

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214350

TIM BATES	CLAIMANT
STAFFMARK LLC MIDWEST	RESPONDENT
ATLANTIC MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 3, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 5, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 20, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The prior Opinion of July 19, 2004, is the law of this case.

By agreement of the parties, the issues to be litigated are limited to the following:

1. Additional medical.

In regard to the foregoing issues the claimant contends that he was injured on December 10, 2002. His left foot and right wrist were injured when he fell from a dumpster head first. The claimant contends that he is entitled to additional medical treatment from February 24, 2004.

In regard to the foregoing issues the respondents contend that the opinion of July 19, 2004, is now final and that the opinion bars future medical treatment after September 16, 2003.

The documentary evidence in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. All of these exhibits were admitted without objection.

DISCUSSION

_____ In a previous Opinion dated July 19, 2004, it was found that the claimant had failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment subsequent to September 16, 2003, for his compensable injury. The parties had previously stipulated that the claimant was entitled to a 1% impairment rating for his compensable right wrist injury which the respondents accepted and paid.

The parties have stipulated and the claimant testified to a compensable injury on December 11, 2002, to his right wrist. The claimant testified that he was seen by Dr. Powell who put him in a cast and prescribed physical therapy. The claimant testified that once his cast came off he continued with his physical therapy in

order to hopefully regain his range of motion. The claimant testified that he was also seen by Dr. Tomlinson and that Dr. Tomlinson had him undergo an MRI. The claimant testified that his MRI was conducted after the hearing on February 24, 2004. The claimant testified that after his MRI Dr. Tomlinson sent him to Dr. Tang, a wrist specialist. The claimant testified that Dr. Tang recommended a cortisone shot to hopefully improve his range of motion and that as a last resort they would consider surgery.

The claimant testified that he is still having problems with his wrist in that he has a clicking in his wrist as well as limited range of motion and chronic pain. The claimant testified that he returned to work approximately one month prior to his hearing. The claimant testified that he has been worked for Deck Masters as a carpenter. The claimant explained that his job duties include cutting boards and carrying them as well as hammering. The claimant testified that he is right-hand dominant and occasionally does have problems doing his work. The claimant testified that his work history involves just about everything from moving furniture to being a machinist. The claimant testified that the reason he did not go to work from the date of his injury (2002) until approximately one month prior to this hearing was because of his medical restrictions.

On cross examination the claimant agreed that his medical history would indicate that he saw Dr. Tomlinson on March 12, 2003, and the next time he received any type of medical treatment for his wrist was March 5, 2004. The claimant also agreed that he

underwent his MRI on March 12, 2004, and it was not until June 23, 2004 that he saw Dr. Tang. The claimant again testified at length that the reason he has not worked up until a month prior to this hearing was because of his physical limitations and inability to drive a non-power steering automobile. The claimant testified that he looked for work but the employment office had indicated that there would not be work for him since he could only do one-handed or one-armed duty. The claimant agreed that his restrictions state that he could only use one arm.

The medical records set forth that the claimant was seen by Dr. Powell on April 15, 2003 for his right wrist and left foot fracture. At that time it was recommended that he return in two months and to be off work until further notice. Dr. Powell on May 2, 2003 placed restrictions on the claimant of no pulling or pushing more than 10 pounds and that he could return to work at limited duty. The claimant underwent a functional capacity evaluation on May 12, 2003 which discusses his ability to drive and that he should not push more than 25 pounds, pull 35 pounds, and lift with a maximum of 12 pounds and carry bilaterally no more than 20 pounds. On May 29, 2003 Dr. Powell assessed the claimant with a 1% upper extremity impairment for his right wrist distal radius and a 0% impairment rating for his foot problem. On September 12, 2003 Dr. Robert Tomlinson writes that the claimant was seen for his mild intermittent right wrist pain and numbness in his finger. After examination and review of the claimant's x-rays Dr. Tomlinson assessed the claimant with having right wrist pain status post

right distal radius fracture. The doctor notes that the claimant's care has been appropriate noting that it is not unusual that he is having some wrist weakness. Dr. Tomlinson recommended an MRI to evaluate intercarpal and a triangular fibral cartilage complex in the claimant's right wrist. Dr. Tomlinson writes on March 5, 2004 that the claimant was seen for his persistent pain, mainly along the ulnar aspect of his right wrist. After examination and review of the claimant's x-rays the doctor opines that the claimant's problems result from a rotation of his articular surface putting his ulnar tendons on stretch. Dr. Tomlinson notes that the claimant may require future medical care for this condition and prescribed an MRI. The claimant underwent an MRI of his right wrist on March 5, 2004 which revealed findings that are consistent with subacute, healing fractures of the distal radius and ulna. There is an approximately 5 mm. cortical defect noted along the medial articular surface of the distal radius and secondly it is noted that there is some mild marrow edema noted in the triquetrum which may also represent a subacute, healing fracture or reactive marrow edema related to a degenerative change or osseous contusion. The claimant's MRI also set forth that there are findings suspicious of tears of the triangle fibrocartilage and lunate or triquetral ligament. On April 29, 2005 Dr. Tomlinson writes that he has seen the claimant for his chronic wrist pain noting that he had undergone an MRI which showed a well healed radial styloid fracture with a defect in the lunate fossa. Dr. Tomlinson notes that the claimant reports that his wrist continues to bother him both on the

dorsal and the radial aspect and says it bothers him mostly in his radial ulnar deviation. After examination Dr. Tomlinson diagnosed the claimant with having post traumatic degenerative joint disease of the right wrist with dye punch fracture and recommended that the claimant be seen by a specialist. Dr. Peter Tang writes on June 23, 2005 that he has seen the claimant for his right wrist fracture. Dr. Tang sets out a history of the claimant's treatment of his right wrist and notes that the claimant complains of pain on the ulnar side of his wrist especially when he does things in the ulnar direction of the wrist and when the ulnar deviates and then supinates at the same time. The claimant also reported intermittent numbness in his ring and small fingers. After examination and review of his x-rays and MRI, Dr. Tang notes that the claimant has right distal radius intra-articular fracture, healed with ulnar positive variance and now with persistent ulnar sided wrist pain as well as intermittent ring and small finger tingling. Dr. Tang writes that the pain on the claimant's ulnar side may be consistent with a TFCC tear and the ulna being a little long consistent with ulna impaction syndrome. Dr. Tang notes that treatment for this would simply be splinting and anti-inflammatory medications to cortisone injections to arthroscopic or debridement of the TFCC to ulna shortening. Dr. Tang also writes that the claimant's numbness in his ring and small fingers could be consistent with compression of the ulnar nerve possibly at the wrist level of his injury. Dr. Tang notes he will want to hear from the claimant as to what treatment prodical he wishes to follow.

I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right wrist injury subsequent to February 24, 2004. The claimant has been assessed a permanent impairment rating which the respondents have accepted and his treating physicians have now recommended ongoing medical treatment for his continued problems with his right wrist. I find that these recommendations are reasonable and necessary for the treatment of the claimant's compensable injury therefore the respondents should be responsible for this ongoing medical. The respondents have contended that any future medical treatment for this claimant's compensable injury are barred subsequent to September 16, 2003 which was the finding in a previous opinion. This prior opinion was based on testimony and information taken at a hearing on February 24, 2004. It is my opinion that the July 19, 2004 opinion covers the claimant's entitlement to additional meds from September 16, 2003 through the date of the hearing on February 24, 2004. The office visit with Dr. Tomlinson in March of 2004 as well as the claimant's MRI were subsequent to this hearing and not available for consideration at the time of the February 24, 2004 hearing. The findings on this test as well as the doctor's recommended treatment were not available for consideration as to the claimant's need for additional medical treatment for his compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The prior Opinion of July 19, 2004, is the law of this case.

3. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment subsequent to February 24, 2004 for his right wrist compensable injury. See Discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right wrist injury subsequent to February 24, 2004. Therefore, the respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable right wrist injury subsequent to February 24, 2004.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE