

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214745

DWIGHT D. SEAGRAVES, EMPLOYEE	CLAIMANT
DELTA CONSOLIDATED INDUSTRIES, EMPLOYER	RESPONDENT
GAB ROBINS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 3, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on September 26, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Ms. Carol Lockard Worley, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted September 26, 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 August 27, 2003, and a Prehearing Order was filed on August 28, 2003. At the hearing, the parties announced that the stipulations, as well as the issues were properly set out in the Prehearing Order. 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 employee/employer/carrier relationship existed at all relevant times through June 18, 2002; that claimant earned sufficient

wages to entitle him to compensation rates of \$324.00 per week for temporary total disability and \$243.00 per week for permanent partial disability; and that respondents have 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 determined.

At the prehearing conference, the claimant contended, in summary, that he sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on June 18, 2002; that he was entitled to temporary total disability for the period beginning June 18, 2002, and continuing through February 18, 2003; 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 amended his contention to conform with the proof, maintaining that the event occurred on June 17, 2002. In addition, claimant amended his contentions to request temporary total disability beginning June 19, 2002, and continuing through February 3, 2003.

At the prehearing conference, respondents contended that claimant did not sustain a compensable injury, maintaining that the claimant's need for medical treatment was associated with a pre-existing non-work related problem

and that respondents were not liable for any benefits. Alternatively, respondents contended that if compensability was determined, it was entitled to a credit or offset for any unemployment or short-term disability that the claimant received following the alleged injury. At the hearing, respondents amended its contentions asserting lack of notice as an affirmative defense. Respondents contended that if compensability was determined, it was not responsible for benefits prior to the filing of a Commission Form AR-N on December 15, 2002.

In addition to the claimant, his wife, Heather Seagraves, was called as a corroborating witness in his behalf. Heather Parsons and Phillip Dale Jones were called as witnesses for the respondents. The record is composed solely of the transcript of the September 26, 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 hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with Delta Consolidated Industries as the result of a specific incident identifiable by time and place of occurrence on June 17, 2002, which caused internal, physical harm to his body and which is supported by objective medical evidence, specifically, a fracture of the right wrist, which required medical services and resulted in disability.
4. The claimant is entitled to temporary total disability benefits at the rate of \$324.00 per week beginning June 18, 2002, and continuing through February 3, 2003.
5. Respondents are responsible for all medical and related expenses as the result of claimant's June 17, 2002, injury, and respondents remain responsible for continued, reasonably necessary medical treatment.
6. The claimant's injury was timely reported on June 17, 2002, and respondents affirmative defense concerning lack of notice does not apply in this case.
7. Respondents are entitled to a credit or offset for benefits previously paid by the employer's group health care plan, as well as an offset for short-term disability benefits previously paid pursuant to Ark. Code Ann. §11-9-411 (Repl. 2002).

8. Respondents are not entitled to a credit or offset for any unemployment compensation the claimant received after February 3, 2003.
9. Respondents have controverted this claim in its entirety for purposes of attorney's fees.
10. Any additional issues are, by necessity, specifically reserved.

DISCUSSION

It is undisputed that the claimant reported a work-related incident and injury on June 17, 2002. The claimant's description of the injury is set out below:

Q We're here today over an injury occurring on June 17, 2002 while you were working at Delta Consolidated. If you could, just tell us what happened that day.

A I was welding on tacking, a toolbox within the tack hole, and I was prying on the toolbox like I normally do and my wrist popped. When it popped, I reported the injury.

Q Okay. You were prying on a toolbox?

A Where the lid goes at the top of the toolbox.

Q And how much pressure would you say that –

A Quite a bit because the boxes coming out, they weren't formed right, so they're bowed out in the back and I had to pry it in.

Q And what is the size of these boxes that we are talking about?

A Probably about four foot long, two foot wide and two foot high.

Q How much do they weigh?

A Approximately 50 to 60 pounds.

Q You said your wrist popped. Did you have any other symptoms besides that?

A Just my hand went numb right after it popped and then it started hurting.

JUDGE GREENBAUM: Could you identify which hand we're talking about?

THE CLAIMANT: My right wrist.

JUDGE GREENBAUM: Thank you.

BY MR. RICHARDSON:

Q All right. And you said you reported it?

A Yes, sir.

Q Who did you report it to?

A I reported it to my immediate supervisor, and then I filled out an accident report with Kelly Manuel – I can't pronounce his last name.

Q What's your immediate supervisor's name?

A It was Phillip Fenmore or Phillip – well, the line leader was Phillip Fenmore, the immediate supervisor is Phillip Jones.

Q Did you fill out any paperwork with Phillip Jones?

A No, sir. The safety rep is the only one I filled out any paperwork with.

Q And that's Kelly Manuel, is that right?

A Yes, sir.

Q All right. How soon after your accident happened?

A Just right after it happened. I stopped welding right then.

Q Did you fill out any paperwork yourself or did you watch somebody else?

A He filled it out for me because I couldn't write. (Tr.10-11)

An incident report was filled out by claimant's immediate supervisor on the date it was reported. The dispute in this case was created by the erroneous conclusion given as the root cause of the claimant's injury, specifically, attributing the injury to a pre-existing injury related to a fall from a horse rather than the June 17, 2002, reported injury. As will be set out further below, the evidence clearly establishes that claimant's injury was related to the June 17, 2002, incident rather than the incident that occurred almost ten (10) months earlier. (Cl. Ex. A, p.2)

Admittedly, the record reflects that the claimant had sustained two (2) prior injuries involving the same right wrist. The first injury occurred on or about November 7, 2000, when the claimant tripped over a welding lead and fell into a toolbox while working for the employer herein, sustaining what he described as a bruise to his right wrist. The claimant was examined one-time only at the emergency and returned to work the following day. The claimant sustained a subsequent injury to his right wrist when he was thrown from a

horse on or about August 24, 2001. The claimant missed approximately four (4) days of work following the non-work related injury. He returned to work and worked continuously until the undisputed incident on June 17, 2002. (Tr.19-21, 23)

Following the June 17, 2002, injury, the claimant was initially examined by his family physician, Dr. Tedder. Dr. Tedder subsequently referred the claimant to Dr. James Marvel, an orthopedic surgeon at the Northeast Arkansas Clinic in Jonesboro, Arkansas. Dr. Marvel, based upon an x-ray examination, determined that the claimant has sustained a fracture of the carpal navicular of the right wrist. As reflected by the medical evidence, x-rays were taken of the claimant's right hand and right wrist following the August 24, 2001, incident when the claimant was thrown from the horse which were negative. These diagnostic studies clearly reflect that the claimant sustained a new injury on June 17, 2002, rather than a recurrence of a prior injury. (Cl. Ex. A, pp.1, 3)

Dr. Marvel treated the claimant conservatively by casting the wrist. Because the claimant's wrist failed to mend properly, he was subsequently referred to Dr. Thomas Frazier, a hand specialist in Little Rock, Arkansas, who performed surgery on the right wrist. Dr. Frazier eventually released the claimant with restrictions on February 3, 2003.

The record reflects that the claimant received short-term disability benefits in the amount of \$125.00 per week for approximately twenty-six (26)

weeks. After the claimant was released by Dr. Frazier on February 3, 2003, rather than return to work, the claimant applied for, and began receiving unemployment compensation in the amount of \$260.00 per week. The claimant subsequently returned to work for himself in the construction field. At the time of the within hearing, the claimant had reapplied, and was, again, receiving unemployment compensation at the rate of \$260.00 per week.

COMPENSABILITY

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
4. 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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied.

Mikel vs. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

_____The claimant has satisfied each and every requirement necessary to establish compensability. Although respondents maintain that the claimant's need for treatment and disability were causally related to a pre-existing injury, a preponderance of the credible evidence clearly reflects otherwise. An x-ray following the August 24, 2001, incident was normal. The claimant returned to work during the later part of August, 2001, and continued to work without interruption until the June 17, 2002, event. Following the report of claimant's injury, another x-ray was taken which revealed a fracture to the right wrist. When a claimant's disability arises soon after the accident, and is logically attributable to it, with nothing to suggest any other explanation, the Commission may find the existence of the causal connection. *Hall vs. Pittman Construction Company*, 235 Ark. 104, 357 S.W.2d 263 (1962); *Harris Cattle Co. vs. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974). The claimant's credible testimony, together with the medical evidence establishes the causal connection. *Kearby vs. Yarborough Brothers Gin Co.*, 248 Ark. 1096, 455 S.W.2d 912 (1970); *Exxon Corp. vs. Fleming*, 253 Ark. 798, 489 S.W.2d 766 (1973).

Further, I feel compelled to point out that the claimant's immediate supervisor, Phillip Jones, who filled out the incident report confirmed that the

claimant routinely performed his regular job duties which involved strenuous activities without complaints of having any problems involving his right wrist prior to June 17, 2002. (Tr.59)

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 proven, by a preponderance of the evidence, that he sustained a compensable injury on June 17, 2002, entitling him to appropriate workers' compensation benefits.

Compensability having been determined, the only remaining issues concern respondents' alternative contentions, as well as its affirmative defense. Respondents maintained that if compensability was determined, it was entitled to a credit or offset against any unemployment or short-term disability that the claimant received following the alleged injury. Although I find that respondents are entitled to a credit for any short-term disability benefits paid pursuant to Ark. Code Ann. §11-9-411 (Repl. 2002), they are not entitled to a credit for unemployment benefits that the claimant may have received.

Ark. Code Ann. §11-9-506 (Repl. 2002) provides:

(a) Any other provisions of this chapter to the contrary notwithstanding, no compensation in any amount for temporary total, temporary partial, or permanent total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment insurance benefits under the Arkansas Employment Security Law, §11-10-101 *et seq.*, or the unemployment insurance law of any other state.

(b) Provided, however, if a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee with respect to any week for which the injured employee received unemployment benefits but only to the extent the temporary total disability otherwise payable exceeds such unemployment benefits.

The record reflects that the claimant did not begin receiving unemployment compensation until after February 3, 2003. No claim for temporary total disability has been made or awarded with respect to any week that the claimant received unemployment insurance benefits. Accordingly,

respondents are not entitled to a credit outside the period that the claimant is claiming benefits.

Finally, respondents contend that it is not responsible for any benefits before December 15, 2002, maintaining that no notice of a work-related injury was reported until that day. Respondents' affirmative defense is without merit. Ark. Code Ann. §11-9-701 (Repl. 2002) provides, in part:

(b)(1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the Commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

The claimant timely reported an injury on June 17, 2002. The fact that the employer improperly concluded that the condition was due to a pre-existing injury rather than a new injury does not excuse its liability to promptly provide medical treatment and pay appropriate benefits.

In view of the foregoing, I hereby make the following:

AWARD

Respondent, GAB Robins, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$324.00 per week beginning June 18, 2002, and continuing through February 3, 2003.

All accrued benefits shall be paid in lump sum and without discount.

Respondents are further directed and ordered to pay and/or reimburse the appropriate medical providers for all hospital, medical and related expenses as the result of claimant's June 17, 2002, injury, and respondents remain responsible for continued, reasonably necessary medical treatment.

Respondents may claim credit and/or an offset for benefits paid under the respondents' group health insurance provider, as well as any benefits paid pursuant to a group short-term disability policy.

Additionally, claimant's attorney, Mr. Kristofer E. Richardson, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge