

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503672

VICTOR BERMUDEZ ALDACO

CLAIMANT

NOE PACHECO  
UNINSURED

RESPONDENT

OPINION FILED MARCH 15, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents not represented by counsel.

STATEMENT OF THE CASE

A hearing was held on February 21, 2006, 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 November 8, 2005, where it was stipulated by the respondent, Noe Pacheco, that the claimant was his employee.

An earlier pre-hearing order set for the issues as to the compensability of the claimant's left-hand injury, related medical, temporary total disability from March 3, 2005, to a date to be determined, compensation rate and attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured on March 2, 2005. Claimant's first finger on his left hand was cut off while he was cutting wood with a table saw. His second finger on his left hand was also injured during the same accident.

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

It was noted that at the pre-hearing conference scheduled for November 8, 2005, the respondent, Noe Pacheco, was present by cell phone at which time he stipulated that he was the employer of the claimant and at that time it was agreed that a hearing would be set for this date, February 21, 2006, at 10:00 a.m. Subsequent to the pre-hearing, notices of the hearing and the pre-hearing orders were mailed out to the respondent setting forth the date and time of this hearing. It will be noted that all correspondence sent to Mr. Pacheco have been returned as unclaimed or incorrect address. The time of this hearing was set for 10:00 and the hearing began at 10:27, the respondent, Mr. Pacheco not appearing.

#### DISCUSSION

The claimant testified through a Spanish interpreter that he currently is working for Basic Block but that on March 2, 2005, he was working for the respondent, Noe Pacheco. The claimant testified that he was hired to install wood siding and was working with two other people. The claimant testified that on March 2, 2005, he was using a table saw and as he was putting the wood through the saw, the saw hit a knot in the wood and the board jumped up and when the wood came back down it caught his hand and pushed it through the saw. The claimant testified that at the time

this accident occurred he was working for Mr. Pacheco and at the time of this accident he was earning ten dollars an hour and worked on an average of thirty or forty hours per week.

The claimant testified that the respondent took him to the hospital in Springdale and that Dr. Tomlinson performed surgery. The claimant testified that after his surgery he followed up with Dr. Tomlinson and that on April 13, 2005, Dr. Tomlinson released him to work at one handed duty. The claimant testified that the respondent did not provide work for him and in fact terminated him. The claimant testified that he did return to work for another employer in June 2005.

The claimant was asked to show his injured left hand and he indicated that he had cut off most of his index finger and seriously damaged his long middle finger as well as damaged his ring finger. The claimant testified that half of his index finger was cut off and that there is severe nerve damage in his long or middle finger. The claimant testified that as a result of his left-hand injury he has problems lifting heavy things with both hands because he cannot apply pressure with his left hand anymore. The claimant testified that his middle finger is also very sensitive and he has problems handling anything very hot or cold. The claimant testified that the one finger that is halfway cut off is painful all of the time.

The medical records set forth that the claimant was seen at the Northwest Medical Center for treatment of his left-hand injury. Arrangements were made at that time to irrigate and debride as well

as close the claimant's wounds under general anesthetic. Dr. Tomlinson operated on the claimant's left hand on March 3, 2005, to repair the claimant's amputation through his PIP joint, left index finger and laceration of his ulnar aspect of PIP joint in the left long finger. Dr. Tomlinson performed a revision amputation of the claimant's left index finger and an irrigation and debridement of the left long finger with repair of the laceration. Following the claimant's surgery, the claimant was followed by Dr. Tomlinson as to the treatment and healing of his left hand. There is a note from Dr. Tomlinson indicating that the claimant was seen on March 7, 2005, and was temporarily and totally disabled and unable to return to work. When the claimant was seen by Dr. Tomlinson on March 11, 2005, the doctor notes that the claimant is healing well and shows no signs of infection. Dr. Tomlinson released the claimant to one handed work on March 14, 2005.

The claimant has proven by a preponderance of the evidence that he is entitled to a compensation rate of \$233.00 for temporary total disability and \$175.00 for permanent partial disability. This is based on an average weekly wage of \$350.00 per week. The claimant testified that he earned ten dollars per hour and worked between thirty and forty hours per week, thus an average of thirty-five hours was figured as his average work time per week.

I further find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left hand involving his index finger, his middle finger and ring finger on March 1, 2005, while working for the respondent. The medical

records set forth that the claimant had a partial amputation of his left index finger and a severe laceration to his long or middle finger. The respondent, therefore, should pay for all reasonable and necessary medical treatment for this claimant's left-hand injuries. The claimant has also proven by a preponderance of the evidence that he is entitled to temporary total disability from March 2, 2005, until he returned to work on June 1, 2005. It is noted that Dr. Tomlinson did return the claimant to one handed work on March 14, 2005, but that the respondent refused to put the claimant to work and in fact terminated him at that time. The claimant, therefore, should be entitled to temporary total disability from March 2, 2005, until June 1, 2005, when he was able to find employment.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The claimant was employed by the respondent on March 1, 2005.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to the fingers on his left hand while working for the respondent on March 3, 2005. See discussion above.
4. The respondent should pay for all reasonable and necessary medical treatment for this claimant's compensable injuries.

5. The claimant is entitled to a compensation rate of \$233.00 for temporary total disability and \$175.00 for permanent partial disability. See discussion above.

6. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from March 2, 2005, until June 1, 2005. See discussion above.

7. The respondent has controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

#### ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to the fingers on his left hand on March 1, 2005, while working for the respondent.

The claimant is entitled to a compensation rate of \$233.00 for temporary total disability and \$175.00 for permanent partial disability.

The respondent should pay for all reasonable and necessary medical treatment for this claimant's compensable injuries.

The respondent should pay temporary total disability to this claimant from March 2, 2005, to June 1, 2005.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE