

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311737

KATHY SWANNER, EMPLOYEE	CLAIMANT
HAWORTH, INC, EMPLOYER	RESPONDENT
FEDERAL INSURANCE CO, CARRIER	RESPONDENT

OPINION FILED JULY 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 21, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Little Rock, Arkansas.

STATEMENT OF THE CASE

_____A hearing was conducted in the above-styled case to determined claimant's entitlement to workers' compensation benefits,

On March 23, 2004, a pre-hearing conference was conducted in this claim from which a Pre-hearing Order of the same date was filed . The Pre-hearing Order reflects stipulations entered by the parties, the issues to addressed during the course of hearings, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The parties stipulated that the claimant's average weekly wage was \$398.00. Further, respondents noted that claimant received unemployment benefits at the weekly rate of \$311.00, from January 29, 2004, to at least April 14, 2004, if not beyond. As of the date of the hearing in this claim, claimant was continuing to receive unemployment benefits. Additionally, respondents noted that the claimant received short term disability benefits at the weekly rate of

\$240.00 from October 29, 2003 through December 17, 2003. Finally, respondents asserts that claimant suffered an infection, and, as an alternative argument, assert that the prevision of Ark. Code Ann. §11-9-114 set forth the criteria which she must meet in order to establish compensability, to include an extraordinary unusual event.

The testimony of Kathy Swanner, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Kathy Swanner, the claimant, with a date of birth of June 18, 1950, is a high school graduate. Claimant commenced her employment with respondent on October 6, 2003, training to do panel fabric assembly. Claimant last performed employment duties for respondents on or about October 30, 2003.

The testimony of the claimant reflects that prior to her employment by respondent, she was employed by Dana, Incorporation for a period of four years eight months until it closed its Jonesboro operation and relocated the business to Mexico. Before her employment Dana Incorporation claimant had worked for a period of twenty-four years with Southwestern Bell. Claimant denies that she experience any complaints relative to her right hand prior to her employment with respondent.

The evidence in the record reflects that claimant underwent a two weeks of classroom training following her October 6, 2003, employment by respondent. At the conclusion of the afore, claimant began hands-on training on the floor of respondent working with trainers and assembling fabric panels. The testimony of the claimant reflects that it was during her third week of her employment with respondent that she suffered injuries which she attribute the present

claim for workers' compensation benefits.

Claimant's testimony reflects that the week prior to October 29, 2003, she cut her right index finger from its tip to the base of her palm with a heated knife while cleaning the instrument. The testimony in the record reflects that the heated knife is basically red hot and that once the cut was made it cauterized wound, sealing it without bleeding. Claimant testified:

It was - - it just laid wide open and then it closed up. No, there was no blood to wipe off. (T. 20)

Claimant did not seek treatment from the first aid station of respondent, nor did she report the cut to supervisory personnel. Claimant compared the cauterized cut to a paper cut which did not prevent her discharging her regular employment duties. In explaining when the incidents occurred claimant's testimony reflects that the same occurred during her third week of employment.

Claimant's testimony reflects that the following day she scraped her knuckles on her right hand on some metal while discharging her employment duties, that the same was minor enough that a band aid was sufficient to address it and that it subsequently healed. The third week of training on a Wednesday claimant sustained the cut and the knuckle scrape was on the Thursday. Claimant noted that at the time the injuries were not significant enough to be given any consideration.

The testimony in the record reflects that after completing a third week of work for respondent, over the course of the weekend claimant did cut some dead flowers from two rose bushes in her yard. Claimant testified that she wore gloves when working with rose bushes.

Claimant's testimony reflects that on the 29th of October, 2003, she experience symptoms

relative to her right hand which she later attributed to either the cut with the heated knife or scraping of her knuckles on the metal. Specifically, the testimony of the claimant reflects, with respect to October 29, 2003:

It was between lunch and before last break. I can't give you a specific time because it started very slowly, just touch something and it's sensitive and then, you know, it became worse. Between last break and quitting time it became so sensitive to touch that it didn't have the strength to do some of the things that you have to do your job. (T.11)

Claimant noted that one of the individuals that had been training her during her training period was a gentleman name Ray who she maintain explained to her what a cauterized cut was and why it felt like a paper cut.

Claimant reported for work the following day, October 30, 2003, at which time her hand was swollen and closed down. Claimant did not perform any work on October 30, 2003, but rather, reported to the nurses station to await the arrival of Mr. Charlie Clay. Claimant's testimony reflects that she was provided Ibuprofen while at the nurses station, and that upon Mr. Clay's arrival, arrangements were made for her to be seen at the office of Dr. Michael Lack, respondents' designated medical provider.

In addition to Dr. Lack, claimant was seen by three other physicians. Specifically, claimant's testimony reflects that she was referred by Dr. Lack to Dr. Spencer Guinn, who was responsible for admitting her to St. Bernard Hospital where she was treated with antibiotics. The testimony of the claimant reflects that Dr. Guinn referred her to Dr. Carl Abraham who then referred her to Dr. Tomasz Majewski.

The testimony of the claimant reflects that she was released from the care of Dr.

Majewski on March 31, 2004, at her request because the insurance was no longer paying any of her bills. Claimant's testimony reflects that to her knowledge the only bill paid by respondents was the initial visit to the Dr. Lack. Claimant's medical treatment relative to her injury was filed with her personal insurance and she was responsible the co-payments and deductibles.

Claimant did receive a period of short term disability benefits from October 29, 2003 through December 17, 2003. Claimant's testimony reflect that she is current receiving unemployment benefits at the weekly rate of \$311.00 and has been receiving same since January 29, 2004.

Residuals of her injury which claimant attributes to the injury in the employment of respondent include loss of strength in her right hand, inability to close the right hand fully, and swelling in the right hand. Further, claimant notes that she continues to experience a pin prick sensation in the right hand which she also attributes to the claimed injury in the employment of respondent.

Claimant acknowledged that neither of the physicians to treat her relative to her right hand has attributed her employment with respondent as the basis for the need for medical treatment. Claimant further testified:

In my heart and in my mind, and I have no medical proof whatsoever, because I have only been told from physicians, one after the other, they do not know what is wrong with it. I feel like when I cut it with the hot knife that something sealed up inside the hand in that finger that caused the infection. Because when I went to work at Haworth, there was nothing wrong with me, Those were the only injuries that I have received. The only thing difference in my life. And I didn't - - on the 29th and the 30th, I really didn't know. I hurt so bad and I

was scared. I didn't even think about the cuts until Dr. Abraham's nurse questioned be repeatedly about cuts burns - - (T. 16)

Charles Anthony Clay, safety health environmental coordinator for respondent, testified that he was familiar with the claimant's workers' compensation claim. Mr. Clay testified regarding when he first became aware that the claimant was having problems with her right hand:

The - - part of what I do is, I'm the primary first aid care giver at Haworth and people are brought to my attention of, if our folks on the floor think that they need first aid treatment or even possible medical treatment. I can't recall if it was a Tuesday or Wednesday but she came up to see me with some problems with her hand and she was reporting loss of sensation, pain and swelling in her right hand.

* * *

Well, we do an evaluation and if it's something we can take care of with first aid we will, if not, we will take them for medical treatment. Ms. Swanner and I discussed it. We really didn't know that the cause of it was because there was pain and swelling it was very possible that it could be a strain or sprain. We took her to see Dr. Lack over at occupational health. (T. 24-25)

Mr. Clay's testified that while Dr. Lack listed cause of claimant's injury as undetermined, he felt that it was infection based and not a strain or sprain. As a consequence of the afore, claimant was referred to Dr. Guinn by Dr. Lack.

Mr Clay's testimony reflects that he did attempt to conduct an investigation relative to the claimant's complaint to ascertain its organ:

Yes, we did. As I recall we did a First Report if Injury. She did mentioned the cut that she had. During the course of her seeing the doctors that day,

her skinned knuckle, her cut finger with the heat knife were discussed. Also, as I recall, Dr. Guinn asked her about some scratches on her hand and she said that she did have some work done in her rose bushes over the weekend but it was never determined from them what they thought the cause of her infection was. (T. 25-26)

Mr. Clay's testimony reflects that while the assembles in the PFA will every once in a while suffer a cut with the heat knife, it is not something that respondent deals with a lot. The testimony of Mr. Clay reflects that such occurrences do not result in further problems:

No, sir. As Ms. Swanner mentioned, most of them don't even require first aid treatment. The knife, when it's in use, it headed where it is glowing red. The cuts that are made are cauterized as they go. We've never had any kind of infection problem from them. (T.26)

The medical evidence in the record reflects that on October 21, 2003, claimant came under the care and treatment of Dr. W. Tomasz Majewski relative to her right hand complaint. In a December 19, 2003, report Dr. Majewski outlined the extent of his contact with the claimant:

This letter is regarding Ms. Kathy Swanner. I have been taking care of Ms. Swanner since 10/31/03 when I was asked to see her in consultation for her right hand problem. The patient was admitted to the St. Bernards Medical Center on 10/31/03 for rapidly progressing pain, swelling and erythema of the hand. At that point, the patient was unable to determine what caused the onset of the symptoms. The patient was placed on intravenous antibiotics that helped to partially resolve the erythema.

* * *

The patient was placed on a program of aggressive physical therapy and was followed closely in our office. The patient was seen in our office today on

12/19/03. Despite some improvement with the applied treatment, the patient's hand function is still not suitable for any kind of factory work. Although the infectious process seems to be resolved at this point, the patient continues to have prolonged edema, mild erythema and severely compromised range of motion.

The patient was previously issued an excuse from work allowing her to return to work on 01/05/04. After today's evaluation, I doubt that the patient will be able to return to work for at least another six weeks. We will reevaluate the patient several times during the next weeks and determine the progress and prognosis more precisely. (RX. 1, p4)

Claimant's employment with respondent ceased on January 4, 2004, once she was unable to return to work and to perform the functions of the job. Subsequent to the hearing claimant submitted a document authored by Dr. Mejewski of November 21, 2003. In order to complete the available medical in this record, the document is herein designated a part of the record as claimant supplemental exhibit.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, a review of the medical reports and application of the appropriate provision and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 29, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On October 29, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$265.00, for temporary total disability.

4. On or about October 29, 2003, the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

Claimant asserts that as a result of injuries in the employment of respondent she is entitled to the payment of temporary total disability benefits and medical benefits commencing October 29, 2003. Respondents deny the compensability of this claim in its entirety. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the above provision.

Claimant commenced her employment with respondent October 6, 2003, and last discharged employment duties on October 29, 2003. During the first two weeks of her employment with respondent claimant was undergoing training in a classroom setting. In the third week [October 20-24, 2003] of her employment with respondent claimant, while still undergoing training, claimant discharged employment duties out on the floor, with actual hands-on experience.

While performing the hands-on job duties claimant suffered a cauterized right index finger cut through the use of a heated knife on Wednesday, October 22, 2003. The injury did not require medical treatment nor did it prevent the claimant from continuing to discharge her employment duties. The following day, Thursday, October 23, 2003, claimant's testimony reflects that she suffered a skinned knuckle to her right hand while performing employment duties. The injury was addressed through the use of a band aid. Claimant continued to discharge her employment duties through out her third weeks of employment with respondent.(T. 16-17).

The evidence in the record reflects over the weekend claimant performed work on some rose bushes in her yard, which entailed cutting dead flowers from the bushes. There is credible evidence to reflect that claimant had scratches on her right hand, and that during the course of obtaining medical treatment for her claimed injury she disclosed to the doctor that the scratches were the product of working on the rose bushes. The weekend which concluded the claimant's third week of employment with respondent was Saturday October 25, and Sunday October 26, 2003.

The evidence reflects that on October 29, 2003, claimant experienced swelling and pain in her right hand which made the performance of her employment duties difficult. Nonetheless, claimant was able to conclude her employment shift on October 29, 2003. On October 30, 2003, claimant's symptoms relative to her right hand were such that she was unable to perform her job duties. The claimant's complaints were appropriately reported to proper personnel of respondent on October 30, 2003. Following an assessment of the claimant's complaint, respondent arranged for the claimant to be seen by Dr. Michael Lack. Claimant was subsequently referred by Dr. Lack to other medical providers for treatment of an infection process in the right hand.

In order to prove a compensable injury as a result of a specific incident which is identifiable time and place of occurrence, claimant must establish by a preponderance of the evidence:

- (1) An injury arising out of and in the course of employment;
- (2) That the injury caused internal or external harm to the body which required medical or resulted in disability or death;

- (3) Medical evidence supported by objective finding, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and
- (4) That the injury was caused by a specific incident and identifiable by time and place of its occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineering Specialty Plastic, 56 Ark. App. 126,938 S.W.2d 876 (1997).

In the instant claim, claimant has failed to sustained her burden of proof by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment with respondent which caused internal injury or external harm to the body and which required medical services or resulted in disability or death. While it is undisputed that the claimant suffered a skinned knuckle on her right hand while performing employment duties for respondent on one day and that on the preceding day a cut to her index finger which was cauterized by the heated knife, the evidence does not preponderates that the same was the basis for the infection in her right hand for which medical treatment was required on October 30, 2003, and which resulted in the claimant's disability.

Claimant candidly acknowledged that each of the physicians to provide medical treatment has indicated they are unable to related it to her employment with respondent. Further, the evidence discloses that at the time claimant sought medical treatment on October 30, 2003, scratches were still evident on her hand relative to the work she had performed on the rose bushes the preceding weekend.

Medical opinions addressing compensability must be stated within a reasonable degree of

medical certainty. Ark. Code Ann. § 11-9-102 (16)(B); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000). To be within a reasonable degree of medical certainty, a medical opinion must be more than speculation. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W. 3d 760 (2001).

It is therefore my opinion, after a thorough consideration of all of the evidence in this record, that the claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment with respondent on or about the third week of October 2003. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge