

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213311

BOB WEAVER

CLAIMANT

SUPERIOR INDUSTRIES

RESPONDENT

CROCKETT ADJUSTMENT
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 29, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON 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

A hearing was held on November 1, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on October 26, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 17, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his right wrist.

4. Temporary total disability has been paid from November 5, 2003, to date of last payment.

5. Medical expenses have been paid to date of last payment.

6. The claimant is entitled to a weekly compensation rate for temporary total disability in the amount of \$293.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to temporary total disability from March 1, 2005, to a date to be determined.

2. The claimant's entitlement to additional medical from May 12, 2005.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was recommended to undergo surgery in April of 2003 and the respondents wanted a second opinion. They got one from Dr. Moore who indicated in June that he agreed with Dr. Heinzelmann. The claimant now wants to have the Commission enter an order that he is entitled to receive this treatment and if the respondents have not and will not continue to pay temporary benefits from the time that he last worked, he wants that as well. Further, the claimant requests attorney's fees.

In regard to the foregoing issues the respondents contend that they paid temporary total disability through March 1, 2005. They further contend that medical was controverted after the May 12, 2005, examination by Dr. Benafield and that they further contend

that any benefits after May 12, 2005, do not arise out of the compensable injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records which are marked Claimant's Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The parties have stipulated and the claimant testified that on October 17, 2002, he was working for the respondent when he broke his wrist using a sledge hammer. The claimant testified that he received medical treatment for his injury and was in a cast for about three to four months. The claimant testified that Dr. Heinzelmann did surgery on his wrist to determine how much damage had been done so that they could do repairs at a later time. The claimant testified that he has never had any right wrist problems before his compensable injury.

The claimant testified that he has done construction throughout his life, driven a truck as well as having his own business for a short period of time. The claimant testified that he continued to treat with Dr. Heinzelmann until May 2005 when the respondents refused to authorize further treatment. The claimant testified that he has not worked since he left the respondent. The claimant testified that he has had an opportunity to start a landscaping business but due to his physical limitations he has not been able to go forward with this venture. The claimant testified

that he talked to Dr. Heinzelmann about going into the landscaping business and told him what the physical requirements he expected to be doing. The claimant testified that he did not tell Dr. Heinzelmann that he had been doing these physical activities. The claimant testified that he has not worked because the type labor he is used to requires the use of his right hand. The claimant testified that sometimes just getting out of a chair his right wrist will feel like a knife is stuck in it.

On cross examination, the claimant denied telling Dr. Heinzelmann that he had been performing fairly strenuous manual activities such as shoveling or lifting heavy rocks in his landscaping work. The claimant testified that Dr. Heinzelmann got this mixed up because that is what he had told the doctor he would be doing if he went into the landscaping business. The claimant testified that Dr. Heinzelmann's note dated March 29, 2005, which sets forth that he, the claimant, has not returned to his regular work as a stone and brick mason is also not correct. The claimant agreed that he began working for the respondent through the Arkansas Department of Corrections on a work release program. The claimant testified that he was convicted in 1997 of distribution of methamphetamine and was sentenced to twenty-years. The claimant testified that he served five years lacking one month of this sentence. The claimant testified that he had a possession charge in March 2004 for which he was incarcerated for six months. The claimant agreed that during this six months that he spent at the Department of Corrections he drew temporary total disability

benefits. The claimant testified that currently he had a charge of possession of paraphernalia out of Fulton County which is set for hearing on December 12, 2005. The claimant testified that he has gone fishing approximately twice a month during the spring through fall in 2004 and 2005.

The medical records set forth that the claimant was seen by Dr. Brian Abernathy on October 18, 2002, where it is noted that he had his right wrist casted. It is further noted that the claimant can return to work that day with limited use of his right hand. Dr. Abernathy, on December 10, 2002, referred the claimant to Dr. Heinzelmann and restricted his work with no lifting more than ten pounds with right hand until seen by Dr. Heinzelmann. Dr. Peter Heinzelmann writes on January 9, 2003, that he has seen the claimant for his right wrist problems. After examination, Dr. Heinzelmann ordered a right wrist arthrogram. The claimant underwent a right wrist arthrogram on January 13, 2003, which revealed findings consistent with tears of the scapholunate and lunatotriquetral ligaments as well as the triangular fibrocartilage. Dr. Heinzelmann writes on January 20, 2003, that he has seen the claimant following his arthrogram, noting that the claimant continues to complain of pain in his wrist, mainly in the scapholunate area and is tender in this spot. Dr. Heinzelmann recommended right wrist arthroscopy with reconstruction of the scapholunate ligament and dorsal capsulodesis and probable debridement of triangular fibrocartilage tear and possible fusion of the lunotriquetral joint. On April 8, 2003, Dr. Heinzelmann

writes to the claimant's attorney that he would anticipate the claimant being unable to use his right arm for strenuous activities for a period of ten to twelve weeks after a wrist arthroscopy and possible wrist joint fusion. Dr. Michael Moore writes on June 24, 2003, that he has seen the claimant for a second opinion evaluation. After review of the claimant's various tests and a physical examination, Dr. Moore writes that the claimant is a legitimate patient who has mild, residual right wrist pain following an injury that occurred on October 17, 2002. Dr. Moore writes that the differential diagnosis could include right wrist degenerative arthritis and dynamic instability of the scapholunate joint. The doctor opines that the claimant does not have systematic tears of the lunotriquetral ligament or triangular fibrocartilage complex. Dr. Moore writes that in his opinion the arthrograms findings which revealed leaks through the lunotriquetral ligament and triangular fibrocartilage complex are most likely related to age and not a traumatic injury. Dr. Moore bases his opinion on the fact that the claimant does not describe pain over the dorsal aspect of the right wrist in addition the Regan, Linscheid, and Kleinman tests were negative. Dr. Moore does agree with Dr. Heinzelmann's opinion that a diagnostic arthroscopy would help determine the etiology of the claimant's persistent right wrist pain. On November 3, 2003, Dr. Heinzelmann writes that he has seen the claimant and discussed his right wrist arthroscopy in order to determine what further treatment will be needed to reconstruct any ligaments in the wrist or debridge them. The

claimant underwent a diagnostic right wrist arthroscopy performed by Dr. Heinzelmann on November 5, 2003. Dr. Heinzelmann writes on November 12, 2003, that the findings during the claimant's arthroscopy showed arthritic changes on the radial side of the joint between the distal radius and proximal scaphoid bones with areas of the joint completely devoid of articular cartilage. Dr. Heinzelmann writes that due to these findings a surgical repair of the injured ligament within the joint would not have been indicated, therefore, he did not proceed with surgery. Dr. Heinzelmann recommended an MRI of the wrist to completely evaluate all the articular surfaces of the wrist joint. Dr. Heinzelmann writes on November 17, 2003, that the claimant has been unable to work since November 5, 2003, and would not be able to work for the next two weeks. The claimant underwent an MRI of his right wrist on November 17, 2003, and Dr. Heinzelmann writes on November 24, 2003, that the claimant's MRI of his right wrist showed edema of the entire scaphoid bone and loss of normal articular surfaces at the proximal pole of the scaphoid and the scaphoid fossa of the distal radius. Dr. Heinzelmann notes that the test also reveals evidence of a triangular fibrocartilage tear. Dr. Heinzelmann recommended that the claimant be evaluated by Dr. Ed Weber and that the claimant should remain off work until he is seen and evaluated by Dr. Weber. Dr. Heinzelmann writes on October 25, 2004, that he has seen the claimant for follow up of his right wrist. The doctor notes that about six weeks ago the claimant had coronary bypass surgery and is recovering. Dr. Heinzelmann writes that the

claimant still complains of pain and weakness in his right wrist and the doctor told the claimant that after he recovers from his heart surgery they will consider surgery on his right wrist. Dr. Heinzelmann writes on March 29, 2005, that he has rechecked the claimant's right wrist and the claimant reports that he has not returned to his regular work as a stone and brick mason. The doctor notes that the claimant reports that he does have some bothersome pain in his right wrist when he has been fishing using that hand to cast the rod. After repeat x-rays and examination, Dr. Heinzelmann diagnosed the claimant with radial scaphoid arthritis, probably secondary to scapholunate disassociation. Dr. Heinzelmann gave him a canvas wrist splint to use as needed and recommended Ibuprofen with meals. Dr. Heinzelmann recommended that he return for follow up in three months and if he is not better than a scaphoid excision of the four corner fusion would be considered. On May 12, 2005, Dr. Heinzelmann writes that the claimant states that he is performing fairly strenuous manual activity with his right hand now in shoveling and lifting heavy rocks in his landscape work. The doctor notes that with this activity he is having recurrent and significant pain on the radial aspect of his right wrist but not on the ulnar aspect. The doctor discussed with the claimant the possibility of wrist surgery which would involve removal of the scaphoid bone and fusion of the four other bones in the wrist joint but would not recommend this surgery unless the claimant's pain is severe, prolonged and limits his work activities. Dr. Heinzelmann recommended that they proceed with a

triple phase bone scan to further document the claimant's area of arthritis in his right wrist.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability from March 1, 2005, to a date to be determined. From October 25, 2004, when the claimant was seen by Dr. Heinzelmann after his release from prison there is no indication from the doctor that the claimant is unable to work due to his wrist. When Dr. Heinzelmann saw the claimant on March 29, 2005, he again does not set forth that the claimant is unable to work and even notes that the claimant has been unable to return to his regular work as a stone and brick mason. Therefore, the claimant has failed to meet his burden of proof by a preponderance of the evidence that he is entitled to additional temporary total disability from March 1, 2005, to a date to be determined. I do find, however, that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his right wrist subsequent to May 12, 2005. The claimant has had a compensable injury which has been substantiated by objective medical findings and although there may be some arthritis complex also affecting this claimant's right wrist it is not uncommon for arthritis to develop in an injured area. Dr. Heinzelmann writes on November 24, 2003, after reviewing the claimant's MRI that the claimant's wrist problems include arthritic changes at the radial scaphoid joint, evidence of ligament tears at the scapholunate and lunotriquetral

joints and tear of the triangular fibrocartilage. Therefore, until it can be determined by a specialist that this claimant's ongoing need for medical treatment for his wrists are not as a result of his compensable injury, I find that he is entitled to continuing medical treatment for his injury at the respondents' expense.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 17, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his right wrist.

4. Temporary total disability has been paid from November 5, 2003, to date of last payment.

5. Medical expenses have been paid to date of last payment.

6. The claimant is entitled to a weekly compensation rate for temporary total disability in the amount of \$293.00.

7. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability from March 1, 2005, to a date to be determined. See discussion above.

8. The claimant has proven by a preponderance of the evidence that he is entitled to additional treatment for his compensable right wrist injury subsequent to May 12, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability from March 1, 2005, to a date to be determined.

The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his compensable right wrist injury subsequent to May 12, 2005. Therefore, the respondents should pay for additional medical treatment for this claimant's right wrist problems.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE