

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CA11-1126

CLARENCE JONES

APPELLANT

V.

RHEEM MANUFACTURING  
COMPANY and OLD REPUBLIC  
INSURANCE

APPELLEES

Opinion Delivered April 18, 2012

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. G010207]

AFFIRMED

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**JOSEPHINE LINKER HART, Judge**

The Arkansas Workers' Compensation Commission found that Clarence Jones failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left shoulder. On appeal, Jones contends that he sustained a new injury to his left shoulder or, alternatively, aggravated a preexisting condition in his left shoulder and thus the Commission's decision was not supported by substantial evidence. Where the Commission denies a claim because of the claimant's failure to prove his claim, we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Hickman v. Kellogg, Brown & Root*, 372 Ark. 501, 277 S.W.3d 591 (2008). We affirm.

Jones testified that in September 2010, he injured his left shoulder while working as a break-press operator. According to Jones, he was turning over a flat steel sheet that weighed fifteen to twenty-five pounds and that was as big as a door when he felt his shoulder "pop." He continued working because he felt as if he could "work it off."



In medical records dated September 30, 2010, a nurse noted that Jones had left-shoulder pain for three weeks “with no known injury.” The nurse further noted that Jones had a “very strenuous job and must lift, carry and pull heavy items” and that he denied having any prior similar symptoms. The nurse also wrote that radiographically there were “degenerative changes of the ac joint, degenerative and cystic changes of the humeral head and decreased subacromial space.”

Jones was seen by Dr. Greg Lloyd on October 5, 2010. In the patient-assessment form, it was noted that the pain began “three weeks ago” and that it began “gradually.” The form also contained the following question: “If not a result of injury, what do you think caused your pain?” Jones replied, “Strenuous work, lifting and pulling heavy baskets of parts over the years.” On that day, Jones completed a notice of injury in which he identified the day of the accident as September 13, 2010, and described the cause of the injury as “lifting and pulling along with reaching and pulling formed parts out of press.”

An October 29, 2010 medical record from Dr. Steven Smith indicated that Jones reported that “about three weeks prior to 09/13/2010, that he was doing some work at his job at Rheem, and had the onset of the shoulder pain. He reports that shoulders bother him on and off for several years. He does not remember any specific one injury to the left shoulder.” Dr. Smith concluded that Jones suffered from a “[c]hronic retracted atrophic rotator cuff tear.” On November 11, 2010, Dr. Smith opined that “on reviewing his MRI and plain films, he appears to have chronic rotator cuff arthropathy and atrophy of the rotator cuff musculature.”

In denying benefits, the administrative law judge (ALJ) made several findings. In part,



the ALJ concluded that Jones failed to meet his burden of proving that he suffered a compensable left-shoulder injury from a specific incident that occurred on or about September 13, 2010. In his discussion, the ALJ wrote that Jones failed to prove that there was a causal connection between the alleged specific incident and the objective medical findings regarding his left shoulder, as the medical records did not support Jones's history of the injury. The ALJ further concluded that Jones likewise failed to prove an aggravation of a preexisting condition. The ALJ also wrote that the MRI showed chronic, not acute, findings and that Dr. Smith opined that the MRI showed a chronic condition. The ALJ observed that Jones's condition resulted from long-term, heavy use of his left shoulder. The Commission adopted the ALJ's opinion as its own.

On appeal, Jones argues that there is not substantial evidence to support the Commission's finding that he failed to prove a compensable injury to his left shoulder. He asserts that he either suffered a new injury to his left shoulder or aggravated a preexisting condition in his left shoulder. In support of his argument, he points to findings in the MRI that he asserts establish an acute injury, his own testimony that he suffered an injury on September 13, 2010, a September 30, 2010 medical report that indicates he had left-shoulder pain for three weeks, and the notice-of-injury form dated October 5, 2010, in which he asserted that an injury occurred on September 13, 2010.

A "compensable injury" must be "accidental," and it is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence." Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2011); see *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000). A preexisting disease or infirmity does not disqualify a claim if the employment



aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which workers' compensation is sought. *Hickman, supra*. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Id.* The burden of proof is on the claimant. Ark. Code Ann. § 11-9-102(4)(E).

The medical records show instances where Jones did not attribute his injury to a specific incident identifiable by the time and place of occurrence, which must be proved by the claimant in order to establish a compensable injury. Jones reported "no known injury," that the pain began "gradually," and that he did not "remember any specific one injury to the left shoulder." It was for the Commission to determine Jones's credibility and the weight to be given to the evidence. *Hickman, supra*. Given this evidence and our standard of review, we hold that there was a substantial basis for the denial of Jones's claim.

Affirmed.

GRUBER and GLOVER, JJ., agree.

R. Gunner DeLay, for appellant.

Ledbetter, Cogbill, Arnold & Harrison, LLP, by: E. Diane Graham and Rebecca D.

Hattabaugh, for appellees.