

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512253

DOYLE M. SIMS, EMPLOYEE	CLAIMANT
RED RIVER INSTRUMENT, INC., EMPLOYER	RESPONDENT
UNION INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 31, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on May 3, 2006, at Texarkana, Miller County, Arkansas.

Claimant represented by HON. GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by HON. WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on May 3, 2006, in Texarkana, Arkansas. A prehearing order was filed in this matter on February 14, 2006. At the hearing the parties announced the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to any additional stipulations, contentions and issues agreed to at the hearing. A copy of the prehearing order was introduced into evidence as Commission Exhibit "1", and made a part of the record, without objection.

At the hearing the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times, including August 26, 2005.

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- 3) Claimant's average weekly wage was \$278.72, which would entitle him to compensation rates of \$186.00 per week for temporary total disability and \$154.00 per week for permanent partial disability.

The parties agreed to litigate the following issues at the full hearing:

- 1) Compensability.
- 2) If overcome, whether claimant is entitled to associated indemnity benefits, medical benefits, and attorney's fees.

The claimant contended, in summary, that he sustained a compensable injury to his right arm as a result of the rapid, repetitive nature of his work. That he became symptomatic on August 26, 2005, and ultimately required medical attention on August 29, 2005. That due to his injury he should be awarded temporary partial disability benefits from August 26, 2005 through March 16, 2006; temporary total disability benefits from March 17, 2006 to a date yet to be determined; all associated medical treatment, and attorney's fees. The claimant further contends that all medical treatment he has received since August 26, 2005 has been reasonable, necessary and related to his compensable injury, and that he is in need of additional medical treatment associated with his compensable injury.

Respondents contended, in summary, that the claimant's arm problems were not work related. Alternatively, respondents contended that if compensability is overcome, claimant would possibly be entitled to temporary partial disability benefits only from August 29, 2005 through October 19, 2005. That on October 19, 2005 the claimant was released to full duty, and would not be entitled to any temporary total disability benefits after October 19, 2005.

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Respondents also contend that work was always available to the claimant within his restrictions.

DISCUSSION

The respondent-employer is in the business of making stainless steel plates for gas pipelines. The claimant primarily performed the jobs of backsiding and beveling for the respondent-employer. The claimant testified as follows regarding the tasks involved while performing his backsiding duties.

Q. Describe for us what backsiding is.

A. It's where you put your hand in the hole where it is a piece of sandpaper and you move it back and forth real quick like with your wrist.

Q. And what is it that you are working on?

A. It's a plate.

Q. It's one of these plates?

A. Yes, sir.

Q. Is the plate in the machine?

A. Yes, sir. (T. pg. 18, lns. 16-25)

Q. All right. So it is in the machine?

A. Up in the collar.

Q. And what are you doing with your hand to the piece on the machine?

A. Sticking my hand down in the hole and going back and forth.

Q. Your right hand?

A. Yes, sir, my right hand.

Q. And do you have something in your right hand?

A. A piece of sandpaper.

Q. All right. Describe for us what you are doing with that sandpaper in your right hand.

A. Going down in that hole and going back and forth to knock off the rough spots on the backside.

Q. Do these plates or pieces have little rough spots or edges on them?

A. Yes, inside of the hole.

Q. Now is the piece moving in there or is it being still and only your hand is moving?

A. No. The plate is spinning - the machine has got the plate spinning and then I stick my hand down in there and go back and forth until it smooths out.

Q. And how fast is the plate spinning?

A. Whew, pretty fast, I mean, I don't know. 60 or 70 miles an hour probably, I mean, I really couldn't say accurately.

Q. All right. And as it is spinning, how fast are you moving your hand back and forth?

A. Quick, back and forth just like ----

Q. Now you are moving your left hand for us, demonstrating ----

A. Right.

Q. And you are moving it in a back and forth fashion?

A. Right. Back and forth, just like that.

Q. For each plate that you stick in the machine, how long to (sic) you typically, on average, have to move your hand back and forth, to get the plate like you want it before you go to the next one?

A. I's say five or six times.

Q. How long in time would that be?

A. Maybe a minute, a minute and a half.

Q. So you are sitting here and going back and forth a minute to a minute and a half on each plate?

A. Yes, sir. (T. pgs. 19 & 20, lines 1-25 & 1-20)

Q. And so how many plates would you go through on an average day do you think in the course of doing this activity, this backsideing?

A. Oh, probably 400 to 500. (T. pg. 21, lines 11-14)

The claimant testified as follows regarding tasks involved while beveling:

Q. All right. And then with the beveling, what are you doing?

A. It's just getting the chatter out of the hole itself because the tool will make chatter. It's kind of like a skip, you know, make it look like it is chopped.

Q. And you are getting these little pieces off?

A. Yes, sir.

Q. And you are using sandpaper again to do that?

A. Yes, sir.

Q. And describe for us how you do this beveling with the sandpaper. How do you use your hand to do the sandpaper in that job?

A. The same as I do in backsiding.

Q. Again, you are motioning with your left hand in a back and forth motion?

A. Yes, sir.

Q. And compared to the backsiding, is the beveling easier or harder.

A. The beveling is easier.

Q. Okay. In what way? How is it easier?

A. Because the machine does most of your work. On backsiding you do all the work.

Q. Does it take as long on the beveling?

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A. No, sir. You can get a little faster on the beveling part.

Q. If it was a minute to a minute and a half on the backsiding, how long does it take you to bevel a piece?

A. Oh, about half a minute.

Q. So it's only about thirty seconds?

A. Yes, sir.

Q. And how many pieces are you able to go through on an average day on the beveling do you thing?(sic)

A. Probably about five to six hundred. (T. pgs. 23 & 24, lines 1-25 & 1-10)

The claimant testified that for five to six months prior to August 26, 2005, he primarily worked as a beveler. (T. pg. 24, lines 11-17) However, on August 26, 2005, the claimant testified that for one hour on that day he performed the backsiding job. The claimant testified that while performing the backsiding job for one hour on August 26, 2005, his right arm started swelling up. The claimant testified that he was unable to report the swelling on August 26, 2005 because no one was present at his employment at the time.

The claimant has alleged that he sustained a compensable injury to his right arm as a result of the rapid, repetitive nature of his work; and that he became symptomatic on August 26, 2005. The claimant's contentions at the prehearing conference and the full hearing lead this examiner to conclude that the claimant is alleging a non-carpal tunnel gradual onset injury to his right arm. However, in closing argument, the claimant's attorney seem to want to leave the door

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open for a consideration of carpal tunnel. Therefore, I will address both.

A.C.A. §11-9-102(4)(A) defines "compensable injury" as follows:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

Since carpal tunnel syndrome is recognized as a gradual onset injury, it is not necessary that an employee prove an alleged carpal tunnel injury was caused by rapid repetitive motion. **Freeman v. Con-Agra Frozen Foods**, 344 Ark. 296, 40 S.W. 3rd 760.

However, even carpal tunnel syndrome, to be compensable, must be established by medical evidence supported by objective findings. (A.C.A. §11-9-102(4)(D)). The record is void of any objective medical evidence of carpal tunnel syndrome. Therefore, the claimant has failed to meet his burden of proving a compensable carpal tunnel injury.

The record does contain a medical diagnosis of De Quervain's Tenosynovitis and tendonitis. In order for the claimant to receive benefits for his alleged gradual onset injury of De Quervain's Tenosynovitis or tendonitis, the claimant must satisfy all of the following requirements:

(1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment ;

(2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body.

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16);

(4) proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion, and

(5) proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

The claimant has failed to get over the first element of compensability outlined above. The burden is on the claimant to prove his injury arose out of and in the course of his employment. There is too much contradictory evidence in this record to conclude that the claimant has overcome his burden.

First, both Barbara Kelly and Heather Johnson testified credibly that the claimant stated "I know I did not get hurt at work." The claimant denied the statement, but the evidence shows the claimant failed to prove by a preponderance of the evidence that his injury arose out of and in the course of his employment. Second, Harold Patterson testified that the claimant said his problems might be due to a spider bite, tractor fall or backsiding. Loretta Striplen testified in her deposition that she knew the claimant had been having problems with his arm, but that the claimant's arm problems started after the claimant told her he had fallen off a tractor. (RX- 2, pg. 20, lines 23-25 & Pg. 21, line 1.)

Two witnesses testified they heard the claimant admit he knew he didn't hurt himself at work, and two other witnesses testified they understood the claimant had fallen off a tractor. Third, when the claimant first went to the doctor on August 29, 2005, the

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medical records state, "Pain & swelling (R) forearm. Abrasion noted." (JX-1, pg. 2.)

It is apparent the swelling in the claimant's forearm was the objective evidence that lead to the diagnosis of De Quervain's Tenosynovitis and tendonitis. The question is did the swelling occur due to the claimant's work, a tractor fall, or for some other reason. The medical report from August 29, 2005 notes an abrasion. An abrasion would be more consistent with a fall than from rapid repetitive movement. On one hand, it would appear the claimant has given a credible account of a work-related incident on the afternoon of August 26, 2005, which the claimant corroborated to his medical providers. However, the conflicting evidence outlined above casts serious doubt as to why the claimant's right arm was swollen.

When there are contradictions in evidence, it is the Commission's province to reconcile the conflicting evidence. The injured party bears the burden of proof in establishing entitlement to benefits by a preponderance of the evidence. (A.C.A. §11-9-102(4)(E)(i).) The claimant has fallen short of his burden. Based on all the conflicting evidence, I find the claimant has failed to prove by a preponderance of the evidence that his right arm injury arise out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of 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, and without giving the benefit of the doubt to either party, the following findings of fact and

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conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that he sustained a right carpal tunnel injury with medical evidence supported by objective findings.
- 4) The claimant has failed to prove by a preponderance of the evidence that his right upper extremity injuries arose out of and in the course of his employment with Red River Instruments, Inc.

ORDER

After careful consideration of all the evidence in this matter, and viewing such impartially, and without giving the benefit of the doubt to either party, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a gradual onset compensable injury to his right arm due to the rapid, repetitive nature of his work that arose out of and during the course of his employment.

Therefore, respectively, the above captioned clam is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge