

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307189

RICHARD EARP	CLAIMANT
WORKSOURCE, INC.	RESPONDENT
WAUSAU UNDERWRITERS INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 1, 2004

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

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

Respondents represented by JAMES ARNOLD, II, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 9, 2003, 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 October 17, 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 June 27, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained an injury to his left upper extremity.

4. Medical expenses have been paid to July 7, 2003.

5. The claimant is entitled to a weekly compensation rate of \$225.00 for temporary total disability and \$168.00 for permanent partial disability.

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

1. Compensability of the claimant's left upper extremity problem.

2. Related medical.

3. Temporary total disability from June 28, 2003, through July 1, 2003.

4. Temporary total disability from July 8, 2003, through July 27, 2003.

5. Attorney's fees.

In regard to the foregoing issues the claimant contends that he sustained a compensable injury on June 27, 2003. The claimant's authorized treating physician ordered an EMG test on July 7, 2003, which was denied by the respondents. The claimant contends that the respondents have no good faith basis to deny medical treatment on a compensable injury on a test that would disclose whether there is objective evidence of injury or not. The claimant is entitled to a controverted attorney fee on all additional benefits found due.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury that arose out of and in the course of his employment with the respondent.

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 documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was twenty-seven years old and had a high school education as well as two years of vo-tech auto mechanics. The claimant testified that he began working for the respondent in April 2003 explaining that the respondent is a temporary work service. The claimant testified that while working at the Allen Canning Company for the respondent on June 27, 2003, he was shoveling green beans and in the process of shoveling he began to experience some muscle fatigue in both left and right arms. The claimant testified that he stopped for a moment to massage his muscles and the pain temporarily went away so he started working again. The claimant stated that after a short period of time he felt a pop in his left elbow and pain that was extreme. The claimant described his pain as being from his elbow up to the inner side of his forearm and into the palm of his hand with a slight tingling and numbness in the last three fingers. The claimant remembers that this was in the first few hours of his work shift and he did not finish his shift that day. The claimant testified that since his supervisor was on vacation, he reported his injury to the lab where first aid was given. The claimant

testified that after an ice pack was placed on his arm, the front office was contacted and the respondent was contacted.

The claimant testified that the respondent requested that he come to their office and then he was told to go to the ER at Siloam Memorial Hospital. The claimant testified that they x-rayed his arm to see if anything was broken and prescribed medications as well as put his arm in a splint. The claimant testified that this conservative treatment seemed to make his arm feel worse and he was also taken off work for a couple of days. The claimant testified that the respondents sent him to Dr. Rebecca Lewis on June 30, 2003. The claimant testified that Dr. Lewis took him out of his splint and put him in a sling as well as prescribed medications. The claimant testified that Dr. Lewis released him to return to light duty work to include one-armed duty only. The claimant testified that the respondent placed him at the Adult Development Center where he could perform light duty work. The claimant testified that the medications which he was prescribed were very strong and made it difficult for him to stay awake during his working day. The claimant testified that his symptoms remained the same.

The claimant testified he returned to see Dr. Lewis on July 7, 2003, for a recheck of his symptoms. At this time Dr. Lewis prescribed different medications but kept him in his sling as well as for him to continue on light duty. The claimant remembers that later that same day after seeing Dr. Lewis he was contacted by a claims adjuster at which time a recorded statement was made. The

claimant testified that he told the adjuster that he was seeking to get his medical bills paid and to get better so he could go back to work. The claimant testified that he was contacted that evening by the respondent and was told that his claim was being denied and no medical bills would be paid.

The claimant agreed that when he saw Dr. Lewis on July 7, 2003, she had scheduled an EMG test by Dr. Miles Johnson. The claimant testified that because the respondent refused to authorize this testing he was unable to have the test. The claimant testified that the respondent also told him that he was to no longer contact Dr. Lewis. The claimant testified that the respondent did not place him at another work position since his injury was considered not work related and no work would be provided for him until he had a release from a doctor.

The claimant testified that on his own, after his claim had been denied by the respondents, he went to see his family doctor, Dr. Tucker. The claimant testified that Dr. Tucker had him go through physical therapy. The claimant testified that the physical therapy did improve his condition and it is these medical bills which he wishes to be paid.

The claimant testified that on July 28 or near the end of July until the first of September he drew unemployment benefits. The claimant testified that from September 1 he obtained other employment and has continued to work. The claimant testified that before his injury on June 27, 2003, he had no problems or injuries to his left elbow, hand or arm.

On cross examination, the claimant agreed that his symptoms have improved and he is not seeking any additional medical evaluation or treatment. The claimant also agreed that at this time he did not feel it necessary to undergo the diagnostic testing that had been recommended by Dr. Lewis.

The medical records set forth that the claimant was seen at the Siloam Springs Memorial Hospital on June 27, 2003, for problems with his left forearm and elbow. These medical notes set forth that the claimant should be off work from June 28 and 29, 2003, and to follow up with a physician on June 30, 2003. The claimant was diagnosed with tendinitis of his left forearm and elbow and a velcro splint was applied to his left forearm and medications as well as off work were recommended for the claimant. The claimant was seen by Dr. Rebecca Lewis on June 30, 2003, for his complaints of left shoulder problems as a result of shoveling green beans at Allen Canning Company on June 27, 2003. Dr. Lewis writes that an examination of the claimant's left upper extremity reveals that he has tenderness with gentle pressure, his reflexes are normal and there is no redness or swelling of the joint, his grip is good and there is no thenar atrophy. Dr. Lewis diagnosed the claimant with having left elbow medial epicondylitis and mild left shoulder pain secondary to shoveling. Medications were prescribed, he should discontinue the use of his wrist splint and he was restricted to no left arm duty work at that time. Dr. Lewis writes again on July 7, 2003, that she has seen the claimant for follow up of his left upper extremity pain. Dr. Lewis notes that the claimant continues

to complain of worsening pain and he has complaints of some numbness and tingling down into the finger tips with some intensity of pain up into his shoulder. After examination, the claimant was diagnosed with having persistent upper left extremity pain and medications were recommended as well as he was scheduled for an EMG test by Dr. Miles Johnson. Dr. Lewis further recommended that he be placed in a left arm sling. The claimant was seen by Dr. David Tucker on July 17, 2003, where it is noted that the claimant sustained a work related injury while shoveling and was placed in a sling. Dr. Tucker notes that an EMG was recommended and currently the claimant is not experiencing any weakness but is having some pain as well as numbness and tingling at times in his arm. Dr. Tucker notes that there is marked tenderness of the lateral epicondyle and pain of the extender muscles down the forearm. Dr. Tucker diagnosed the claimant with having tendinitis of the elbow and forearm with possible muscle strain but that he doubts nerve injury. Dr. Tucker recommended medication as well as physical therapy.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 27, 2003. It has been stipulated that the claimant sustained an injury to his left upper extremity on June 27, 2003, but in order for a work related compensable injury to be found there must be objective medical findings to substantiate the injury. The claimant's x-rays were normal and there are no other objective

tests noted in this record to establish any type of compensable injury. The claimant's treating physicians have consistently reported tenderness or reports of pain but Arkansas law has clearly set forth that complaints of pain are not considered objective medical evidence on which to establish a compensable injury. The claimant has the burden of proving by a preponderance of the evidence that he sustained a compensable injury and I find that in this case the claimant has not met his burden of proof as required by Arkansas law.

FINDINGS & CONCLUSIONS

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

2. On June 27, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained an injury to his left upper extremity.

4. Medical expenses have been paid to July 7, 2003.

5. The claimant is entitled to a weekly compensation rate of \$225.00 for temporary total disability and \$168.00 for permanent partial disability.

6. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 27, 2003. There is no objective evidence in this record to establish a compensable injury as required by Arkansas law. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury as defined by Arkansas law while working for the respondent on June 27, 2003. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE