

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400147

BRYAN CANNON	CLAIMANT
LW CLARK, INC. (BURGER KING)	RESPONDENT
AIG CLAIMS SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 8, 2004

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

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

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 7, 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 June 24, 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 December 23, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$152.00 for temporary total disability and permanent partial disability.

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

1. Compensability of the claimant's right hand injury.
2. Related medical.
3. The respondent was not given notice of an injury until December 26, 2003.

In regard to the foregoing issues the claimant contends that he is entitled to benefits for the injury to his right hand.

In regard to the foregoing issues the respondents contend that the claimant did not suffer an accidental injury under 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. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he was thirty-nine years old and as of December 2003 he had been working for the respondent a little over a year. The claimant testified that on December 22 he was breaking down corrugated syrup boxes and although at that time he did not notice any pain or problem with his hand. The claimant stated that the next day his hand started hurting a little bit more than usual and had some swelling. The claimant testified that he had x-rays taken of his hand on December 23, 2003, where it was

found that he had a fracture. The claimant testified that he returned to the doctor on December 25 for his diagnosed Boxer's fracture. The claimant testified that he reported his injury to the respondent by speaking to Melanie, a supervisor, on December 26, 2003. The claimant testified that he reported to Melanie that he had hurt his hand when breaking down boxes and he had been to the doctor.

The claimant testified that he was seen by Dr. Patrick Coker on December 31, 2003, at which time his hand was x-rayed and the doctor put his hand in a splint. The claimant testified that he saw Dr. Coker one other time on January 21, 2004, at which time the doctor indicated that his hand was healing appropriately and took his splint off.

The claimant testified that he continued to work throughout the week following Christmas and that it was into January before he missed some time from work. The claimant testified that he did not miss more than one week from work as a result of his hand injury.

On cross examination, the claimant explained that on December 22 when he was breaking down boxes he was using his fist to punch the box to break it in. The claimant agreed that on the day that he was breaking down boxes he did not feel any pain right away in his hand and, therefore, did not report anything to the manager. The claimant testified that he first went to a family clinic and was told to go get an x-ray so he went to Washington Regional. The claimant was asked why he did not tell the manager on the 23<sup>rd</sup> that he was going to the doctor and the claimant responded, "I wasn't

sure how to handle it." The claimant agreed that he reported to Washington Regional how he hurt his hand and that after they put a splint on his hand he went back to work. The claimant agreed again that it was not until December 26<sup>th</sup> that he reported to his manager, Jason, that he had hurt his hand at work. The claimant agreed that he and his manager, Jason Kirkland, had gotten into a heated discussion over some time off that the claimant was wanting to take. The claimant stated that it was simply a misunderstanding and believed it to be a week or two before December 22. The claimant agreed that at the time of his deposition he did not reveal that he has and was being treated for depression. The claimant agreed that he has sustained a small injury to his right hand while working for another employer but it has healed.

Jason Kirkland testified that he has been working for the respondent for thirteen years and has been a general manager for five to six years. Mr. Kirkland testified that he began working in the same store with the claimant on November 17, 2003. Mr. Kirkland testified that on December 22, 2003, the claimant came to him around 1:00 in the afternoon and asked if he could leave so he showed the claimant the schedule which indicated that he was to work till 2:00 p.m. This witness testified that he laid the schedule on the desk and turned around at which time he heard a loud noise. Mr. Kirkland testified that he came out of his office and saw the claimant walking through the kitchen toward the front screaming, yelling and cursing. This witness testified that he confronted the claimant and asked him what was going on and the

claimant told him that Melanie, the other manager, had told him that he could get off an hour early that day to go to a doctor's appointment. Mr. Kirkland testified that he told the claimant that Melanie had never told him anything like that and that he told the claimant that if he did not like it he could leave. Mr. Kirkland testified that the claimant left at this time. Mr. Kirkland testified that on December 26 the claimant reported that he hurt his hand breaking down boxes. Mr. Kirkland then was asked about the boxes which the claimant was working with and he said that typically these boxes are not broken down since they are such heavy duty boxes held together with strong glue.

On cross examination, Mr. Kirkland testified that the claimant was breaking down boxes in the morning and that he and the claimant had had their confrontation around 1:00 in the afternoon. The witness testified that it would be ill advised to break down the kind of box the claimant had testified to or to punch it to break it down. Mr. Kirkland testified that the claimant told him on December 26 that he had hurt his hand while working. Mr. Kirkland testified that the claimant did not return to work until January 5 because he had a doctor's note saying that he could not work. Mr. Kirkland testified that it was sometime after January 5 when the claimant was transferred to another store owned by the respondent.

The medical records set forth that the claimant was seen at the Washington Regional Medical Center on December 23, 2003, at which time he had an x-ray of his right hand. This x-ray identified a fracture of the claimant's mid shaft of the right

fifth metacarpal with mild displacement and moderate volar and lateral angulation. Dr. Rebecca Barrett saw the claimant at Washington Regional Medical Center on December 25, 2003, due to swelling and bruising of his fifth metacarpal. The claimant was placed in a splint and medications were prescribed as well as a referral to the Ozark Orthopedic Clinic. Dr. Patrick Coker, on December 31, 2003, released the claimant from work until January 5, 2004. On January 21, 2004, Dr. Coker writes that the claimant is about four weeks out from a Boxer's fracture and that he is doing well. Dr. Coker notes that they discussed dos and don't for the next month and the claimant was to return to see him unless he was 100 percent. Dr. Patrick Coker writes on July 28, 2004, that the claimant suffered a Boxer's fracture on December 22, 2003, while trying to open a box at work. Dr. Coker notes that he last saw the claimant on January 21, 2004, and at that time the claimant was approximately one month out from his fracture and it was healing well. Dr. Coker notes that he does not anticipate any further medical treatment nor any permanent impairment.

After a review of this record, I find that the claimant has proven by a preponderance of the evidence that he sustained a work related injury to his right hand on December 22, 2003. The claimant has testified and his manager has agreed that part of his job duties are breaking down boxes. The claimant testified to a specific incident happening on December 22, 2003, while breaking down boxes at around 10:00 in the morning. The x-rays of the claimant's right hand indicate that he was suffering from a Boxer's

fracture of the fifth metacarpal and a splint and medications were recommended as treatment. The respondents, therefore, should pay for the medical treatment for this claimant's right hand injury subsequent to December 26, 2003, which is the day he testified he first gave notice to the respondent of a work related injury.

#### FINDINGS & CONCLUSIONS

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

2. On December 23, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$152.00 for temporary total disability and permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a right hand fracture on December 22, 2003, while working for the respondent.

5. The claimant did not report a work related injury until December 26, 2003.

6. The respondents should pay for medical treatment for this claimant's right hand from December 26, 2003, through the treatment of Dr. Coker on January 21, 2004.

#### ORDER

The claimant has proven by a preponderance of the evidence that he sustained a right hand injury while working for the respondent on January 22, 2003. The claimant did not report his work related injury to the respondent until December 26, 2003,

therefore the respondents will only be responsible for the payment of medical treatment for this claimant's compensable injury from December 26, 2003, through January 21, 2004.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE