

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608022

LYNN BURKETT

CLAIMANT

TIGER MART, INC.

RESPONDENT

AMERICAN HOME ASSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 18, 2007

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

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

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 20, 2007, in Fort Smith, Arkansas. A pre-hearing order had been entered in this case on January 4, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On July 15, 2006, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$139.00 for both total disability and permanent partial disability.
3. On July 15, 2006, the claimant sustained a compensable injury to her right hand.

4. There is no dispute over the payment of medical expenses through August 21, 2006.
5. There is no dispute over the payment of temporary disability benefits through August 21, 2006.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant's difficulties with her right upper extremity, which have been diagnosed as RSD, represent a compensable consequence or complication of the compensable injury of July 15, 2006.
2. The claimant's entitlement to additional medical services, additional temporary total disability from August 22, 2006 through a date yet to be determined, and attorney's fees.

In regard to the foregoing issues, the claimant contends:

"Claimant suffered an accidental injury to the right hand arising out of and in the course of her employment on July 15, 2006, as a consequence or complication of the initial injury. Claimant is suffering from reflex sympathetic dystrophy for which respondents are not providing medical benefits to which claimant is entitled. Claimant is entitled to additional temporary total disability, medical benefits and attorney's fees."

In regard to the foregoing issues, the respondents contend:

- (a) Respondents are not responsible for medical care received after claimant was released to return to unrestricted duties by her authorized treating physician, Dr. David M. Rhodes.
- (b) Temporary total disability benefits were paid from July 16 through August 20, 2006, the total amount paid being \$734.00.
- (c) Claimant was offered appropriate work by respondent employer, but declined to return to work.

- (d) Respondents ask leave to supplement these contentions as discovery proceeds.

DISCUSSION

The stipulations reflect that the respondents have accepted the occurrence of a compensable injury to the claimant's right hand on July 15, 2006. This compensable injury occurred when a piece of plastic fell from a sign and struck the claimant on her right hand. The medical evidence shows that this initial compensable injury was diagnosed as being in the form of a relatively minor contusion to the claimant's right hand. No fractures or other significant damage was shown on x-rays. The initial emergency room records reflect only the observation of mild swelling from mid-palm to the tips of the fingers on both the front and the back of the claimant's right hand. There is no record of the observation of any cut, laceration, or even abrasion involving the claimant's right hand. This would be contrary to the claimant's testimony and to the history recorded by Dr. Kelly.

The claimant was next seen by Dr. Robert May, who had previously treated her for an injury to her right upper extremity. When he saw the claimant on July 19, 2006, Dr. May noted no objective findings of damage to the claimant's right hand, particularly no swelling, redness, temperature differential, skin changes, or hair pattern changes. However, he did diagnose the possibility of developing RSD (reflex sympathetic dystrophy), based solely upon the claimant's subjective complaints of extensive pain

involving the entire right arm with “devastating” pain to light touch.

On July 26, 2006, Dr. May again saw the claimant and noted that her symptoms were worsening. He continued his diagnosis of RSD. However, he again specifically stated that there were no visible signs of injury or any visible changes to indicate the presence of RSD. His diagnosis remained based solely on the claimant’s extensive subjective complaints of pain, which he describes as “terrible pain, shooting burning pain in the right hand.”

Dr. May continued to diagnose the claimant as suffering from RSD through his visit on July 28, 2006. However, his reports and records indicate that this diagnosis was based solely upon the claimant’s subjective complaints of severe pain, particularly to light touch.

The claimant was next examined by Dr. David Rhodes. This examination occurred at the respondents’ request. Dr. Rhodes noted that, in regard to her right upper extremity, she displaced radial pulse of 3+ and capillary refill of less than 2 seconds. At his request a triple phase bone scan was performed on the claimant’s right upper extremity. Although this bone scan showed findings indicative of post-traumatic change involving the claimant’s scaphoid and lunate in her right wrist, this study did not support the presence of RSD. The claimant last saw Dr. Rhodes on August 21, 2006. At that time, he noted that both the triple phase bone

scan and his physical examination failed to objectively demonstrate any abnormalities indicative of the presence of RSD.

The claimant was next seen by Dr. Westbrook on August 31, 2006. In the report of that date, the nurse's notes record a history of a hammer being dropped on the claimant's right hand on July 15, 2006. It further noted that the claimant experienced swelling and constant pain since that time. Dr. Westbrook in his physical examination does note swelling of the dorsum of the right hand and diagnoses tendinitis or possibly carpal tunnel syndrome. However, except for the swelling, there is no evidence of the observation of any objective physical findings consistent with RSD.

On September 2, 2006, the claimant returned to the emergency room at Johnson Regional Medical Center. At that time, the visual observation of moderate swelling was noted on both physical examination and x-rays. However, it was further noted that the claimant did not display any temperature change or redness of the back of her hand.

However, two days later (September 4, 2006), the claimant returned to the Johnson Regional Medical Center emergency room. At that time, she was complaining of severe pain and swelling in her right hand with redness of the hand. On physical examination, it was noted that she exhibited redness and swelling of the palm of her right hand. Although the claimant denied any injury since her visit of September 2, 2006, her difficulties were diagnosed as "possible cellulitis". Dr. Joseph Kradel, the emergency room physician, noted the following:

"She is having trouble with her right hand. She injured it the 15th of August and has been seen a couple of times since then. She saw a specialist and was told that it was okay and then she had more pain and had repeat x-rays which just showed some old injuries, nothing acute. She is having much more pain today, which is a Monday. The hand is swollen. She does have swelling and there is some erythema, which actually looks more like bruising across the knuckles and down the right lateral aspect, the palmar aspect of the hand over the fifth metacarpal. It is markedly swollen to the touch. There is one area that looks like there may have been a bite/sting, but nothing to drain. She is not running any fever."

Dr. Kradel suspected that the claimant was experiencing an infection or cellulitis and provided appropriate anti-biotics and anti-bacterial medication.

The following day, September 5, 2006, the claimant returned to Dr. Westbrook. Dr. Westbrook noted that the claimant's hand was warm and swollen. His diagnosis was cellulitis and possible RSD. He recommended a referral of the claimant to Dr. Kelly.

The claimant appears to have initially seen Dr. James E. Kelly, III, on September 6, 2006. Dr. Kelly states that on that date, the claimant presented:

"With a swollen, red hand, very painful. She has hyperhydrosis of the palm as well as excessive hair growth and shiny skin."

Based upon his observations and the claimants stated complaints, Dr. Kelly voices the following opinion:

"She has classic RSD findings and at this point, I think it warrants fairly aggressive treatment. I am going to start her on stellate ganglion blocks as well as stress loading therapy. We will keep her on light duty restrictions and I will be following her throughout her care."

At the hearing, the claimant's right hand did appear to be somewhat swollen. However, her left hand appeared to be equally swollen. There was also no noticeable skin changes, bluish discoloration of the skin, abnormal hair growth patterns, or muscle atrophy.

I am concerned about the discrepancies in the objective findings that formed the basis for the diagnosis of RSD. I am also somewhat concerned with Dr. Kelly's conclusion that his observation that the claimant's right hand was "red", is supportive of his diagnosis of RSD. Generally, as RSD results in a constriction of blood flow to the affected area, a bluish tinge of the skin and decreased skin temperature is recognized as a symptom of RSD, rather than redness and increased temperature. After consideration of all the evidence presented, it is my opinion that to insure a fair and just result to all parties concerned, the claimant should be evaluated for her hand complaints by a qualified medical doctor that specializes solely in injuries and conditions involving the hand, including RSD. I further find that this appropriate medical expert is Dr. Ruth Thomas, an orthopaedic surgeon and head of the hand section at the University of Arkansas School for Medical Sciences in Little Rock, Arkansas. The claimant is hereby ordered to undergo an evaluation and any appropriate testing by Dr. Thomas. This evaluation and testing is to be at the respondents' expense. The respondents shall also obtain from Dr. Thomas a report setting forth her opinion on the etiology of the claimant's right hand difficulties, particularly as it regards the existence of reflex

sympathetic dystrophy (RSD). Any decision on the issues set out in the pre-hearing order is reserved, pending the result of this evaluation and report.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On July 15, 2006, the relationship of employee-employer-carrier existed between the parties.

3. On July 15, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$139.00 for both total disability and permanent partial disability.

4. On July 15, 2006, the claimant sustained a compensable injury to her right hand.

5. There is no dispute over the payment of medical expenses incurred through August 21, 2006, for this compensable injury.

6. There is no dispute over the payment of temporary total disability benefits, which accrued through August 21, 2006.

7. The issue of whether the claimant has experienced a compensable consequence or complication of her admittedly compensable right hand injury, particularly in the form of reflex sympathetic dystrophy (RSD), should be and hereby is reserved for future determination as set out in this Opinion.

8. The claimant's entitlement to additional medical services and additional temporary total disability benefits should be and hereby is reserved for future determination, as set out in this opinion.

ORDER

The claimant is hereby ordered to undergo an evaluation by Dr. Ruth Thomas at the University of Arkansas School for Medical Sciences in Little Rock, Arkansas, at the earliest convenient date.

The respondents are liable for the expense of the evaluation by Dr. Thomas and any appropriate testing she deems necessary, subject to the medical fee schedule established by this Commission.

The respondents shall also obtain from Dr. Thomas, a written report setting forth her findings and opinions concerning the etiology of the claimant's continued right hand complaints, including her findings and opinions on whether the claimant is experiencing a compensable consequence or complication in the form of reflex sympathetic dystrophy (RSD).

Upon receipt of this report, both parties will be allowed the right to cross examine Dr. Thomas or present any evidence to rebut her medical report.

The issues of whether the claimant has experienced a compensable consequence or complication of her admittedly compensable right hand injury, which is alleged to be in the form of reflex sympathetic dystrophy (RSD), and the claimant's entitlement to additional medical services and additional temporary total disability benefits is expressly reserved for future determination, upon receipt of the reports of Dr. Thomas, the possible deposition of Dr. Thomas, and any appropriate rebuttal evidence that either party may wish to offer.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE