

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D405044

SAMUEL C. WILSON, EMPLOYEE CLAIMANT

INTERNATIONAL PAPER COMPANY,
SELF-INSURED EMPLOYER RESPONDENT

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., TPA RESPONDENT

OPINION FILED JULY 30, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in
El Dorado, Union County, Arkansas.

The claimant was represented by STEPHEN R. MCNEELY, Attorney at Law,
Little Rock, Arkansas.

The respondents were represented by MICHAEL J. DENNIS, Attorney at Law,
Pine Bluff, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on May 4, 2004. A prehearing
conference was conducted on March 17, 2004, and a prehearing order was
filed on March 25, 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 on April
24, 1984.
2. The claimant sustained a compensable injury on April 24, 1984.
3. The respondents have accepted this claim as a permanent and

total disability claim.

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 respondents are liable for home improvements to be made to the claimant's residence.
2. Whether the claimant is entitled to a vocational evaluation to determine the nature of modifications to the claimant's home for the accommodation of the claimant's injuries.

From a review of the record as a whole, to include the testimony of the claimant, Flora Idell Wilson and Gary Wilson, 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. I find that the claimant failed to prove by a preponderance of the evidence that the respondents are liable for modifications made to his home.
4. Respondents controverted liability for any modifications made to the claimant's home.

DISCUSSION

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The claimant lost his leg as a result of a compensable injury that occurred in 1984. The claimant returned to work for a period of time after the accident; however, he ultimately became unable to work due to the effects of the compensable injury. His claim was accepted as permanent and total disability. He was seventy-two (72) years old at the time of the hearing conducted in this matter.

The respondents provided the claimant with a prosthetic leg and for several years he was able to ambulate fairly well with the use of this prosthesis. However, in June of 2002 the claimant slipped and fell damaging his prosthetic leg and injuring his low back. Surgery was ultimately required to correct the claimant's low back injuries. The respondents provided the claimant with a new prosthetic leg; however, the claimant is unable to walk on it very well because of the design of the prosthetic device. In this regard he testified that the new prosthesis does not have anything to hold it up and that after he wears it for a while the leg "slips down and it bumps up and down, makes it too long. It makes me have to walk up on [his] heel." The respondents have agreed to provide the claimant with another prosthesis and that prosthesis was being made at the time of the hearing conducted in this matter.

The claimant has been required to use a wheelchair extensively since

the June of 2002 accident. He testified that he does not want to be in a wheelchair. He also testified that he could walk approximately 300 feet before his leg gave out on him. He also testified that he had to use a cane anytime he walked.

Because of the claimant's use of the wheelchair the claimant and his family decided that modifications needed to be made to their home to accommodate the wheelchair and the claimant's son performed these modifications. In this regard the claimant's son does remodeling work and he has applied for a license to perform such work on his own. With regard to the modifications made, a ramp was constructed to allow the claimant to use the wheelchair to get in and out of his house in the wheelchair. In addition, the door leading to the ramp was widened to accommodate the wheelchair; the claimant's bathroom was widened to allow him to get his wheelchair into the room, and a handicapped accessible bathtub was installed.

The claimant now contends that he is entitled to reimbursement for the cost of materials used to make these modifications and for his son's labor. Initially I note that the law to be applied to this claim is the law that existed in 1984 when the claimant sustained his injury, and I also note that under the law in existence at that time all benefits are to be resolved in favor of the claimant.

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Nevertheless, I find that the claimant failed to prove by a preponderance of the evidence that he is entitled to reimbursement for the cost of these modifications. In this regard I note that there is no indication that either of these modifications were recommended by a physician. Furthermore, there is no evidence indicating that the respondents were ever advised that the modifications were needed prior to the time that they were completed. Therefore, the respondents were deprived of the ability to find less expensive, but equally efficient alternatives. See Teague v. C. J. Chemical Company, Full Arkansas Workers' Compensation Commission, Opinion filed July 10, 1995 (Claim No. D507962). Moreover, I note that the claimant testified that he is able to walk approximately 300 feet with the prosthetic device that he currently has and the respondents are in the process of providing the claimant with a new prosthetic device which is expected to improve the claimant's ability to ambulate significantly.

In short, even under the law in existence in 1984 when the claimant sustained his injury, claimants were required to prove their entitlement to the benefits sought by the greater weight of the evidence presented. In the present claim, after carefully weighing the evidence presented at the hearing conducted in this matter, I find that the claimant has failed to meet his burden of proof.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
Administrative Law Judge