

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505208

CHRISTOPHER M. HATCH, Employee	CLAIMANT
KRAFT FOODS, INC., Employer	RESPONDENT
INDEMNITY INSURANCE CO. OF NORTH AMERICA, Carrier	RESPONDENT

OPINION FILED OCTOBER 10, 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 E. DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On September 21, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 20, 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 employee-employer-carrier relationship existed among the parties on March 18, 2005.
3. The claimant was earning an average weekly wage of \$622.87 which would entitle him to weekly compensation rates of \$415.00 for total disability benefits and \$311.00 for permanent partial disability benefits.
4. Respondents have paid for doctor's visits of March 21 and March 28, 2005.
5. Respondents have controverted this claim.

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

1. Compensability of injury to claimant's left wrist on March 18, 2005.
2. Temporary total disability benefits.
3. Related medical.
4. Attorney fee.

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

The claimant's contentions as set forth in his pre-hearing questionnaire are as follows: "Claimant was injured on March 18, 2005. Claimant's left wrist was injured while he was driving a forklift. He was turning in a clockwise motion when the pain in his wrist started. He was then unable to move his wrist for quote a while."

The respondents deny claimant sustained a compensable injury.

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 witness and to observe his 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 July 20, 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 to his left wrist while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 33-year-old man who began working for the respondent on or about February 5, 2003 as an "operator." According to claimant's testimony an operator

runs the respondent's cheese barreling line which produces cheese in 500-pound barrels. Claimant testified that when the barrels arrive the operator must first place a plastic bag in the barrel and lift the empty barrel which weighs approximately 25 pounds onto a line. The barrel is then filled with 500 pounds of cheese and the operator places a steel lid on top of the barrel which is held in place with a metal ring. The metal ring is secured to the lid with a number of bolts which are attached by using a drill. Once the filled barrel reaches the end of the conveyor line, the operator uses a forklift to take the barrel to a cooler.

Claimant testified that on Friday, March 18, 2005 the barreling line was running approximately 16 barrels an hour which he described as "very fast." Claimant testified that as he was in the process of using the forklift to take barrels back to the cooler he was turning the steering wheel on the forklift and his left wrist and hand went numb. Claimant testified that he continued to perform his work in pain because there was no one else available to perform his job. Claimant testified that he reported it to his supervisor the next Monday and was referred by the respondent to Dr. Berestnev who evaluated the claimant on March 21, 2005.

Dr. Berestnev diagnosed claimant's condition as a left wrist sprain and ordered an MRI scan. Before the scan could be performed claimant on his own sought medical treatment from Dr. Peter Heinzelmann, an orthopaedic surgeon. Dr. Heinzelmann diagnosed claimant's condition as a probable repetitive trauma injury and also ordered an MRI scan. Claimant did undergo the MRI scan on March 31, 2005, and he returned to Dr. Heinzelmann on two additional occasions.

Claimant has filed this claim contending that he suffered a compensable injury to his left wrist while employed by respondent on March 18, 2005. He seeks payment for medical treatment relating to that injury.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his left wrist while working for respondent on March 18, 2005 when he developed pain and numbness in his left wrist and hand while operating a forklift. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

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 he suffered a compensable injury. Specifically, I find that claimant has failed to offer objective findings establishing an injury.

As previously noted, claimant originally sought medical treatment from Dr. Berestnev on March 21, 2005. A review of Dr. Berestnev's medical report of that date reveals no objective findings establishing an injury. To the contrary, Dr. Berestnev noted that claimant had no objective findings with no evidence of swelling, bruising, or discoloration of the left wrist. Dr. Berestnev also noted that claimant's x-rays revealed no fractures or dislocations. Dr. Berestnev did note that there was some calcification in the ulnar aspect

of claimant's left wrist; however, according to the radiologist's report this was an old finding.

Claimant next sought medical treatment on March 24, 2005 when he went to Dr. Heinzelmann. Dr. Heinzelmann's medical report of that date indicates that x-rays revealed a normal bone and joint spaces. The x-rays also revealed the pre-existing calcification. Prior to the MRI scan which had been ordered by both Dr. Berestnev and Dr. Heinzelmann, claimant returned to Dr. Berestnev on March 28, 2005. Dr. Berestnev's report of that date indicates that there was still no evidence of bruising, swelling, discoloration, or any anatomical deformity.

Claimant underwent the MRI scan of his left wrist on March 31, 2005, and it was interpreted as negative. Following that scan the claimant returned to Dr. Heinzelmann on March 6, 2005, and in his report of that date Dr. Heinzelmann noted that the MRI scan revealed no abnormalities. Dr. Heinzelmann also noted that there was no obvious swelling or discoloration.

Claimant subsequently returned to Dr. Heinzelmann on June 2, 2005 complaining of continued pain and swelling in his left wrist. Dr. Heinzelmann's report indicates that his examination revealed no obvious swelling or abnormal discoloration. Dr. Heinzelmann noted that although the claimant complained of swelling, he measured the circumference of both wrists and they were equal.

Finally, I note that in addition to Dr. Berestnev and Dr. Heinzelmann, the claimant also sought medical treatment from the emergency room at Washington Regional Medical Center on May 26, 2005. The emergency room report from that date reveals no objective findings supporting claimant's complaints of swelling.

In summary, in order to prove a compensable injury claimant has the burden of offering objective findings establishing an injury. Here, both Drs. Berestnev and Heinzelmann made no objective findings in the form of swelling, bruising, or discoloration. Dr. Heinzelmann specifically measured the circumference of both of claimant's wrists

following complaints of swelling and determined that the wrists were equal in circumference with no swelling present. Furthermore, x-rays as well as an MRI scan of the claimant's left wrist revealed no objective findings of an injury. Absent objective findings establishing an injury, claimant has failed to meet his burden of proof.

Finally, to the extent that claimant's testimony seems to indicate that he is also contending that he suffered a gradual onset injury to his left wrist as a result of his job duties with the respondent, I note that gradual onset injuries also require objective evidence of injury. Therefore, even if this were a claim for a gradual onset injury, there are no objective findings which would establish a gradual onset injury.

ORDER

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

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE