

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F506728

BOBBY DAVID WATTS, Employee	CLAIMANT
UNITED PARCEL SERVICE, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED APRIL 21, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by STEPHANI BRADY JUNGMEYER, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On March 16, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 19, 2006, and a pre-hearing order was filed on January 20, 2006. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant was earning sufficient wages to entitle him to compensation at the maximum rate.

At the time of the hearing the parties agreed to stipulate that claimant provided notice of his workers' compensation claim to the carrier on January 13, 2005 and that Form AR-C was filed with the Commission on September 12, 2005.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right hand and wrist as a result of overuse.
2. Temporary total disability benefits from July 5, 2005 through August 15, 2005.
3. Related medical.
4. Attorney fee.
5. Statute of limitations.

The claimant contends that he suffered compensable injuries in the form of ganglion cysts to his right wrist and a finger on his right hand as a result of his employment with the respondent. Claimant seeks payment of all unpaid medical benefits, temporary total disability benefits, and a controverted attorney fee.

The respondents contend that claimant's claim for a compensable injury to his right wrist is barred by the statute of limitations and that the injury to claimant's finger is not compensable.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 19, 2006, and contained in a pre-hearing order filed January 20, 2006, are hereby accepted as fact.
2. The parties' stipulation that claimant provided notice of his workers' compensation claim to the carrier on January 13, 2005 is accepted as fact.
3. The parties' stipulation that Form AR-C was filed with the Commission on September 12, 2005 is accepted as fact.
4. Claimant's claim for a compensable ganglion cyst to his right wrist is barred by

the statute of limitations.

5. Claimant has failed to prove by a preponderance of the evidence that the ganglion cyst on the finger of his right hand is compensable.

FACTUAL BACKGROUND

The claimant is a very nice 44-year-old man who has worked for the respondent for approximately 20 years. After one and a half to two years of loading trucks claimant began driving a "package" car. Package cars are the typical brown UPS trucks which one sees around town delivering packages. Claimant testified that for some 10 to 13 years he ran a route delivering packages to various departments at the University of Arkansas. Claimant was required to make 15 to 20 stops per hour and would typically deliver 300 to 400 packages per day and pick up another 200.

Claimant testified that he followed a specific procedure for each stop. After stopping and securing the vehicle, he would be required to reach down and pick up a clipboard, open the bulkhead door, get the package/s, make the delivery, obtain a signature, return to his vehicle, place the clipboard back in place and drive to the next stop. The clipboard which claimant used is an electronic device known as a "diag" which weighs between 3 and 5 pounds. The clipboard is plugged in and connected to the UPS data base. Claimant is currently a full time "feeder" driver. This requires him to drive two trailers to various locations such as Little Rock or Tulsa, deliver the trailers, pick up other trailers and return back to Northwest Arkansas.

Claimant testified that he first developed cysts in his right wrist 11 or 12 years ago. Claimant sought medical treatment from a clinic where the cyst was aspirated and wrapped. Claimant testified that the cyst went away but that subsequently the cyst returned on and off for several periods of time beginning seven or eight years ago. Claimant testified that when the cysts appeared he would treat them with Ibuprofen and

he also occasionally wore a wrist splint.

Most recently, claimant sought medical treatment from Dr. Olsen on November 11, 2004 complaining of the cysts. Dr. Olsen referred claimant to Dr. Moore who diagnosed claimant as suffering from a ganglion cyst. When claimant attributed his ganglion cyst to his employment with the respondent he was sent to Dr. Berestnev for treatment. After a period of physical therapy claimant again returned to Dr. Moore who performed surgery to remove the ganglion cyst on July 5, 2005. At that same time Dr. Moore also removed a ganglion cyst from a finger on the claimant's right hand.

Claimant has filed this claim contending that the ganglion cysts are compensable injuries as a result of his employment with the respondent. He seeks payment of all unpaid medical treatment, temporary total disability benefits, and a controverted attorney fee. The respondent contends that claimant's claim with regard to the ganglion cyst on his wrist is barred by the statute of limitations.

ADJUDICATION

The statute of limitations for the filing of a claim is codified at A.C.A. §11-9-702(a)(1). That subsection states that a claim is barred unless it is filed with the Workers' Compensation Commission within two years from the date of the compensable injury. The injuries to claimant's wrist and finger are scheduled injuries. The statute of limitations for scheduled injuries begins to run when the injury becomes apparent to the claimant. *Pina v. Wal-Mart Stores, Inc.*, ___ Ark. App. ___, ___ S.W. 3d ___ (May 11, 2005).

Claimant contends that he filed his claim on January 13, 2005 when he provided notice of his workers' compensation claim to the compensation carrier. However, claimant did not file his AR-C form with the Commission until September 12, 2005. Notifying the workers' compensation carrier of a potential claim is not the same as filing a claim for purposes of the statute of limitations. A.C.A. §11-9-702(a)(1) specifically states that the

claim must be filed with the Workers' Compensation Commission within two years from the date of the compensable injury. Here, the claim was not filed with the Commission until September 12, 2005. That date is the date the claim was filed for statute of limitation purposes. Therefore, the question arises as to whether the filing of the claim on September 12, 2005 was within two years from the date of claimant's injury. More specifically, did claimant's injury become apparent to him more than two years prior to September 12, 2005? I find based upon the evidence presented that the injury did become apparent to claimant more than two years prior to September 12, 2005; therefore, this claim is barred by the statute of limitations.

The claimant contends that the cyst which was removed by Dr. Moore in July 2005 appeared only a few months before he first saw Dr. Moore in January 2005; therefore, the filing on September 12, 2005 would be within the two year statutory period. However, the totality of the evidence indicates that claimant's cysts were an ongoing problem, not a new injury which appeared only a few months earlier. Dr. Berestnev's notes of January 14, 2005 indicate that claimant gave a history of having a cyst on his right wrist for approximately six to seven years. At the hearing claimant denied giving that history to Dr. Berestnev.

The medical records also indicate that on July 12, 2001 claimant sought medical treatment from Dr. Olsen at which time claimant was complaining of a knot on his right wrist with the onset of two years and a knot on the right middle finger with an onset of one year.

Furthermore, I believe it is important to note that a review of claimant's deposition testimony indicates that his right wrist cyst reoccurred some four to five years earlier.

Q. And so they aspirated them [ganglion cysts] at the Quandt Clinic, and if I understood you correctly, they went away for awhile?

A. Right.

Q. When the knots went away or the cysts went away, did the discomfort in your wrist go away?

A. Yes, it did.

Q. And then if I understood you correctly, you said it was a period of years before you started having further difficulty?

A. Well, I had noticed them, you know, coming back, but, yeah, it was, I don't know, four or five years ago that I started getting more and more discomfort from them.

Q. And I know this - - I'm not expecting you to give me an exact date or whatever, but after the cysts were aspirated at the Quandt Clinic many years ago, do you recall when it was that you next noticed either knots or discomfort in your right wrist?

A. At U.P.S., again, you're very active and you're always, you know, getting aches and pains and stuff like that, but it was probably four or five years ago that I noticed it was slowly coming back. (Emphasis added.)

Furthermore, my review of Dr. Moore's deposition indicates that although the cyst may have moved in location over the years, the cyst itself was one condition, not several new ones. For instance, the following testimony from Dr. Moore indicates that the condition he operated on was the same cyst which had existed for a period of time.

So that was atypical, and that was a - - that made me think that it was more of an irritation along the tendon, proliferation of the lining of the tendon in forming the cyst, and then also the fact that it had been aspirated and rejected several times, I think changed the - - changed the complexity of the cyst itself. Sometimes I think there is reaction to that material, and it can scar down a little bit more. It's - - frequently, it's a little harder to excise a ganglion that's been aspirated and injected.
(Emphasis added.)

Dr. Moore's testimony indicates that the ganglion cyst he excised from the claimant's wrist had existed for a period of time and it was more difficult to excise because it had previously been aspirated and injected. In my opinion, Dr. Moore's testimony supports a

finding that claimant's ganglion cyst was not a new condition, but rather a condition which had previously existed and continued off and on for a period of years.

Based upon my review of the evidence presented, I find that the claimant's scheduled injury became apparent to him more than two years prior to the date his claim was filed with the Commission on September 12, 2005. Therefore, I find that claimant's claim for compensation benefits associated with a ganglion cyst on his right wrist is barred by the statute of limitations.

With respect to the ganglion cyst on a finger of claimant's right hand, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that that ganglion cyst was causally related to his employment with the respondent. Dr. Moore was asked at his deposition whether he could state within a reasonable degree of medical certainty that the cyst on claimant's finger was due to his work activities. In response, Dr. Moore stated that he did not think anyone could say that such a relationship existed and that he could not tell the cause of that particular cyst. While Dr. Moore did note that claimant's gripping of a steering wheel while working for the respondent as a driver may have caused pain, it did not cause the cyst itself.

Accordingly, for the forgoing reasons, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that the ganglion cyst on the finger of his right hand is causally related to his employment with the respondent.

ORDER

Claimant's claim for compensation benefits relating to a ganglion cyst on his right wrist is barred by the statute of limitations. Claimant did not file his claim for compensation benefits within two years from the date the injury became apparent to him. Furthermore, with respect to the ganglion cyst on claimant's finger, claimant has failed to prove by a preponderance of the evidence that that cyst is causally related to his

employment with the respondent. Claimant's claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE