

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F108434

HERBERT L. CARLISLE, JR., EMPLOYEE	CLAIMANT
WATKINS MOTOR LINES, INC., EMPLOYER	RESPONDENT
LIBERTY INSURANCE CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 19, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on June 12, 2003, at Forrest City, St. Francis County, Arkansas.

Claimant represented by Mr. Joe M. Rogers, Attorney-at-Law, West Memphis, Arkansas.

Respondents represented by Mr. David C. Jones, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 12, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this case on April 16, 2003, and a Prehearing Order was filed on April 18, 2003. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

At the hearing, the parties announced that the stipulations, as well as the issues were properly set out in the Prehearing Order.

It was stipulated that the employee/employer/carrier relationship existed

at all relevant times, including July 12, 2001; that claimant earned sufficient wages to entitle him to the maximum compensation rates of \$410.00 per week for temporary total disability and \$308.00 per week for permanent partial disability; and that respondents had controverted the claim in its entirety.

The primary issue presented for determination concerned compensability of two (2) separate injuries, specifically, whether the claimant sustained a carpal tunnel injury arising out of and during the course of his employment with Watkins Motor Lines, Inc., as well as whether the claimant sustained a cervical injury arising out of and during the course of his employment. If answered affirmatively, claimant's entitlement to associated benefits must be determined.

At the prehearing conference, claimant contended, in summary, that he sustained a gradual onset, bi-lateral carpal tunnel syndrome and, that in addition, he sustained a cervical injury as the result of a specific event identifiable in time and place of occurrence on or about July 12, 2001; that he was temporarily totally disabled as the result of one or both injuries for the period beginning July 12, 2001, and continuing through February 13, 2002, at which time he maintained that the healing period ended for the cervical injury (the healing period for the carpal tunnel syndrome having ended January 21, 2002); that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

At the hearing, the claimant clarified his position and claimed temporary total disability for the period beginning July 12, 2001, until February 13, 2002, for both alleged injuries. The claimant further contended that with respect to respondents' claim of credit for group health or disability benefits, that respondents were not entitled to an offset because said benefits were a collateral source paid for out of the claimant's own pocket. The claimant reserved the issue of permanent disability, if applicable.

At the prehearing conference, respondents contended that the claimant did not sustain bi-lateral carpal tunnel syndrome in the course and scope of his employment. In that regard, respondents maintained that the major cause of claimant's condition and need for treatment was not the result of work activities, pointing out that claimant's medical providers indicated that claimant's carpal tunnel syndrome could be due to fluid retention from his cardiac condition while stating that the carpal tunnel syndrome problems may not be alleviated as the result of surgical intervention. In addition, respondents pointed out that the claimant had a pre-existing condition involving a crush injury to the left wrist several years prior to the within claim. Concerning the cervical injury, respondents contended that the claimant did not sustain a specific incident or gradual onset injury to his neck which arose out of and during the course of his employment; that claimant's job duties were not rapid and repetitive in nature; and that the major cause of claimant's need for cervical

treatment was not the result of any work-related activities for the employer. Alternatively, in the event that the claims were determined to be compensable, respondents claimed an offset for any group health carrier payments or disability payments made in regard to the injuries alleged. As a second alternative, respondents reserve the right to assert the Statute of Limitations as a bar to the within claim. At the hearing, respondents dismissed the Statute of Limitations defense. Further, based upon the claimant's acknowledgment that the employer paid for the claimant's health care coverage which paid for the medical in this claim, claimant's attorney agreed that respondents were entitled to a credit or offset for medical benefits previously paid pursuant to Ark. Code Ann. §11-9-411 while continuing to maintain that respondents were not entitled to a credit for any disability benefits the claimant received from a policy in which he paid all the premiums. The parties were directed to submit letter briefs within twenty-one (21) days after the hearing addressing this legal issue. (Tr.7-13)

Subsequent to the hearing, by letter dated June 26, 2003, respondents withdrew its request for an offset of any disability payments because the claimant paid the premiums on the disability policy. Accordingly, the primary issues presented for determination concerned whether the claimant sustained a compensable injury or injuries which arose out of and during the course of his employment with Watkins Motor Lines, Inc.

The claimant testified in his own behalf. Mary Rea was called as a witness for the respondents. The record is composed solely of the transcript of the June 12, 2003, hearing containing numerous exhibits, together with the June 26, 2003, letter received from respondents that it was withdrawing its request to offset any payments for disability benefits previously received, in the event compensability was overcome.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times through, and including, July 12, 2001, at which time claimant earned sufficient wages to entitle him to the maximum compensation rates of \$410.00 per week for temporary total disability and \$308.00 per week for permanent partial disability.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained an gradual onset, bi-lateral carpal tunnel syndrome

which arose out of and during the course of his employment with Watkins Motor Lines, Inc.

4. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a cervical injury which arose out of and during the course of his employment with Watkins Motor Lines, Inc., as the result of a specific incident on July 12, 2001.
5. The claimant has failed to establish, by the greater weight of evidence, that his physical problems, need for treatment, and disability were directly and causally related to his employment with Watkins Motor Lines, Inc.
6. Respondents have controverted this claim in its entirety.

DISCUSSION

_____The record in this case is replete with inconsistencies and contradictions. The record reflects that the claimant had significant physical problems which pre-existed the within claims. Although the record reflects that the claimant reported various physical problems to both co-workers, as well as supervisory personnel, there is no credible evidence that the claimant timely reported any work-related injuries to his employer. Further, the history contained in the medical records is inconsistent with the claims of work-related injuries. In my opinion, it would require sheer speculation and conjecture to attribute the claimant's physical problems to any alleged, work-related injuries. No matter

how sincere a claimant's belief that a medical problem is related to a compensable injury, such belief is not sufficient to meet the claimant's burden of proof. *Killingberger vs. Big D Liquor*, WCC #E408248 & E408249, Full Commission Opinion Filed August 29, 1995. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Co. vs. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The claimant, Herbert L. Carlisle, Jr., is fifty-seven (57) years old. He began working for Watkins Motor Lines, Inc., in 1990 as a truck-driver. Initially, the claimant drove an 18-wheeler tractor/trailer rig cross-country. During the later part of claimant's employment, he primarily drove a bob-truck making local deliveries. The claimant's duties consisted primarily of driving the bob-truck which required shifting gears, as well as stopping and unloading loads of various weights and sizes which he described as between one (1) pound up to fifty (50) to one hundred (100) pounds or more. The claimant stated that he spent more time driving than unloading. He stated that he would unload the product manually, while occasionally requiring the assistance of a pallet jack. In addition, occasionally, the delivery site would unload the product with a forklift. The claimant related that during the last three (3) to six (6) months of his employment, he began experiencing problems with his hands and arms

going numb. The record reflects that the claimant first sought medical treatment on June 26, 2001, from Dr. James H. Calandrucchio in Germantown, Tennessee. The record reflects that the claimant sought treatment primarily because of problems with his feet when he saw Dr. Calandrucchio on June 26, but that he also reported pain and discomfort in his upper extremities, predominantly on the left. (Tr.19-22)(Resp. Ex. A, p.11)

Dr. Calandrucchio's past medical history reflected heart disease and hypertension, as well as past surgical history involving the left wrist in 1974 and open heart surgery in 1993. The claimant's chief complaint was tingling in the left arm and left foot pain. The doctor noted the following under present illness:

PRESENT ILLNESS: Mr. Carlisle is a 55-year-old white male who suffered two separate injuries. He was in a motor vehicle accident in 1974 where he states he crushed his left hand. He underwent surgery for this. Over the last several months to a year he has had progressive problems with his left arm. He has a numbness and a tingling type sensation over the left forearm. In order to get it to go away he must rub his arm. He says it potentially runs all the way up to his shoulder but does not go to his neck. He has had no radiation of pain that comes down from his neck into his hand. There have also been times when both hands go to sleep. It seems to be worse in the thumb and index and long fingers. He denies any significant limitations of motion and has been working since his accident.

He also had a fall of approximately 20 feet landing flatfooted. He sustained an injury to his left foot. He was unable to walk on it for several days but had no treatment. Today he complains of pain into his left foot in the metatarsal region that is most specifically located at approximately the level of the second

metatarsal head but says it is diffuse in nature. (Resp. Ex. A, p.11) (Emphasis supplied)

The claimant testified that he reported his physical problems to Mary Rea. The claimant did not request medical treatment. In addition, the claimant did not indicate that his physical problems were in any way causally related to his employment. He went to Dr. Calandrucchio on his own.

In addition to the alleged, work-related, carpal tunnel syndrome, the claimant maintained that he sustained a cervical injury as the result of a specific event on July 12, 2001. The claimant asserted that his cervical problems related to an incident where he was pulling a pallet jack at a loading dock at the Color Craft Label in Memphis, Tennessee. The incident described follows:

Q Now, again, describe exactly what happened?

A Well, you know, like this guy named Greg Foy, he worked at Color Craft Label. He couldn't get in there to get it out with a forklift. So we had to use the pallet jack, and I think the product weighed about 400 pounds. It was big rolls of labels, you know, they put stickers on stuff, you know. The paper was real heavy, so he was helping me. I was pulling it and he was pushing it. I had it jacked up as far as it would go, but the lip was down in the trailer like this, and when it came up, the pallet jack hit, the pallet hit, and it just stopped, you know. That's when I felt my neck, you know, it was pulling in my neck, you know.

Q You're pulling on the jack?

A Yes, sir.

Q And it's underneath the pallet?

A Yes, sir.

Q So you're manually pulling on it with your arm?

A Yes, sir.

Q And this other man that's working for this Color Craft there, he's pushing?

A Yes, sir, he's pushing.

Q Manually pushing?

A Yes, sir.

Q And you hit –

A The lip of the dock plate.

Q – the lip of the dock? Okay, and then you described feeling a jolt or neck pain?

A Yes, sir.

Q All right. Had you ever experienced any pain like that before?

A No, sir, not like that.

Q Now, I understand you'd had some heart problems sometime in the past?

A Yes, sir.

Q You had some problem with your left arm –

A Yes, sir.

Q – and pain going up into your neck?

A Yes, sir.

Q Was it anything like that?

A Well, no, sir, not like that, but, you know, it'd scare you, you know. I mean, anytime you hurt in your chest or wherever, you know, in your arm, the first thing you think about is, "Am I having a heart attack?" (Tr.25-27)

The claimant stated that he immediately called his employer and talked to Jeff Kennedy. He maintained that Mr. Kennedy was a truck-driver, but was also a dispatcher. Again, the claimant did not report any work-related injury, but, merely told Mr. Kennedy that he was hurting which apparently both parties related to the claimant's prior heart problems. The claimant did not immediately seek medical treatment. The record reflects that the claimant next sought medical treatment on July 16, 2001, at which time he went to the Semmes Murphy Neurologic and Spine Institute in Memphis, Tennessee. There is no history in the initial medical treatment of any specific incident on July 12, 2001. In fact, the medical report reflects that the claimant specifically denied any recent injury. The confusing medical history is provided below:

Mr. Carlisle is a 55 y/o right-handed male with pain and numbness of the left upper extremity seen in consultation at the request of Dr. Addington.

Mr. Carlisle reports that he has tingling and pain in his left thumb, forearm and arm for about 3 months. He denies any recent injury. He reports being involved in a motor vehicle accident in 1974. He suffered a crush injury to his left wrist with torn tendons. He had surgery. He also was involved in a truck accident in 1985 and 1987. He reports that at times when he coughs he has an electric shock like sensation through this arm. He says his left ring finger pulls down on him at night and he has to straighten it with his other hand. That has been happening for several months.

He reports intermittent neck pain and dull aching. He also has back pain, which is more bothersome than his neck pain. His back hurts a lot. He says he had an injury to his back when he was in the service. He's had local injections to his back in the past, which gave him temporary relief. He has radiation of his back pain to his hips and intermittently to the left lower extremity with numbness and tingling. He has a lot of foot pain. He fell 20 feet landing on his feet several years ago and has had foot pain since then. He was seen at Campbell Clinic for that problem and treated with anti-inflammatory medication.

Sitting, standing and walking aggravates his back pain. He enjoys gardening but his back hurts a lot when he does that. (Cl. Ex. A, p.1)

Dr. Margaret Todd, at the Semmes Murphy Clinic, made multiple diagnosis of claimant's physical condition, including questionable bi-lateral carpal tunnel syndrome, primarily on the left; chronic, intermittent neck and back pain secondary to strain; chronic arteriosclerotic disease, post myocardial infarction; and hypertension. Dr. Todd recommended NCV/EMG studies to evaluate the bi-lateral carpal tunnel syndrome.

The record reflects that the claimant was also examined and evaluated by Dr. Richard S. Clark at the Preventive Medicine Clinic in West Memphis, Arkansas, on July 17, 2001. Dr. Clark's history and assessment follow:

HISTORY: Pains in left hand radiating from left hand to left shoulder. Numbness in first 3 fingers of left hand and pains for 2 months. Also some numbness in first 3 fingers of right hand. Went to Semmes Murphy clinic yesterday because he thought he was having a heart attack and saw Ft. Margaret Todd MD, physiatrist who did bilateral nerve conduction studies on both arm [sic] and told him he had severe carpal tunnel syndrome in left hand and also in right hand but not as severe. She recommended

surgery for release of carpal tunnel syndrome on left hand. She did not give him wrist splints.

PH includes CABG 1993 and coronary arterial stent 1 year ago. He is on amlodipine and nifedipine for hypertension, metoprolol for irregular heart rate and prilosec for GERD. Also an aspirin a day.

* * * * *

ASSESSMENT: Bilateral carpal tunnel syndrome, left worse than right. Significant coronary arterial disease, obesity, hypertension. GERD. (Cl. Ex. A, p.5) (Emphasis supplied)

The claimant was eventually seen by Dr. Stephanie Einhaus, a neurosurgeon at the Semmes Murphy Clinic, on July 25, 2001. Dr. Einhaus' impression follows:

1. Left carpal tunnel syndrome. I think that part of his problem is probably because he has fluid retention exacerbating the problem but I am not sure that this can be fixed given his cardiac situation. He is already on a host of medications. I think that he also may have a cervical disk rupture which is contributing to some of his left arm pain, particularly the pain that involves the upper arm and neck and the shock like phenomenon that he experiences when he coughs involving his upper body. I have made sure that he understands that a carpal tunnel release will not help that condition.

2. I think he also has a peripheral neuropathy which is contributing to some of his pain particularly in his feet and he probably needs to have a B-12 level checked. He says that he cannot have an MRI scan because of the stents in his heart and in order to work up his cervical disk he would need to have a cervical myelogram done. I have offered to do this beforehand but I also think it would be okay to try a carpal tunnel release to see if that helps a large portion of his complaints. Again I have emphasized to the family that I am doubtful that this will clear up all of his complaints because I am very suspicious that he could have a ruptured cervical disk. I am recommending that we do this under local infiltration and IV sedation so that we can have an anesthesiologist in the room and give him some light sedation to

help him relax during the procedure and better monitor his cardiac functions. I do plan to talk with his cardiologist prior to the procedure to make sure that he thinks he is in good enough shape to have the procedure done without any further cardiac evaluation. We will do this in the near future. (Cl. Ex. A, p.8)(Emphasis supplied)

The claimant subsequently underwent a left carpal tunnel release on August 1, 2001, as well as cervical surgery on August 30, 2001. It must be noted that the history contained in the discharge summaries of Dr. Einhaus reflect that the claimant's cervical complaints pre-dated the date of the alleged, specific incident. As previously noted, the claimant reported chronic neck and low back pain.

The first history relating the claimant's cervical problems to an alleged, work-related incident is contained in Dr. Todd's office notes of September 26, 2001, almost one month post-surgery. I feel compelled to point out that even the first history relating the claimant's problems to any work-related incident was inconsistent with the claimant's description, aforementioned. It reflects development of neck and left upper extremity pain after making a jerking movement attempting to stop a freezer from falling off a loading ramp. (Cl. Ex. A, pp.2, 13, 18)

On cross-examination, claimant candidly acknowledged that he did not report a neck injury to his employer and, further, that he failed to report any injury to any of his treating physicians.

Mary Williams Rea, a witness called by the respondents, acknowledged that the claimant reported physical problems with his hands which the claimant related to his employment. Ms. Rea, in turn, filled out a claim and turned it over to the employer's insurance carrier which denied the claim. Ms. Rea stated that she was first aware of the claimant's cervical problems approximately six (6) months after the claimant left respondents' employment.

ADJUDICATION

The claimant contends that he sustained both a gradual onset, bi-lateral carpal tunnel syndrome, as well as a cervical injury as the result of a specific event identifiable in time and place of occurrence on July 12, 2001. The claimant has failed to prove either injury, by a preponderance of the credible evidence.

Concerning the carpal tunnel syndrome, the claimant does not contend that this injury was caused by specific incident, but, instead contends that he sustained the injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in

A. C. A. §11-9-102(16);

(4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,

(5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

While the claimant is not required to establish that his work duties required rapid repetitive motion in order to establish the compensability of his carpal tunnel syndrome injury, he must still prove that he sustained a carpal tunnel syndrome injury arising out of and in the course of his employment, that a work-related injury was the major cause of his disability or need for treatment, and the compensable injury must be established by objective medical findings. *Kildow vs. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 644 (1998).

The claimant's claim for carpal tunnel injury fails because he has not proven that the injury arose out of and during the course of his employment with Watkins Motor Lines, Inc. "Arising out of employment" refers to the origin or cause of the accident, while the phrase "in the course of employment" refers to the time, place and circumstances under which the accident occurred.

Accordingly, a casual connection must be shown between the injury and the employment. *Gerber Products vs. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985); *Deffenbaugh Industries vs. Angus*, 313 Ark. 100, 852 S.W.2d 804 (1993); *Pilgrims Pride Corp. vs. Calderera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

The claimant further alleges a compensable injury as the result of a specific incident identifiable by time and place of occurrence on July 12, 2001. Again, the claimant must prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment; that the injury caused internal or external physical harm to the body which required medical services or resulted in disability; medical evidence supported by objective medical findings, establishing the injury; and, proof, by a preponderance of the evidence, that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Again, if the claimant fails to establish, by a preponderance of the evidence, any of the requirements for establishing compensability of the alleged injury, he fails to establish compensability of the claim and compensation must be denied. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

As previously pointed out, there is no evidence other than the claimant's own testimony of a specific event resulting in a cervical injury. It would require sheer speculation and conjecture to attribute the claimant's cervical problems

to an alleged event. The medical history and the record as a whole simply does not support such a claim.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has simply failed to prove that he sustained a compensable injury within the meaning of the *Arkansas Workers' Compensation Laws*. Accordingly, the within claim is hereby denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge