

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610737

JEFF BATT

CLAIMANT

J. SMITH, INC. dba J. SMITH SUNROOMS,  
UNINSURED

RESPONDENT

OPINION FILED JUNE 29, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondent not represented by counsel.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 24, 2007, in Fort Smith, Arkansas.

A pre-hearing order had been entered in this case on February 14, 2007. At the time of the pre-hearing order, Southern Personnel Management and Wausau Insurance Companies had also been named as potential respondents. However, it was subsequently conceded that the relationship of employee-employer-carrier did not exist between the claimant, Southern Personnel Management, and Wausau Insurance Company, on the date of the claimant's alleged injury. Therefore, Southern Personnel Management and Wausau Insurance Company were dismissed from this claim by Order filed March 23, 2007. The pre-hearing order was amended to reflect that these parties had been released from this claim. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

J. Smith, Inc. dba J. Smith Sunrooms appears to be uninsured. Although properly notified, this uninsured respondent has made no

response in this claim and has failed to appear, either in person or through counsel, at any of the scheduled proceedings.

As a result of the respondent's failure to respond or appear, no stipulations can be made in this case.

The following issues were submitted by the claimant for resolution at the present time:

1. whether the claimant was an employee for workers' compensation purposes of J. Smith, Inc. dba J. Smith Sunrooms on August 10, 2006, and whether this represented an employment covered by the Act.
2. The appropriate compensation rates for any disability benefits.
3. whether the claimant sustained a compensable injury to his right arm on August 10, 2006.
4. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from August 11, 2006 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"That at all relevant times the employee-employer-carrier relationship existed. That on August 10, 2006, the claimant suffered an accidental injury to his right upper extremity arising out of and in the course of his employment. That at the time of the injury, claimant's average weekly wage was \$320.00; that his temporary total disability rate is \$213.00; and his permanent disability rate is \$160.00. Claimant is entitled to reasonable and necessary medical expenses associated with his injury; temporary total disability payments from August 10, 2006 through a date yet to be determined; and potentially, to permanent partial disability benefits."

In regard to these issues, the respondent has made no contentions.

## DISCUSSION

### I. EMPLOYMENT RELATIONSHIP

The first issue to be addressed concerns the question of whether the relationship of employee-employer existed between the claimant and J. Smith, Inc. dba J. Smith Sunrooms on August 10, 2006. Included in this issue, is whether such an employment relationship, if it exists, would represent an employment covered by the provisions of the Act. In regard to these issues, the only evidence presented consists of the claimant's testimony.

The claimant testified that he was hired by J. Smith, Inc. dba J. Smith Sunrooms at its Fort Smith office on August 4, 2006. He stated that this office was located at Griffin Place on South Zero Street. He testified that when he was employed, he worked on a 3 and occasionally a 4 man crew. He further testified that there were approximately 6 or 7 supervisors working out of the Fort Smith office and each apparently was in charge of a crew. He stated that he entered into an oral contract of hire that provided for a 48 hour work week at \$8.00 per hour. He was retained by the respondent as a roofer/carpenter. The respondent assigned him to his job and his daily activities were directed by one of the respondent's supervisors.

Although the testimony of a party is never considered contradicted, neither can such testimony be arbitrarily disregarded. If such testimony is credible, it may be sufficient,

in and of itself, to establish any fact it is legally competent to address.

In the present case, I find the claimant's testimony concerning the relationship between himself and J. Smith, Inc. dba J. Smith Sunrooms, to be credible. I further find his testimony concerning the number of employees employed by J. Smith, Inc. dba J. Smith Sunrooms to also be credible. This testimony is sufficient to prove the existence of an employee-uninsured employer relationship and that this employment relationship falls under the coverage of the Arkansas Workers' Compensation Act.

#### II. WEEKLY COMPENSATION RATES

The next issue concerns the appropriate weekly compensation rates for disability benefits. Again, the only evidence presented on this issue is the claimant's own testimony.

In this regard, the claimant testified that his contract of hire provided for an average weekly wage of \$320.00. Again, I find this testimony to be credible. Based upon this average weekly wage, the claimant would have appropriate weekly compensation rates of \$213.00 for total disability and \$160.00 for permanent partial disability.

#### III. COMPENSABILITY

The next issue is whether the claimant sustained a "compensable injury" on August 10, 2006. The burden rests upon the claimant to prove all of the statutory elements necessary to establish this "compensable injury."

First, the claimant must satisfy the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the claimant prove by medical evidence the actual existence of the physical injury alleged to be compensable. Further, the claimant must show that the actual existence of this alleged physical injury is supported by “objective findings” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence is sufficient to establish the actual existence of physical injuries in the form of a non displaced fracture of the left posterolateral 7th rib, a comminuted intraarticular fracture of the distal radius of the right wrist, and a soft tissue contusion of the left elbow. The actual existence of these physical injuries is further demonstrated by purely objective radiographic findings. Thus, the claimant has satisfied the statutory requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(D), in regard to these particular injuries.

Next, the claimant must prove that these medically established and objectively documented physical injuries satisfy the definitional requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

- (1) That the injury must arise out of and occur in the course of the employment;
- (2) That the injury must be caused by a specific incident;
- (3) That the injury must be identifiable by time and place of occurrence;

- (4) That the injury must cause external or internal physical harm to the claimant's body;
- (5) That the injury must require medical services and/or result in disability.

In order to prove the first three of these requirements, the claimant must show the existence of a causal relationship between his various physical injuries and the alleged specific employment related incident on August 10, 2006. In this regard, the claimant testified that while he was performing his assigned employment activities for the respondent on August 10, 2006, he fell from the roof of a house and struck the ground approximately 15 feet below. He stated that this accident was witnessed by his lead man and a co-employee. He stated that he had immediate difficulties breathing and immediate pain and swelling in his right wrist. He testified that he was transported from the job site by employees of J. Smith Sunroom and taken to the emergency room of Eastern Oklahoma Medical Center in Poteau, Oklahoma. He believes that the initial medical expenses at the emergency room and the medication prescribed there was paid for by agents of the respondent.

The claimant testified that he was referred by the physician at the emergency room of the Eastern Oklahoma Medical Center to an orthopaedic surgeon at River Valley Orthopaedics. He obtained follow up for his injuries through Arkansas Valley Orthopaedics, specifically a Dr. Edward W. Rhomberg.

The claimant's testimony, in regard to these matters, substantially coincides with the medical evidence presented. Particularly, his history of the onset of his difficulties is

identical with the history recorded on the initial and subsequent medical records. I find such testimony to be credible and sufficient to prove the existence of a causal relationship between the injuries to his rib, right wrist, and left elbow and a specific employment related incident that occurred while he was performing his regular employment duties for the respondent on August 10, 2006. Therefore, the claimant has proven the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant's credible testimony concerning the magnitude of his physical complaints and the objective findings made by his various treating physicians are sufficient to prove that he sustained internal physical harm to his body. Thus, he has satisfied the fourth definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(i).

The nature and magnitude of the claimant's injuries, as demonstrated by the medical evidence, is sufficient to reasonably cause these injuries to require medical services for the diagnosis and treatment of the physical damage sustained. The nature and magnitude of these injuries is also sufficient to reasonably cause the claimant to experience disability at least as a temporary basis. Thus, the claimant has satisfied the fifth and final definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven that on August 10, 2006, he sustained compensable injuries to his 7<sup>th</sup> left rib, his right wrist, and his left elbow.

### III. MEDICAL EXPENSES

Clearly, the claimant is entitled to reasonably necessary medical services for his compensable injuries, under Ark. Code Ann. §11-9-508. However, he must still show that the actual medical services provided represent “reasonably necessary medical services”.

The evidence presented shows that the medical services provided to the claimant at the Eastern Oklahoma Medical Center emergency room and by and at the direction of Dr. Edward W. Rhomberg of the River Valley Musculoskeletal Center were all necessitated by and directed toward the claimant’s employment related injuries of August 10, 2006. A review of the actual medical services provided reveals that they were of a type and nature recognized and commonly employed by the general medical community as being reasonable and medically appropriate for the diagnosis and treatment of the injuries such as those experienced by claimant. Not only does the evidence presented indicate that these medical services had a reasonable expectation of accomplishing the purposes or goal for which they were intended, but in fact, actually did so.

Therefore, I find that the medical services provided to the claimant by physicians at the Eastern Oklahoma Medical Center emergency room and by and at the direction of Dr. Edward W. Rhomberg represent “reasonably necessary medical services” for the claimant’s compensable injury under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondent is

liable for the expense of these services, subject to the medical fee schedule established by this Commission.

#### IV. TEMPORARY TOTAL DISABILITY BENEFITS

In order to be entitled to temporary total disability benefits, the claimant must prove that he continued within his healing period from the effects of his compensable injury. As his injury sustained were primarily to portions of his body scheduled under Ark. Code Ann. §11-9-521, he must only also prove that he had not "returned to work".

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the resolution of the actual physical damage caused by the compensable injury. Once this underlying physical damage has totally resolved or at least stabilized, at a level where nothing further in the way of medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

A review of the medical evidence in the present claim, shows that the claimant continued within his healing period from the effects of his compensable injuries, through November 8, 2006. At that time, it was noted that x-rays showed that the fracture of the claimant's right distal radius had healed, although with a residual dorsal angulation of the distal fragment. However, Dr. Rhomberg

concluded this acceptable degree of deformity and no further medical treatment was necessary.

Again, the only evidence presented by the claimant to show that he had not returned to work during this period was his own testimony. However, again I find the claimant's testimony in this regard to be credible.

Therefore, it is my opinion that the claimant has proven that he was rendered temporarily totally disabled as a result of the effects of his compensable injuries for the period beginning August 10, 2006 and continuing through November 8, 2006. He would be entitled to temporary total disability benefits at the weekly rate of \$213.00 during this period.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On August 10, 2006, the relationship of employee-uninsured employer existed between the claimant, and J. Smith, Inc. dba J. Smith Sunrooms.

3. On August 10, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$213.00 for total disability and \$160.00 for permanent partial disability.

4. On August 10, 2006, the claimant sustained compensable injuries to his 7<sup>th</sup> left rib, his right arm, and his left elbow.

5. The medical services rendered to the claimant at the emergency room of the Eastern Oklahoma Medical Center in Poteau, Oklahoma, and by and at the direction of Dr. Edward W. Rhomberg

represent reasonably necessary medical services for his compensable injuries, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondent is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

6. The claimant was rendered temporarily totally disabled as a result of the effects of his compensable injuries for the period beginning August 11, 2006 and continuing through November 8, 2006.

7. The respondent has controverted the claimant's entitlement to any benefits.

8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all controverted indemnity benefits herein and hereinafter awarded.

#### ORDER

The respondent shall pay to the claimant temporary total disability benefits at the weekly rate of \$213.00 for the period beginning August 11, 2006 and continuing through November 8, 2006. These benefits have all accrued and total 12 5/7th's weeks or \$2,708.14.

The respondent shall be liable for the medical expenses incurred by the claimant as the result of reasonably necessary medical services provided him by and at the direction of personnel at the emergency room of Eastern Oklahoma Medical Center in Poteau, Oklahoma, and by and at the direction of Dr. Edward W. Rhomberg. Such liability is subject to the medical fee schedule established by this Commission.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondent in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondent from these benefits.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE