

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312431

EVERETTE CALDWELL	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 28, 2004

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

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on April 27, 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 February 13, 2004. 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 August 25, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The parties have stipulated that the claimant is entitled to a compensation rate of \$305.00 for temporary total disability and \$229.00 for permanent partial disability.

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

1. Compensability of the claimant's injury to his right wrist on August 25, 2003.

2. Related medical.

3. Temporary total disability from November 4, 2003, to a date to be determined.

4. Attorney's fees.

The claimant reserves all other issues including the possibility of permanent partial disability.

In regard to the foregoing issues the claimant contends that he began working for the respondent in approximately May 2002 and as a result of his hard work received several early raises and promotions. Claimant is also employed in the National Guard and has been stationed in Diego Garcia and served in the Persian Gulf War. Claimant is also a volunteer fire fighter. Prior to his work related incident which occurred on August 25, 2003, claimant had never received medical treatment for his wrist, had never experienced pain in the wrist, and had never failed a military physical. On or about August 25, 2003, claimant sustained a severe wrist injury while lifting a heavy wheel while in the course and scope of his employment with the respondent. Claimant's wrist immediately appeared swollen and red, and he was sent to Dr. Garland Thorn, the company doctor. After two visits, Dr. Thorn referred claimant to Dr. Bryan Benafield, an orthopedic surgeon. While under Dr. Benafield's care, claimant was supposed to be on

light one arm duty and was supposed to wear a wrist splint. Unfortunately, the company did not provide light duty, and claimant continued in his normal job lifting 40 to 80 pound wheels all day long. Claimant went through a couple wrist splints, until finally Dr. Benafield took claimant completely off work on November 4, 2003. Claimant will introduce one of the worn out splints as evidence that he was not provided light duty work. Respondents initially paid benefits but controverted the case after Dr. Benafield recommended that the wrist be fused. Since that time the doctor has submitted all bills to claimant's health carrier, Blue Cross/Blue Shield. Claimant recently had the hardware removed from his wrist, and claimant hopes to be back to work by February 2004. Dr. Benafield would probably let claimant go back to work sooner, but for, respondents' previous track record of noncompliance with stated restrictions. Dr. Bryan Benafield has opined that claimant's pain and medical treatment was a direct result of his lifting the wheel at work.

In regard to the foregoing issues the respondents contend that the claimant did not sustain an injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1. The parties submitted the deposition

of Dr. Benafield marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 38 years old and had been a combat medic and CNA rescue swimmer for the United States Navy for nine and one half years. The claimant testified that he currently was in the Arkansas Air National Guard and he has been a fireman for the City of Johnson since 1994. The claimant testified that for the fire department he has a physical once a year and with the National Guard he has a physical every six months. The claimant testified that while in the Navy he had a physical once a year but had to have a special physical every seven months for swimming in open water. The claimant testified that he served during the Gulf War and that his guard unit was sent to New York City for three or four weeks after September 11. The claimant testified that he also worked the Oklahoma City bombing on a search and rescue team. The claimant testified that prior to August 25, 2003, he never failed a physical and never had any injuries to his wrists or other parts of his body.

The claimant testified that he began working for the respondent in May 2002 and that his job involved lifting wheels all day long placing or tossing them on a conveyor belt. The claimant explained that the wheels would vary in weight the lightest being around 35 pounds and the heaviest being around 110 pounds. The claimant testified that prior to August 24, 2003, he had no wrist complaints and no problems lifting. The claimant testified that on

August 25, 2003, he bent over to lift a wheel, felt a pop in his right wrist and lost his grip on the wheel. The claimant testified that he went to Collin Montgomery who is an EMT at the plant. The claimant testified that his wrist was swelling, that Mr. Montgomery took him to the safety office and he was sent to Dr. Thorn that day. The claimant testified that in the safety office a report was made out and his wrist was put on ice before he was sent to Dr. Galen Thorn. The claimant testified that his arm was swollen and a little red.

The claimant testified that Dr. Thorn put him on restrictions of no lifting more than ten pounds, gave him a brace and sent him back to work with a return appointment in two weeks. The claimant testified that he took his note with the restrictions on it to the safety office. The claimant testified that the safety office was to notify his supervisor as to what his restrictions are but he was sent back to his regular job. The claimant testified that when he returned to Dr. Thorn in two weeks he was then sent to Dr. Benafield. The claimant testified that Dr. Benafield has performed surgery on his wrist twice as well as put him through physical therapy. The claimant testified that his group insurance paid for his medical treatment initially but once he was fired his medical insurance ended. The claimant explained that he had requested FMLA leave and since he had not been with the company more than five years he had out used his leave time and due to company policy he was fired.

The claimant testified that he attempted to work between August 25, 2003, and November 4, 2003. The claimant testified that he has been off work since November 4, 2003, under Dr. Benafield's care. The claimant testified that during the period of time he continued to work for the respondent after his injury his wrist got worse and the pain and swelling never went away. The claimant testified that the doctor had given him a wrist brace but it did not do much good.

The claimant testified that since he has been off work he has continued to attend his monthly National Guard drills. The claimant stated that at these drill meeting he sits in the alarm room. The claimant testified that he also has done some administrative work for the Johnson Fire Department and he has acted as a training officer. The claimant testified that he has gone out on calls but he drives a support unit noting that he has not responded in an engine since he hurt his wrist.

On cross examination, the claimant testified that after his accident he was sent back to his supervisor and his supervisor told him to get back to work. The claimant was asked if his supervisor told him not to lift outside his lifting restrictions and the claimant responded, "No." The claimant testified that he has not worked since leaving the respondent although he has done administrative work for the Johnson Fire Department and given safety lectures for the fire department. The claimant agreed that he gives safety lectures to other fire departments and has been paid for a couple of these talks. The claimant testified that he

does not receive compensation when he responds to a fire in the Johnson area because it is a volunteer fire department. The claimant testified that he did draw short term disability up until February 27, 2004, in the amount of \$281.70 per week from November 4, 2003, until February 27, 2004. The claimant stated that he has not received any long term disability.

On redirect examination, the claimant agreed that he gave the respondent's safety department the medical record setting forth that he should lift no more than ten pounds and wear a splint daily. The claimant testified that every time he got a note dealing with his restrictions he gave it to the safety department. The claimant identified a wrist splint which he wore as directed by his physician and stated that the worn places where the metal was showing through was where the splint had snagged on the uncasted wheels he was lifting. The claimant testified that he wore out two splints in a period of six weeks while working for the respondent. The claimant testified that he has made a total of \$150 giving two seminars to voluntary fire departments since his accident. The claimant testified that the respondent never offered him any kind of one handed light duty work to perform after he injured his wrist.

The medical records set forth that the claimant was seen by Dr. Galen Thorn on August 25, 2003, for complaints of pain in his right wrist while lifting. Dr. Thorn rechecked the claimant on September 8, 2003, for his right wrist problems. Dr. Bryan Benafield writes on September 17, 2003, that on August 25, 2003,

the claimant reports that he was picking up a well and felt a pop in the ulnar side of his wrist and began to experience pain, swelling and paresthesias in his right hand. Dr. Benafield notes that the claimant has been seen by Dr. Thorn twice and was given a splint to wear as well as medications and some limited duty. The claimant's x-rays show that he has ulnar positive variance by a few millimeters in his right wrist. After examination and review of the claimant's x-rays, Dr. Benafield diagnosed the claimant with having a probable TFCC tear associated with ulnar positive variance as well as right carpal tunnel syndrome. The doctor prescribed a better splint and recommended that the claimant undergo an MRI. Dr. Benafield writes on October 10, 2003, that he has reviewed the claimant's MRIs which show that he has an area of marrow edema of the sub articular portion of the lunate which most likely is Kienbock's. Dr. Benafield notes that the claimant also has ulnar positive variance with the ulnar being approximately 2-3 mm longer than the radius. Dr. Benafield notes that the claimant's plain films do not have any signs of Kienbock but does have ulnar positive variance. Due to the unusual findings Dr. Benafield writes that he is going to do some reading and discuss this situation with his partners to come up with a treatment plan. Dr. Benafield writes on October 24 that after consideration and discussion with his partners about the claimant's findings he notes that the claimant has Kienbock with ulnar positive variance and recommended a capitate shortening with capita-humate fusion. On October 27, 2003, Dr. Benafield returned the claimant to work with

no use of his right hand for one month. Dr. Ray Mitchell took the claimant off work on November 3, 2003, noting that the claimant needs to be off work November 4, 2003, until after his surgery.

On November 11, 2003, the claimant underwent surgery on his right wrist having a capitate shortening osteotomy with a capitolunate fusion performed by Dr. Benafield. On November 21, 2003, Dr. Benafield removed the claimant's sutures and placed him in a short arm cast.

Dr. Benafield writes on November 3, 2003, that the claimant has Kienbock disease of his ulnar and that this condition in itself is not work related. Dr. Benafield notes that he thinks the claimant's current pain did result from an injury that he sustained at work causing his underlying Kienbock to flair up. On December 9, 2003, Dr. Benafield writes in response to the claimant's attorney's letter addressing specific questions concerning the claimant's right wrist problems. Dr. Benafield noted that it was his opinion, based on a reasonable degree of medical certainty, that the claimant's right wrist pain directly resulted from his lifting wheels at work. It was also Dr. Benafield's opinion that the claimant's medical treatment for pain leading up to his surgery was a direct result of his lifting wheels at work. It was Dr. Benafield's opinion that the claimant's need for surgery was not a direct result of the pop in his right wrist that he felt when lifting wheels at work on August 25, 2003, but Dr. Benafield did think the claimant had a preexisting condition which predisposed him to injury that was aggravated when lifting the wheel at work

that resulted in his need for medical treatment including but not limited to the surgery performed on November 11, 2003.

Dr. Brian Benafield, in his deposition, taken on March 30, 2004, stated that he had diagnosed the claimant with Kienbock's disease explaining that Kienbock's disease is a avascular necrosis of the lunate. Dr. Benafield testified that the lunate is one of the small carpal bones, one of the small group of bones within the wrist joint itself and that a vascular necrosis is where the blood supply gets decreased to that bone and the bone has a series of degenerative changes that then occurs within it. Dr. Benafield testified that he thinks that it is likely that the claimant's Kienbock's disease preexisted his work injury of August 25, 2003. Dr. Benafield testified that Kienbock's disease can cause pain to develop in the wrist and over time it will lead to degenerative changes which can cause some surrounding arthritic change in the wrist. Dr. Benafield testified that it is not necessary for a person to experience a strain or trauma in order to develop Kienbock's disease but stated that as it is with other degenerative conditions the disease is often brought to the forefront or aggravated by an injury. Dr. Benafield testified that he sees it a lot with degenerative type problems that a patient will not have pain then they will experience an injury that will exacerbate the problem and bring it to the surface. Dr. Benafield was asked if regardless of any kind of trauma to the claimant's wrist, would he have needed treatment for the Kienbock's disease at some point and time? Dr. Benafield responded, "More than likely." Dr. Benafield

testified that he did not think that the claimant's work related event on August 25, 2003, played a part as to causation of the claimant developing Kienbock's disease. Dr. Benafield did state that he does think that it did contribute to some of the claimant's pain.

On cross examination, Dr. Benafield testified that he was not aware of the claimant having any complaints of pain prior to August 25, 2003, and that it certainly was possible that he could have gone forever without pain or treatment for his wrist had he not injured himself on that date. Dr. Benafield testified that he thought that the probability of the claimant's August 25, 2003, incident was greater than 50 percent of his need for medical treatment. Dr. Benafield testified, "I think his pain was brought out by the injury that he had." Dr. Benafield was asked if in terms of percentages he thought the treatment that the claimant received on August 25, 2003, up to the surgery was more than 50 percent the result of the injury he received and Dr. Benafield responded, "I do." Dr. Benafield testified that:

"I don't think the Kienbock's was a result of the injury at all. I think that the injury precipitated the Kienbock's becoming painful, and therefore, lead to the need for the non operative treatment that he had and ultimately the need for his surgery. I think his injury accelerated his process where he needed a surgical intervention if we were going to get his pain under control."

Dr. Benafield was asked if the claimant had been asymptomatic before August 25, 2003, would he have needed treatment for the

Kienbock's condition at that point and Dr. Benafield responded, "No. We don't treat asymptomatic conditions."

On recross examination, Dr. Benafield testified that he thought that the claimant's accident caused his wrist to become symptomatic. Dr. Benafield was asked, "And the only symptom was pain?" Dr. Benafield responded, "Correct. And that's what Kienbock's does, is it causes pain." Dr. Benafield followed up his question by stating that Kienbock's causes pain and then will ultimately lead to degenerative changes in the wrist. Dr. Benafield stated that the claimant has not been released from his care as of the date of this deposition but he felt as though he was getting close to maximum medical improvement. The doctor testified that the claimant will have a slight permanent impairment due to the fusion.

After a review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a work related injury while working for the respondent on August 25, 2003. The claimant has clearly testified to a sudden onset type injury and the medical records reveal and Dr. Benafield has stated that his work activities on August 25, 2003, aggravated or exacerbated a preexisting condition necessitating the claimant's need for medical treatment. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his compensable injury as well as temporary total disability from the date he was released from work by his physician on November 4, 2003, to a date to be determined. In Wheeler Construction Company

v. Armstrong, 73 Ark. App. 146, 41 S.W. 3d 822 (2001) the Court sets forth that:

The statute (Ark. Code Ann. §11-9-521(a)) expressly provided that for scheduled permanent injures the injured employee is to receive compensation for temporary total or temporary partial disability during the healing period or until the employee returns to work, whichever occurs first. Consciously absent from the statute is any indication that the injured employee show an incapacity to earn wages as a requirement to receiving temporary benefits....We hold that the plain meaning of the language employed indicates 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 had demonstrated that he is actually incapacitated from earning wages.

Therefore, based on Arkansas law as well as the claimant's testimony that he has not returned to work since November 3, 2003, he is entitled to temporary total disability to a date to be determined. The respondents are, however, entitled to a dollar for dollar set off for the short term disability benefits that this claimant received from November 4, 2003, until February 27, 2004, in accordance with Ark. Code Ann. §11-9-411. It should be noted that the claimant should also comply with the statutory requirements set forth in Ark. Code Ann. §11-9-411(b) and following.

FINDINGS & CONCLUSIONS

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

2. On August 25, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The parties have stipulated that the claimant is entitled to a compensation rate of \$305.00 for temporary total disability and \$229.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a sudden onset injury on August 25, 2003, while working for the respondent. The claimant has testified to a specific incident which was immediately reported, verified by objective medical findings necessitating medical treatment. See discussion above.

5. The respondents should pay to this claimant all reasonable and necessary medical treatment for his compensable injury.

6. The claimant is entitled to temporary total disability from November 4, 2003, to a date to be determined. See discussion above and Ark. Code Ann. §11-9-521(a).

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 a sudden onset injury while working for the respondent on August 25, 2003.

The respondents should pay for all necessary and reasonable medical treatment for this claimant's compensable injury.

The respondents should pay temporary total disability from November 4, 2003, to a date to be determined.

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