

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F408548

CHARLES SMITH, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
CROCKETT ADJUSTMENT, Carrier	RESPONDENT

OPINION FILED JUNE 22, 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 CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On June 1, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 6, 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 relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to his left wrist on July 22, 2003.
4. Respondent has not paid benefits after July 31, 2003.

At the time of the hearing the parties also agreed to stipulate that claimant earned an average weekly wage of \$460.00 which would entitle him to compensation at the rate of \$307.00 for temporary total disability benefits and \$230.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's right wrist.
2. Medical for right wrist and additional medical for left wrist.

At the time of the hearing the issues to be litigated were clarified. First, claimant is requesting additional medical treatment subsequent to July 31, 2003 for an injury to his left wrist which occurred on July 22, 2003. Also at issue is the compensability of bilateral carpal tunnel syndrome and related medical. Finally, claimant has requested payment of temporary total disability benefits and respondent has raised as a defense a lack of notice with respect to the bilateral carpal tunnel syndrome claim.

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 April 6, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$460.00 which would entitle him to compensation at the rates of \$307.00 for temporary total disability benefits and \$230.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his July 22, 2003 compensable injury. This includes surgery to repair a tear of the triangular fibrocartilage complex.

4. Claimant has met his burden of proving by a preponderance of the evidence that

he suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent.

5. Claimant's claim for compensation benefits is not barred for failure to provide notice of the bilateral carpal tunnel syndrome injuries.

6. As a result of his compensable injuries, claimant is entitled to temporary total disability benefits beginning September 23, 2003 and continuing through July 29, 2004. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for group disability benefits paid to the claimant. In addition, pursuant to A.C.A. §11-9-506(b) claimant is only entitled to the difference between his temporary total disability rate and the rate at which he received unemployment compensation benefits during this period of time.

7. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable bilateral carpal tunnel syndrome. Pursuant to A.C.A. §11-9-411 respondent is entitled to credit for any medical benefits which were paid for by group health insurance.

8. Respondent has controverted claimant's entitlement to all indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 49-year-old-man who has obtained a bachelor's degree in sociology and has also taken some master-level courses. Before working for the respondent the claimant had primarily been employed in human services. According to claimant's testimony he was "burnt out" and went to work for respondent approximately five years ago.

Claimant testified that he was originally hired by respondent to work in its machine shop as a leak tester. Claimant was responsible for determining whether there were leaks in aluminum wheels which weighed approximately 10 to 14 pounds. In order to perform this test it was necessary to pick a wheel off the line, put it in a machine to perform the leak

test, and then place the wheel back on the line. Claimant testified that he would perform this check approximately 120 times per hour and that he performed this job for approximately six to seven months. The claimant was next assigned to the respondent's casting department working "fetting" - putting the center hole in aluminum wheels. In order to perform this job claimant had to take freshly molded wheels off the line and put it in a machine for the center cut. According to claimant's testimony the wheels at that point of production weighed some 20 to 30 pounds and each wheel had to be picked up two times. Claimant performed this job for approximately one year.

Claimant's last job with the respondent involved working on the pack line. The pack line included several jobs which were rotated amongst several employees. These job duties included inspecting wheels, performing the leak test, dimensionals-measuring wheels, and packing. Claimant testified that all of these jobs on the pack line required the use of his hands to pick up wheels.

Claimant was working on the pack line on July 23, 2003 when he suffered an admittedly compensable injury to his left wrist. Claimant testified that he was taking a wheel off the line when the wheel "swooped down" and his left wrist popped. Claimant testified that he had a visible knot on his wrist and that he reported this incident to his supervisor and the respondent's safety person who sent claimant to the Arkansas Occupational Health Clinic in Lowell where he was evaluated by Max Beasley, a nurse practitioner.

Beasley requested an x-ray which showed no fracture or acute changes. Beasley diagnosed claimant's condition as a left wrist strain and provided claimant medications and a splint to wear at work. Beasley also indicated that claimant should not lift more than five pounds with his left hand and that he should return for a follow-up appointment in one week.

Claimant returned to Beasley for the follow-up appointment on July 31, 2003.

Beasley's notes indicate that claimant's condition had improved with claimant experiencing a full range of motion. Beasley's report indicates that claimant wants to return to his usual job without restrictions, but wants to continue wearing the splint. Beasley indicated that claimant could continue wearing the splint on an as-needed basis over the next one to two weeks and then discontinue its use. Beasley released the claimant to return to work without restriction, to return for treatment as needed, and with no permanent impairment.

Claimant testified that he did return to work for the respondent but he continued to have problems while performing his work. Claimant testified that on September 26, 2003 he was seeking medical treatment from his family physician, Dr. Byrum, for a non-work related condition when he mentioned to Dr. Byrum problems with numbness and tingling in his hand which according to claimant's testimony had begun in 2002. Claimant testified that he was unaware at this time that this condition might be related to his work with the respondent. Dr. Byrum in his report of September 26, 2003 diagnosed claimant as suffering from possible bilateral carpal tunnel syndrome. Dr. Byrum prescribed medication, provided claimant splints, and indicated that claimant should see Dr. Cooper for an evaluation of his carpal tunnel syndrome. Dr. Byrum also originally indicated that claimant could continue working from September 23, 2003 through October 10, 2003. However, in an addendum to his report, Dr. Byrum extended claimant's medical leave until October 17, 2003 when he could be seen by Dr. Cooper on October 13, 2003.

Claimant was evaluated by Dr. Cooper on October 13, 2003, and it was his impression that claimant suffered from bilateral carpal tunnel syndrome. Dr. Cooper ordered a nerve conduction velocity test and indicated that based on claimant's statements "it seems likely this is work related." Dr. Cooper completed a slip indicating that claimant should remain off work until his next appointment of October 29, 2003.

An EMG/NCV report from Dr. Johnson dated October 23, 2003 revealed bilateral carpal tunnel syndrome. Because of claimant's unique complaints involving his left wrist,

he was referred to Dr. Benafield. In a report dated November 3, 2003 Dr. Benafield diagnosed claimant's condition as bilateral carpal tunnel syndrome and also a probable triangular fibrocartilage complex tear. Dr. Benafield's medical report notes a one-year history of claimant's hands going to sleep at night and also notes an injury to the left wrist which popped while lifting a wheel at work. [It should be noted that Dr. Benafield's medical report incorrectly contains the date of September 18, 2003 as opposed to July 22, 2003.] Dr. Benafield ordered an MRI scan of the claimant's left wrist to confirm the triangular fibrocartilage complex tear. This test was performed on November 3, 2003 and confirmed Dr. Benafield's diagnosis.

On November 12, 2003, Dr. Benafield recommended that claimant undergo carpal tunnel releases and an arthroscopic procedure to repair the triangular fibrocartilage complex tear. Claimant underwent surgery on November 25, 2003 from Dr. Benafield to repair the fibrocartilage tear and release the left carpal tunnel. Subsequently, claimant underwent a right carpal tunnel release on January 16, 2004.

In a report dated April 8, 2004 Dr. Benafield indicated that claimant should remain off work until a re-check in one month. In a report dated May 11, 2004, Dr. Benafield indicated that claimant should still remain off work and that he would benefit from a functional capacities evaluation to determine his permanent restrictions. This functional capacities evaluation was performed on July 29, 2004 which indicated that claimant could perform medium work.

Claimant has filed this claim contending first that he is entitled to additional medical treatment for his July 22, 2003 compensable injury. Claimant also contends that he suffered compensable injuries in the form of bilateral carpal tunnel syndrome as a result of his job activities with the respondent. Claimant seeks payment of medical treatment for the bilateral carpal tunnel syndrome. Claimant also seeks payment of temporary total disability benefits and a controverted attorney fee. Finally, respondent has raised as an

issue claimant's failure to provide notice with respect to the bilateral carpal tunnel syndrome claims.

ADJUDICATION

The first issue for consideration involves claimant's request for additional medical treatment relating to his July 22, 2003 compensable left wrist injury.

Respondent is required to provide medical services that are reasonably necessary for treatment of a compensable injury. A.C.A. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Gallaway*, 74 Ark. App. 13, 45 S.W. 3rd 396 (2001). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury of July 22, 2003. This additional medical treatment includes the surgery to repair the tear of his triangular fibrocartilage complex.

As previously noted, following claimant's July 22, 2003 injury he was evaluated by Max Beasley, a nurse practitioner, at the Arkansas Occupational Health Clinic. X-rays were performed which were negative and claimant was eventually released to return to work by Beasley as of July 31, 2003. However, claimant testified that he continued to have complaints of pain with his left wrist following activity at work. Indeed, even when claimant was dismissed by Beasley on July 31, 2003 the claimant requested permission to continue wearing the splint which Beasley granted on an as-needed basis for the next one to two weeks.

When claimant sought medical treatment for a non-work related condition from his family physician, he mentioned continued problems with both his left and right wrist. Subsequent testing not only revealed bilateral carpal tunnel syndrome but also a tear of

the triangular fibrocartilage complex. This testing was an MRI scan which is a more definitive test than the x-rays which were initially performed. Furthermore, it was the opinion of Dr. Benafield, an orthopaedic surgeon, in his report of May 11, 2004 that the claimant's triangular fibrocartilage tear was related to his employment with the respondent. Dr. Benafield is a specialist while Beasley is a nurse practitioner.

I find that the opinion of Dr. Benafield is credible and entitled to great weight and based upon his opinion as well as the remaining evidence presented, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his left wrist injury of July 22, 2003. This includes surgery to repair the tear of the triangular fibrocartilage complex. While claimant was initially treated by Beasley and released, it was claimant's testimony that he continued to have problems and he was subsequently diagnosed with the tear by a specialist following more advanced testing. It is the opinion of that specialist that the tear is causally related to claimant's employment. Accordingly, I find that claimant has met his burden of proof with respect to this issue.

I also find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent. A.C.A. §11-9-102(4)(A) defines "compensable injury":

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or if it is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition [.]

A compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(D). Furthermore, the resultant condition is

compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii).

In this particular case, claimant's testimony indicates that throughout the five-year period of time he has worked for the respondent he has performed jobs which required the use of his hands to lift aluminum wheels. Claimant testified that he first noticed problems with his hands in 2002. When claimant sought medical treatment from his family physician, Dr. Byrum, claimant mentioned the numbness and tingling in his hands. As a result, Dr. Byrum assessed claimant as suffering from possible bilateral carpal tunnel syndrome and referred claimant to Dr. Cooper who in turn referred claimant to Dr. Benafield. Testing in the form of an EMG/NCV study confirmed the diagnosis of bilateral carpal tunnel syndrome and claimant underwent surgery for that condition in November 2003 and in January 2004. Dr. Benafield addressed causation in a report dated May 11, 2004.

I do think that his carpal tunnels and his triangular fibrocartilage tear were related to his work.

Subsequently, Dr. Benafield again addressed the issue of causation with respect to carpal tunnel in a letter to claimant's attorney dated May 16, 2005.

I do not think that Mr. Smith's carpal tunnel syndrome was related to any sort of heart condition or pulmonary condition that he had. With regard to the work relatedness, I think that is a more difficult question to answer. I think certainly, Mr. Smith's employment at Superior, where he was handling heavy wheels on a repetitive basis, did not do his hands any favor. I think it is more likely than not that given his employment there, that his carpal tunnel syndrome was caused, at least 51% , by his repetitive work and therefore, I do think that it was work related. (Emphasis Added.)

Accordingly, after consideration of the evidence presented including claimant's testimony, the medical evidence, and specifically, Dr. Benafield's opinion, I find that

claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome while working for the respondent.

The respondent has raised as a defense its lack of notice with respect to the claimant's bilateral carpal tunnel syndrome contending that it did not have notice of this alleged injury until the AR-C form was received by the Commission on August 6, 2004. Therefore, respondent contends that claimant is not entitled to any compensation benefits prior to that date for his bilateral carpal tunnel syndrome.

The law governing notice of injury is codified at A.C.A. §11-9-701. That statute states that employees, unless physically or mentally unable to do so, must report injuries immediately after they occur. Failure to do so will result in the employer not being responsible for disability benefits, medical benefits, or other benefits prior to receipt of the report of injury. That statute also states that failure to give notice shall not be a bar to a claim if the employee had no knowledge that the condition arose out of and in the course of his employment or if the Commission excuses the failure on the grounds that for some satisfactory reason notice could not be given. In this particular case, claimant testified that although he first noticed problems with his hands in 2002 he did not attribute those symptoms to his employment with respondent. It was not until claimant had already begun receiving medical treatment that he related his symptoms to his job activities with the respondent. Furthermore, it appears that when claimant did learn that this condition was attributable to his employment, he attempted to contact Fred Norwood, safety supervisor for the respondent. Claimant testified that he called Norwood in an attempt to find out what he needed to do as an employee who had been injured on the job. Claimant testified that he wanted to make sure he had not broken any rules by seeing Dr. Byrum before a company physician. However, according to claimant's testimony, Norwood "stonewalled" him and did not offer any help.

In summary, failure to provide notice of a work related injury can be excused if an employee was unaware that the injury was causally related to their employment. Here, claimant testified that he was not aware that his carpal tunnel syndrome symptoms were related to his employment with the respondent until after he had begun receiving medical treatment. Furthermore, when claimant did learn of a potential causal relationship, he attempted to contact Fred Norwood, a safety supervisor for the respondent, who did not offer any help to the claimant. Given this evidence, I find that claimant's claim for compensation benefits is not barred by the failure to provide notice.

As a result of claimant's compensable injury, I find that respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's bilateral carpal tunnel syndrome. This includes the surgical releases which were performed by Dr. Benafield in November of 2003 and January of 2004.

Finally, I find that as a result of claimant's compensable injuries he is entitled to temporary total disability benefits beginning September 23, 2003, and continuing through July 29, 2004. In order to be entitled to temporary total disability benefits claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2nd 392 (1981). In this particular case, claimant took FMLA leave because of his hand symptoms on September 23, 2003. Three days later claimant sought medical treatment from Dr. Byrum who referred claimant for additional medical treatment and indicated that claimant should remain off work until his appointment with Dr. Cooper. Dr. Cooper ordered additional testing and also indicated that claimant should remain off work. Following that testing which confirmed bilateral carpal tunnel syndrome, Dr. Cooper referred claimant to Dr. Benafield who also took claimant off work and eventually performed surgery. While claimant testified that he believes Dr. Benafield released him to return to work in March of

2004, Dr. Benafield's notes indicate that as of April 8, 2004, he was still of the opinion that claimant should remain off work. In a report dated May 11, 2004, Dr. Benafield indicated that claimant should continue off work but that he would benefit from a functional capacities evaluation to determine permanent restrictions. That functional capacities evaluation was eventually performed on July 29, 2004 and indicated that claimant could perform medium work. The functional capacities evaluation also indicates that claimant gave a consistent performance.

It should be noted that the documentary evidence contains an application for continuation of benefits to Southern Pioneer Life Insurance Company which was signed by a doctor whose name is illegible on August 12, 2004. That report indicates that claimant's total disability will continue until September 2, 2004. It is unclear whether this form was completed in reference to claimant's work-related injuries or for other conditions such as his heart for which claimant was also receiving medical treatment. Finally, I note that Dr. Byrum did complete a work slip dated October 14, 2004 indicating that claimant could return to medium work. However, it is unclear from a review of this slip whether Dr. Byrum had been of the opinion that claimant was to remain off work up until that date.

After consideration of all of the evidence presented, I find that claimant remained within his healing period and that he suffered a total incapacity to earn wages beginning September 23, 2003, the date he last worked for respondent, and continuing until July 29, 2004, the date the functional capacities evaluation was performed indicating that claimant could return to work at medium work. There is insufficient evidence that claimant was totally incapacitated from working subsequent to that date as a result of his compensable injury.

Claimant testified at the hearing that he received short-term disability benefits following his last day to work for the respondent. Pursuant to A.C.A. §11-9-411 respondent is entitled to a credit for any group disability benefits paid to claimant. In

addition, claimant also testified that he drew unemployment compensation benefits for 26 weeks. Pursuant to A.C.A. §11-9-506(b), claimant is only entitled to the difference between his temporary total disability benefit rate and the rate at which he received unemployment compensation benefits. Finally, I find that respondent has controverted claimant's entitlement to all indemnity benefits.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left wrist injury of July 22, 2003. This includes surgery to repair a tear of the claimant's triangular fibrocartilage complex. Claimant has also met his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome. Respondent is liable for payment of all reasonable and necessary medical benefits provided in connection with claimant's bilateral carpal tunnel syndrome. This includes the surgical releases which were performed by Dr. Benafield. Claimant is also entitled to temporary total disability benefits beginning September 23, 2003 and continuing through July 29, 2004. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for any group disability benefits paid and pursuant to A.C.A. §11-9-506(b) claimant is

entitled to only the difference between his temporary total disability benefit rate and the rate at which he received unemployment compensation benefits during this period of time. Finally, respondent has controverted claimant's entitlement to all indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE