

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406462

STERLING S. RAY, EMPLOYEE	CLAIMANT
FRITO LAY, INC., EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 14, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 7, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Joe M. Rogers, Attorney-at-Law, West Memphis, Arkansas.

Respondents represented by Mr. Lee J. Muldrow, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 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 September 21, 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 subject to an additional stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the

parties at all relevant times, including May 24, 2004; that the claimant's average weekly wage was \$462.96 per week, entitling him to compensation rates of \$309.00 per week for temporary total disability and \$232.00 per week for permanent partial disability in the event the claim was found compensable; and that the respondents had controverted this claim in its entirety for purposes of attorney's fees.

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

Claimant contended, in summary, that he sustained an injury to his right wrist which arose out of and during the course of his employment on or about May 24, 2004; that the injury was caused either by a specific incident or a cumulative trauma injury caused by rapid repetitive motion, manifesting itself on said date; that the claimant was entitled to temporary total disability benefits beginning on or about June 1, 2004, and continuing for approximately eleven (11) weeks, together with payment of medical expenses; continued medical treatment; and a controverted attorney's fee on any benefits awarded.

The respondents contended that the claimant's condition did not arise out of and during the course of his employment; that the claimant could not satisfy the elements of compensability associated with a gradual onset injury; and that there was no objective medical evidence of a compensable injury. Alternatively, respondents pointed out that in the event claimant's injury was found compensable,

that the claimant was paid short-term disability benefits of \$221.00 per week for approximately eleven (11) weeks, together with payment of medical expenses under the employer's health insurance plan, and requested an offset pursuant to Ark. Code Ann. §11-9-411 in the event compensability was overcome.

The claimant testified in his own behalf. Fredna Nichols was called as a witness by the respondents. The record is composed solely of the transcript of the October 7, 2005, hearing containing thirty-two (32) pages of medical records introduced as "Claimant's Exhibit A."

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 reasonable and are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that he sustained a cumulative trauma injury caused by repetitive work activities which arose out of and during the course of his employment with Frito Lay,

Inc., specifically, an injury to his right wrist as reflected by medical evidence supported by objective findings, and, a preponderance of the evidence reflects that the injury was the major cause of the claimant's need for treatment and disability, entitling the claimant to appropriate workers' compensation benefits.

4. The claimant is entitled to temporary total disability at the rate of \$309.00 per week beginning in June, 2004, when he was required to cease work, and continuing for approximately eleven (11) weeks when he returned to work for the employer herein.
5. Respondents are responsible for all medical and related treatment as a result of claimant's compensable injury, and remain responsible for continued, reasonably related medical treatment.
6. Respondents are entitled to a credit or offset in an amount equal to, dollar-for-dollar, the amount of benefits the claimant previously received for medical services or group disability benefits pursuant to Ark. Code Ann. §11-9-411.
7. Issues not addressed herein are specifically reserved for future determination.

DISCUSSION

In the present claim, the claimant contends that his injury was caused by a specific incident on May 24, 2004, or, alternatively, as the result of cumulative work trauma which manifested itself on May 24, 2004. Apparently, the claimant

maintains a specific incident injury because of additional work activities on the date the injury manifested itself. First, I feel compelled to state that the claimant's job duties involved rapid repetitive motion both before, as well as on, May 24, 2004. As will be set out further below, the claimant did perform additional job functions on May 24, 2004. Although persuasive arguments can be made that the additional duties on the date the symptoms manifested themselves satisfy the specific incident requirement, I find that the claimant's increased work activities, together with the prior repetitive work activities supports an injury not caused by a specific incident. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (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 cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay vs.*

United Parcel Service, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

A review of the record reflects that the claimant has satisfied each and every requirement necessary to establish compensability of his injury which was diagnosed De Quervain's tenosynovitis of the right wrist. Despite respondents' assertion during the prehearing conference that there was no objective medical evidence of injury, the record reflects numerous references to swelling which is clearly objective findings. In fact, the record reflects that the employer accepted the claim as compensable and provided the claimant with prompt, reasonably necessary medical treatment, and that the respondent/insurance carrier subsequently controverted the claim, maintaining that the admitted injury did not arise out of and during the course of claimant's employment because the claimant could not satisfy the elements of compensability associated with gradual onset injury. After the carrier controverted the claim, the claimant's medical was paid under the employer's group health insurance. Further, it is undisputed that the claimant was paid short-term disability benefits, \$221.00 per week gross and \$176.00 net for an eleven (11) week period that the claimant was required to miss work. The claimant has since returned to work for the same employer herein. At the hearing, respondents acknowledged that the claimant's period of temporary total disability was not in dispute. Accordingly, the sole issue concerned compensability. Following the claimant's course of conservative treatment, including physical therapy, he has since returned to work for the employer having received a

promotion to a new job earning greater wages than those he earned at the time of his injury. (Tr.30, 35)

The claimant, Sterling S. Ray, is twenty-five (25) years old. He began working for the employer through a temporary service in September, 2003. The claimant was subsequently hired as a regular employee during March, 2004. At all times prior to the alleged injury, the claimant worked as a “packer.” His duties required him to stand at a conveyor belt to pack and box various products distributed by Frito Lay. The claimant would first create or build a box using both hands to fold and make the open box. The claimant would then manually place the product into the box that he built. Finally, the claimant would seal the box and then grab and pinch a label from a roller to be placed on the box. The claimant would repeat the process during an entire eight (8) hour shift. The claimant described the work activities as both rapid and repetitive. Although it was difficult to conceptualize the entire process, the claimant’s testimony that the job activity involved rapid repetitive motion is undisputed. I feel compelled to point out that Fredna Nichols, the employer’s nurse, as well as the safety manager, appeared as a witness for the respondents and did not dispute the claimant’s credible testimony. In fact, as previously pointed out, the employer accepted the claim as compensable and initiated medical treatment. Ms. Nichols confirmed that the insurance carrier and not the employer controverted the claim, apparently based upon a report from Dr. Lack indicating that tenosynovitis usually occurs with forced use of the thumb as in

a pinch. (Tr.44, 47)

The record reflects that on the date the claimant's symptoms first manifested themselves, in addition to his normal duties, claimant was required to perform additional activities which involved using his right hand to tape and smooth both sides of the boxes which caused pain in the right wrist which progressed during his shift. The claimant reported his physical problems the following day to several supervisors and was provided first-aid. The claimant was next seen by the company nurse and safety manager, Fredna Nichols, who referred the claimant to the company doctor, Dr. Michael D. Lack with Occupational Health Partners in Jonesboro, Arkansas. Dr. Lack diagnosed the claimant's injury as De Quervain's tenosynovitis. In some medical records, Dr. Lack opined that the injury was work-related, while in others, in response to the causal relationship, he stated that the cause was undetermined. (Cl. Ex. A, pp.7, 10, 13)

Again, Fredna Nichols did not dispute the cause of the claimant's injury. As previously pointed out, she stated that the carrier controverted the claim based upon a statement by Dr. Lack that normally packing boxes using a "C-grip" could not cause the injury, but, rather, it was normally caused using a "pinch grip". However, it is clear that Dr. Lack did not have a complete history of the claimant's job duties during his initial assessment because it is undisputed that the claimant's job duties included, but were not limited to using a pinch grip. (Tr.12, 46-47)(Cl. Ex. A, p.1)

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 his 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 his 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 shown, by a preponderance of the credible evidence, that he sustained a compensable injury arising out of and during the course of his employment. The claimant has satisfied each and every element necessary to establish compensability under the amended law. Accordingly, I hereby make the following:

AWARD

Respondent, St. Paul Travelers Insurance Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of

\$309.00 per week for the period of approximately eleven (11) weeks that the claimant was required to miss work as the result of his controverted claim.

Respondents are further directed and ordered to pay and/or reimburse the appropriate medical providers for all medical and related treatment as the result of claimant's compensable injury, and, respondents remain responsible for continued reasonably necessary medical treatment.

Respondents are entitled to a credit or offset of \$176.00 per week which is the amount of benefits the claimant has previously received pursuant to Ark. Code Ann. §11-9-411.

Additionally, claimant's attorney, Mr. Joe M. Rogers, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge