

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201514

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| HUEY P. BRADSHAW , EMPLOYEE | CLAIMANT |
| GEORGIA-PACIFIC CORPORATION , EMPLOYER | RESPONDENT |
| SEDGWICK CLAIMS MANAGEMENT , CARRIER | RESPONDENT |

OPINION FILED OCTOBER 4, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on July 7, 2006 at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

Respondents represented by the HONORABLE ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable gradual injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on October 10, 2001 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$387.00/\$291.00, in the event this claim is found to be compensable. The claimant's last day of work was October 23, 2001 and his employment was terminated on November 1, 2002. Some expenses have been paid by the group insurance carrier, Blue Cross Blue Shield. The claimant has court-

ordered child support obligations in the state of Louisiana.

The claimant contends he sustained a gradual injury to his right wrist on October 10, 2001. He seeks payment of medical expenses, temporary total disability benefits from October 11, 2001 to a date yet to be determined and attorney's fees.

The respondents contend there are no objective medical findings to substantiate a compensable injury arising out of and in the course of employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript and the May 11, 2006 deposition of Dr. Michael Moore. It should be noted that Attorney Hubbell did not attend the doctor's deposition.

The following witnesses testified at the hearing: the claimant and his supervisor, David Mackey.

The claimant, age 42 (D.O.B. August 3, 1963), is right hand dominate. His health history includes a motor vehicle accident in August, 2004 which he stated "inflamed" his right arm, (Tr. p. 19). His work history includes jobs as a salesman for a department store, as an assembler of products for display in a store, and as a construction worker. Despite using a jackhammer in his construction job from 1980-1985, the claimant denied any prior right arm or wrist problems. No medical evidence was submitted to show that the claimant was treated for right hand or arm pain prior to October, 2001, however, Dr. Vora's report of July 28, 2005 mentions right shoulder bursitis under the heading, "Past Medical History."

The claimant began work for the respondent-employer in July, 2001. His job duties included pulling sheets of veneer with four co-workers and loading them in buggies, (Tr. p. 10-12, 25-26). The claimant demonstrated a grasping and pinching

motion with his hand as he described his job. The claimant worked 10 hours a day and filled 5-7 buggies per day. Each buggy weighed as much as an automobile.

Around the first part of October 2001, the claimant began noticing problems with his right hand. He experienced pain, swelling, numbness, sleep disturbance, and decreased grip strength. He reported the problem to his supervisor, David Mackey, who dismissed his complaints, (Tr. p. 14-16).

The claimant then saw his general practitioner, Dr. Webb, who prescribed medication and a sling and excused him from work three days before returning for light duty. His employer would not provide light duty or change the claimant's job duties (Tr. p. 17-18), and the claimant felt he was unable to do the job. The claimant's employment with the respondent was terminated after he was off work for over one year. He then worked three days at Remco and now earns money mowing yards and painting houses. The claimant was also treated by Dr. Spires and examined by Dr. Moore. Neither Dr. Spires nor Dr. Moore excused the claimant from work. Although Dr. Spires never formally released the claimant, he noted improvement by August 1, 2002. The claimant stated he remains symptomatic but he is still able to go fishing.

David Mackey has been employed with Georgia Pacific for twenty-four years. He described the claimant's job duties (Tr. p. 40-43) but downplayed the repetitive rapidity of the job despite the fact that the speed of the veneer machine requires five workers to handle it and they fill up buggies of product weighing thousands of pounds, (Tr. p. 50-53). Mr. Mackey testified the claimant never reported a work-related injury. It was Mr. Mackey's understanding the claimant hurt his hand while repairing his wife's car, (Tr. p. 47). Attendance records show the claimant was late

for work on October 4, 2001 because his wife's car broke down, however, the claimant denied any injury associated with this incident.

Claimant's counsel emphasized that because the claimant possessed a Georgia Pacific medical form, he must have reported the injury (Tr. p. 34-35, 37). It should be noted that this form dated November 21, 2001, concerns the Family and Medical Leave Act and is not a workers' compensation form.

MEDICAL EVIDENCE

_____The claimant has been examined by general practitioner, Dr. Wyatt Webb and orthopaedic surgeons, Dr. Timothy Spires and Dr. Michael Moore. Dr. Spires is located in Louisiana. I am not familiar with this physician and no curriculum vitae was provided. Dr. Spires and Dr. Moore have diagnosed the claimant with DeQuervain's disease based on a positive Finkelstein's test.

The medical records of Dr. Webb are handwritten and illegible. Interpretations of these reports are offered by Attorney Ivey and by Dr. Moore in his deposition, however, these are just interpretations. If a party plans to rely on a report as evidence and that report is illegible, it is best to ask the doctor for a typed narrative report or depose the doctor.

It appears Dr. Webb began treating the claimant on October 25, 2001 for a two week history of right arm pain. He diagnosed bursitis of the wrist. Dr. Webb referred the claimant to a physical therapist, Craig Lowery, who described "inflammation" of the right hand and forearm in his report of March 4, 2002. The claimant also complained of right shoulder , elbow and wrist pain to Mr. Lowery. The therapist diagnosed DeQuervain's disease with inflammation of the radial nerve.

Although observation of inflammation or swelling can be considered objective

medical evidence of injury, the evidentiary weight to be given to Therapist Lowery's report is problematic in that the inflamed musculature and nerve referred to by Mr. Lowery is located nearer the elbow while DeQuervain's syndrome is closer to the wrist. (Compare p. 481, p. 1070 and p. 1116 of Dorland's Illustrated Medical Dictionary 28th Ed.). He also records "inflammation" of the superficial branch of the radial nerves. It is unclear how a therapist can determine a nerve disorder. It is also apparent from Mr. Lowery's report that he does not make a correct distinction between subjective symptoms and objective findings.

Dr. Spires began treating the claimant on April 18, 2002. He diagnosed tendinitis of the right wrist based on a clinical examination – range of motion test, positive Finkelstein's test, negative Tinel's test and tenderness. He prescribed medication, injections and a thumb splint. The claimant gave the following history of injury:

Patient comes in for evaluation of his thumb and wrist right hand. Onset of symptoms about October 10. Onset without specific trauma. He does a lot of repetitive work. He has been managed by Dr. Webb who placed him on light duty, but was unable to return to employment because of this. He has been through physical therapy at Wied's and taking Vioxx. The swelling that was present has diminished with physical therapy, but he still has discomfort and he was given a wrap around thumb support. He has also been given some injections in the upper arm.

Dr. Spires recorded improvement in the claimant's symptoms in follow-up reports dated May 16, 2002 and June 27, 2002. He noted tenderness, weakness of grip, and mild discomfort with the Finkelstein's test. He diagnosed "right DeQuervain's, much improved," and prescribed medication, a splint, injections and home strengthening exercises. In follow-up reports dated June 27 and August 1,

2002, the claimant reported discomfort with pressure or heavy lifting. The doctor recorded improvement with minimal tenderness, full range of motion and a negative Finkelstein's test.

Dr. Vora conducted an EMG/NCV study of the claimant on July 28, 2005 which he interpreted as abnormal. Dr. Vora recommended an orthopaedic referral for carpal tunnel syndrome (CTS) of the right hand based on the claimant's complaints of tingling, numbness, pain, weakness and decreased grip strength of the right hand. However, the claimant denied any injury or accident to his right hand. The report also mentions a preexisting condition of right shoulder bursitis.

Dr. Spires commented on the causal connection in a letter dated March 10, 2006 addressed to respondents' counsel. It is unknown what questions were posed to the doctor. Dr. Spires attributed the DeQuervain's syndrome to repetitive trauma from his job duties with Georgia Pacific. He felt the claimant might possibly benefit from surgical intervention. The doctor's opinion was based on the claimant's history and clinical examinations. However, Dr. Spires opined the claimant's symptoms were unrelated to carpal tunnel syndrome and the diagnosis of carpal tunnel syndrome was unrelated to his job.

The claimant was examined by Dr. Michael Moore at the expense of the respondents for a "second opinion" even though this claim was never accepted as compensable.

Dr. Moore issued two reports dated February 9 and February 28, 2006 to respondents' attorney and again it is unknown exactly what questions were posed to Dr. Moore. Dr. Moore recites the history of the claimant's treatment in his letter and agrees with Dr. Spires' diagnosis of DeQuervain's Syndrome related to repetitive

work at Georgia Pacific.

Dr. Moore questioned the diagnosis of carpal tunnel syndrome because Dr. Spires' records show no history of numbness in the fingers and the Tinel's test was negative. Although a physical therapist noted a positive Phalen's test, there was no follow-up on this finding by Dr. Spires. Additionally, Dr. Moore felt there were technical problems with the EMG/NCV study conducted by Dr. Vora and his findings conflicted with the claimant's symptoms. Dr. Vora's report does contain the notation, "Right ulnar and radial motor proximal response absent, which may be because of conduction block or technical difficulty."

In his deposition, Dr. Michael Moore testified he reviewed the claimant's medical records and opined that Dr. Spires' diagnosis of tendinitis was based on subjective symptoms and testing – tenderness, weakness and a positive Finkelstein's test for DeQuervain's Syndrome. Dr. Moore also conceded that his own diagnosis was based on subjective symptoms and testing. It should be noted Dr. Moore found no evidence of swelling in his examination.

ATTORNEY IVEY:

Would you agree these findings (a positive Finkelstein's test) are not objective findings... because the findings can be controlled by the ... patient?

DR. MOORE:

The findings can be controlled by the patient.

Dr. Moore advised that the EMG/NCV study should be repeated to determine if the claimant had CTS. Even if the finding were positive though, Dr. Moore could not relate the development of CTS to the claimant's job duties. Dr. Moore's opinion on CTS is questionable because he does not take into consideration the reference to numbness and tingling in Dr. Vora's report and the inflammation recorded by the

therapist.

FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant was performing a hand-intensive, repetitive and rapid job for the respondent-employer from July 2001 to October 2001 when he developed pain in his right hand. The claimant has been diagnosed with DeQuervain's disease of the wrist based on a positive Finkelstein's test. Both Dr. Moore and Dr. Spire agree this condition is work-related. The respondents controverted this claim based on a lack of objective medical evidence.

Under Ark. Code Ann. §11-9-102(4)(D) the claimant is required to establish the existence of an injury based on medical evidence supported by objective medical findings as described in Ark. Code Ann. §11-9-102(16). Objective findings cannot come under the voluntary control of the patient.

Based on Dr. Moore's deposition, the results of a Finkelstein's test can be manipulated by the patient and therefore there is no objective medical evidence to support an award of compensability.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 10, 2001.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that he sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge