

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F102457**

**KEN WATERS, EMPLOYEE**

**CLAIMANT**

**CENTURY TUBE CORPORATION, EMPLOYER**

**RESPONDENT**

**CROCKETT ADJUSTMENT, CARRIER**

**RESPONDENT**

**OPINION FILED JULY 20, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on May 7, 2004, at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. HARPER, Attorney at Law, Monticello, Arkansas.

Respondents represented by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable neck injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on January 17, 2001 at which time the claimant sustained compensable scheduled injuries (bilateral carpal tunnel and cubital tunnel syndrome) at a compensation rate of \$410.00/\$308.00. Medical expenses, temporary

total disability benefits, and permanent partial disability benefits (19% to each upper extremity) have been paid. The Veteran's Administration has filed a lien in this case for \$2,271.40.

The claimant contends that he injured his neck on January 17, 2001 and seeks payment of medical expenses, temporary total disability benefits from May 24, 2003 to a date yet to be determined and attorney's fees. The claimant seeks continuing medical treatment with Dr. Verma.

The respondents contend all appropriate benefits have been paid. The claimant did not sustain a neck injury arising out of and in the course of his employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and safety manager, Reggie Smith.

The claimant, age 58 (D.O.B. August 7, 1945), has a work history as a mechanic and truck driver. He began work for the respondent-employer in 1998 driving an eighteen wheeler. His job duties required him to use a five ton crane to load steel on the truck, secure the load and transporting the load to another building. The claimant's health history includes diabetes and a 1993 neck injury.

On January 17, 2001, the claimant was trying to move a load of steel using a broken control box suspended from the ceiling. The process was slowed and out of frustration, the claimant pulled against the control box over his right shoulder. He worked with the broken controls for a couple of days before developing numbness in his hands. He reported the problems to his supervisors (Foote, Daniels) and came under the care of Dr. Anderson, Dr. Pollard Dr. Verma, Dr. Moore, and Dr. Rutherford..

Dr. Pollard performed surgery on his left hand on March 17, 2001. The claimant remained symptomatic. Dr. Moore operated on the claimant's left elbow on August 7, 2001 and right hand and elbow on November 1, 2001. The claimant was assessed a 19% rating to each arm. The claimant testified that his neck symptoms began after his surgeries.

The claimant returned to work and was assigned "62 acres of office" outside sweeping, weed eating and working on the line. The safety department had to take him off some of the jobs because they exceeded his work restrictions. The claimant was released for full duty on January 23, 2002. He last worked May 23, 2003, before drawing thirteen weeks of unemployment benefits (\$213.00 weekly). The claimant explained that he quit work because he was physically unable to perform the assigned job duties.

The claimant remained symptomatic and asked both his employer (Josie Kimberland) and the carrier (Linda New) to send him to another doctor but they refused.

At his own expense, the claimant returned to Dr. Verma and obtained an MRI at the Veteran's Hospital. The claimant was diagnosed with multilevel degenerative changes of the cervical spine.

Reggie Smith, the safety manager described light duty as working in the guard shack. Regular duty involved jobs on the line, as a janitor, and as a "gopher." Mr. Smith testified the claimant quit work without mentioning his neck.

### **MEDICAL EVIDENCE**

The claimant testified he suffered a neck injury in 1993 and a myelogram confirmed a disc protrusion at C6-7. The claimant declined Dr. P. B. Simpson's recommendation of surgery, opting

for conservative care. He was able to return to work at regular duty. The claimant testified he had no problems with his arms or hands until the incident in 2001.

\_\_\_\_\_The claimant's current neck problems are mentioned in only two reports – Dr. Verma's report of February 15, 2001 and the VA records of December 2003.

The claimant treated with orthopedic surgeon, Dr. Pollard on February 6, 2001, complaining of numbness and weakness in both hands worse on the left, his dominant hand. Dr. Pollard's report shows a six month history of symptoms which would pre-date the incident at work on January 17, 2001.

Neurologist, Dr. Verma, performed an EMG/NCV study on February 15, 2001. The claimant related a history of numbness, tingling and weakness in his hands for the last 6-8 months, with a recent worsening of symptoms. Dr. Verma also recorded a history of neck and shoulder pain.

History of mild neck pain at times shooting to both shoulders but no relation to numbness/tingling in his hands, diabetes mellitus and repetitive task on the job.

CLINICAL EXAM: Range of motion, cervical spine, associated with mild pain/discomfort but no radicular symptoms...

IMPRESSION: Clinical and electrodiagnostic evidence of carpal/cubital tunnel syndrome, both upper extremities.

Although Dr. Verma does not explain the basis of his opinion, it is the only one offered on the issue of causation. It is Dr. Verma's opinion that the claimant's neck pain is not work-related.

The claimant returned to Dr. Pollard on March 1, 2001. Despite the positive test results, Dr. Pollard commented that the claimant's symptoms were inconsistent with cubital tunnel syndrome. Dr. Pollard performed surgery (carpal tunnel release) on the left wrist on March 17, 2001. In follow-up reports, the claimant continued to complain of numbness in his fingers. Dr. Pollard recommended physical therapy for the left and right hands and monitoring of the cubital tunnel condition.

