

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307538

GREGORY HAMILTON, EMPLOYEE	CLAIMANT
CONAGRA POULTRY COMPANY, SELF-INSURED EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENT

OPINION FILED AUGUST 5, 2005

Hearing held on May 10, 2005, at El Dorado, Union County, Arkansas, before the HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE NORWOOD PHILLIPS, Attorney at Law, El Dorado, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on May 10, 2005, to determine whether the claimant is entitled to a vocational rehabilitation evaluation.

A prehearing conference was conducted on February 9, 2005, and a Prehearing Order was filed on February 10, 2005. A copy of the February 10, 2005 prehearing order has been marked Commission Exhibit #1, and made a part of the record herein without objection.

At the hearing the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- 2) That the employee/employer/carrier relationship existed at all relevant times.

By agreement of the parties, the sole issue to be determined is whether the claimant is entitled to a vocational rehabilitation evaluation.

The claimant contended that he sustained an admitted compensable injury in the form of bilateral carpal tunnel syndrome for which he received a five percent (5%) impairment rating to his left upper extremity. Claimant further contended he has not been allowed to return to his prior employment with the respondent, and that as such, he is entitled to a vocational rehabilitation evaluation.

The respondents contended the claimant's impairment is only minimal, and that he is not entitled to a vocational rehabilitation evaluation.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance

Hamilton, Gregory/F307538

with A.C.A. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the credible evidence that he is entitled to a vocational rehabilitation evaluation.

DISCUSSION

A. HISTORY

The claimant, forty-three (43) years old, was born September 29, 1961, and the last grade he completed in school was the eleventh. The claimant credibly testified he sustained compensable carpal tunnel injuries which culminated while in the respondents' employ in July of 2002.

After consulting with Doctors Callaway and Massanelli, the claimant underwent carpal tunnel surgery on February 14, 2003. Soon after the surgery, the claimant testified he went back to work with some restrictions. The claimant credibly testified he worked for a short time on limited duty, but was fired because

Hamilton, Gregory/F307538

he couldn't do the heavy lifting he did before the surgery.

After the claimant was fired by the respondents, the claimant applied with the respondents again hoping to get a different light duty job. The claimant testified he was never contacted by the respondents about a job after he applied.

The claimant's past work experience, as well as his duties with the respondents, consisted primarily of heavy manual labor, and required intensive use of his hands. (T. pg. 12, lines 10-25) The claimant credibly testified he could not continue to work jobs that required intensive use of the hands after his compensable injury.

At the time of the hearing, the claimant was enrolled in GED classes.

B. ADJUDICATION

In the case at hand, the claimant has requested a vocational rehabilitation evaluation, rather than a specific vocational rehabilitation program. Under prior law there are a number of cases that address such evaluation requests. In the case of Coosenberry v. McCroskey Sheet Metal, 6 Ark. App. 177, 639 S.W. 2d 517 (1982), the court looked more at "candidate viability" rather than a strict 11-9-505 (b)(1) interpretation. However, in Harris v. Diamond International Trucks, 2002 AWCC

Hamilton, Gregory/F307538

174, Claim No. F007890, opinion filed August 29, 2002, the Commission drew no distinction between a request for evaluation verses a program. In Harris v. Diamond International Trucks, the claimant too was requesting an evaluation for vocational rehabilitation. This Administrative Law Judge relies on the standards set forth in Harris, but does find the claimant is entitled to a vocational rehabilitation evaluation under both standards. As mentioned earlier, the claimant's credible testimony about his education, prior work history, current conditions, pending GED courses and respondents' actions lead me to find he is a viable candidate for vocational rehabilitation, Further, the medical records indicate permanent impairment with limitations that the respondents would not work around.

Ark. Code Ann. §11-9-505(b)(1) states:

"In addition to benefits otherwise provided for by this chapter, an employee who is entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or reemployment assistance shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation if the commission finds that the program is reasonable in relation to the disability sustained by the employee."

The claimant received a five percent (5%) impairment rating to the upper left extremity following his surgery by Dr. Shailesh Vora (CX-1, pg. 55). The

Hamilton, Gregory/F307538

respondents argue that since Dr. Massanelli gave a zero percent rating following the claimant's surgery that any injury the claimant has is so minimal that vocational rehabilitation would be inappropriate. In this examiners view, when all the evidence is looked at together, a preponderance of the credible evidence shows the claimant is entitled to the evaluation and proves the claimant did sustain a permanent impairment.

The claimant credibly testified that when he went back to work following his surgery that he was not able to perform his previous job. The claimant testified that his employer allowed him to not do any of the heavy lifting associated with his job for awhile. However, the claimant testified credibly that his employer grew tired of his inabilities and fired him. Certainly, that would not satisfy the "opportunity to return to work" element in §11-9-505(b)(1). It would circumvent the law if an employer could rehire a claimant for a short period and then fire him to satisfy the "opportunity to return to work" element.

The facts in the case at hand are significantly different than those in Harris. In Harris, the employer allowed the claimant to return to work for \$12.00 per hour, rather than his previous \$14.00 per hour earnings. The claimant in Harris then

Hamilton, Gregory/F307538

remained working for nearly a year at \$12.00 per hour, and then voluntarily left. Here the claimant could not perform his old job because of his compensable injury and was fired. Then, when the claimant attempted to get rehired for a lighter duty job, he was never contacted. Once again, the claimant credibly testified to the circumstances of his being fired and subsequent attempts for light duty with the respondents; however, interestingly, the respondents didn't put on one witness or offer any evidence to contradict the claimant's account of anything he testified about at the full hearing. I find a vocational rehabilitation evaluation to be reasonable in relation to the disability sustained by the claimant.

ORDER

I find the claimant has satisfied all the requirements for his request under A.C.A. §11-9-505(b)(1), and order the respondents to arrange for a vocational rehabilitation evaluation of the claimant forthwith.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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