

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209256

ALLIE CRELIA	CLAIMANT
RHEEM MANUFACTURING CO.	NO. 1 RESPONDENT
CRAWFORD & COMPANY INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 3 RESPONDENT

OPINION FILED AUGUST 9, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents No. 1 represented by JASON BROWNING, Attorney, Fort Smith, Arkansas.

Respondent No. 2 represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

Respondent NO. 3 represented by JUDY RUDD (not present at hearing), Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 12, 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 March 16, 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. On August 5, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her right hand on August 5, 2002.

4. Medical expenses have been paid.

5. Respondents No. 1 have accepted and are paying a 63 percent impairment to her right hand.

6. The claimant's healing period ended on September 11, 2003.

7. The claimant sustained a compensable injury to her left elbow and all benefits have been paid or are being paid for this injury by the respondents.

By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's entitlement to permanent and total disability or wage loss.

2. Second Injury Fund liability.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is totally permanently disabled, or alternatively is entitled to wage loss in excess of the 63 percent anatomical impairment rating to her right hand, including the liability of the Total Disability and Death Fund and Second Injury Fund. Further, the claimant is entitled to statutory attorney's fees.

In regard to the foregoing issues Respondents No. 1 contend that the claimant is not entitled to wage loss in excess of the 63 percent anatomical impairment rating to her right hand as such was

a scheduled injury. Further, PPD is being paid out at such rate. Moreover, the claimant is not permanently and totally disabled.

In regard to the foregoing issues Respondent No. 2, SIF, contends that the claimant is not entitled to wage loss nor is there any Second Injury Fund liability.

In regard to the foregoing issues Respondent No. 3 contends that pursuant to Ark. Code Ann. §11-9-525(b)(1), Second Injury Fund liability must be determined prior to consideration of the Death and Permanent Total Disability Trust Fund liability. If the Second Injury fund is found to not have liability and the claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with Ark. Code Ann. §11-9-502. Therefore, the Trust Fund has not controverted the claimant's entitlement to benefits. Respondents No. 1 must first pay permanent partial disability in the form of the anatomical ratings for the claimant's compensable injury before payment of permanent total disability benefits. Additionally, Respondents No. 1 are not entitled to credit against its \$75,000.00 maximum for payment of the claimant's permanent partial anatomical ratings for the compensable injury. The Death and Permanent Total Disability Trust Fund will state its contentions upon completion of discovery.

The documentary evidence submitted 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 these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was currently sixty-four but in a month or two would be sixty-five years of age. The claimant testified that she began working for the respondent in September 1975 and over the period of time she has worked for them has done a variety of things. The claimant testified and it has been stipulated that she sustained a compensable injury to her right hand on August 5, 2002. The claimant briefly testified that she was working on a press that morning and before she knew it she her right hand was caught in the press and she could not get out. The claimant agreed that she lost four of her fingers on her right hand but that she still has the function of her thumb. The claimant testified that she has been treated by several doctors for this compensable injury and that as a result of her injury she has experienced emotional problems coping with the loss of her right hand. The claimant testified that she tries to wear a prosthesis on her right hand but it rubs blisters and makes it uncomfortable for her to wear. The claimant also explained that this prosthesis is not functional and is just for cosmetic purposes.

The claimant testified that after her compensable injury the respondent discussed with her coming back to work doing sweeping and cleaning. The claimant testified that she did not return to work due to information she received from her psychologist. The claimant testified that she is right hand dominate and truly did not feel as though she would be able to do a sweeping or cleaning job for a full eight hours. The claimant testified that she does

very little sweeping at her home. The claimant testified that the things she does try to do with her right hand cause it to be sore.

The claimant testified that she primarily has done factory work all of her life and that this work requires the use of both hands, therefore, she does not feel like she could go back to any of the jobs she has done in the past. The claimant testified that besides problems with her right hand, she also had a pre-existing problem of having ulcerated ulcers on her feet. The claimant explained that if she stands on her feet or walks around a lot these ulcers break open and will not heal. The claimant testified that for her foot problems she has been treated by Dr. Zufari, Dr. Moore, Dr. Craft and Dr. Kelly. The claimant testified that currently she is not having problems with her feet because she does not have to stand on her feet as she once did. The claimant testified that she wears compression socks to help prevent these ulcers.

The claimant testified that she is living with her sister in Osage, Oklahoma. The claimant testified that she has finished high school and took a business course some years before she began working for the respondent. The claimant testified again that the majority of her working career has been manufacturing work.

On cross examination, the claimant testified that prior to beginning her manufacturing job work she did work for a CPA entering data as well as with an abstract company who at that time was doing microfilming. The claimant testified that although she has worked in an office environment the equipment is a lot

different in an office now. The claimant testified that Jim Fesperman encouraged her to come back to work stating that she could do anything. The claimant testified that she never discussed with Ashley Owens the possibility of returning to work for the respondent somewhere other than the plant or the press department. The claimant testified that since she left the employment of the respondent she has not looked for work nor has she filled out any applications or answered any want ads for employment. The claimant testified that she has no recollection of what she and the psychiatrist, Dr. Wilson, discussed concerning her offer of employment as a janitor. The claimant testified that her life is very boring, she does very little during the day and rarely goes anywhere. The claimant stated that the community where she lives is very small. The claimant testified that she did drive to the hearing today, explaining that she lives some forty-five miles west of Tulsa. The claimant testified that she does go grocery shopping with her sister but she normally does not push the cart but she does as much as she possible can. The claimant testified that she helps with some light house work and does keep her bedroom and bathroom clean. The claimant testified that she reads a lot and that she likes to fish but has not fished since March. The claimant testified that she does not take any medication except for Premarin and a vitamin each day.

On cross examination by Respondent No. 2, the claimant testified that she is drawing social security disability benefits and that she is entitled or vested in the retirement program with

the respondent. The claimant was asked that if there was a job at the respondent's business that she could do with her left hand and that she could work on her own pace could she enter the building in order to work. The claimant responded, "I don't---I don't know. I'm not a lazy person and I would try, but honestly, I don't know."

Ashley Owens was called to testify by Respondents No. 1. Ms. Owens testified that she works for the respondent as their safety director and that her job involves all the OSHA compliance, occupational safety and health regulations, she supervises the Occupational Medical Clinic and she oversees the workers' compensation claims. Ms. Owens testified that she is familiar with the claimant as well as her injury which occurred in August 2002. Ms. Owens testified that she contacted the claimant in September 2003 concerning a janitorial position that was open that fell within her restrictions. This witness testified that she contacted the claimant by telephone and set up an appointment to discuss the claimant bidding for this particular position. Ms. Owens testified that there was some question as to which shift this position would be in and once it was determined that it was in first shift the claimant then expressed concern about having to walk into the plant or by the press department and having flash backs of her accident. Ms. Owens testified that the claimant would have been assigned to clean the administrative offices not out in the plant. Ms. Owens testified that there were other accommodations which the respondent was willing to make for the claimant to keep her from having to go out into the plant. Ms. Owens testified that the claimant did not

bid on the job nor did she express any concerns about any physical limitations which would prevent her from doing the job.

On cross examination by the claimant's attorney, Ms. Owens testified that the janitorial position offered the claimant consisted of light janitorial work such as dusting and emptying waste baskets as well as sweeping with a light vacuum cleaner. Ms. Owens testified that the claimant would be allowed to sit down as needed because of her feet. Ms. Owens testified that this particular janitorial position remained open for a long period of time although she could not speak for certain that this position was open today. Ms. Owens testified that she was unaware that Dr. Walz, in January 2004, said that she was not releasing the claimant to return to work. Ms. Owens testified that it was her understanding from the functional capacity evaluation that this position fell within the claimant's restrictions but that she understood from the claimant that she just plain was not interested in doing a janitor's job for the respondent. Ms. Owens testified that in offering to place the claimant into a position that was within her restrictions, the report of Dr. Wilson concerning her psychological condition was considered.

On redirect examination, Ms. Owens testified that there were psychological issues aside from the claimant's physical injury that were being dealt with by Dr. Walz. Ms. Owens testified again that when she spoke to the claimant about returning to work in a janitorial position her concerns about which shift, where she would be working and where she would clock out were all addressed.

Dr. Gregory Lloyd testified that he was a medical doctor and employed by the respondent as their company physician. Dr. Lloyd testified that he has worked for the respondents since January 2002 and has his clinic there at the plant. Dr. Lloyd testified that the claimant underwent a functional capacity evaluation on February 16, 2004. Dr. Lloyd testified that the results of the test indicated that the claimant was capable of doing medium work. Dr. Lloyd testified that he was aware the claimant had developed a left elbow problem diagnosing it as epicondylitis and that this problem was also considered in the functional capacity evaluation. The doctor stated that after reviewing the test results as well as the requirements of the janitor's position being offered to the claimant, it was his opinion that the claimant would have been able to perform this job. Dr. Lloyd was referred back to an office note dated February 2003 when he had discussed the janitor's position with the claimant. Dr. Lloyd testified that his note indicated that the claimant felt that this position would be very demeaning.

On cross examination by the claimant's attorney, Dr. Lloyd testified that after the claimant's FCE he did not discuss with her treating physician, Dr. Walz, whether the claimant would be released to do this janitorial job. Dr. Lloyd testified that he tries to get his patients back to work as soon as he can but he does not return them to work if he feels it would aggravate an injury which they have sustained. Dr. Lloyd agreed that he formulated his opinion that the claimant was capable of returning to work at a medium grade level job without consulting her treating

physician. Dr. Lloyd explained that his opinion as to the claimant's ability to return to work was based primarily on her physical capabilities rather than the mental aspects of her case. The doctor testified that he was aware that Dr. Wilson was treating the claimant for her trauma related to her physical injury. Dr. Lloyd agreed that based on the evidence that he had just read, the claimant's treating psychologist had noted that from September 2003 through January 2004 she was not ready to go back to work. On cross examination by Respondent No. 2, Dr. Lloyd testified that he has seen cases where people may not be at MMI but are in fact able to perform some kind of job duties. Dr. Lloyd reflected back on his clinic at the respondent's plant and opined that the claimant would be able to do the light janitorial work required to clean his clinic, noting that it would need light mopping, light sweeping, emptying the trash cans and cleaning the restrooms.

On rebuttal the claimant testified that she does not remember any of the conversations testified to by Ashley Owens and does not think that they happened. The claimant was asked if based on the description she heard today of the job that was being offered to her did she think she could do the job. The claimant responded that she did not know, she did not know how her other arm would hold up or how her feet were going to act up so she was just really unsure. On cross examination by Respondent No. 1, the claimant testified that she was not inferring that Ashley Owens was a liar, just that she, the claimant, could not recall.

The medical records set forth that the claimant was receiving treatment for her foot problems as early as April 2002 and these notes indicate that her problems have been chronic for some time even undergoing plastic surgery for grafting due to the ulcers on her feet and ankles. Treatment for her foot and ankle problems due to ulcers developing continued throughout 2002. There is no dispute between the parties that the claimant had four of her fingers on her right hand partially amputated in a work related injury. The medical records set forth that Dr. Roger Bise did surgery on the claimant's right hand on August 5, 2002, and was followed up by Dr. Bise in order to monitor the claimant's healing and medical needs as a result of her injury. The claimant began rehabilitation of her right hand at the River Valley Rehabilitation on August 30, 2002. On September 12, 2002, Dr. Bise writes that the claimant is healing well but that one of the things of concern for the claimant is her need for psychological intervention to deal with her loss. An appointment was scheduled by Dr. Bise for the claimant to see a psychologist. The medical records set forth that the claimant continued to be followed by Dr. Bise as well as receive physical therapy up and through November 19, 2002.

Dr. Patricia Walz writes on November 20, 2002, that she has seen the claimant who is suffering from post traumatic stress syndrome, noting further that the claimant is having nightmares of the accident and flash backs. Dr. Walz notes that the claimant is clinically depressed with impairment in sleep and appetite as well as low energy and impaired concentration. The claimant continued

with treatment by Dr. Walz as well as going to physical therapy and on December 9, 2002, Dr. Walz writes that the claimant is continuing to work on issues of self esteem as well as acceptance of the changes in her appearance since her accident. Dr. Walz notes that the claimant talks of fear that she will be forced back to work before she is ready and that she dreads going back to her place of employment because of her fear of flash backs, noting that she reports having nightmares about being at work. Dr. Walz suggested that the claimant visit with her physician about possibly a return to work date. Dr. Bise writes on December 10 that he has seen the claimant and that she is doing better in looking at her hand. Dr. Bise notes that he thinks they should consider getting her back to work but thinks that would be pushing things a bit right now. Dr. Walz writes on December 30, 2002, that the claimant did return to see the company doctor at the plant and that she did fairly well. Dr. Walz notes that the claimant was frightened but she went on the floor and visited with some of her friends at the plant noting that she was too frightened to go where she used to work. Dr. Walz writes that the claimant was pleased that she was able to do this but still did not know if she would be able to return to her job. Dr. Bise writes on January 14 that the claimant is doing much better and that her mental state has improved as well as her range of motion. Dr. Bise notes that he talked with Dr. Lloyd about finding some type of job for the claimant, noting that she is probably a month or so away from being able to try something. On January 17 and January 31 Dr. Walz notes that she

has been talking with the claimant about visualizing herself getting ready to return to work. Dr. Lloyd writes on February 3, 2003, that the claimant is still experiencing phantom pain from her amputations. Dr. Lloyd further writes that Dr. Bise saw the claimant on January 14 and felt she could return to work to one handed duty but it is not available for her. Dr. Bise writes on February 13, 2003, that he and the claimant's case manager will attempt to find her a one handed job, noting that he had looked at a job description presented to him and felt it would be acceptable for her to try. Dr. Bise writes to Dr. Lloyd on February 18 that he thinks the claimant still has a ways to go but she could attempt a modified job at this time.

Dr. Patricia Walz writes on March 11, 2003, that Dr. Bise plans to release the claimant to return to work to a janitorial position. Dr. Walz notes that it is her opinion that the claimant is not ready to return to work as she suffers from post traumatic stress syndrome related to her job accident. Dr. Bise writes on April 22, 2003, that the claimant, in his opinion, has reached maximum medical improvement. The claimant underwent surgery on her right hand to address a neuroma as well as extension contractions on April 24, 2003, performed by Dr. David Rhodes. The claimant did follow up with Dr. Rhodes, continued being seen by Dr. Walz and began physical therapy again for her hand. The claimant underwent psychological testing by Dr. Winston Wilson on November 20, 2003, and at the conclusion of her numerous tests and evaluations, the doctor recommended that she be considered for less demanding work

than she had been doing but certainly more useful than sweeping and other janitorial efforts. Dr. Wilson notes that the claimant shows above average motivation to work and also agrees with Dr. Walz that she has a serious psychological illness. By January 26, 2004, the claimant began to experience and express problems with her left elbow for which her doctor gave her a tennis elbow support. Dr. Lloyd writes that on February 18, 2004, that the claimant has finished physical therapy last week and underwent an FCE on February 16, 2004, further noting that the claimant reports that her elbow is not doing any better. Dr. Lloyd referred the claimant back to Dr. Rhodes for evaluation of her elbow. Dr. Rhodes writes on February 23, 2004, that he has seen the claimant for her complaints of left elbow pain and after evaluation and examination, diagnosed her with left lateral epicondylitis and recommended steroid injections, medications, icing and stretching exercises as well as an elbow brace. Dr. John Moore writes on April 7, 2004, that he has treated the claimant for her foot problems for many years setting out a history of the claimant's treatment for her chronic venous insufficiency and ulcer on her left ankle. Dr. Moore concludes with a recommendation that the claimant limit the amount of time that she spends each day standing and that she continually wear compression stockings throughout the entire day. Dr. Moore notes that compression stockings can be difficult for some patients and requires considerable strength in a patients' hands for proper placement of the stockings. By August 16, 2004, Dr. Walz was discussing with the claimant the possibility of

discontinuing their therapy sessions. The doctor notes that the claimant is hesitant to completely terminate these appointments. Lastly, Dr. David Rhodes writes on September 27, 2004, that he has seen the claimant for her complaints of left elbow problems and administered a steroid injection, prescribed medications and recommended that she continue icing, stretching and bracing.

After a review of all the evidence presented in this matter, I find that the claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled. The facts revealed in this case indicate that the claimant, after taking a functional capacity examination, tested to be capable of doing medium level work and, in fact, employment has been offered to the claimant by the respondent which she, to date, has been hesitant or fearful attempt. There is also indication in the record that the claimant considers the work being offered to her as being demeaning and she, by her own testimony, has not bid for the positions open within her restrictions. The claimant certainly has experienced a very traumatic injury and has substantial permanent impairment due to the loss of the majority of the fingers on her right hand. The claimant, however, is intelligent and articulate and should be capable of some type of employment. I further find that the claimant has failed to prove by a preponderance of the evidence as well as in light of long standing Arkansas law that she is not entitled to wage loss over and above her permanent impairment for the loss of the use of part of her right hand. It has long been the law in Arkansas that when a claimant sustains a

scheduled injury, their benefits are limited to the schedule unless permanent and total disability can be shown. Therefore, there will be no Second Injury Fund liability in this matter.

FINDINGS & CONCLUSIONS

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

2. On August 5, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her right hand on August 5, 2002.

4. Medical expenses have been paid.

5. Respondents No. 1 have accepted and are paying a 63 percent impairment to her right hand.

6. The claimant's healing period ended on September 11, 2003.

7. The claimant sustained a compensable injury to her left elbow and all benefits have been paid or are being paid for this injury by the respondents.

8. The claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled. See discussion above.

9. The claimant has failed to prove her entitlement to wage loss disability over and above her permanent partial impairment rating of her right hand. See discussion above.

10. That there is no Second Injury Fund liability in this matter.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to permanent and total disability benefits or entitled to wage loss over and above her permanent partial impairment rating to her right hand.

There is no Second Injury Fund liability in this matter.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE