

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502138

DANNY SKAGGS, EMPLOYEE	CLAIMANT
H & W WIRE CORPORATION, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED MAY 12, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 7, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

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

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On February 7, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Danny Skaggs, the claimant, and Fred Clifton, coupled with medical

reports and other documents comprise the record in this claim.

DISCUSSION

Danny Skaggs, the claimant, with a date of birth of May 22, 1951, is a high school graduate who commenced his employment with respondent-employer on August 21, 2000. Claimant performs the job duties of a drawing technician.

In the performance of his job duties the claimant operates two machines. Claimant worked the first shift (7:00 a.m.- 5:30 p.m.). In describing the mechanic of his job duties and the mechanism of the injury which serves as the basis for the present claim, claimant's testimony reflects:

We take like three-eighths rod aluminum and draw it down to small sizes. We have two machines that run.

Well we run, I run machines. And the wires on top of the roller that goes in the spools - -

And I picked it up in my hand with gloves and I picked it up and it went through the glove. I cut the end of my finger or not the end but a small portion of that but I didn't realize that until, you know, I found out what was in my finger, what Dr. Cullom found. (T. 7-8).

The injury was to the claimant's right ring finger. Claimant asserts that he was off work for a period of six (6) weeks as a result of the injury, which also required medical treatment and remains unpaid.

When questioned regarding his confidence that the injury to his right ring finger occurred while discharging employment duties for respondent-employer, claimant testified:

Well, actually when I thought back, you know, my job is hectic, you know, I've got two machines I've got to run.

And, I mean you can cut yourself and just go on, you know. But

I noticed what happened after I thought about it.

The incident. (T. 9).

During cross examination, claimant acknowledged that the weekend before his injury he was hunting for a couple of days. Claimant denies injuring his finger while he was hunting.

Claimant's testimony reflects:

No. What I done was push the metal on down in my finger using the cutter. I treated the wound a couple weeks before, you know, it hurt and, you know, I put Neosporin and a band aid on it and kept it clean and it healed up and when I got to the woods using the cutter to cut down some small limbs to park the trailer I felt something going into my finger and I took my glove off and I didn't see a puncture wound or nothing. That night it swelled up. (T. 10).

Claimant acknowledged that the deer woods incident was prior to November 29, 2004.

Regarding the deer woods incident, claimant testified:

Well, you know, you kind of pick your finger, you know, just like feeling something was going into it and usually it will bleed or something but this didn't bleed. It did swell up, though. (T. 11).

Claimant estimates that the swelling occurred about six hours later following the incident.

Claimant asserts that at the time he did not know what the problem was related to.

Claimant reported for work after the weekend and told his supervisor, Curtis Clifton, that he had hurt his finger. Claimant added that he told Mr. Clifton that he thought that he had something in his finger, however he did not know what it was. Further, claimant acknowledged that he told Mr. Clifton that he thought he hurt his finger in the deer woods. Claimant testified that on-the-job injuries are supposed to be reported to the supervisor.

The testimony of the claimant reflects that during the two days that he worked following the deer woods incident his finger remained swollen. Claimant initially denies that he attempted

to remove the object that he felt was in his finger with box cutters or a pin, however later testified:

No. I've got 72 hours of - - I know how to treat medical accidents, you know. I felt something like it was coming out of my finger, you know, like a splinter or something. And that's what a wire does is splinter, so to speak. And I felt something and I went and put Peroxide on my finger and I washed it real good and I had a pin and was I rubbing it on the top of it, you know, to try to get whatever it was out because I could feel it. It hurt. And the pin was sterilized. There wouldn't have been any kind of infection from that. (T. 13).

Later described a work-related incident which he now attributes as the basis for his injury and present claim:

No, I don't guess. I don't remember that. Oh yeah, what you're talking about, okay. What it was, the wire rubbed across your finger, wire is hot and it will cause a callous if you hold it very long. And if the wire, if anything is wrong with the wire, you really don't want to put your hands on it because the little slivers will come off of it. We call it slivers. But that day we was running, you know, kind of fast and I didn't want to stop the machine because it would take that much longer, you know, to fix it. And right before I started the machine up I noticed it was off the roller and I picked it up with my glove and hand and put it back on the roller. Then I went around the corner I felt something, you know, but it cut through my glove and cut into my finger. But that's something, you know, it's on top of callous. (T. 13-14).

Claimant acknowledged that the above incident occurred "a couple of weeks" before he went to the emergency room for treatment of his right ring finger.

Based on his recollection of events claimant estimated that the piece of aluminum was in his finger approximately a week and a half before becoming infected and requiring medical treatment. Claimant acknowledged that he did not say anything to anyone regarding the problem with his finger during the week and a half:

No, because it was just, all it was there was just a little cut, you know.

I put Neosporin on it and a band aid and it healed up. (T. 14-15).

Claimant was seen in the emergency room on December 1, 2004, regarding the right ring finger. While claimant testified that at the time of the emergency room visit he did not know what the problem was he acknowledged relaying a history that his finger cracked open and he thought that he got it while chopping wood the weekend in the deer woods. During the emergency room visit x-rays were obtained of the claimant finger which he understood to be normal. The testimony reflects that the weekend of the claimant's activity in the deer woods during Thanksgiving. Claimant concedes that he did not related the cut or work-related activities to his finger injury at the time of the emergency room visit. Claimant acknowledged that even after the initial emergency room visit he still felt that the injury was sustained in the deer woods.

Following the emergency room treatment claimant next received medical treatment for his finger under the care of Dr. Cullom. Regarding the medical treatment provided by Dr. Cullom, claimant testified:

He wanted the finger to swell up, I guess. And that's what it done. It just swelled up to abnormal size and then he treated it, the skins off my finger, we found aluminum in one of the bandages that was taken off. (T. 16).

In February 2005, claimant reported to supervisory personnel of respondent-employer that the problem with his finger was work-related. Claimant explained:

I didn't. Until the aluminum come out and I knew what it was then. I mean I've been in the woods a lot of times and everything. (T. 17).

The testimony of the claimant reflects that his activities around his house include working in the yard, and working on his car fixing a flat, changing tires and changing the oil. Claimant was off work due to complaints with his finger from December 1, 2004, until his release to return

to work by Dr. Cullom on January 10, 2005.

Mr. Fred Clifton, the claimant's supervisor at respondent-employer, testified regarding the reporting procedures of work-related injuries at respondent:

Well, we try to tell everybody, you know, to make sure somebody knows and, you know, if it's like a minor injury and it don't need a doctor's attention, I make a note and I've got a little file I put it in, you know, if something happens later on. (T. 21).

Mr. Clifton's testimony reflects that the first time he heard the claimant link the injury to his right ring finger to a cut to the finger sustained at work was during the testimony at the hearing on the claim.

The testimony of Clifton reflects that respondent-employer was closed for Thanksgiving, Thursday and Friday, before resuming work on Monday, November 29, 2004. Mr. Clifton testified regarding his contact with the claimant on the morning of November 29, 2004:

Well, all the guys just normally sit there in the break room and the first thing, you know, that I remember that Danny came in and said that he broke his finger in the deer woods. So, he was pulling up a piece of firewood and it twisted on him and he thought he had broke his finger. And that's all I knew about it. (T. 22).

Mr. Clifton testified that the claimant's finger was "pretty swollen" at the time. Claimant worked for two days before going to the emergency room. Mr. Clifton testified that it was not until he received a letter in February 2005, that he learned that the claimant was asserting a work related injury regarding his finger. By the time the respondent-employer received the February 2005, letter claimant was back at work and his treatment had been completed.

The medical in the record reflects that the claimant was seen at the emergency room of Baptist Memorial Hospital - Osceola on December 1, 2004, relative to his right ring finger

complaint. (JX. #1, p. 1-3). The emergency room report reflect the following by way of history provided by the claimant:

PT to ER - states Rt 4th finger “cracked open”Friday & thinks may have foreign body in finger - - pt states he may have a piece of wood in finger p chopping wood this weekend - (JX. #1, p.9).

A radiology report generated during the December 1, 2004, emergency room visit noted that three views of the claimant’s right ring finger were obtained for possible foreign body. The report reflects:

Indicate no obvious demonstration of an opaque foreign body in soft tissue, although swelling over the middle phalanx of the ring finger on the palmar side is noted. (JX. #1, p. 6).

On December 2, 2004, claimant was seen by Dr. Sumner R. Cullom pursuant to recommendation of the attending emergency room physician. Following his examination of the claimant, Dr. Cullom’s assessment of the claimant’s complaint was that of cellulitis of the right ring finger. (JX. #1, p. 13). The medical reflects that the claimant was seen on a daily basis by Dr. Cullom from December 2, 2004 through December 8, 2004, for treatment relative to the right ring finger. (JX. #1, p. 13-19). Thereafter, the medical reflects that the claimant was seen by Dr. Cullom approximately every other day for treatment through January 10, 2005, when he was released to restricted duty. (JX. #1, p.20-28). On January 31, 2005, claimant was released to full duty by Dr. Cullom effective February 1, 2005. (JX. #1, p. 28).

A February 7, 2005, chart note of Dr. Cullom relative to the claimant reflects the handwritten entry “aluminum injury”. (JX. #1, p. 31). A February 14, 2005, report authored by Dr. Cullom relative to the claimant reflects, in pertinent part:

Mr. Skaggs is a patient of mine. I have been treating him for a cellulitis

of the right finger, due to a puncture wound. During this time, we had to take a piece of aluminum out of his finger. This should be a work-related incident. . . . (JX. #1, p. 32).

A March 31, 2005, correspondence from Dr. Cullom's office, reflects regarding the claimant:

Enclosed are the records of Danny Skaggs for December 2004. Also enclosed is a letter stating this should be work-related. Our records show that Dr. Cullom had Mr. Skaggs off the whole month of December, due to the cellulitis of his finger. . . . (JX. #1, p. 33).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. At all times pertinent the relationship of employee-employer-carrier existed among the parties.
3. At all times pertinent the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$350.00, for temporary total disability.
4. On or about November 15, 2004, the claimant sustained an injury to his right ring finger within the course and scope of his employment.
5. The claimant was temporarily totally disabled for the period beginning December 1, 2004, and continuing through January 10, 2005.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's November 15, 2004, right ring finger injury.
7. The respondents have controverted this claim in its entirety.

CONCLUSIONS

Claimant maintains that while discharging duties in the employment of respondent he sustained an injury to his right ring finger which required medical treatment and rendered him totally disabled from engaging in gainful employment for a period of six (6) weeks. As a consequence of the afore, claimant maintains that he is entitled to the payment of corresponding medical and temporary total disability benefits by respondents. Respondents deny that the injury suffered by the claimant to his right ring finger is work-related.

The present claim is one governed by the provisions of Act 769 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (A)(i) (Repl. 2002). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Claimant commenced his employment with respondents on August 21, 2000, and continues in the employment of same. There is not a dispute regarding the mechanics of the

claimant's job duties, nor the tasks performed in the discharge of same. Specifically, the credible testimony reflects that as a drawing technician is responsible for the operation of two (2) machines. The machines draw down three-eighths rod aluminum into smaller sizes of wire onto spools. The claimant wears gloves while performing his job duties, which entail picking up the spools of wire. Although claimant wears work gloves while discharging his employment duties the credible testimony in the record reflects sustaining small nicks, cuts, or punctures wounds are not uncommon.

Claimant described a specific incident of the wire being off the roller and picking it up with his gloved hand to place it back on the roller. Thereafter, claimant described feeling something and observing that the glove was cut and a cut on his finger. (T. 13-14). Due to the nature of his job duties and the production of wire claimant did not attach significance to the incident at the time. Claimant continued discharging his regular job duties following the incident, which occurred approximately two (2) weeks prior to November 29, 2004, the date he reported back for work symptomatic following the Thanksgiving holiday weekend.

Claimant first experienced appreciable symptoms relative to his right ring finger while deer woods during the Thanksgiving weekend while chopping wood. As a consequence of the afore, claimant attributed his complaints of swelling and pain in the right ring finger to the wood chopping activity. The afore was relayed to supervisory personnel of respondents when the claimant reported back to work on Monday, November 29, 2004, and to emergency room medical personnel when he sought treatment on December 1, 2004.

There is not a dispute regarding the medical treatment the claimant received relative to his right ring finger injury. Dr. Sumner R. Cullom was the claimant's treating physician for the

right ring finger injury. In his February 14, 2004, report, Dr. Cullom noted that he treated the claimant for a cellulitis of the right finger due to a puncture wound. Dr. Cullom further noted that during the course of his treatment of the claimant a piece of aluminum was removed from the finger.(JX. #1, p.32). By the time the claimant and Dr. Cullom identified the source of claimant's injury, the puncture wound from the aluminum wire, claimant had returned to work and resumed his regular employment duties. Further, claimant was nearing completion of this medical treatment, having last seen Dr. Cullom on February 7, 2005.

The Arkansas Supreme Court had noted with respect to Ark. Code Ann. §11-9-104 (4) (A) (i), that it is not a prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). The claimant must only prove that the occurrence of the injury is capable of being identified. *Id.* The statute does not require that the exact date be identified. In the instant claim, after the aluminum wire was removed from the claimant's right ring finger, which established a nexus between the injury and his employment, claimant was credibly able to identify the occurrence/injury as two weeks prior to the November 29, 2004, return to work following the Thanksgiving holiday weekend, on or about November 15, 2004.

Dr. Cullom generated his report regarding the nexus of the claimant's injury to the claimant's employment on February 14, 2005. By the time of the report claimant had resumed his regular employment duties with respondent, and had completed his course of treatment regarding the injury. Notice of the injury as work-related was provided to respondents at that time. Ark. Code Ann. §11-9-701 provides that failure to give notice shall not bar any claim if the employee had no knowledge that the condition arose out of and in the course of the employment.

The evidence preponderates that the claimant sustained an injury to his right ring finger within the course and scope of his employment with respondents on or about November 15, 2004, that the injury caused harm to the body which required medical services and resulted in disability; that the medical evidence is supported by objective findings and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Respondents have controverted the claimant's entitlement to workers' compensation benefits.

The evidence preponderates that the claimant was totally disabled and within his healing period as a result of the November 2004, compensable injury from December 1, 2004, through January 10, 2005, and correspondingly entitled to the payment of temporary total disability benefits. Likewise, the evidence preponderates that medical treatment rendered to the claimant relative to his compensable right ring finger injury was reasonably necessary and related to the compensable injury. Pursuant to Ark. Code Ann. §11-9-508, respondents are liable for the payment of the medical treatment received by the claimant relative to the November 2004, compensable right ring finger injury. Respondents have controverted the payment of the afore temporary total and medical benefits.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$350.00, for the period December 1, 2004, and continuing through January 10, 2005, as a result of the claimant's compensable right ring finger injury of on or about November 15, 2004. Said sums accrued shall be paid in lump without discount.

Respondents are further order and directed to pay all reasonable related medical, hospital,

nursing and other apparatus expenses growing out of the claimant's compensable right ring finger injury of on or about November 15, 2004, to include medical related travel.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge