

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307538

GREGORY HAMILTON, EMPLOYEE

CLAIMANT

CONAGRA POULTRY COMPANY,  
SELF-INSURED EMPLOYER

RESPONDENT

GALLAGHER BASSETT, TPA

RESPONDENT

**OPINION FILED MAY 26, 2006**

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 28, 2006, at El Dorado, Union County, Arkansas.

Claimant, MR. GREGORY HAMILTON, of Strong, Arkansas, appeared Pro Se.

Respondent was represented by HON. NORWOOD PHILLIPS, Attorney at Law, of El Dorado, Arkansas.

**STATEMENT OF THE CASE**

On February 28, 2006, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A Prehearing Order was entered on December 28, 2005. A copy of the Prehearing Order was made a part of the record without objection, (*Comm. Ex 1*), subject to any modifications made on the record at the full hearing.

The parties stipulated at the full hearing that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-

carrier relationship existed at all relevant times, including July 1, 2002, and that the claimant sustained compensable carpal tunnel injuries while in the respondents employ.

The parties agreed the issues to be presented were whether the claimant is entitled to permanent partial disability benefits with regard to both his hands and/or permanent partial disability benefits commensurate with a five percent (5%) impairment rating with regard to claimant's left elbow; whether the claimant is entitled to vocational rehabilitation and/or benefits for one year pursuant to A.C.A. §11-9-505(a)(1); whether the claimant is entitled to medical expenses consisting of, but not limited to, all prescription drug costs and mileage reimbursement for travel to and from medical providers, and determination of claimant's average weekly wage and compensation rates.

The claimant contended at the full hearing that on July 1, 2002, he sustained compensable bilateral upper extremity injuries and that as a result is entitled to permanent partial disability benefits commensurate with a five percent (5%) permanent impairment to his left elbow. Claimant further contended his entitlement to travel expenses and prescription drug costs associated with his compensable injuries and also contended entitlement to benefits under A.C.A. §11-9-505(a)(1) and/or vocational rehabilitation.

The respondents contended at the hearing that the claimant is not entitled to any permanent disability benefits, vocational rehabilitation, or A.C.A. §11-9-505(a)(1) benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence any anatomical impairment that is supported by objective and measurable physical findings.
- 4) The claimant has, therefore, failed to prove by a preponderance of the evidence that he is entitled to any permanent partial disability benefits related to either upper extremity.
- 5) Pursuant to A.C.A. §11-9-505(b)(1), The Commission can order vocational rehabilitation if the employee is entitled to permanent disability benefits and has not been offered an opportunity to work. The claimant has failed to prove by a

preponderance of the evidence any entitlement to permanent disability benefits or that he was refused an opportunity to work; and, therefore, is not entitled to a vocational rehabilitation program pursuant to A.C.A. §11-9-505(b)(1).

6) Pursuant to A.C.A. §11-9-505(a)(1), an employer can be liable for up to one year of lost wages if said employer refuses to return an employee to work under their restrictions if suitable employment is reasonably available. The claimant has failed to prove by a preponderance of the evidence that the respondent-employer refused him work within his restrictions.

7) The claimant has proven by a preponderance of the evidence entitlement to travel expenses for medical treatment associated with his stipulated compensable injury totaling \$352.93. Said sum is to be paid by respondents to claimant forthwith.

8) Due to claimant's failure to prove entitlement to the permanent partial disability benefits requested herein, a determination of claimant's average weekly wage and applicable compensation rate is rendered moot.

## **DISCUSSION**

### **1. HISTORY**

The claimant, age 44, sustained admittedly compensable carpal tunnel injuries while working for the respondents in July of 2002. Due to his carpal tunnel injuries, the claimant underwent carpal tunnel surgery. The claimant testified he was off work for

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approximately a week after the surgery, (*T. pg. 34, lines 7-11*), but then returned to work on restricted duty. The claimant testified that he sat in the breakroom at work for approximately one to one and one-half months after returning from the surgery. (*T. pg. 34, lines 15-22*) After sitting in the breakroom for approximately one and one-half months, the claimant testified he then went to work picking feathers with a brace on his hand for about a month. (*T. pg. 35, lines 1-5*). After picking feathers for about a month, the claimant testified he went back to work at the job he was doing prior to the carpal tunnel injuries, and did that job for about two and one-half months before termination. (*T. pg. 35, lines 7-13*)

The claimant testified he last worked for the respondents on June 24, 2003. (*T. pg. 38, lines 5-9*) The parties opinions differ on whether the claimant was terminated for cause, or whether he was let go by the respondents because of his work restrictions. The claimant argues he was terminated by the respondents because he was unable to perform his job under the restrictions imposed upon him from his doctor. The respondents argued the claimant was terminated because of his persistent violations of plant policy. The claimant argued he is entitled to permanent partial disability benefits, A.C.A. §11-9-505 benefits, and travel expenses.

## II. ADJUDICATION

### A. PERMANENT PARTIAL DISABILITY BENEFITS

Permanent impairment is "any permanent functional and anatomical loss remaining after the healing period has been reached." *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W. 2d 411 (1994). An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole, whether his earning capacity is diminished or not. Any determination of permanent physical impairment must be supported by objective and measurable physical or mental findings. A.C.A. §11-9-704(c)(B). Benefits for permanent impairment may be awarded only upon a showing that the compensable injury was the major cause of the impairment. A.C.A. §11-9-102(4)(F)(ii)(a).

Dr. Vora assigned the claimant an anatomical impairment rating of five percent (5%) to the left arm, (CX-3, pg. 7), while Dr. Massanelli gave the claimant a zero permanent impairment rating. (CX-3, pg. 11) Dr. Vora's rating report was a fill-in-the-blank type report that offered no explanation or rationale behind the rating. On the other hand, Dr. Massanelli's report outlined the reasoning of his rating in detail. Dr. Massanelli found no evidence of residual carpal tunnel syndrome or compression of the ulnar nerve at the elbow on the left side. It is the duty of the Commission to resolve

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conflicting medical opinions and I find Dr. Massanelli's opinion to be the more credible and have a more substantive basis.

Therefore, in light of the zero percent impairment to either of the claimant's upper extremities, I find the claimant has failed to prove by a preponderance of the evidence entitlement to permanent partial disability benefits.

#### **B. A.C.A. §11-9-505 BENEFITS**

The claimant has requested vocational rehabilitation pursuant to A.C.A. §11-9-505 (b)(1); however, said section of the code states that for an employee to qualify for vocational rehabilitation, they must first prove entitlement to permanent disability benefits. As stated earlier in this opinion, the claimant has failed to meet his burden of proof regarding permanent disability benefits. Therefore, I find the claimant does not qualify for vocational rehabilitation. Further, in a prior opinion rendered by this administrative law judge in this claim on August 5, 2005, I ordered an evaluation for vocational rehabilitation which was provided for at the respondents expense. However, at the hearing of February 28, 2006, neither party introduced the evaluation. The burden is on claimant to prove entitlement to vocational rehabilitation and he has failed to so meet his burden.

The claimant has requested benefits for one year pursuant to A.C.A. §11-9-505(a)(1). Said statute provides as follows:

"Any employer who without reasonable cause refuses to return an employee to work, where suitable employment is available within the employees physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wage lost during the period of refusal, for a period not exceeding one (1) year."

The record reflects that, in fact, the respondents allowed claimant to come back to work for several months after his carpal tunnel surgery. The claimant testified that for over one month he merely sat in the break room as his job duty. Claimant Exhibit 3, page 5, contained in the record herein, purports to be a return to full duty on May 5, 2003. The claimant testified he worked through July of 2003, but was unable to continue full duty in light of his condition.

The record contains the credible testimony of Ms. Hattie Bullock who testified the claimant was terminated for cause rather than anything related to the claimant's work restrictions. The record contains several unexplained absences on the part of the claimant and some plant policy/procedure violations. (*RX-1, pg. lines 5-15*) The reasons for the absences range from oversleeping to no reason given at all. Another factor in determining whether the claimant is entitled to §11-9-505(a)(1) benefits is Ms. Bullock's credible testimony to why the claimant was terminated:

Q. Was Gregory Hamilton terminated because of his injuries or because of his persistent violations of the plant disciplinary policy?

A. Because of persistent violations, not because of his injuries.

Q. Did Conagra ever refuse to allow Gregory to work because of his injuries?

A. No. (T. pg. 49, lines 8-15)

In light of the credible evidence contained in this record, I cannot find that the claimant has proven by a preponderance of the evidence that the respondents refused him work within his physical limitations. Therefore, the claimant's request for §11-9-505(a)(1) benefits for one year is denied.

**C. Additional Medical Benefits and Travel Expenses**

An employer must promptly provide for any injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a) However, at the full hearing, the claimant requested no additional medical treatment and only requested travel expenses related to his admittedly compensable carpal tunnel injuries. The claimant produced affidavits contained in the record as Claimant's Exhibit 5 that adequately proves entitlement to travel expenses related to the claimant's admitted carpal tunnel injuries. I find the claimant has proven by a preponderance of the evidence that respondents are responsible for \$352.93 in travel expenses to be paid forthwith to the claimant. As mentioned, the claimant presents no other evidence of unpaid medical bills related to his compensable injury, and also did not request any further specific medical treatment.

The sole remaining issue concerning the claimant's average weekly wage and

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applicable compensation rates has been rendered moot due to claimant's failure to prove entitlement to the indemnity benefits requested herein.

**AWARD**

The claimant has proven by a preponderance of the evidence entitlement to \$352.93 for travel expenses related to admittedly compensable carpal tunnel injuries. The respondents are hereby directed and ordered to pay said travel expenses in accordance with the Findings of Fact and Conclusions of Law set out herein. All accrued sums shall be paid in a lump sum, without discount, and this award shall earn interest at the legal rate until paid pursuant to A.C. A. §11-9-

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IT IS SO ORDERED.

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S. DALE DOUTHIT  
Administrative Law Judge