

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203397

FRANKLIN R. LOCKHART, EMPLOYEE	CLAIMANT
MID-SOUTH MANUFACTURING INC., EMPLOYER	RESPONDENT
RSKCo, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 8, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on June 13, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. John D. Davis, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 13, 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 May 21, 2003, and a Prehearing Order was filed on said date. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the parties at all relevant times during May, 2000, including the date of the alleged injury, and continuing through on or about February 8, 2002, at which time

claimant's employment with Mid-South was terminated; that the claimant earned sufficient wages to entitle him to the maximum compensation rate of \$394.00 per week for temporary total disability in the event his claim was held compensable; and that respondents had controverted the claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable injury to his left wrist and hand on or about May 3, 2000; that respondents should be held responsible for outstanding medical and related expenses, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability benefits for the period beginning on or about March, 2002, and continuing through an undetermined date which the claimant was unable to identify at either the prehearing conference or the within hearing.

The respondents contended that the claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Laws; that there was no medical evidence supported by objective findings of a compensable injury on May 3, 2000, and controverted the claim in its entirety. Alternatively, respondents maintained that any problems that the claimant may have complained of to Dr. Chanh, (subsequently determined to be Dr. Chanh Van Huynh) on March 27, 2002, were unrelated to any incident

at the workplace in May, 2000; that the claimant's problems, if any, were the result of an independent intervening cause; and, finally, that the claim was barred by the Statute of Limitations.

Concerning respondents' affirmative defense that the claim was barred by the Statute of Limitations, it is undisputed that a Commission Form AR-C was filed by the claimant on April 6, 2002. (Resp. Ex. C)

The claimant testified in his own behalf. John Brooks and Robert Parker were called as witnesses for the respondents. The record is composed solely of the transcript of the June 13, 2003, hearing containing numerous exhibits.

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 stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. On or before May 3, 2000, an incident occurred at the workplace when the claimant smashed his hand and jammed his left wrist at which time

he was provided medical treatment at the Marked Tree Family Clinic.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained an injury as the result of the work-related incident on or before May 3, 2000.
5. The claimant has failed to prove, by a preponderance of the evidence, that his physical problems, need for medical treatment, and disability, if any, beginning March 27, 2002, were in any way causally related to the May, 2000, incident.
6. The claimant has failed to prove, by a preponderance of the evidence, that his current complaints, need for treatment or disability, if any, are in any way causally related to his employment and/or any injury at Mid-South Manufacturing, Inc.
7. This claim is not barred by the Statute of Limitations.
8. Respondents have controverted this claim in its entirety.

DISCUSSION

_____The record in this case is replete with inconsistencies and contradictions. The record does reflect that the claimant reported a work-related incident involving his left hand and wrist which was apparently accepted as a medical only claim for which claimant was provided treatment at the Marked Tree Family Clinic in Marked Tree, Arkansas. However, it must be noted that the claimant's description of the alleged injury is inconsistent with the history given

to the initial medical providers. Further, the claimant's course of conduct and work history is totally inconsistent with his claim.

The claimant, Franklin R. Lockhart, testified in his own behalf. On and before May, 2000, claimant was employed as a machine operator for Mid-South Manufacturing. The claimant worked on an assembly line, manufacturing pumps. The claimant's description of the injury is set out below:

Q Well, tell me what happened to cause you to injure that left hand on or about May the 3rd of the year 2000?

A I was taking a pump off of the 284 machine center, sir, and you look at the holes in the back plate, drills on it, and I took and dipped it down into the coolant, and I was attempting to clean it out. I hit it against the machine. When I hit it against the machine, then I hurt my hand.

Q What do you mean you hit it against the machine?

A Well, I mean, I hit it against the bottom of the machine. See, you've got a pan there with coolant in it, and then you've got a little pan that don't have no coolant in it at all.

Q You hit the pump?

A Yes, sir, I took it and just picked it up and did it like that, just –

Q Kind of pounded it into the pan?

A Yes, sir. Yes, sir.

Q And how much did this pump weigh?

A I reckon between 12 and 15 pounds, I would say, sir.

Q So roughly a 12 to 15 pound pump?

A Yes, sir.

Q And you dipped it in the solution?

A Yes, sir.

Q And then to clean it out, you banged it or slammed it into a pan?

A Yes, sir. Yes, sir.

Q Was your hand under the pump or something?

A Yes, sir, it was, sir.

Q And what kind of injury – did you sustain a crush injury or what to your hand?

A It was crushed. It was a crush injury, sir.

Q What part of your hand did this pump fall on?

A All of my left lower part of my hand here. My left lower part of my left arm.

Q You're showing your palm?

A Palm-like, yes, sir.

Q The palm of your hand?

A Yes, sir.

Q So the pump landed on the palm of your hand?

A The palm and my fingers, sir.

Q Okay.

A All of them got very, very numb and started swelling.

Q So as a result of this incident when the pump smashed your hand, that would be the best way I can describe it –

A Yes, sir.

Q – you felt a pain in your hand, immediate pain?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q And your hand started swelling immediately, is that right?

A Yes, sir.

Q At the time of this incident in May of 2000, how long had you been working for Mid-South?

A About 12, I think, sir.

Q Twelve years, okay. So if you'd been there 12 years, you knew what to do if you had a work-related injury, right?

A Yes, sir.

Q What did you do?

A I reported it, sir.

Q And who did you report it to?

A Joe Cooksey, sir.

Q Joe Cooksey. What did you tell Mr. Cooksey?

A I told Mr. Cooksey that I hurt my hand on cleaning a pump. I slammed it up against the machine and everything.

Q Did Mr. Cooksey look at your hand?

A I don't recall, sir.

Q Well, I mean, would it be obvious to somebody that your hand or your fingers were swelling as a result of this incident?

A Yes, sir, he could have looked at it and saw that it was swelling, sir.

Q Did Mr. Cooksey fill out a work-related injury report at that time?

A Yes, sir, he sure did.

Q He filled it out in your presence?

A Yes, sir.

Q Did Mr. Cooksey send you to a doctor?

A No, sir.

Q What did he do? He just made a report of the incident?

A Yes, sir.

Q Did he ask you if you needed medical treatment?

A To my reflection, he did not sir.

Q Did you request medical treatment?

A Well, at that particular time I was not in a position to request anything, sir. I showed it to him and –

Q Did you feel like you needed medical treatment on that date?

A Yes, sir. Yes, sir.

Q That would have been on or about May the 3rd, right?

A Yes, sir.

Q When did you first see a doctor?

A The next morning.

Q So you did see a doctor the next day?

A Yes, sir. He said that –

Q Did you go back to work the next day before seeing a doctor?

A Yes, sir.

Q So when you went back to work the next day, were you having problems with your hand?

A Yes, sir.

Q Did you request medical treatment then, the next day?

A I went to him and asked him, and he said they had to make an appointment.

Q And did they make an appointment?

A I think they did, about an hour or hour and a half later.

Q And did you get to see the company doctor?

A I went to see the company doctor.

Q Who would that have been?

A (No Response)

Q If you can recall.

A I can't recall the lady's name.

Q Well, let's see if we have this in here. Well, it looks here, if this is correct, that you went to see perhaps Marked Tree Family

Clinic on May the 3rd?

A Well, that's where the company doctors were. (Tr.19-23)

The claimant was first examined and treated at the Marked Tree Family Clinic on May 3, 2000. The clinic notes reflect the following subjective complaints and history:

(L) Wrist feels jammed on job. Pt states "I jammed my wrist around last month, I reported it." "Yesterday I worked & last night it started giving me problems when I lift it & turn it; pain jumps up through my arm, tips of my fingers are numb. Numbness started last night." Ganglion cyst removed several [illegible].... (Resp. Ex. A, p.1)

The claimant was diagnosed with possible tendonitis of the left wrist and was prescribed medications and released to return to work with a lifting restriction for one week followed by a release for normal duties. (Resp. Ex. A, pp.2-4)

The claimant was apparently next examined and evaluated by his family physician, Dr. Chanh Van Huynh on July 5, 2000. Dr. Huynh's medical records do not reflect any further complaints of problems involving the claimant's left hand after July 5, 2000, until March 27, 2002, more than six (6) weeks after his termination of employment for cause. (Resp. Ex. B)

The record reflects that the claimant continued working for the employer herein at all times between May 2, 2000, and February 8, 2002, at which time he was terminated for cause. The claimant applied for, and was initially denied,

unemployment compensation because the termination was justified. The claimant subsequently qualified for unemployment compensation which he drew beginning April 26, 2002, indicating that the claimant was ready, willing, and physically able to work. Apparently, the claimant has not returned to any gainful employment since his termination; however, the record reflects that the claimant ran for, and was elected Mayor of Turrell, Arkansas. The claimant is paid \$75.00 per week as Mayor.

The record does reflect that Dr. Van Huynh has treated the claimant for a variety of physical ailments, including, but not limited to high blood pressure, arthritis and gout, all of which claimant acknowledged pre-dated the within claim.

A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

The claimant's credibility is extremely suspect. As pointed out in respondents' cross-examination of the claimant, after the claimant was fired, he filed a claim alleging, among other things, that he had undergone surgery for carpal tunnel related to his claim which was clearly a mis-statement of material facts. (Tr.41-45)(Resp. Ex. D)

John Brooks, the human resource manager for the employer, was called as a witness by the respondents. Mr. Brooks stated that the claimant made no complaints of any physical problems involving his left hand between May, 2000, and the date of his termination. He further stated that when he met with the claimant during August, 2001, at which time the claimant received a warning concerning his job performance, nothing was said concerning any work-related problems. In addition, the claimant failed to make any complaints concerning any alleged injury at his unemployment hearing.

Robert Parker, respondents' safety coordinator, acknowledged that a file was set up as a medical only claim in May, 2000; however, Mr. Parker stated that no further complaints were received from the claimant until after his termination of employment.

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).

Even if it was determined that the claimant sustained a work-related injury during May, 2000, which is not conceded herein, it would require sheer speculation and conjecture to attribute the claimant's complaints and need for medical treatment beginning March 27, 2002, to the alleged injury, twenty-two and one-half (22-1/2) months earlier. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Const. Co. vs. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Ark. Methodist Hosp. vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The record in this case is replete with inconsistencies and contradictions. Further, I did not find the claimant to be a credible witness. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has simply failed to prove that he is entitled to workers' compensation benefits. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge