

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207142

DAVID HAWTHORNE, EMPLOYEE	CLAIMANT
FIRESTONE BUILDING PRODUCTS LTD, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 11, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Hope Hempstead County, Arkansas.

The claimant was represented by STEVEN R. MCNEELEY, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by JOSEPH H. PURVIS, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on November 13, 2003. A prehearing conference was conducted on September 9, 2003, however, a prehearing order was not filed.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on May 7, 2002.
3. On May 7, 2002, the claimant was earning sufficient wages to

entitle him to a total disability rate of \$315.00, and to a partial disability compensation rate of \$236.00.

4. The respondents have controverted this claim in its entirety.
5. The claimant returned to work for the respondent-employer on or about December 4, 2002, and he has continued to work for them ever since. The claimant returned to work on December 4, 2002 at the same or greater pay than he was earning on May 7, 2002.

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

1. Whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Act.

From a review of the record as a whole, to include the testimony of the claimant, Ruth Hawthorne, Danny Glass, and Dwight Dixon, as well as the medical records and other documentary and physical 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 claimant has proven by a preponderance of the evidence elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.
4. The respondents controverted this claim in its entirety.

DISCUSSION

_____The claimant has worked for the respondent/employer for approximately thirty-two (32) years, and for approximately twenty (20) years he has worked as a "slitter" operator. Rows of relatively thin rubber that are approximately fifty (50) feet long are placed on the slitter and then the rubber is rolled off of the machine to a point at which the rubber is slit. The video tape presented at the hearing demonstrates that this is a mechanized process with blowers blowing air underneath the rubber which causes it to "shimmy" across the floor. Nevertheless, the claimant testified that occasionally the rubber did not spread across the floor evenly and that on those occasions he would have to go out onto the floor and pull the rubber manually with his hands to get it equal. According to his testimony, on May 7, 2002 there was a point when the rubber did not spread across the floor evenly the claimant testified that he attempted to utilize automated means to even the rubber, however, these automated means failed. Consequently, the claimant went to the floor to manually even the rubber. He testified that as he did he heard a pop in his finger and felt a pain and that he then couldn't feel his finger anymore. The claimant testified that he immediately reported this incident to Dwight Dixon,

the Cure Finishing Department manager, and he testified that Mr. Dixon advised the claimant to report the incident to Lester Bullock, who is the claimant's immediate supervisor. The claimant testified that Mr. Bullock advised him to soak the hand in Epson Salt that night and if it wasn't better the next day that he would be sent for medical treatment.

Claimant's hand was, in fact, hurting the following day and the claimant initially called his family physician for an appointment. However, when he advised them that the injury was work related he was advised that he would have to obtain treatment from the company's physician. He then talked to Dwight Dixon who directed the claimant to see Dr. Michael Young, the company physician. Dr. Young's report indicates that the claimant reported a history of injuring his hand at work, and this history is consistent with the history testified to by the claimant at the hearing conducted in this matter. Dr. Young referred the claimant to Dr. John Young, an orthopedic surgeon. Dr. Young saw the claimant on May 14, 2002, and Dr. Young opined that the claimant had "disrupted the FDP tendon to the small finger." At some point the claimant came under the care of Dr. G. Thomas Frazier, an orthopedic surgeon, and Dr. Frazier first saw the claimant on May 21, 2002. Again, Dr. Frazier's report indicates that the claimant reported a history of injuring his small finger at work. Dr. Frazier determined that the claimant sustained flexor

digitorum profundus avulsion or rupture near the insertion at the volar base of the distal phalanx of the right small finger, and Dr. Frazier surgically repaired this condition. Dr. Frazier has opined that the claimant sustained a five percent (5%) impairment to his right hand with regard to the injury to his small finger and Dr. Frazier has also opined that the claimant's condition is related to his employment.

_____ Danny Glass, Human Resource & Safety Manager for the respondent/employer, and Dwight Dixon also testified. Both Mr. Glass and Mr. Dixon opined that the claimant did not injure himself as he described and both based their opinion on the fact that the automated nature of the slitter machine eliminated the need for manual straightening of the rubber.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific

incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and

place of occurrence (see, Ark. Code Ann. § 11-9-102(4)(A)(i)
(Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

In the present claim I find that the claimant proved by a preponderance of the evidence the elements necessary to establish a compensable injury. In this regard, the respondents have contended that the claimant did not sustain an injury arising out of and in the course of his employment. However, I find that the greater weight of the evidence does, in fact, prove that the claimant did sustain an injury arising out of and in the course of his employment. In this regard, both Mr. Glass and Mr. Dixon testified that the automation of the slitter machine eliminated the need for any manual straightening of the rubber. However, neither Mr. Glass nor Mr. Dixon were responsible for working on this machinery on a daily basis. In addition the claimant testified that he attempted to utilize the automated means available to straighten the rubber and that these means failed. He also testified that these automated means occasionally failed and that on such occasions it was necessary for

him and other slitter operators to manually straighten the rubber. In considering the weight to be given to the claimant's testimony in this regards, as well as to his testimony regarding the occurrence of this event, I find the claimant to be a credible witness and a thirty-two (32) year employee of the respondent/employer who continues to work for the respondents.

Accordingly, I find that a preponderance of the evidence establishes that the claimant did sustain an injury arising out of and in the course of his employment and I find that the injury was caused by a specific incident that is identifiable by time and place of occurrence. Furthermore, the medical evidence establishes that the injury caused internal physical harm to the body which required medical services and resulted in disability and this medical is supported by objective findings. Consequently, I find that the claimant has proven by a preponderance of the evidence the elements necessary to establish a compensable injury.

ORDER

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant

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to Ark. Code Ann. § 11-9-809 (Cumm. Supp. 1997).

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
Administrative Law Judge