

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F410229 & F410230

JONATHAN S. BRYANT, EMPLOYEE

CLAIMANT

**BEN FROST D/B/A PALLETS PLUS,
UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED JULY 18, 2006

Hearing before Administrative Law Judge Barbara W. Webb on April 19, 2006, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondent did not appear at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 19, 2006. A Pre-hearing Order was entered in this case on January 19, 2006. The Pre-hearing Order set out the issues to be litigated and resolved at the present time. A copy of this Pre-hearing Order was made Commission's Exhibit No.1 to the hearing record. Despite notice thereof, the respondent declined to participate in the Pre-hearing conference held on January 19, 2006, and declined to appear at the hearing.

The issues to be litigated and resolved at the present time were limited in the Pre-hearing Order to the following:

1. Whether claimant sustained a compensable right hand injury on April 21, 2004.
2. Whether claimant sustained a compensable right knee injury on May 3, 2004.
3. Whether claimant is entitled to medical benefits.
4. What is claimant's average weekly wage.
5. Whether claimant is entitled to temporary total disability benefits.

6. Whether claimant is entitled to an attorney's fee.

The record consists of the April 19, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant has the burden of proving by a preponderance of the evidence that his claim is compensable. To prove the occurrence of a compensable injury as the result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the preponderance of the credible evidence establishes that the claimant sustained an on-the-job injury to his right middle finger when it was smashed while he was handling wood pallets while employed by Ben Frost d/b/a/ Pallets Plus ("Pallets Plus") on April 21, 2004. The claimant testified that he immediately sought attention at the emergency room at Baxter Regional Medical Center. The testimony of the claimant also establishes by a preponderance of the credible evidence that he sustained a second injury on May 3, 2004, when he slipped on some wood pieces on the floor and injured his right knee. He underwent surgery on the knee on May 18, 2004, and returned back to work full-duty on June 15, 2004. Clearly, both the injury to the finger and the injury to the knee were specific incidents within the meaning of the Arkansas workers' compensation law,

and I find that the claimant has established by a preponderance of the evidence that he sustained injuries to the finger and knee which is established by medical evidence supported by objective findings. In this regard, I note that the claimant presented to the emergency room at Baxter Regional Medical Center on April 21, 2004, in which the claimant reported that he had smashed his middle finger between two logs resulting in a three centimeter intermediate laceration to his right middle finger. Sutures were administered and antibiotics were applied. Medical records further reflect that the claimant presented to the North Arkansas Regional Medical Center emergency room on May 3, 2004, for the injury to his right knee. An MRI of the knee reflected a “fairly significant disruption of the medial patellar retinaculum.” On May 18, 2004, the claimant underwent surgery at Baxter Regional Medical Center for a medial patellar retinacular repair.

Consequently, I find that claimant has established each of the requirements necessary to establish that he has sustained a compensable injury to his right middle finger and to his right knee in the course of his employment for Pallets Plus.

I. Temporary Total Disability Compensation

A claimant “who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work.” Ark. Code Ann. § 11-9-521(a) (Repl. 2002); Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). In the instant case, the claimant seeks temporary total disability beginning May 4, 2004, the first date of disability until June 15, 2004, the date he returned to work. The claimant testified that following the surgery, the hospital told him to return to his doctor on June 2nd and he did. However, he

testified that he was not released from the doctor's care but went back to work on June 15, 2004. Based on a preponderance of the evidence, I find that the claimant remained within his healing period until his return to work.

In addition, the claimant's testimony establishes by a preponderance of the evidence that he earned an average weekly wage of \$260.00 per week. Accordingly, pursuant to Ark. Code Ann. § 11-9-501(b), the claimant's temporary total disability compensation rate is 66 2/3% of \$260.00, or \$173.00 per week. The calendar indicates that six weeks accrued between May 4, 2004 and June 15, 2004. Therefore, as of the date of the hearing, the claimant's accrued and unpaid temporary total disability compensation was \$1,038.00.

II. Medical Benefits

In light of the nature of the claimant's injuries and symptoms, I find that the medical treatment which the claimant received at the Baxter Regional Medical Center, the North Arkansas Regional Medical Center, and the Sam Alexander Pharmacy was reasonably necessary for his compensable injuries. To date, the claimant has accrued reasonably necessary medical expenses of \$8,008.72.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable right hand injury on April 21, 2004.
2. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable right knee injury on May 3, 2004.
3. The claimant has established by a preponderance of the credible evidence that he is entitled to a period of temporary total disability benefits beginning on May 4, 2004, through the date he returned to work, June 15, 2004. The claimant is entitled to \$1,038.00 in accrued unpaid temporary total disability benefits.

4. The preponderance of the evidence establishes that the medical treatment at the Baxter County Regional Medical Center, the North Arkansas Regional Medical Center, and Sam Alexander Pharmacy is reasonable and necessary for treatment in connection with his work-related injuries. The claimant has unpaid medical bills to date of \$8,008.72, which are the responsibility of the respondent, Benjamin Frost d/b/a Pallets Plus.

5. I find that the respondent has fully controverted the compensability of this claim and payment of benefits in this case and therefore, the claimant's attorney is entitled to a maximum statutory attorney's fee on the temporary total disability benefits awarded to the claimant as a result of the findings herein, one-half of the fee to be paid by the claimant, i.e. the sum of \$129.75, and one-half of the fee to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002). I further find that the respondent is responsible for reimbursement to the claimant for payment of the costs of preparation of the transcript in the sum of \$139.60 as reflected by invoice dated May 31, 2006.

ORDER

The respondent, Benjamin Frost d/b/a Pallets Plus, an uninsured employer, is hereby directed to pay benefits in accordance with the findings set forth herein through the date of the hearing held on April 19, 2006. Benjamin Frost d/b/a Pallets Plus is liable to Jonathan S. Bryant in the amount of \$ 1,038.00 in unpaid temporary total disability compensation, un-reimbursed medical expenses in the amount of \$8,008.72, attorney's fees in the sum of \$129.75, and court costs of \$139.60 (costs of preparation of the transcript), for a total of \$9,316.07.

IT IS SO ORDERED.

BARBARA W. WEBB
Administrative Law Judge