The claimant was seen by orthopedic surgeon, Dr. Michael Moore on June 13, 2001 for complaints of bilateral pain in his hands radiating to his elbows with numbness and stiffness in his fingers. Dr. Moore sent the claimant to Dr. Rutherford for repeat EMG/NCV studies. The test was positive for left cubital tunnel syndrome, right carpal tunnel syndrome, and right cubital tunnel syndrome. Dr. Moore recommended surgery – a left cubital tunnel release and intramuscular transposition of the ulnar nerve.

The claimant returned to Dr. Pollard in July 2001. He diagnosed left cubital tunnel and left elbow lateral epicondylitis and recommended injections for the epicondylitis and surgery for the left cubital tunnel syndrome.

The claimant returned to Dr. Moore in August and surgery was performed on August 7, 2001 for the left cubital tunnel syndrome. On August 20, 2001, the claimant was released for light duty with continued physical therapy. On November 1, 2001 Dr. Moore performed surgery on the claimant's right hand and arm – carpal tunnel release and cubital tunnel release with intramuscular transposition of the ulnar nerve.

In follow-up reports, the claimant continued to complain of numbness in his fingers. Dr. Moore recommended repeat EMG/NCV studies with Dr. Rutherford which confirmed some improvement with persistent abnormality of the median and ulnar nerve of both extremities. Dr. Rutherford did not feel the claimant's diabetes was a factor in his symptomology. In a report dated January 30, 2002, he rated the claimant at 19% for each upper extremity with lifting restrictions and prohibition of forceful gripping and repetitive use of the upper extremities. The claimant was released to return to work on February 11, 2002.

One year later in March, 2003, the claimant returned to Dr. Verma for repeat EMG/NCV studies for complaints of numbness and tingling of the left hand with pain in the left shoulder and neck. Dr. Verma diagnosed possible brachial plexopathy or cervical radiculopathy and recommended an MRI scan.

The December 9, 2003 MRI scan conducted at the Veterans Hospital was interpreted as showing multilevel degenerative changes of the cervical spine with osteophytes and facet hypertrophic disease causing canal stenosis. The claimant was advised to lose weight and released with no restrictions. He was also advised that his condition could not be improved with surgery.

#### **DOCUMENTARY EVIDENCE**

The claimant completed an AR-N, Employees Notice of Injury, on January 28, 2001. He listed injuries to both hands caused by repetitive use of an overhead crane. There is no mention of a neck injury.

The claimant completed an AR-C on August 12, 2003 with the assistance of counsel listing his injuries as bilateral carpal tunnel and cubital tunnel syndrome as a result of pulling on a pendant operator for an overhead crane. The date of injury is shown as January 17, 2001. There is no mention of a neck injury, either from a specific incident or as a result of a gradual injury.

#### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. Under the Act, the claimant has the burden of proving the following requirements by a preponderance of the evidence of record:

1. An injury arising out of and in the course of employment

2. An injury causing internal or external harm to the body, requiring medical services or resulting in disability or death
3. An injury established by objective medical findings
4. (a) An injury caused by a specific event identifiable by time and place of occurrence  
  
or
5. (b) A gradual injury, caused by rapid and repetitive motion, which is the major cause of the disability or need for medical treatment.

The evidence of record shows the claimant never reported a neck injury to his employer and did not file a claim for a neck injury until his attorney asked for a hearing and filed a prehearing questionnaire, about three years after the date of injury.

The claimant's neck condition was not diagnosed until December, 2003, almost three years after the date of injury. His condition, canal stenosis as a result of degenerative changes and spurring, is commonly associated with the aging process, not trauma from a specific incident. It is also unclear how pulling on the control box for two days could cause a gradual neck injury to the degree shown on the MRI scan. There is no evidence that the claimant's job duties were rapid and repetitive.

It is the claimant's burden to produce evidence connecting the objective findings to the work-related incident. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). The gap in time between the reported date of injury and the diagnosis raises questions about the causal connection. The only opinion regarding causation appears in Dr. Verma's report of February 15, 2001 and he opines the claimant's neck symptoms are not work-related.

The claimant has never received treatment for a neck injury nor been excused from work because of a neck injury. The Veterans Administration doctors who diagnosed his neck condition advised him only to lose weight. He was released with no restrictions and no recommendations for treatment.

After reviewing the lay testimony and expert medical evidence and considering the lack of reporting of a neck injury, the gap in time between the injury and diagnosis, the degenerative nature of the claimant's neck condition, the report of symptoms predating the date of injury and the lack of recommendations for medical treatment to the neck, I find the claimant has failed to meet his burden of proof.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on January 17, 2001 at which time the claimant sustained compensable scheduled injuries (bilateral carpal tunnel and cubital tunnel syndrome) at a compensation rate of \$410.00/\$308.00. Medical expenses, temporary total disability benefits and permanent partial disability benefits (19% to each upper extremity) have been paid.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable neck injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The Veterans Administration is not entitled to reimbursement as the claimant's neck condition is not work-related.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge