeal is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm. *Linton v. Ark. Dep't of Correction*, 87 Ark. App. 263, 190 S.W.3d 275 (2004).

In order to prove a compensable gradual-onset injury to his left shoulder, as defined by the Arkansas Workers' Compensation Act, Eads must prove:

...

> (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
> (a) Caused by rapid and repetitive motion. ....

Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2002). In addition, Eads must prove that his injury is established by medical evidence supported by objective findings,[3] Ark. Code Ann. § 11-9-192(4)(D) (Repl. 2002), and that his injury was a major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii) (Repl. 2002).

The Commission concluded that Eads failed to prove that his injury was caused by rapid and repetitive motion.[4] Our court and our supreme court have set the parameters for those cases that fall within the definition of rapid and repetitive motion. On one end of the spectrum, in one of the most obvious examples of a job that fits within the rapid-and-repetitive-motion definition, is *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998). There, a job that required the appellee to use an air gun to assemble one thousand items per day and required her to meet that quota by engaging in three maneuvers to be repeated in succession throughout her shift was held to meet the definition of rapid and repetitive motion. *High Capacity Prods.*, 61 Ark. App. at 7, 962 S.W.2d at 835.

---

[3] We note that while the Commission did not make a specific finding on this issue, both Eads and Rogers Group devote a small portion of their argument to this element. We hold that the medical evidence—specifically, the August 21, 2003, MRI results—establishes that Eads's injury was supported by objective findings.

[4] The Commission initially stated in its decision that, "[w]e find that the claimant in the present case has simply failed to meet his burden of proof on the major cause requirement." However, the Commission made no further mention of the major-cause element in its decision and ultimately found that Eads failed to prove the element of rapid and repetitive motion.

While this assembly-line type work can clearly meet the rapid-and-repetitive-motion element, our court has also held that the rapid-and-repetitive-motion element does not require the very same movements throughout the course of a day; rather, work that varies during the day but involves fairly constant stress and shock to the hands, wrists, and arms can be rapid and repetitive. *See Baysinger v. Air Sys., Inc.*, 55 Ark. App. 174, 934 S.W.2d 230 (1997).

On the other end of the spectrum, we look to *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), for an example of a job that does not fit within the rapid-and-repetitive-motion definition. In *Malone,* the appellant worked as a custodian whose daily routine included mopping floors, cleaning bathrooms, cleaning classrooms, and vacuuming. The court affirmed the Commission's denial of benefits, holding that substantial evidence supported the finding that appellant's work was not rapid and repetitive in that she performed many different movements, separated in time by several minutes, throughout the day. *Id.* at 350, 969 S.W.2d at 648.

Similarly, in *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997), the appellant's job required him to drive a truck, pick up and deliver packages weighing up to 150 pounds, type a record of his deliveries into an electronic clip board, and remove and replace the clip board approximately seventy-five to eighty times per day at each delivery stop. Our court affirmed the Commission's findings that the appellant's job was not rapid and repetitive because he engaged in periods of rapid and repetitive motion followed by approximately eight

minutes of driving, which admittedly was not a rapid and repetitive task. *Lay*, 55 Ark. App. at 41, 934 S.W.2d at 231.[5]

We hold that the facts in the instant case are akin to the facts in *Malone*, *supra*, and *Lay*, *supra*. First, while there is evidence that Eads's work may have been repetitive for a period of time as he turned his truck around at each stop, there is no evidence demonstrating how long that task took him or that this task was performed rapidly. Second, assuming Eads's task in turning the truck around at each stop was rapid and repetitive, the majority of Eads's time was spent driving the truck five to ten minutes in between stops—a task even Eads conceded did not involve rapid and repetitive motion. Also, while the evidence established that Eads had to turn the truck around at both ends of his trip, he only had to exert effort at one end—at the excavation site—which means that Eads actually spent between ten to twenty minutes driving the truck before he turned around at the excavation site. Accordingly, we hold that reasonable minds could reach the Commission's conclusion that Eads's job, driving the truck and turning it around every five, and possibly every twenty, minutes does not meet the definition of rapid and repetitive motion required under Ark. Code Ann. §§ 11-9-102(4)(A)(ii)(a), and we affirm.

---

[5] In contrast, rapid and repetitive tasks separated by very short intervals of time may satisfy the requirement. *See Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998) (holding that making a gear every 4.78 minutes with a 1.5 minute break met the definition of rapid and repetitive motion); *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000)(holding that work that required bending the neck every twenty seconds over the course of a nine-or ten-hour shift was rapid and repetitive); *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004)(holding that a job that involved thirteen neck bends every minute was rapid and repetitive).

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.