

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309231

JERRY GOINS, EMPLOYEE	CLAIMANT
ELECTROLUX HOME PRODUCTS, INC., EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 21, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Texarkana, Miller County, Arkansas.

The claimant was represented by GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by EDWARD McCORKLE, Attorney at Law, Arkadelphia, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on March 23, 2004. A prehearing conference was conducted on January 16, 2004, and a prehearing order was filed on January 29, 2004. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employer/employee/carrier relationship existed at all relevant times.
2. The claimant sustained compensable injuries to both hands and into his left ulnae nerve.
3. The parties stipulated to a TTD rate of \$187.00 and a a PPD rate

of 154.00 per week.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether claimant is entitled to additional temporary total disability compensation.
2. Whether the respondents are liable for treatment provided by Dr. David Allen, Dr. Karen Perry, and Dr. Thomas Timnesz.

From a review of the record as a whole, to include the testimony of the claimant, Jacqueline Polk, Ann Locker, Jean Matthews and Carol Kissman, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. The respondents are not liable for medical treatment provided by Dr. Allen, Dr. Perry, and Dr. Timnesz prior to August 20, 2003, when the claimant first gave notice of injury to the respondents.
4. Treatment provided by Dr. Allen, Dr. Perry, and Dr. Timnesz subsequent to August 20, 2003 was not authorized and not the liability of the respondents.
5. I find that the claimant failed to prove by a preponderance

of the evidence that he was incapacitated from earning wages.

6. I find that the claimant failed to prove by a preponderance of the evidence that he is entitled to temporary disability compensation
7. The respondents controverted the medical treatment provided by Dr. Allen, Dr. Perry, and Dr. Timnesz, and the respondents controverted the claimant's entitlement to temporary disability benefits.

DISCUSSION

The claimant began working for the respondent/employer in February of 1999 as a production line worker. In addition, he had previously worked for the respondent employer as a production line worker. At some point in time the claimant began to experience problems with both his right and left upper extremities. These problems included pain in both hands as well as numbness. The medical records indicate that he first sought medical treatment for these problems in September of 2001 from his personal physician, Dr. David Allen, a general practitioner. Dr. Allen's office note indicates that he suspected carpal tunnel syndrome at that time. The claimant saw Dr. Allen again on March 19, 2002 for complaints of pain in his right hand, arm, and shoulder. These complaints included swelling as well as pain. The claimant returned to Dr. Allen on March 28, 2002 with continued complaints involving pain and swelling in his right hand and arm, as well as numbness in

both hands. The claimant apparently experienced a worsening of these problems in June of 2003, and the medical records indicate that he returned to Dr. Allen on July 7, 2003 with complaints of numbness in both hands as well as swelling and pain in his right hand. Dr. Allen referred the claimant to Dr. Karen Perry for electrodiagnostic tests, which were performed on July 17, 2003. Dr. Perry opined that the results of these tests were highly abnormal and consistent with a moderately severe, and fairly chronic media nerve dysfunction with the site or entrapment located at the carpal canal. She also opined that there was evidence for a minimal left median nerve dysfunction at the carpal canal. Based on these findings Dr. Allen referred the claimant to Dr. Tom Timnesz. Dr. Timnesz first saw the claimant on August 19, 2003 and he determined at that time that additional electrodiagnostic should be performed. Consequently, he referred the claimant back to Dr. Perry who did perform additional tests on August 21, 2003. Dr. Timnesz had determined that these additional tests were necessary due to a worsening of the claimant's symptoms on the left. And Dr. Perry's findings were, in fact, consistent with "new and probably clinically significant left ulnar dysfunction with a site of entrapment across the elbow or cubital tunnel." Prior findings also revealed evidence for "some worsening of the median dysfunction on that left side as compared to the previous study in the sense that the patient now

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meets criteria for moderate degree of severity of his left carpal tunnel."

On August 20, 2003 the claimant filed notice with the respondent employer of a work related injury. Prior to that time the claimant had not informed his employer that he considered the claim to be related to his employment, although the respondent employer was aware that he was experiencing problems and that he had missed work as a result of those problems. After receiving notice that the claimant considered these problems to be related to his employment, the respondents authorized the claimant to receive treatment from Dr. Charles Hollingsworth, an orthopedic surgeon. In addition, the respondents accepted the compensability of the claimant's problems. The claimant first saw Dr. Hollingsworth on September 4, 2002, and Dr. Hollingsworth opined that the claimant's problems were related to left median and ulnar nerve compressions, as well as a right median nerve compression. Dr. Hollingsworth opined that surgical decompression of both ulnar and media nerves was indicated due to the severity of the pain described by the claimant. Surgery was scheduled for September 11, 2003; however, prior to the scheduled surgery claimant determined that he wished to be seen by a different physician. Consequently, on October 23, 2003 an order was filed by Pat Capps Hannah, Administrator of the Medical Cost Containment Department, authorizing a change of physician to Dr. Randy

Bindra at UAMS. Dr. Bindra saw the claimant on November 24, 2003 and after reviewing the claimant's medical records and examining the claimant, Dr. Bindra did determine that the claimant suffered from bilateral carpal tunnel syndrome. Dr. Bindra also concluded that the claimant's most significant problem involved a left ulnar nerve entrapment at the elbow. However, Dr. Bindra noted that the claimant demonstrated signs of functional overlay which he indicated could affect the results that the claimant would receive from surgery. Consequently, Dr. Bendra recommended conservative measures prior to consideration of surgery. These conservative measures were, in fact, implemented. However, the claimant continued to complain of significant problems and on January 29, 2004 Dr. Bendra performed surgery. Ark. Code Anno. §11-9-701 provides the following:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

In the present claim, as discussed above, the claimant did not report a work related injury until August 20, 2003. Although he was experiencing problems with both of his upper extremities prior to that date. The respondent/employer had no notice that he considered these problems to be related to his

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employment. Likewise, I find that the respondent/employer did not have sufficient grounds to believe that the claimant's condition arose out of or in the course of his employment prior to August 20, 2003. Consequently, I find that the respondent employer is not liable for any medical treatment provided to the claimant prior to August 20, 2003. Specifically, I find that the respondents are not liable for the treatment provided by Dr. Allen or Dr. Perry or Dr. Timnesz prior to August 20, 2003. Furthermore, I find that the respondents immediately took action to provide the claimant with appropriate medical treatment by Dr. Hollingsworth after receiving the claimant's notice of injury on August 20, 2003. Consequently, I find that the medical treatment provided by Dr. Allen, Dr. Baker, and Dr. Timnesz subsequent to August 20, 2003, was not authorized and not the liability of the respondents.

Since the claimant's injury occurred after July 1, 1993, the provisions of Act 796 of 1993 are applicable to this claim. However, Act 796 did not change the basic law regarding temporary total disability compensation. In this regard, temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. An injured employee is entitled to temporary total disability compensation during the period of time that he is within his healing period and totally incapacitated to earn wages.

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Ark. 244, 613 S.W.2d 392 (1981). An injured employee is entitled to temporary partial disability compensation during the period that he is within his healing period and suffers only a decrease in his capacity to earn the wages that he was receiving at the time of the injury. Id. The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(6) (Cumm. Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. When the underlying condition causing the disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation or temporary partial disability compensation, regardless of his physical capabilities.

In the present claim the respondents contend that the respondents unreasonably refused the surgery recommended by Dr. Hollingsworth. In this regard, Ark. Code Anno. §11-9-512 provides that the Commission may take into consideration a refusal to submit to an advised operation. However, this statute specifically provides that the claimant must "unreasonably refuse to submit to a surgical operation that has been advised by at least two qualified physicians...." In the present claim at the point the claimant declined surgery by Dr. Hollingsworth only Dr. Hollingsworth had recommended surgery.

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Moreover, when the claimant came under Dr. Bindra's care, Dr. Bindra initially recommended conservative treatment and, once Dr. Bindra determined that surgical intervention was, in fact, indicated, the claimant did submit to that surgery.

Nevertheless, I find that the claimant failed to prove by a preponderance of the evidence that he is entitled to temporary total disability compensation. Although Dr. Allen did indicate that the claimant should remain off work, Dr. Hollingsworth released the claimant to light duty work. Although the claimant indicated in his testimony presented at the hearing that the light duty work presented by the respondent/employer was not consistent with his physical limitations, the other testimony presented by representatives of the respondents indicate that they remained willing and able to provide the claimant with light duty work that was within the physical limitations established by the medical records and by his medical care providers. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence that he was incapacitated from earning wages. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence that he is entitled to temporary disability compensation.

ORDER

Accordingly, based on my review of the entire record and for the reasons

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discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

C. MICHAEL WHITE
Administrative Law Judge