

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206804

LONNIE GOLDSTEN

CLAIMANT

CANNON EXPRESS
SELF INSURED

RESPONDENT

OPINION FILED SEPTEMBER 23, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant appearing pro se and not represented by counsel.

Respondents represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 30, 2003, in Springdale, Arkansas. A pre-hearing order was entered in this case on April 17, 2003. Prior to the commencement of the hearing, both parties announced that they now had agreed on the appropriate compensation rate and this was added as a stipulation. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 13, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$330.00 for total disability and \$248.00 for permanent partial disability.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained compensable injuries to his wrist, neck and/or shoulder on March 13, 2002.
2. Whether the damage to the claimant's glasses on March 13, 2002 is compensable under the Act.

3. The claimant's entitlement to the payment of medical expenses and temporary total disability from March 18, 2002 through November 20, 2002.

In regard to these issues, the claimant contends that he sustained compensable injuries to his wrist, neck, and/or shoulder on March 13, 2002. The claimant also contends he is entitled to temporary total disability benefits, payment of medical expenses, and payment for the damage done to his glasses.

In regard to these issues, the respondents contend:

"The claimant apparently contends that he sustained injuries as the result of a work related accident which occurred on March 13, 2002 in Tuscaloosa, Alabama. The respondents made arrangements for the claimant to return to Arkansas for an evaluation and any necessary medical treatment; purchased a bus ticket for him and advanced him money for meals. However, the claimant has failed and refused to return to Arkansas for treatment. The respondents remain willing to provide a medical evaluation and reasonable and necessary medical treatment for any work related injury sustained by the claimant through authorized Arkansas physicians."

DISCUSSION

_____The central issue requiring resolution is the question of whether the claimant sustained compensable injuries to his wrist, neck, and/or shoulder in a specific employment related incident on March 13, 2002. The burden rests upon the claimant to prove the occurrence of these alleged compensable injuries. In order to meet this burden, he must prove that these alleged injuries meet all of the necessary requirements for a "compensable injury" imposed by the Act. Should he fail to prove even one, then any injuries he may have sustained on March 13, 2002, would not represent "compensable injuries", as that term is defined by the Act. He would also not be entitled to any benefits conferred by the Act for such injuries.

The first of these requirements is contained in Ark. Code Ann. §11-9-102(4)(D). This subsection requires the claimant to prove by medical evidence the actual existence

of the physical injuries he alleges to be compensable. It further requires that the actual existence of these physical injuries must be supported by “objective findings” or findings beyond the claimant’s voluntary control.

After consideration of the medical evidence presented (which includes that in Claimant’s Exhibit No. 1 and 2 and Respondents’ Exhibit No. 1), I find that this evidence is sufficient to “establish” the actual existence of physical injuries to the claimant’s cervical spine and other portions of his anatomy. However, there is absolutely no evidence of the independent observation of any “objective findings” to support the existence of these injuries. I can find no mention of any bruising, swelling, muscle spasms, etc. The only objective diagnostic tests contained in the record are in the form of x-rays of the claimant’s chest, right shoulder, right scapula, right hand and fingers, and left hand. None of these x-rays appear to reveal any abnormalities involving these portions of the claimant’s body, and the radiologist’s interpretation of these studies were all negative or normal.

Thus, I have no alternative but to find that the claimant has failed to prove that any physical injuries he may have sustained in the specific employment related incident of March 13, 2002, meet the requirements for “compensable injuries”, as set out in Ark. Code Ann. §11-9-102(4)(D). Based upon the claimant’s failure to prove the necessary requirements of Ark. Code Ann. §11-9-102(4)(D), these injuries would not constitute “compensable injuries” within the meaning of the Act, and no benefits provided by the Act can be awarded for such injuries.

Thus, the only remaining issue concerns the claimant’s entitlement to the payment of expenses incurred to repair or replace his prescription glasses, which he contends were damaged in the employment related incident on March 13, 2002. Again, the burden rests upon the claimant to prove his entitlement to such benefits.

The claimant’s entitlement to recover the expense for the repair or replacement of the prescription glasses, which he alleges were damaged in the specific employment

related incident of March 13, 2002, is controlled by the provisions of Ark. Code Ann. §11-9-102(4)(A)(i). This subsection includes, in the definition of “compensable injury”, the accidental injury to prosthetic appliances, including eyeglasses. In order to be entitled to the repair or replacement of prescription glasses under the provisions of this subsection, the claimant must prove that the damage to the prescription glasses:

- (1) Arose out of and occurred in the course of his employment;
- (2) Was caused by a specific incident;
- (3) Is identifiable by time and place of occurrence;
- (4) Required medical services.

The claimant offers only his own testimony to prove that he sustained damage to his prescription glasses, and that this damage meets the foregoing requirements. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be arbitrarily disregarded. If the testimony of a party is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant’s testimony would be legally competent to prove the occurrence of damage to his glasses that arose out of and occurred in the course of his employment with this respondent, that was caused by a specific incident, that is identifiable by time and place of occurrence, and that required medical services (in regard to this latter requirement, I would note that the services of an optometrist or ophthalmologist are expressly recognized as “medical services” by the Act).

The claimant testified that while performing his employment activities for the respondent, as an over-the-road driver, his truck caught fire due to an electrical short. When he started to remove the lid from his battery compartment, a set of batteries exploded and he was struck in the head or face by a portion of the battery. He testified that when he was struck by this portion of the battery, “it messed my glasses up”.

After consideration of all the evidence presented and after having had the

opportunity to view the claimant's testimony, I find the claimant to be a highly credible witness. His testimony is internally consistent and coincides with the other evidence presented.

Therefore, I find the testimony of the claimant sufficient to prove the necessary requirements to entitle him, under Ark. Code Ann. §11-9-102(4)(A)(i), to the expense of the repair or replacement of his damaged prescription glasses. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for this expense, subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 13, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On March 13, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$330.00 for total disability and \$248.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained "compensable injuries" to his wrist, neck, and/or shoulder in an employment related accident on March 13, 2002. Specifically, he has failed to prove that any physical injuries he may have sustained in this accident satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D).
5. The claimant has proven by the greater weight of the credible evidence that he sustained a "compensable injury" to his prescription glasses in the employment related incident of March 13, 2002. Specifically, he has proven by the greater weight of the credible evidence that the damage to his glasses arose out of and occurred in the course of his employment with this

respondent, was caused by a specific incident, is identifiable by time and place of occurrence, and required medical services.

6. The expense for the repair or replacement of the damaged prescription glasses constitutes a reasonably necessary medical expense under Ark. Code Ann. §11-9-508. Pursuant to this subsection, the respondents are liable for this expense, subject to the medical fee schedule established by this Commission.
7. The respondents have denied the occurrence of any compensable injury or injuries and have controverted the claimant's entitlement to any benefits.

ORDER

The respondents are liable for the expense incurred for the repair or replacement of the claimant's prescription glasses, which were damaged in the specific employment related incident on March 13, 2002. This liability is subject to the medical fee schedule established by this Commission.

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss any claim for benefits attributable to alleged injuries to the claimant's wrist, neck, and/or shoulder, sustained in a specific employment related incident or accident on March 13, 2002.

All benefits herein awarded, have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

