

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304712

JEREMY WALTERS	CLAIMANT
US TIMBER CO.	RESPONDENT
TRAVELERS INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by R. GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 11, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 26, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. In May 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant earned an average weekly wage of \$270.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's bilateral carpal tunnel problems.

2. Related medical.

3. Temporary total disability from July 9, 2002, to a date to be determined.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to TTD from July 9, 2002, to the present.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury within the course and scope of employment with U.S. Timber. This claim has been denied.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. All these exhibits were admitted without objections.

DISCUSSION

The claimant testified that he began working for the respondent in June 2001. The claimant testified that when he first went to work for the respondent he was pulling lumber off of a chain, explaining that there was a chain that moved constantly that was about four feet off of the ground and it was his job, all day long, to pull lumber off this chain and stack it on a cart. The claimant agreed that once the cart was full a forklift came and removed that cart and he began loading up another one. The

claimant testified that he then changed jobs and he was running a machine called a tilt hoist. The claimant testified that with this position he flipped boards all day long. The claimant testified that these boards were two by twelves, being eight to ten feet long and some being as much as twenty feet long. The claimant testified that he manually flipped these boards, demonstrating that he would pick up boards with his hands and physically turn them over time after time using both his hands all day long. The claimant testified that when he was doing his first job of stacking boards off of a chain onto a cart, he began to feel a little discomfort in his wrists but his hands and wrists got noticeable worse about a month after he had been running the tilt hoist.

The claimant agreed that he saw Dr. Miranda in June 2002 for his hand and wrist problems. The claimant agreed that he described to the doctor what he was doing to cause these problems and that Dr. Miranda set him up with an appointment with Dr. Smith. The claimant testified that Dr. Smith did surgery on both of his wrist. The claimant testified that he thinks that his right wrist was operated on first in August 2002 and his left wrist was operated on October 1, 2002.

The claimant testified that the respondent terminated him on July 9, 2002. The claimant testified that he talked to Tommy Blaylock, who the claimant stated was the "boss" and told him that he would have to be off to have surgery and that Mr. Blaylock fired him. The claimant testified that Mr. Blaylock told him that he didn't get carpal tunnel while working for the respondent. The

claimant stated that Mr. Blaylock told him that he had gotten carpal tunnel some place else but that I couldn't work there any more because I've got carpal tunnel and he was going to have to let me go. The claimant testified that he has not worked for anyone since his date of termination. The claimant also testified that prior to working for the respondent he has never had any problems or medical treatment of any kind for his hands and wrists.

The claimant testified that after his surgery he was referred to Dr. James Kelly because he continued to have problems with his hands. The claimant explained that he was having numbness and tingling, that his hands and arms hurt all the time, and he had difficulty holding onto things. The claimant stated, "I can hold a glass of water or something and I'll just drop it." The claimant agreed that Dr. Kelly eventually did surgery on his elbows. The claimant then showed the judge the scars on his elbows. The claimant testified that since his last surgery, his condition has not improved but has stayed about the same. The claimant stated that, "they still go numb and they still tingle and a lot of times they will still hurt. It feels like someone is sticking something in my elbows." The claimant testified that even doing light house work such as washing dishes causes his elbows to hurt and he also has difficulty driving. The claimant testified that now his pain goes all the way up to his shoulder although it does not go numb, it just hurts. The claimant testified that he had filed both for workers' comp as well as unemployment but that he has been denied on both.

On cross examination, the claimant agreed that he was mistaken and that his first surgery was done on his left hand on August 22, 2002, and surgery on his right hand on September 17, 2002. The claimant testified that he filed for some of his medical expenses on Medicaid or Medicare with the assistance of the doctor. The claimant testified that he spends his days trying to find something around the house to do or out in the yard. The claimant testified that he has a couple of old push lawnmowers that he has been trying to work on to get them running.

The medical records set forth that the claimant was seen by Dr. Michael Miranda on June 27, 2002, with complaints of wrist and hand pain for the last month in both hands and wrists. The doctor notes that this pain starts from the wrist and radiates to the elbow and also pain that affects the thumb and first and second fingers. The doctor writes that the claimant reports that he works flipping boards most of the time and the claimant was diagnosed with bilateral carpal tunnel syndrome. The doctor recommended that he use wrist splints and anti-inflammatory medications were prescribed. The next medical record is an operative report from Dr. James Kelly dated February 27, 2003, indicating that the claimant underwent a left pronator tunnel release. Dr. Kelly writes on March 14, 2003, that he has seen the claimant for follow up for his bilateral pronator tunnel syndrome. The doctor writes that the claimant's left release has been successful and he now has sensation back in his fingers although there is some aching around the left phenar eminence which is a sign that he is reintervating

the phenar process. Dr. Kelly writes that the claimant is free to do anything he would like with the left arm at this point and if he continues to improve and recover, they will schedule his right side. Dr. Kelly writes on April 28, 2003, that he has seen the claimant for follow up after having had a left pronator tunnel release and carpal tunnel release completed on the left arm. Dr. Kelly notes that the claimant reports that the numbness is better but he still gets an achy pain. On May 12, 2003, Dr. Kelly writes that the claimant is recovering from his left pronator tunnel release and he plans to schedule the claimant for his right pronator tunnel release. There is an operative report dated May 16, 2003, indicating that Dr. James Kelly operated on the claimant for a right pronator tunnel release. Dr. Kelly writes on June 13, 2003, that he has seen the claimant for follow up after his right pronator tunnel release noting that the claimant's sensation is better. Dr. Kelly writes that the claimant reports he does not tingle as much although he does have some tingling and discomfort that goes down into his hand and arm. Dr. Kelly writes that at this point he thinks it is just a matter of time to allow the claimant's nerve to resolve and he explained to the claimant that he is free to use his hand at will.

I find, after a review of this entire record, that the claimant has proven by a preponderance of the evidence that he developed bilateral carpal tunnel syndrome while working for the respondent. The claimant has testified to performing very hand intensive work for the respondent which was performed for his

entire shift. The claimant's activities as described indicate that the claimant would use both of his hands to grip lumber and pull it off of a chain and then stack it onto a cart. The claimant then testified that his second job was that of flipping boards with his hands which were on a conveyor belt or chain. The claimant testified that these boards were two inches by twelve inches and ran from eight feet to twenty feet long. The claimant demonstrated that he would grip the boards in each hand and physically flip each board over causing a rotation of the wrist as well as a gripping motion in each hand. The claimant testified that he did this continually all day long during his shift. The medical records set forth that when the claimant was seen by Dr. Miranda on June 27, 2002, he had complaints of pain in his hands up to his wrists as well as pain into his fingers. This medical record further sets forth that there is a report of tingling and the doctor notes that the claimant's work is that of flipping boards most of the time. Dr. Miranda writes that the claimant had a positive Tinden's and Phalen's test bilaterally. Although there are no operative reports in this record setting forth that the claimant underwent right and left carpal tunnel surgery, there were questions and answers concerning the dates of these surgeries, both in direct and cross examinations. Eventually on cross examination, it was determined that the claimant underwent left carpal tunnel syndrome surgery on August 22, 2002, and had his right carpal tunnel surgery performed on September 17, 2002. Dr. Kelly, in his office note dated April 28, 2003, mentions that the claimant is recovering from left carpal

tunnel release. Under the new Rule 37 dealing with occupational carpal tunnel syndrome, the indication is that a positive Phalen's and Tindel's test is sufficient to diagnose occupational carpal tunnel syndrome. Therefore, based on the testimony of the claimant as well as the medical information, I find that this claimant has proven by a preponderance of the evidence that he sustained or developed bilateral carpal tunnel while working for the respondent. The respondents, therefore, should be responsible for the cost of the medical treatment for this claimant's bilateral carpal tunnel.

The claimant has requested temporary total disability from his date of termination on July 9, 2002, to a date to be determined. I find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from his date of termination on July 9, 2002, until June 13, 2003, when Dr. Kelly writes, following the claimant's second elbow surgery, that he is free to use his hand at will. In the case, Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146 (2001) it was found that an employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work regardless of whether he has demonstrated that he is actually incapacitated from earning wages. In that same case, the healing period was found to be that period of healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. See Nicks v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W. 2d 457 (1994). In the Wheeler case it was also set forth that

if the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The claimant has testified that he was terminated at the time he reported to his employer that he was going to have to be off due to surgery for his carpal tunnel syndrome. The claimant's testimony as well as the medical records set forth that he continued to have treatment for his wrists, hands and arms until June 13, 2003, when Dr. Kelly writes that the claimant is free to use his hand at will. Therefore, in accordance with Arkansas law, the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from July 9, 2002, to June 13, 2003.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. In May 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant earned an average weekly wage of \$270.00.
4. The claimant has proven by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome while working for the respondent. See discussion above.
5. The respondents should pay for the medical treatment for this claimant's bilateral carpal tunnel syndrome treatment.
6. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from July 9, 2002, until June 13, 2003. See discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome while working for the respondents. The respondents should pay for the medical treatment for this claimant's bilateral carpal tunnel syndrome.

The respondents should pay to this claimant temporary total disability from July 9, 2002, to June 13, 2003.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

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

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

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE