

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302824**

<b>MITCHELL WHITE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>UNIT STRUCTURES, LLC, EMPLOYER</b>	<b>RESPONDENT</b>
<b>AIG CLAIMS SERVICES, INC., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 24, 2003**

Hearing before Administrative Law Judge J. Mark White on September 25, 2003, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

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

**STATEMENT OF THE CASE**

On September 25, 2003, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on July 21, 2003, and a Prehearing Conference Order was entered on that same date. A copy of the July 21 Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed between the parties on June 17, 2002; that the respondents have controverted this claim in its entirety; and that the claimant earned an average weekly wage of \$362, entitling him to a compensation rate of \$241 for temporary total disability and \$180 for permanent disability.

The parties agreed that the issues to be presented were whether the claimant sustained compensable bilateral upper extremity injuries for which he is entitled to medical and indemnity benefits; whether the statute of limitations has run with regard to claimant's alleged injury; and controversion and attorney's fees.

The claimant contends that he sustained a gradual-onset injury as a result of rapid repetitive motion; that he has been diagnosed with and suffers from carpal tunnel syndrome in both upper extremities; that he has been temporarily and totally disabled since June 17, 2002; and that he remains within his healing period at this time.

The respondents contend that the claimant did not suffer a compensable ganglion cyst injury or carpal tunnel injury on or about June 17, 2002, while working for respondent employer; and that the claimant's current need for medical treatment is associated with conditions unrelated to the claimant's alleged injury. In the alternative, respondents contend that the statute of limitations has run with regard to claimant's alleged injury. If the injury is found to be compensable, respondents

contend that they did not receive notice of any alleged injury until the claimant filed Form C on January 3, 2003; that they should not be liable for benefits prior to receipt of actual notice; that they are entitled to a credit for short-term disability benefits paid by other insurers; and that the claimant is not entitled to temporary total disability benefits beyond April 14, 2003.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 hereby made in accordance with ARK. CODE ANN. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that his work involved rapid repetitive motion.
4. The claimant has failed to prove by a preponderance of the evidence that his left volar ganglion cyst, ulnar nerve neuropathy, or ulnar nerve compression

were compensable gradual-onset injuries.

5. The claimant did not inform the respondent-employer of any work injury until January 3, 2003.
6. A preponderance of the evidence shows that any present need for medical treatment is not related to the claimant's work.
7. The claimant has failed to prove by a preponderance of the evidence that his injuries arose out of and in the course of his employment.
8. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable bilateral upper-extremity injuries.

## **DISCUSSION**

### **I. History**

The claimant is 31 years of age and was employed by the respondent-employer as a laborer for more than six years. The claimant's work duties were a matter of dispute; the claimant testified that his job was to use a 75 lb. metal "tamper" to flatten boards of lumber. His supervisor, Ray Johnson, testified that the claimant worked with this "tamper" only infrequently, typically for a total of 15 or 20 minutes per day, and that the claimant's primary job was to watch a lumber conveyor and to sometimes put lumber on the conveyer.

The claimant testified that as he was using the tamper he began to have pain in his left hand. He testified that he began having pain in his right hand after his left hand surgery. He sought treatment on June 20, 2002, from Dr. Ivy McGee-Reed, who referred him to Dr. D'Orsay Bryant. The claimant saw Dr. Bryant on June 25 complaining of a "left wrist mass". Dr. Bryant diagnosed a "left volar ganglion cyst" and subsequently excised the cyst. It appears that Dr. Bryant released the claimant from care on August 1 noting, "The patient is doing well, no complaints. NVI. The wound is healed. Given a wrist compression brace. FOLLOW-UP: As needed." Notably, the claimant failed to mention any of this treatment, or the left wrist cyst itself, until he was questioned about it on cross-examination. He implied in his initial testimony that his only injury was the carpal tunnel syndrome later diagnosed by Dr. Bryant.

The claimant resumed working but returned to Dr. Bryant on September 19, November 26 and December 12 with renewed complaints of tenderness and swelling in his left wrist. Dr. Bryant ordered a nerve conduction/EMG study, which revealed "1. Bilateral carpal tunnel syndrome; 2. Bilateral ulnar motor sensory distal neuropathy, which may be because of alcoholism or other etiology; 3. Left ulnar nerve partial compression at the elbow." Dr. Shailesh Vora, who performed the study, recommended a carpal tunnel release surgery but added, "keep in mind he

has neuropathy, which is mostly secondary to alcoholism so improvement is likely to be limited." Dr. Bryant performed a left carpal tunnel release surgery on January 8, 2003, and a right carpal tunnel release on January 29. The claimant returned to Dr. Bryant four more times, with his last visit being April 14, 2003. By his own testimony and the medical evidence, the claimant did not return to Dr. Bryant or any other physician subsequent to April 14. At the hearing, the claimant refused to say why he had not returned to a doctor for his continuing wrist complaints. The claimant testified that as of the date of the hearing he continued to have pain in his hands such that he cannot pick up so much as a basket of clothes.

Nothing in the record establishes who paid for the claimant's medical treatment, though the claimant did acknowledge receiving short-term disability benefits from his union. Union payment records submitted by the respondents show that the claimant received disability payments for several months in the fall of 2002 and for much of 2003. The claimant submitted a Commission Form AR-N and Form AR-C to his employer on January 3, 2003, alleging an injury to his left wrist. The claimant alleged he had given notice to his employer in June of 2002, when his symptoms began, but the claimant's supervisor, Ray Johnson, and the respondent-employer's accounting clerk, Shelly Burgess, denied that the claimant had done so. Nothing in the record indicates the claimant ever gave notice of his right wrist

complaints to his employer.

## II. Compensability

To prove the compensability of a gradual-onset injury, a claimant must establish by a preponderance of the evidence that the injury arose out of and in the course of his or her employment; that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and that the injury was a major cause of the disability or need for treatment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001); ARK. CODE ANN. § 11-9-102 (4)(A)(ii). Objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores v. Leach, supra*; ARK. CODE ANN. § 11-9-102 (4)(D). Most gradual-onset injuries must be shown to have been caused by rapid repetitive motion. ARK. CODE ANN. § 11-9-102 (4)(A)(ii)(a). Carpal tunnel syndrome, however, is statutorily presumed to be caused by rapid repetitive motion. *Id.* Proof of rapid repetitive motion is therefore not necessary to establish the compensability of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

I must note at the outset that the claimant was in no way a credible witness.

The claimant's testimony was internally inconsistent – at one point he testified that he had sustained a carpal tunnel injury prior to this injury, and at another point he denied sustaining a prior carpal tunnel injury. His testimony was significantly inconsistent with the reports of his treating physicians. Dr. Shailesh Vora attributed the claimant's ulnar neuropathy to alcoholism, quoting the claimant as saying he drank alcohol "quite a lot." Dr. Bryant similarly recorded a "history of alcoholism." The claimant denied telling Dr. Vora that he drank, and denied that Dr. Vora told him of his condition's link to alcoholism. Dr. D'Orsay Bryant recorded the claimant as saying that his job involved using a sledgehammer to "bust up the concrete" for eight hours a day. At the hearing, the claimant denied telling Dr. Bryant this and admitted that his job did not involve concrete or sledgehammers.

The claimant was frequently evasive and displayed a remarkable amount of convenient forgetfulness on cross-examination, replying "I don't know" or "I can't remember" to even rudimentary questions. To take the most obvious example, the claimant initially denied having any prior work injuries. When confronted with evidence of his seven prior work injuries, he testified that he did not remember any of them, though he did eventually acknowledge his signature on each of the seven separate AR-N forms for the injuries. The claimant's evasiveness and forgetfulness, and the numerous contradictions between his testimony and the medical record,

lead me to find that the claimant was not a credible witness. In contrast, the respondents' witnesses, Ray Johnson and Shelly Burgess, offered testimony that was internally consistent, consistent with the documentary evidence, and plausible. I therefore find the testimony of Ray Johnson and Shelly Burgess to be credible.

### **Rapid repetitive motion**

Proof of rapid repetitive motion is not required to prove the compensability of a carpal tunnel injury. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998). Carpal tunnel syndrome is specifically a condition affecting the median nerve; *Dorland's Illustrated Medical Dictionary*, 26<sup>th</sup> ed., defines carpal tunnel syndrome as "a complex of symptoms resulting from compression of the median nerve...." The claimant, however, suffered from at least three other illnesses separate and apart from carpal tunnel syndrome: a left volar ganglion cyst, bilateral ulnar motor sensory distal neuropathy, and left ulnar nerve partial compression at the elbow. These conditions are not synonymous with carpal tunnel syndrome, and thus to be compensable they must be shown to have been caused by rapid repetitive motion. *See, e.g., Buckley v. Pactiv Corporation*, Workers' Compensation Commission F106766 (Aug. 18, 2003). The appropriate test is two-fold: the tasks must be repetitive, and the repetitive motion must be rapid. *Hapney v. Rheem Manufacturing Company*, 342 Ark. 11, 26 S.W.3d 777 (2000). The rapidity question is not reached

unless the task is repetitive. *Id.*

The claimant testified that he would use the “tamper” only five or six times per day, though his testimony implied that each use of the tamper encompassed hitting the lumber multiple times. On cross-examination he attributed his injuries to “continuous” use of the tamper for six and a half years. The claimant’s supervisor, Ray Johnson, testified that the claimant used the tamper infrequently, for a total of only 15 or 20 minutes per day. The claimant offered no evidence or testimony to rebut Johnson’s estimate. I find Johnson’s descriptions of the work duties to be more credible than the claimant’s description.

I cannot find that a task performed for a total of only 15 or 20 minutes out of an eight-hour shift constitutes “repetitive” work. The claimant has identified no other task in his work as being rapid and repetitive. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that his work involved rapid repetitive motion. Although this finding does not affect the compensability of the claimant’s carpal tunnel syndrome, it does mean that I must find that the claimant has failed to prove by a preponderance of the evidence that his left volar ganglion cyst, ulnar nerve neuropathy or ulnar nerve compression are compensable gradual-onset injuries.

### **Arising out of and in the course of employment**

To prove the compensability of a gradual-onset injury, the claimant must establish by a preponderance of the evidence that his injury arose out of and in the course of his employment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001); ARK. CODE ANN. § 11-9-102 (4)(A)(ii). The claimant has failed to do so. The only evidence the claimant offers to prove this element is his own testimony; none of the medical evidence corroborates his testimony, and as noted above the claimant's testimony was sorely lacking in credibility.

The claimant himself initially denied that his wrist problems were work-related. He filed an application for short-term disability benefits identifying his condition as an "illness", not an "injury", and left blank the portions of the form that might indicate a work-related injury. None of the claimant's medical providers record the claimant as connecting his injuries to his work, and Dr. Bryant wrote that he was unaware the claimant was seeking workers' compensation benefits. The claimant admitted that he could not remember informing his doctors that his injuries were work-related. At one point the claimant alleged that he reported his pain as a work injury to his employer when his symptoms began in June, 2002, but at another point he said he could not remember whether or not he reported his injuries prior to his filing a Form AR-C on January 3, 2003. As noted above, Ray

Johnson and Shelly Burgess testified that the claimant did not report any work injury before January 3, 2003. I therefore find by a preponderance of the credible evidence that the claimant did not inform the respondent-employer of his alleged work injuries until January 3, 2003.

Moreover, nothing in the medical evidence establishes or purports to establish a causal relationship between the claimant's work and any of his hand and wrist problems – the carpal tunnel syndrome, the left volar ganglion cyst, the ulnar neuropathy, or the ulnar nerve compression. Dr. Vora specifically attributed the ulnar neuropathy to the claimant's alcoholism, and nothing in the record contradicts Dr. Vora's opinion. Dr. Vora predicted the claimant would continue to have problems with his hands after his carpal tunnel release precisely because of the ulnar neuropathy secondary to alcoholism. I therefore find by a preponderance of the evidence that any present need for medical treatment is not related to the claimant's work.

None of the credible evidence explicitly or implicitly supports the conclusion that the claimant's work caused any of his injuries. There is no credible evidence in the record to establish that the claimant's work was rapid, repetitive, or hand- or wrist-intensive. The claimant himself did not attribute his problems to his work until six months after he claims the symptoms began. The burden is on the claimant to

prove his injuries compensable, and he has failed to offer any proof of a causal relationship between his injuries and his work other than his own testimony, which I find not to be credible. A causal relationship between this claimant's work and his injuries can be drawn only by speculation, and speculation and conjecture cannot substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that his injuries arose out of and in the course of his employment.

#### **ORDER**

Because the claimant has failed to establish that his work consisted of rapid repetitive motion, and because the claimant has failed to establish that his injuries arose out of and in the course of his employment, I must therefore find that he has failed to prove by a preponderance of the evidence that he sustained compensable bilateral upper-extremity injuries. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge