

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214350

TIM BATES	CLAIMANT
STAFFMARK LLC MIDWEST	RESPONDENT
ATLANTIC MUTUAL INSURANCE COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 19, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondent represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 24, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on December 19, 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. On December 10, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to his right wrist.
4. The claimant is entitled to a weekly compensation rate of \$239.00 for temporary total disability and \$159.00 for permanent partial disability.

5. The respondent accepted a 1% impairment rating.

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

1. Additional medical since September 16, 2003.
2. Attorney's fees.

The claimant's attorney, by a letter dated March 17, 2004, requested this case be withdrawn from submission so that his client could get an MRI. In the same letter, the claimant's attorney enclosed a medical report dated March 5, 2004 and asked that it be admitted into record. By letter dated May 25, 2004, the respondent objected to the admission of the March 5, 2004 medical report from Dr. Thompson. By letter dated June 3, 2004, I denied the claimant's request that the March 5, 2004 medical record be admitted into the record. The claimant, in a letter dated June 8, 2004, requested that this case be placed in line for decision. Therefore, the submission date for this case should be June 7, 2004, which is the date the claimant requested his case be resubmitted for decision.

The documentary evidence presented in this matter consists of the Commission's Prehearing Order, marked Commission's Exhibit No. 1. The claimant submitted an exhibit which is marked Claimant's Exhibit No. 1. The respondent submitted medical records marked Respondent's Exhibit No. 1. All of these exhibits were admitted without objection.

DISCUSSION

It has been stipulated and the claimant testified that he sustained a compensable injury to his right wrist on December 10, 2002. The claimant agreed that Dr. Powell had been treating him for his wrist problem but released him from his care in May 2003. The claimant testified that at that time he was still having a little bit of numbness in his fingers, pain on both sides of his wrist, and he had limited movement of his wrist. The claimant testified that his grip was okay but

that he had problems turning the key in his ignition or turning the key to his door. The claimant testified that his wrist has not gotten any better since his release by Dr. Powell. The claimant did state that Dr. Powell referred him to Dr. Moffett for a second opinion. The claimant testified that he saw Dr. Moffett just once and then went on his own to be seen by Dr. Tomlinson. The claimant testified that the problems he was experiencing with his wrist when he was seen by Dr. Tomlinson were the same as his problems were when Dr. Powell released him.

The claimant testified that since May 2003, when Dr. Powell released him, he has been to the unemployment office almost every day looking for work. The claimant testified that prior to this accident, he had worked primarily for the respondent as a temp. since 1991. The claimant indicated that he would be able to work now if his wrist would let him. The claimant testified that most of the jobs he has had with the various temporary agencies over the past several years required the use of both of his hands and wrists. The claimant testified that he was right hand dominant.

On cross examination, the claimant testified that he has not worked since his injury on December 10, 2002. The claimant testified that his mother supports him. The claimant testified that he did borrow a vehicle to drive to the hearing today. The claimant testified that his activities during the day include just sitting around, visiting with friends, playing board games, playing cards, and looking for a job. The claimant testified that he does cook for himself and keeps his own apartment as well as does his own laundry.

The medical records set forth that the claimant was treated for his compensable injury on December 10, 2002 at the Northwest Medical Center where he was diagnosed with a right colles fracture and ulnar styloid fracture with 100% displacement. The radiologist report dated December 10, 2002 sets forth that the

claimant has a fractured right wrist. Dr. Powell assessed the claimant with 1% impairment rating to his upper extremity on May 29, 2003. Dr. Robert Tomlinson writes on September 12, 2003 that he has seen the claimant for his compensable injury. Dr. Tomlinson notes that the claimant sustained a fracture which was treated by Dr. Powell and that the claimant was casted for six weeks and then went through occupational therapy. Dr. Tomlinson notes that the claimant now has some mild intermittent right wrist pain that rates two on a scale of ten in intensity and is intermittent in frequency. Also some numbness is reported to Dr. Tomlinson by the claimant. After examination, Dr. Tomlinson assesses the claimant with having right wrist pain status post right distal radius fracture noting that in his opinion, the claimant's treatment has been appropriate and notes that with the claimant's radial settling, it would not be unusual for him to have some wrist weakness. Dr. Tomlinson writes that if the claimant is not satisfied with his wrist that further study would be an MRI to evaluate intercarpal and triangular fibral cartilage complex of his right wrist.

After a review of this record, the claimant has testified to subjective complaints of pain and restricted movement in his wrist as well as some numbness. Dr. Tomlinson has not recommended treatment in his letter but only indicated that if the claimant was not satisfied with his wrist that perhaps an MRI would be revealing. The claimant, by his own testimony, has indicated that he is active during the day and engages in several activities albeit recreational. Again, based upon Dr. Tomlinson's evaluation dated September 12, 2003, he did not think it unusual that the claimant would be experiencing some wrist weakness but did not recommend additional treatment.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 10, 2002, the relationship of employee-employer existed between the parties.
3. The claimant sustained a compensable injury to his right wrist.
4. The claimant is entitled to a weekly compensation rate of \$239.00 for temporary total disability and \$159.00 for permanent partial disability.
5. The respondent accepted a 1% impairment rating.
6. The claimant has failed to prove by preponderance of the evidence that he is entitled to additional medical treatment subsequent to September 16, 2003 for his compensable injury. See Discussion above.

ORDER

The claimant has failed to prove by preponderance of the evidence that he is in need of additional medical treatment for his compensable injury subsequent to September 16, 2003. Therefore, this request for additional medical benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE