

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308493

KEITH MCFARLAND,
EMPLOYEE

CLAIMANT

EZ LOADER BOAT TRAILERS, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED OCTOBER 26, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on September 7, 2005 in Mountain Home, Arkansas. A prehearing order was entered in this case on February 23, 2005. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. The employer-employee relationship existed at all times pertinent to this claim.
2. The partially missing date on respondents' exhibit 1, #4, page 2 is May 18, 2000.

By agreement of the parties in the prehearing order, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. Average weekly wage.
3. TTD.
4. Unpaid medical bills and additional medical treatment.
5. Attorney's fees.
6. Constitutionality of the Arkansas Workers' Compensation Law.

The record consists of the three volume September 7, 2005 hearing transcript and the exhibits contained therein. In addition, I have "blue-backed" to designate as part of the record the respondents' post-hearing brief filed October 19, 2005 and a copy of the Full Commission's decision in Leslie E. Bland v. Baxter Regional Medical Center, Full Workers' Compensation Commission, Opinion filed August 16, 2005 (F204378).

DISCUSSION

To prove the occurrence of a compensable back injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury cause internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings as defined in Ark. Code Ann. § 11-9-102 (16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mickel v. Engineered Specialty Products, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A claimant seeking benefits for an allegedly work related carpal tunnel syndrome injury must prove by a preponderance of the evidence that (1) the carpal tunnel syndrome arose out of and in the course of employment; (2) that the injury caused internal or external physical harm to the body that required medical treatment or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. In addition, the compensable injury must be established by medical evidence

supported by objective findings. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

1. Compensability of alleged back injury from pulling a Larson 210 trailer in April or May of 2003

Mr. McFarland testified at the hearing held on September 7, 2005 that he injured his back in April or May of 2003 pulling a Larson 210 boat trailer at work. (T. 91). I do not find this testimony corroborated by the remainder of the evidence in the record, and I find that a preponderance of the evidence in the record fails to establish that Mr. McFarland sustained a work-related back injury during the time or in the manner that he asserts for the following reasons.

I see no reference to a Larson 210 boat trailer in Mr. McFarland's much more contemporaneous deposition testimony from November 12, 2003. There is also no mention of any boat trailer lifting incident in Dr. Newton's 2003 medical records. In fact, the only boat trailer lifting incident documented in the medical reports occurred in 2000, not in 2003.

In reaching my conclusions, I acknowledge that a history taking in Dr. Newton's office on April 30, 2003 indicates that Mr. McFarland presented that day with back

pain worse for two days. However, that note makes no reference to lifting a trailer at work, as the claimant now contends occurred. In addition, I note that a history taken in Dr. Newton's office just two weeks before, on April 16, 2003, indicated that Mr. McFarland had experienced chronic back pain for years at a severity of 10/10. Under these circumstances, the preponderance of the evidence fails to establish the occurrence of any new injury as a result of a boat trailer lifting incident in April or May of 2003.

2. Compensability of right wrist carpal tunnel syndrome allegedly sustained at work in late 2001 or early 2002

I also find that Mr. McFarland has failed to establish by a preponderance of the credible evidence that his right wrist carpal tunnel syndrome was caused by his work duties in late 2001 or early 2002 as he asserts.

In reaching this conclusion, I note that Dr. Newton, at one point in his deposition, agreed with Mr. Spencer that the activity of wiring trailers would cause inflammation in the wrist and ultimately cause carpal tunnel syndrome. (R. Ex. 3 p. 26). However, on this record, I am unable to conclude what percentage of the time, if any, that Mr. McFarland wired trailers as compared to performing numerous other tasks at work in 2001 or 2002. Notably, Mr. McFarland

testified that he recalled that dropping trailers (not wiring trailers) was the activity that he was performing when he first started having problems with his right hand, although he testified that he was actually not sure what he was doing. (T. 62).

Prior to Mr. Spencer's hypothetical questions about wiring trailers, Dr. Newton testified that he was not aware that Mr. McFarland had engaged in any type of activity at work that would cause carpal tunnel syndrome, and that he had never gotten the impression that Mr. McFarland's carpal tunnel syndrome was work related. (R. Ex 3 p.25).

In light of the lack of evidence establishing the percentage of time, if any, that Mr. McFarland wired trailers in late 2001 or early 2002, and in light of Dr. Newton's testimony that he was otherwise unaware of any activities that Mr. McFarland was performing that would cause carpal tunnel syndrome, I find that Mr. McFarland has failed to establish by a preponderance of the evidence that his right wrist carpal tunnel syndrome is causally related to his work in late 2001 or early 2002.

3. Constitutionality of the Arkansas Workers' Compensation Law

The Full Workers' Compensation Commission has recently addressed identical constitutional challenges raised by Mr. Spencer in Leslie E. Bland v. Baxter Regional Medical Center, Full Workers' Compensation Commission, Opinion filed August 16, 2005 (F204378). As indicated previously, I have "blue-backed" a copy of that opinion to designate it part of the record in the present case. Based on the legal conclusions of the Full Commission in that opinion, I find that the claimant's constitutional challenge is without merit.

4. Evidentiary Objections

On pages 76-77 of the hearing transcript, Mr. Spencer objected to the relevance of Mr. Murray's question asking Mr. McFarland what type of disability that Mrs. McFarland has applied for. I note that the evidence was proffered as to credibility and that Mrs. McFarland did in fact testify. Under these circumstances, the questions and answers on page 77 are accepted into evidence.

On page 115-116 and on page 140, Mr. Spencer objected to testimony regarding alleged statements against interest purportedly made by Mr. McFarland and not disclosed through discovery. Mr. Murray's discovery answers indicate that Ms. Harris' relevant testimony was properly disclosed, and I do

not detect what I consider to be a statement against interest attributable to Mr. McFarland in Mr. Potter's proffered testimony. Therefore, both objections are denied and the testimony is accepted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer-employee relationship existed at all times pertinent to this claim.
2. The partially missing date on respondents' exhibit 1, #4, page 2 is May 18, 2000.
3. The claimant has failed to establish that he sustained a compensable back injury from pulling a boat trailer in April or May of 2003 as he asserts.
4. The claimant has failed to establish by a preponderance of the evidence that he sustained right wrist carpal tunnel syndrome which was causally related to his work performed in late 2001 or early 2002 for the respondents.
5. The claimant's constitutional challenge to the Arkansas Workers' Compensation Law is without merit.
6. Because I find that the claimant has failed to establish that he sustained a compensable back

injury or a compensable wrist injury, I find that the remaining issues regarding his claim for benefits are moot.

ORDER

For the reasons discussed herein, I find that this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge