

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406722

ARKAN KOBBA, EMPLOYEE	CLAIMANT
WINDSOR REPUBLIC, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 10, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on February 7, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 7, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on January 12, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including May 13, 2004; that the claimant earned sufficient wages to entitle him to compensation rates of \$375.00 per week for temporary total

disability and \$281.00 per week for permanent partial disability, in the event this claim was found compensable; and that the respondents have controverted the claim in its entirety.

By agreement of the parties, the primary issue to be presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable cervical injury as the result of a specific incident identifiable in time and place of occurrence on May 13, 2004; that respondents should be held responsible for all outstanding medical treatment, together with continued, reasonably necessary medical treatment while reserving future entitlements. It was pointed out that the claimant had not missed sufficient time from work, to date, to qualify for total disability benefits.

The respondents contended that the claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Laws while maintaining that the claimant's neck problems were the result of a pre-existing condition and not a work-related injury.

In addition to the claimant, Dale Jones and Ronnie Williams were called as corroborating witnesses. The record is composed solely of the transcript of the February 7, 2005, hearing containing numerous exhibits.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over 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 evidence, that he sustained an injury arising out of and during the course of his employment with Windsor Republic which caused physical harm to his neck, requiring medical services, and which is supported by objective medical findings and which was caused by a specific incident identifiable in time and place of occurrence on or about May 13, 2004.
4. Respondents are responsible for all hospital, medical, and related expenses beginning May 13, 2004, at which time the claimant promptly reported his injury, and respondents remain responsible for continued, reasonably necessary medical treatment.
5. All additional issues are specifically reserved.

DISCUSSION

The facts in this claim are basically undisputed. Respondents' primary

defense is that the claimant's cervical problems and need for medical treatment were the result of a pre-existing condition rather than a work-related injury. It is understandable that an insurance adjuster would take this position because, clearly, the medical evidence reflects that the claimant sought medical treatment and voiced complaints concerning problems with his upper extremities prior to May 13, 2004. In fact, the record reflects that the claimant had undergone prior diagnostic testing. Any confusion was compounded because a prior treating physician recommended and scheduled a MRI which was, in fact, conducted shortly after the within claim. Although it can be argued that the timing of the claim appeared suspicious, I am persuaded that a preponderance of the credible evidence reflects that a cervical injury occurred as the result of a specific incident identifiable in time and place of occurrence on May 13, 2004. The occurrence of the incident and its prompt reporting is undisputed. The claimant's credible testimony, together with the testimony of two corroborating witnesses, establishes the injury. Further, it is well established under our workers' compensation laws that an aggravation of a pre-existing condition is compensable.

The claimant, Arkan H. Koba, is forty-one (41) years old. He has an 11th grade education. The claimant has been employed by Windsor Republic, a/k/a Windsor Door, since November, 1989. The claimant is employed as a machine operator. The record reflects that the claimant has continued to work for the employer herein at all times and has not missed sufficient time from work to qualify

for temporary total disability benefits despite significant physical problems and the work restrictions imposed by treating physicians, including the company doctor. This reflects favorably on the claimant's work ethic and indicates that he is not motivated by any secondary gain in pursuing this claim, but, rather, has, at all times, simply requested reasonably necessary medical treatment for his injury.

The claimant's description of the injury is set out below:

Q Mr. Koba, what happened to you on May the 13th of 2004?

A Well, I bent down to pick up the rollers. The rollers was inside a basket, which they are not supposed to be. They are supposed to be hanging off of a rail where I can walk up to it and get it instead of bending all the way down to pick it up, because they weigh from 20 to 90 pounds.

Q Was that in part, by the way, a product of what Mr. Jones was talking about of a move to Maumelle –

A Yes, sir.

Q – and not having all the equipment in place?

A Yeah, and I told them, you know, "It can't be done. You know, somebody's going to get hurt," and, you know, we had a lot of injuries over there.

Q Go ahead and tell us what happened.

A Those coils, they actually are supposed to be a limit of 4,000 pounds. I think Mr. Jones said five but it's 4,000. But they had been coming in as a 4500 pound coil, which I'd been complaining for the last two months about them dropping it down because – and then like Mr. Jones said, you are supposed to have two people there and we're down to one. I've got to load that coil, I've got to run it through there and change the rollers, just set – just, you know, it's got a die that weighs probably five to a thousand pounds, I mean, just everything. I have to do it all by myself.

Q And did you experience pain?

A Yes, sir.

Q What happened?

A Well, I hurt something, and I just grabbed it, you know. About that time Dale Jones had come around there, because he's the one that told me I needed to change over, and I told him I said, "I can't change over because them rollers, I can't get to them." He said, "Well, you know, go ahead and try." So I went ahead and I did it, and I grabbed that last one there, the heaviest one of all, and it got me. And Mr. Jones come around to do his duty checking on the employees, and that's when I was just holding it with my opposite hand.

Q This is the circumstance that Mr. Jones was telling us about?

A Yes, sir.

Q Okay. And did you see Mr. Williams on that day as well?

A Mr. Williams checks with me every morning, and as a matter of fact, him and all the dock boys will check with me to see if their struts are ready to go, and when he came back over there, I couldn't, you know, I couldn't even talk to him.

Q According to the medical record provided by Dr. Ibsen, this was a problem with your neck and your left shoulder, is that correct?

A My left shoulder.

Q And you were a moment ago, while you were telling us about this, you were touching your right side, or excuse me, you are touching your left side – that's correct. I've got to get myself corrected. I have to get myself situated. So you are touching your right side, grabbing up here in your neck and shoulder area?

A Yes.

Q Okay. Now, Mr. Koba, before this happened – well, let me strike that. Let me back up here for just a second. Can you describe the pain that you were having?

A Before the accident happened?

Q No, at the time.

A Oh, at the time. It was just real bad pain.

Q Well, was it sharp, dull, aching? How would you describe it?

A Just sharp and aching, I mean, it hurt. (Tr.26-28)

Dale Jones was called as a corroborating witness by the claimant. Mr. Jones was employed at Windsor Door for more than seven (7) years until October, 2004. At the time of the within hearing, Mr. Jones worked at Maybelline. He stated that he was the group leader and the claimant's immediate supervisor on May 13, 2004. Mr. Jones confirmed that the claimant reported an injury to his neck on May 13, 2004. He further stated that the claimant had never previously made complaints of neck pain. Mr. Jones advised the claimant to report the injury to the plant manager. He further stated that the claimant continued to experience physical problems after May 13, 2004. Mr. Jones also confirmed the claimant's testimony that the employer basically ignored the work restrictions imposed upon the claimant by the company doctor and allowed the claimant to continue his regular job duties. This illuminating testimony is set out below:

Q Can you tell us what you know about Arkan possibly having been hurt on that day?

A He was changing the roll mill over, which is a machine that he operated, and basically that consists of changing rollers in small diameters of 20 pounds all the way up to 90 pounds being the biggest roll that he has to do. And, basically, only one person can do that because it's not big enough for two people to get in there, and the rollers were in the bottom of a basket, and he said that he bent over to pick up the roller out of the bottom of the basket and he felt something pop in this area here (demonstrating).

Q You are pointing up here?

A Around his neck and shoulder area.

Q Right here at the base of his neck where his shoulder comes in on the left side, am I correct?

A Yes.

Q Okay. Now, you made some observation about him that led you to believe that he was hurt?

A Yeah, he was going like this to his hand and stuff and saying – and grasping his neck and stuff, and said that he thought he had pulled or something had popped in there. I told him to report it to the manager, you know, that I wasn't a manager, I was just a group leader.

Q All right. Mr. Jones, just for the record, you were showing us that Mr. Koba was making a squeezing, gripping motion with his left hand, and that he was touching his neck, shoulder area with his right hand. Am I correct about that?

A Yes.

Q Okay. Had you ever seen him do anything like that before this particular day?

A No.

Q Ever known him to have a physical problem before this particular day?

A No, not as far as the neck or anything like that. He hadn't never said anything.

Q Ever, in fact, know him to make complaints with his neck before this date?

A No.

Q Did you see him after that time?

A Yeah, there was – I don't really recall what time of day it was, but, you know, later in the day he was still complaining that he was hurt, and then about three days later he had called in and informed us that he had no feeling in his arm at all.

Q Okay. Now, Mr. Jones, Mr. Koba we all know here has periodically had some time off, but for the most part he continued to work?

A Right.

Q So this incident having taken place in May and you worked up until – when was that now?

A October.

Q Okay. You worked up until October of 2004. During that course of time, did you have an opportunity to see him over that course of time?

A Yes, I worked with him every day.

Q Okay. Was he still having problems over that course of time?

A Yeah, he discussed with me after he – he took a little while off, you know, and he discussed with me that he was supposed to, in fact, come back and had doctor's orders to come back in a light duty capability, which he informed the company and the manager and they basically ignored it.

Q Put him back to work in the same kind of job he was in?

A Right, the same work.

Q Okay. Was he still complaining about problems with his neck and shoulder?

A Yes, every day. (Tr.10-12)

Ronnie Eugene Williams was also called as a corroborating witness by the claimant.

The claimant testified that he reported the injury to the manager, Mr. Tatum, who basically ignored his complaints. Mr. Jones also stated that he made Mr. Tatum aware of the injury. Respondents identified Alvin Tatum as a witness at the prehearing conference; however, he was never called.

The claimant's family physician is Dr. Brad Jenkins. The medical evidence reflects that the claimant first reported a two (2) to three (3) week history of numbness and tingling in his hands to Dr. Jenkins on April 26, 2004, which Dr.

Jenkins diagnosed as bilateral carpal tunnel syndrome, at which time Dr. Jenkins scheduled the claimant for nerve conduction studies. (Cl. Ex. A, pp.7-8)

On cross-examination, the claimant acknowledged that he suspected his symptoms were related to his employment. No claim had been made, to date, for the potential, gradual onset carpal tunnel claim. Dr. Jenkins referred the claimant to Dr. Julia McCoy, a neurologist, for the nerve conduction studies. Dr. McCoy also scheduled the claimant for MRI studies of the cervical spine on May 14, 2004, as well as scheduled the claimant for a follow-up visit on May 17, 2004, following the MRI which the claimant did not keep. However, as previously pointed out, prior to the scheduled appointment with Dr. McCoy, the claimant sustained a work-related injury as the result of a specific incident identifiable in time and place of occurrence on May 13, 2004, which was promptly reported to the employer. Unfortunately, because the claimant had never undergone a previous MRI, and, because the MRI study followed the work-related incident, this further compounds a determination on the immediate claim. Based upon the claimant's credible testimony, the corroborating evidence, both the lay testimony and the medical evidence, together with the claimant's course of conduct and work history, which will be discussed further below, I am persuaded that the claimant's cervical problems and need for medical treatment beginning May 13, 2004, are directly and causally related to the work-related incident and injury.

ADJUDICATION

The claimant must prove that her injury was “the result of an accidental injury that arose in the course of employment, and that it grew out of, or resulted from, the employment.” *Cook vs. Aluminum Co. of America*, 35 Ark. App. 16, 21, 811 S.W.2d 329, 332 (1991); *See also*, Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2002). Objective findings are those findings which cannot come under the voluntary control of the patient/claimant. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2002). Complaints of pain, *per se*, may not be considered by the physician, the administrative law judge, the Commission, or the Courts. Ark. Code Ann. §11-9-102(16)(A)(ii)(Repl. 2002).

Under our workers’ compensation law, an employer takes the employee as he finds her, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple vs. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. *Oliver vs. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. *Crudup vs. Regalware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). An aggravation, being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Ins. Co. vs. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996); *Ford vs. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Under our law, since an employer takes an employee as he finds them, a pre-existing disease or infirmity does not disqualify a claim if the employment circumstances aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *Jim Walter Homes vs. Beard*, 82 Ark. App. 607 120 S.W.3d 160 (2003). Furthermore, if the claimant can prove that an injury occurred, major cause is not necessary to establish compensability. *Williams vs. L & W Janitorial, Inc.*, 85 Ark. App. 1, ___ S.W.3d ___ (February 4, 2004).

Medical evidence is not ordinarily required to prove causation, *Wal-Mart vs. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); however, if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. *Crudup vs. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

I found the claimant to be an extremely credible witness. Although his recollection concerning the chronological order of his medical treatment was confusing, this can be explained, in whole or in part, by the fact that the claimant was experiencing symptoms consistent with bilateral carpal tunnel syndrome prior to the work-related incident and resulting injury. The fact that a work-related incident was timely reported cannot, in good faith, be disputed. The claimant has shown, by his course of conduct and strong work ethic, to be highly motivated. I feel compelled to point out that the claimant gave a history of his injury to the

company doctor which was consistent with his claim prior to the claim being denied by a claims representative of the insurance carrier, and prior to retaining the services of an attorney. I do not believe that the claimant would appreciate the difference between a gradual onset injury and a specific incident identifiable in time and place of occurrence. Rather, he related to the company doctor, a history previously provided to a group leader, as well as upper management and which is corroborated by the record as a whole.

The company doctor diagnosed the claimant as having sustained a cervical herniated disc which was, by history, related to a work-related injury. It must be further noted that despite the company doctor placing significant physical restrictions on the claimant's activities, he has continued working his regular job, indicating that the claimant is not motivated by secondary gain, but, rather, is merely attempting to obtain continued medical treatment which he has proven to be related to a work-related injury. I feel compelled to further point out that the respondents risk greater exposure and the claimant further injury by failing to provide suitable employment within the restrictions imposed upon the claimant by his treating physicians. (Cl. Ex. A, pp.14-15)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of

proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has satisfied each and every element necessary to establish compensability.

I am unclear as to why the evidentiary deposition of Dr. Butchaiah Garlapati was taken since, as previously pointed out, medical evidence is not required to prove causation. However, rather than conduct an exhaustive analysis of Dr. Garlapati's evidentiary deposition, which was introduced as "Claimant's Exhibit C," suffice it to say that I find, from a review of the deposition, that Dr. Garlapati was of the opinion that the May 13, 2004, incident aggravated the claimant's pre-existing cervical condition. Although Dr. Garlapati did not appear to appreciate the difference between "possible" and "probable," the deposition reflects that he felt the claimant's need for treatment was related to the May 13, 2004, incident rather than

the pre-existing condition. (Cl. Ex. C, pp.9, 20, 27-28)

Accordingly, I hereby make the following:

AWARD

Respondent, Zurich American Insurance Company, is hereby directed and ordered to pay and/or reimburse the appropriate medical providers for all hospital, medical, and related expenses as the result of the claimant's May 13, 2004, injury, and respondents remain responsible for continued, reasonably necessary medical treatment, including, but not limited to pain management and physical therapy recommended by Dr. Butchaiah Garlapati.

Since this Award is limited to medical benefits only, no attorney's fees are due and owing pursuant to A.C.A. §11-9-715. However, as reflected above, respondents have controverted this claim in its entirety.

All additional issues have been specifically reserved.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge