

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F404307

JAMES HEGNA, Employee	CLAIMANT
DANAHER TOOL GROUP, Employer	RESPONDENT
GAB ROBINS RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED NOVEMBER 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by MARK MCCARTY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 22, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 30, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant was earning an average weekly wage of \$473.01 which would entitle him to compensation at the weekly rates of \$315.00 for total disability benefits and \$236.00 for permanent partial disability benefits.

4. Respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to right eye on January 19, 2004.

2. Temporary total disability benefits.
3. Medical.
4. Attorney fee.

The claimant contends that he suffered a compensable injury to his right eye which resulted in the aggravation of a pre-existing mass in his sinus cavity. Claimant requests payment of medical benefits, temporary total disability benefits, and an attorney fee.

The respondents contend the claimant's alleged condition did not arise out of and in the course of his employment.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 30, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 54-year-old man who began working for the respondent in February of 1987. Claimant worked for the respondent as a stock controller and his job duties included the use of a "shot blaster". The shot blaster is a machine which uses small BB's or shot to knock the scale off wrenches after they come out of the furnace.

Claimant testified that on January 19, 2004, he was in the process of cleaning the

shot blaster area when dust or a piece of metal flew into his eye. Claimant testified that he washed his eye out and reported this incident to his supervisor and to the plant nurse the next day on January 20, 2004. Claimant testified that subsequent to this incident he began to have problems with headaches and double vision. As a result, he eventually sought treatment from Joan McDonald, a nurse practitioner, on February 6, 2004. After treatment from McDonald claimant was referred to Dr. Fincher who ordered a CT scan and an MRI. Based upon those test results Dr. Fincher referred claimant to Dr. Kelly Danks. Dr. Danks on April 5, 2004 performed a craniotomy to remove a mass in the claimant's right frontal sinus area. While this mass was pre-existing, it is claimant's contention that the dust or metal which flew into his eye on January 19, 2004 aggravated or caused the mass to become symptomatic which resulted in the surgery performed by Dr. Danks.

ADJUDICATION

Claimant contends that the dust or metal which flew into his eye on January 19, 2004 caused the pre-existing mass in his frontal sinus cavity to become symptomatic which eventually resulted in surgery to remove that mass. Claimant's claim for an injury is a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (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;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;

(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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

In support of his contention that dust or metal flew into his eye causing the pre-existing mass in his sinus cavity to become symptomatic, claimant relies primarily upon the opinion of Dr. Kelly Danks, the treating physician who performed surgery to remove that mass. Dr. Danks has opined that he believes the claimant had a pre-existing mass that was irritated by metal that hit claimant in the eye. Dr. Danks testified that this could cause a hemorrhage within the mass and claimant's resulting symptoms of double vision and headaches. Dr. Danks admitted that his opinion is based upon claimant's history that metal went into his eye and the resulting symptoms afterwards.

In order for Dr. Danks' medical opinion to support a finding of compensability, one must believe that metal or dust flew into the claimant's eye on or about January 19, 2004 and that it somehow struck this pre-existing mass in claimant's sinus cavity. After my review of the evidence, I find insufficient evidence supporting such a finding.

First, I note that there is some discrepancy in the claimant's testimony and documents completed by him regarding this incident. On direct examination claimant did testify that he was in the process of cleaning the shot blaster area when a piece of metal got into his eye. According to claimant's testimony he immediately went and washed out his eye. However, claimant admitted that he did not report this incident to his supervisor, Dave Salverio, until the next day when he was told to see the plant nurse, Tammy Pulliam. Based upon claimant's report Pulliam gave claimant an incident report to complete. That incident report which is in claimant's handwriting indicates that he did give a history of dust

getting into his eye on January 19, 2004 at approximately 2:30 p.m. However, the incident report also indicates that claimant did not notice the dust in his eye until approximately 8:00 p.m., some five and one-half hours later.

In addition, Pulliam testified that she examined the claimant when he reported the incident on January 20. Pulliam testified that she did not observe any redness or any signs of irritation in the claimant's eye. Although claimant reported the dust he stated that he was not having any problems. Pulliam testified that three or four days later the claimant reported numbness in his head when he combed the hair on one side of his head. As a result, Pulliam recommended that claimant seek medical treatment from his primary care physician. Also testifying at the hearing was Virginia Schulze. Schulze is the human resources technician for respondent and is responsible for the respondent's health insurance. Schulze is also a state certified EMT. Schulze testified that she was present at the time of the initial meeting between claimant and Pulliam. Schulze testified that she personally observed the claimant's eye during that meeting and it did not appear to be irritated.

Although Dr. Danks testified that he believed the claimant's pre-existing mass in his sinus cavity was irritated by metal which hit claimant in the eye, Dr. Danks admitted that he did not know whether the metal moved into the sinus cavity with the mass or not and that he did not know how it would have irritated the mass if it had not been in the sinus cavity.

Q. Would this piece of metal, would it have irritated his eye before moving into this - - or - - or did it move into the sinus cavity?

A. I don't - - I don't know whether it came in the sinus cavity or not.

Q. Okay. How would it have irritated the mass if it was not in that sinus cavity?

A. I don't know.

Thus, while Dr. Danks has opined that the metal aggravated the pre-existing mass, Dr. Danks also admitted that he does not know whether the metal ever moved into the sinus cavity or how it would have irritated the mass if it did not go into the sinus cavity.

In short, Dr. Danks' medical opinion is based upon the temporal relationship between the incident described to him by the claimant and the onset of his symptoms. However, as previously noted, Dr. Danks admittedly does not even know whether the metal or dust went into the claimant's sinus cavity and if it did not how it could have irritated the pre-existing mass.

Finally, I note that claimant's medical records were reviewed by Dr. Scott Schlesinger, neurosurgeon. In a letter dated September 7, 2004, Dr. Schlesinger stated that he could see no plausible explanation as to how dust in the eye could cause or precipitate symptoms of frontal sinus mucocele.

In summary, claimant has the burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Here, claimant alleges that dust or metal flew into his eye on January 19, 2004 and irritated a pre-existing mass in his sinus cavity. However, claimant did not report this incident to the respondent until the day after it occurred. When claimant completed an incident report the next day he indicated that he did not notice the dust in his eye until approximately 8:00 p.m., some five and a half hours after it had occurred. When claimant reported the incident on January 20 he was evaluated by Tammy Pulliam, an occupational health nurse, who testified that she examined the claimant's eye and did not observe any redness or any sign of irritation. Virginia Schulze, a state certified EMT, also present at the time of that meeting stated that she personally observed claimant's eye and did not notice any irritation. Finally, while Dr. Danks has opined that a causal relationship exists, his opinion is based upon claimant's history of the events and claimant's subsequent onset of symptoms. However, according to Dr. Danks' testimony, he does not know whether the

dust or metal entered claimant's sinus cavity and if it did not enter claimant's sinus cavity he does not know how it would have irritated the pre-existing mass. Finally, Dr. Schlesinger stated he knew of no plausible explanation as to how dust in the eye could cause or precipitate these symptoms. Given this evidence, I find that claimant has simply failed to meet his burden of proof by a preponderance of the evidence.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE