

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F411607

FRANK DEHNER, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
CROCKETT ADJUSTMENT, Carrier	RESPONDENT

OPINION FILED MARCH 31, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

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

STATEMENT OF THE CASE

On March 17, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 12, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$327.00 for total disability benefits and \$245.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

At the time of the hearing the claimant withdrew as an issue his entitlement to temporary total disability benefits.

The claimant's contentions as set forth in his pre-hearing questionnaire are as follows: "Claimant's injury date is August 6, 2004. Claimant has carpal tunnel and tendinitis in his right wrist and hand caused by continual repetitive motion of sanding for eight years and over one year of wheel cutting."

The respondents' contentions as set forth in their pre-hearing questionnaire are as follows: "The respondents contend the claimant did not sustain an injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act. Among other things, the respondents contend the claimant does not have measurable findings to support a compensable claim and that any physical ailment to the claimant's hands did not arise out of his employment at Superior Industries."

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 12, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of carpal tunnel syndrome while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 36-year-old man who has worked for the respondent almost ten years. Claimant began his employment with respondent as a polisher in its polishing department. In the polishing department claimant used a “facing” gun and grinder to get a layer of “orange peel” off wheels. Both of these tools are air hose operated and require the use of both hands. Claimant performed this job for approximately eight and one-half years. Claimant also testified that he worked in the copper buff department using an orbiting sander and lathe machine. Most recently, the claimant has worked in the respondent’s laboratory using a band saw to make multiple cuts in wheels in order to check adhesion for peeling. Claimant has also performed various other tests and job duties in the laboratory which required use of his hands.

Claimant testified that on Labor Day 2004 he woke up that morning with a twinge in his right wrist. Claimant testified that he believed he had slept on his wrist wrong the night before. Claimant testified that he went to work the next day and his condition worsened. Claimant requested medical treatment and was sent to Dr. Thorn, the company physician. Dr. Thorn ordered an NCV which was performed on September 27, 2004, and revealed moderate carpal tunnel syndrome on the claimant’s right wrist.

Claimant has filed this claim contending that he suffered a compensable injury in the form of carpal tunnel syndrome to his right wrist.

ADJUDICATION

Since the claimant’s claim is for carpal tunnel syndrome, he is not required to establish that his work duties involved rapid repetitive motion as an element of his claim. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, claimant does have the burden of proving by a preponderance of the evidence that his carpal tunnel syndrome arose out of and in the course of his employment with respondent;

that the work related injury is the major cause of his disability or need for medical treatment; and claimant must establish the compensable injury with objective medical findings. *Id.*

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that his carpal tunnel syndrome arose out of and in the course of his employment with the respondent.

While claimant's job duties with the respondent over his 10 years of employment have required the use of his hands, I find that claimant has failed to prove by a preponderance of the evidence that those job duties caused his carpal tunnel syndrome. By claimant's own admission, when he was working in the polishing department he made no complaint of any hand problems to his supervisor. Likewise, claimant admitted that he made no mention of any hand complaints to his supervisors in the laboratory until the Tuesday after Labor Day.

As previously noted, claimant woke up on Monday, Labor Day 2004, with a twinge in his right wrist. Claimant had not worked that day and had not worked the two days prior to Labor Day. Claimant testified that he last worked on Friday before Labor Day weekend and he had no problems with his hands while performing his job duties on that day. On Saturday of Labor Day weekend the claimant took a trip to Tulsa and testified that he had no problems with his hands. Claimant also testified that he had no problems with his hands on Sunday of Labor Day weekend. It was not until claimant awoke on Monday of Labor Day weekend that he had problems with his right hand.

In summary, while claimant's job duties did require the use of his hands, I find that claimant has failed to prove by a preponderance of the evidence that his carpal tunnel syndrome is causally related to his job with the respondent. Claimant did not report any problems with his hands to the respondent until after he awoke with problems on Labor

Day 2004. Prior to Labor Day the claimant had worked on Friday with no problems with his hands. Claimant was off work on Saturday and Sunday of Labor Day weekend and did not have any problems with his hands until he awoke on Labor Day. Given this evidence, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that his carpal tunnel syndrome arose out of and in the course of his employment with respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of carpal tunnel syndrome while employed by respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE