

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F101142**

<b>DENNIS R. ATKINS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>WOODRUFF COUNTY, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ASSOCIATION OF ARKANSAS COUNTIES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 27, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on January 29, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE BEN E. RICE, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on December 23, 2000, at which time the claimant sustained a compensable scheduled injury to his right wrist at a compensation rate of \$243.00/\$182.00. After the initial visit to White County Medical Center on December 24, 2000, along with a pharmacy bill, this claim was controverted.

The claimant reinjured his wrist on June 6, 2002 making an arrest. By agreement of the parties, the June 6, 2002 injury is not included in this hearing.

The claimant contends he injured his right wrist in a specific incident on December 23, 2000 and seeks payment of medical expenses and attorney's fees. The claimant relies on Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002) .

The respondents contend the claimant cannot meet his burden of proving a compensable injury caused by a specific incident, arising out of and in the course of employment. At the time of the incident, the claimant was not performing employment services. The claimant's present condition is related to a preexisting injury and additional medical treatment (specifically the January 2, 2001 surgery) is unreasonable and unnecessary.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript along with the depositions of Jim Harrison, Janet Moore, Shandon Nichols, Terry McCabe, Steve Schoonover, Kenneth Powell, Karen Little, Brenda Ashby, Paula Brown, and Bobby Bozarth incorporated by reference. Attorney Rice's objection to hearsay is overruled and rebuttal evidence concerning Paula Brown's testimony has been considered in reaching this decision as probative on the issue of credibility. The claimant was the only witness to testify at the hearing.

The claimant, age 39 (D.O.B. September 17, 1964) has a G.E.D. with training and certificates in law enforcement. He has worked in the sheriff's department as a patrol deputy for the past thirteen years. His health history includes prior injuries to his right hand playing high school football and breaking up a fight in 1994. The claimant also injured his right knee in 1990 and 1996. The claimant suffers from hearing loss and takes medication for fluid retention to prevent dizziness.

While patrolling on December 23, 2000 at a store, the claimant got out of his car and slipped on ice. He used his right arm to try and catch himself. He then drove home to take some aspirin. While at home, he removed a branch (about two inches in diameter) that had fallen on a shed. At that point he realized his right hand was seriously injured and asked the county's paramedics to give him something stronger than aspirin so he could continue working. The claimant stated his arm was bruised from the fall.

The claimant's hand continued hurting and he sought treatment from general practitioner, Dr. Fred Wilson with the help of Deputy, Kenneth Powell. X-rays were made and a splint was prescribed. After the end of his shift, the claimant's pain worsened and he went to the emergency room with his girlfriend, Paula Brown. The respondent-carrier paid for this initial treatment before controverting the claim.

The claimant was eventually diagnosed with a broken scaphoid bone and underwent two surgeries with a hip bone graft and insertion of pins and screws. The claimant was off work two and one-half months but continued to receive his regular salary.

Paramedics, Brenda Ashby and Karen Little confirmed that the claimant asked them to examine his hand to determine if it was broken. Ms. Little observed that his hand was swollen and bruised. Ms. Ashby advised him to have x-rays made. It was their recollection the injury happened either getting in or getting out of his patrol car when he slipped on ice. Ms. Ashby testified the claimant made no mention of clearing tree limbs but Ms. Little stated the claimant did pull a limb off his house and that is when he knew that his hand was seriously injured.

Police Chief, Bobby Bozarth, testified the claimant came by his home with his arm in a splint. He recalls the claimant injured his hand either getting in or getting out of the patrol car when he slipped on ice in his driveway at home. The claimant returned to Chief. Bozarth's home the next day with a cast on his arm and informed him about the trip to the ER and the need for surgery on his wrist. Chief. Bozarth and his son cleared tree limbs over the claimant's house using a chain saw. The limbs could not be picked up and moved, they had to be cut loose. He did not notice any loose limbs on the roof of the shed next to the claimant's home. Chief Bozarth and the claimant are neighbors and hunt together. He recalled that the claimant had injured his hand in the past but did not remember the details.

Paula Brown, the claimant's girlfriend for eight and one-half years testified the claimant told her he hurt his hand when he slipped and fell on ice getting in or out of the patrol car. She admitted dropping charges against the claimant for hitting her in the mouth during a domestic dispute. She also admitted she was investigated for making harassing phone calls but she denies discussing the claimant's wrist injury with the investigator, Deputy Jim Harrison. She also denied telling Janet Moore that she witnessed the claimant pulling on a limb when he slipped and fell at home, injuring his wrist.

Deputies Kenneth Powell and Steve Schoonover testified the claimant reported an injury to his right hand after he slipped and fell on ice removing a limb from his shed at home. Deputy Powell knew the claimant had been on a call in Patterson and wanted to meet him in McCrory to try and find Dr. Fred Wilson to examine his arm and see if it was broken. The claimant made no mention of any work-related injury while patrolling in Gregory.

Deputy Jim Harrison testified the claimant told him he injured his hand either getting in or out of the patrol car. Later while he was investigating a charge of harrassing phone calls, Ms. Brown told him the claimant did not hurt his hand while on duty.

Dispatcher and EMT, Terry McCabe testified the claimant was on duty on Saturday from 8:00 a.m. to 5:00 p.m. She arrived around 2:00 p.m. and ran into the claimant in the parking lot between the jail and the county courthouse. He was trying to find Dr. Wilson to examine his arm because he was worried it was broken. Ms. McCabe looked at his hand but noted no deformities and was unable to determine the extent of the injury. The claimant told her he injured his hand when he pulled a limb from the roof of the shed, slipped and fell.

Officer, Shandon Nichols testified the claimant told him he injured his hand when he slipped on ice pulling a limb on his shed at home. Officer Nichols is a friend of the claimant's even though he responded to the domestic abuse call concerning Paula Brown.

Bail bondsman, Janet Moore testified Paula Brown told her the claimant injured his hand when he slipped on ice at home pulling a broken limb from a tree. In the past, Ms. Moore was friendly with Ms. Brown, but that seemed to change when Ms. Moore did not support the claimant in his unsuccessful election bid to become sheriff in 2002.

### **MEDICAL EVIDENCE**

In 1994, the claimant was treated for a sprained and swollen right wrist after breaking up a fight. X-rays were made revealing "no acute fx - old Navicular non-union."

On December 23, 2000 the claimant was treated by Dr. Fred Wilson, however, he thought the x-rays were normal. The claimant's pain worsened and he went to the ER on December 24, 2000. X-rays were repeated and he was diagnosed with a "displaced transverse scaphoid fracture"

with no “acute traumatic findings.” Dr. Prince noted swelling of the wrist but made no mention of bruising.

The claimant was then referred to Drs. McCoy and Blickenstaff. He gave a history of injury of slipping and falling on Christmas Eve and landing on his outstretched right wrist. Dr. McCoy again noted swelling but no bruising.

...this appears to be an old injury. It looks like a non-union. In questioning him he does have a history of spraining and injuring his wrist playing football in high school several years ago and having to wear a splint on his wrist... X-rays show that he has an established non-union of the scaphoid on the right side... I do think he needs to have this treated because the incidence of post traumatic arthrosis is virtually 100% and cases of fracture of the scaphoid that go into non-union.

\* \* \*

Dr. McCoy’s Consultation Report of 1-2-01:

This gentleman is a 36 year old white male who injured his right wrist many years ago and has had some problems with it over the years off and on but recently injured it again about a week and a half ago at work.

Surgery was performed on January 2, 2001. On March 22, 2001 Dr. McCoy opined that the claimant could return to work if a desk job was available but he did not want the claimant to use his right hand for anything strenuous.

Dr. McCoy’s Letter of 3-2-01:

Dear Ms. Kelly:  
(Claims Adjustor)

In response to your letter dated February 16, 2001 and in an effort to help clarify the points that you requested I provide the following information:

It is my opinion Mr. Atkins had a nonunion of his scaphoid fracture, not an acute fracture that would have occurred any time around late December 2000. The injury he had, had to be a minimum of several

months if not several years old. It is certainly possible, however, that his falling on it when he slipped on the ice while at work may have aggravated his pain and precipitated his trip to the emergency room and to our office.

With regard to your second point as to whether the Russe bone grafting procedure would have been necessary before the date of December 23, 2000, the answer to that I think would have to be qualified in that apparently he was functioning well and not having much pain, so he had not sought medical treatment prior to December 23, 2000. So he may or may not have required the Russe bone grafting, at least not at the present time, without having had that slip and fall on his wrist in late December. So in answer to your question, I think his medically objective observable injury was in fact an old injury to his scaphoid and it was an old fracture that had gone on to a nonunion. His current clinical symptoms were actually precipitated by falling on that previously weakened wrist when he slipped on the ice and injured his wrist while at work in late December of 2000. Hopefully this information will help you in adjudicating his case.

Dr. Edward Weber's Report of 2-14-02:

I have had a chance to review Mr. Atkins' original x-rays, although they are of poor quality. It does appear that his fracture was an old fracture on which Dr. McCoy operated. This does not mean that the patient's symptoms were not new, however, as a fibrous union can break down, producing symptoms which necessitate the operation.

**FINDINGS AND CONCLUSIONS**

The claimant's bruised and swollen hand seems more consistent with a fall rather than just lifting a branch from a shed, but the witnesses are divided about whether the fall happened while the claimant was on the job patrolling or whether he was at home clearing limbs damaged in an ice storm.

The claimant's co-workers cannot confirm that he was patrolling in Gregory at the time of the incident and he made no report of a work-related injury to Chief Bozarth, Deputy Powell, Deputy Schoonover, Officer Nichols, or Dispatcher McCabe.

Because of the differing accounts of the claimant's history of injury, I find the claimant cannot meet his burden of proving an injury arising out of and in the course of his employment by a preponderance of the credible evidence of record. However, assuming arguendo, that the claimant was injured while performing employment duties, I find the claimant did sustain a compensable aggravation of a preexisting condition, Williams v. L & W Janitorial, Inc., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (February 4, 2004).

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on December 23, 2000.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge