

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407006

JOHN STOLLER, EMPLOYEE	CLAIMANT
MORGAN BUILDING & SPA, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 16, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on June 17, 2005, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted June 17, 2005, to determine whether the claimant is entitled to additional medical treatment at respondents' expense.

A prehearing conference was conducted in this claim on May 25, 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. In addition, the parties stipulated to the applicable compensation rates at the hearing. However, claimant's entitlement to indemnity benefits is not at issue. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1," without objection.

It was stipulated that the employment relationship existed between the parties at all relevant times, including March 26, 2004; that the claimant sustained

a compensable injury to his right hand on said date, specifically, a laceration to the hand for which the respondents paid various medical and related expenses; and that the respondents had controverted claimant's entitlement to all additional benefits. At the hearing, it was agreed that the claimant's compensation rates were \$160.00 per week for temporary total disability and \$154.00 per week for permanent partial disability.

The sole issue for determination concerned the claimant's entitlement to additional medical treatment, if any.

Claimant contended, in summary, that he continued to experience problems with his right hand, entitling him to further evaluations and treatment, maintaining that no further treatment was provided after June, 2004. Conversely, the respondents contended that further medical treatment is not reasonably necessary in this claim.

The claimant was the only witness to testify. The record is composed solely of the transcript of the June 17, 2005, hearing containing a final report from Dr. Charles Davidson which was introduced as "Joint Exhibit 1."

From a review of the record as a whole, to include the medical report, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his 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 credible evidence, that he is entitled to at least a follow-up examination and evaluation to determine the nature and extent of claimant's injury, as well as whether additional medical treatment is reasonably necessary.
4. Respondents have controverted all benefits beyond those previously paid.

### DISCUSSION

\_\_\_\_\_ In retrospect, it is apparent that this is a claim which should have been amicably resolved without requiring the litigation process. In fact, this examiner is partially responsible for not requiring the parties to attend a mandatory mediation conference pursuant to Commission Rule 26. However, this oversight was compounded by responses to preliminary inquiries, indicating that the dispute exceeded the amount necessary for mandatory mediation. It is apparent that the parties simply failed to communicate in an effort to amicably resolve their differences which is encouraged in all claims.

It is undisputed that the claimant sustained a compensable injury on March 26, 2004. On said date, he was placing a load of flat steel used for roofs and siding for metal buildings onto a rack which was to be moved by a forklift when a corner

of the metal lacerated his right hand. The claimant was immediately taken to the Lawrence County Family Clinic where he was treated by Dr. Charles Davidson, a general practitioner. The claimant stated that Dr. Davidson cleaned out the wound, sewed it up, and took x-rays to make sure no foreign object was left. The claimant was last evaluated by Dr. Davidson on April 19, 2004, at which time he was released from treatment with complaints of stiffness in the hand, but with full range of motion and neurologically intact. (Tr.8)(Jt. Ex. 1)

The record reflects that the claimant has continued working at all times since his release by Dr. Davidson. In fact, the claimant has since left the employment of Morgan Building & Spa and went to work for Pocahontas Aluminum in order to earn more money. The claimant maintained that he has continued to experience difficulties with his right hand at all times since the injury. He stated that, first, he just experienced stiffness in his fingers, specifically, around the incision. He explained that he thought the stiffness would go away after awhile, but that it never did. He testified that he subsequently began experiencing a burning sensation and pain which had been getting progressively worse. He stated that the symptoms seemed to increase over the last six (6) months. He related the increased symptoms to increased use of the hand. The claimant's only request was that he be allowed to return to Dr. Davidson for a current evaluation, as well as possible referral to a hand specialist or that he be allowed to see some other doctor. The claimant has not ever been seen by a doctor of his own choosing; however, the

claimant has never petitioned or requested a change in treating physicians. In fact, the claimant maintained that he had a good relationship with Dr. Davidson but simply had not returned because he thought his claim was over, and, in fact, respondents have resisted all follow-up care as not being reasonably necessary.

I feel compelled to point out that pursuant to the provisions of Act 796 of 1993, the claimant has an absolute, statutory right to a one-time change of physicians. See, Ark. Code Ann. §11-9-514(a)(3); *Collins vs. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W.3d 204 (2002). Further, treatment or services furnished or prescribed by any physician other than the one selected according to the provisions of Ark. Code Ann. §11-9-514(a)(3), except emergency treatment, shall be at the claimant's expense. See, Ark. Code Ann. §11-9-514(b). Again, a change of physicians has never been requested.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greetings Corp., vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000).

I found the claimant to be a most credible witness. The claimant has continued working at all times. His only request is that he be allowed to have his

hand evaluated further to determine whether additional treatment would improve the function and eliminate the stiffness, numbness, and tingling in his fingers. I find that said request is reasonably necessary. Accordingly, I hereby make the following:

AWARD

Respondent, Liberty Mutual Insurance Corporation, is hereby directed and ordered to pay for a follow-up examination and evaluation by Dr. Charles Davidson, an authorized treating physician, as well as for any valid referrals that Dr. Davidson may determine is reasonably necessary based upon his evaluation, together with consideration of the claimant's ongoing complaints.

All additional issues are, by necessity, specifically reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge