

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F609429

DEMETRIUS CURTIS, EMPLOYEE **CLAIMANT**

STAFFMARK, EMPLOYER **RESPONDENT**

AMERICAN HOME ASSURANCE CO.
C/O AIG CLAIM SERVICE,
INSURANCE CARRIER/TPA **RESPONDENT**

OPINION FILED DECEMBER 5, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 18, 2007, the above captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on August 22, 2007, and a Prehearing Order was entered that same day. A copy of the August 22, 2007, Prehearing Order was marked as Commission Exhibit 1 and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full 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 16, 2006.

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- 3) The parties agreed the claimant's average weekly wage was \$320.00 per week which would entitle the claimant to a weekly temporary total disability rate of \$213.00 and a weekly permanent partial disability rate of \$160.00.

At the full hearing the parties agreed the following issues would be presented for determination:

- 1) Whether the claimant sustained a compensable injury to his right hand by specific incident on or about the 16th day of August 2006.
- 2) If compensability is overcome, whether the claimant is entitled to TTD benefits from August 16, 2006, through October 17, 2006, PPD benefits, and all associated medical treatment, and attorney fees.

At the full hearing the claimant contended that he sustained a cut at work that subsequently got infected on or about August 16, 2006. Due to the claimant's cut and infection, he contends he sustained a compensable specific incident injury to his right hand on or about August 16, 2006. Claimant contends that he is entitled to TTD benefits from August 16, 2006, until October 17, 2006, PPD benefits in the amount of 6% to the middle finger, all associated medical treatment, and attorney fees.

Respondents contended that the claimant did not suffer a compensable injury on or about August 16, 2006. Respondents contend claimant's current need for medical treatment is not related to any work activity. Respondents contend that there was no causal connection between the claimant's medical condition, and the medical

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documentation does not support a compensable injury. Respondents contend that in the event compensability is found, respondents contend the medical documentation does not support entitlement to any indemnity benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission and having had an opportunity to hearing the testimony of the witnesses and to observe their demeanor, the following findings of fact and 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 parties' stipulations outlined herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that the injury he sustained to his right middle finger arose out of and in the course of his employment.
- 4) Therefore, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury which occurred by specific incident on or about August 16, 2006.

DISCUSSION

In August of 2006 the claimant was employed by Staffmark, who sent the claimant to work at George Fischer's. The claimant testified as follows regarding his

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job duties at George Fischer:

A It was basically – they had machines that would make fittings and couplings that fit on pipes. And they all come out like in a puzzle, where you have to break it loose or cut it loose and stick it in another thing of water. First, you pick it out of the water, and then you cut it and put it into another barrel for it to cool off, I guess. And that was, basically, my job, watching the machines all day.

Q And you said “pipes,” what kind of pipes are those?

A Well, it – it’s –

Q Is it plastic or metal?

A – it’s like PVC pipe, sort of hard plastic –

Q Okay.

A – that’s like couplers has –

Q And you take them out of a liquid?

A Yes. The machine spits them out into a big barrel of water. And you reach down and pick up so many – as many as you can and put – put them in another barrel of water for them to cool off. And then once they cool off, you take them out and they’re – like I said, they’re like puzzles. And you start breaking them and cutting them loose from the little framing that they come out on.

Q Okay. Do you use your hands to do this?

A Yes, sir, that’s – yes, you use your hands. You have to stick your hand, basically, down in the water to grab the parts.

(T. pp. 11-12, lines 4-25, lines 1-3).

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The claimant testified that when picking up the pieces of PVC from the water barrel and trimming the pieces it would cause him to sustain small cuts on his hands throughout the course of every day:

A And the parts have a lot of – because you have to cut it off with a knife. They have a lot of different, like, sharp edge that comes out where the molding doesn't come out right sometimes. And when you reach your hand down in there to grab a lot of them, if you're not really looking at how you're picking them up, you can cut your hand a lot.

Q Well, I mean, I believe you told Mr. Parrish, in your deposition, that – was it routine to get cuts on the inside of your hand working with this type of material?

A Yes. I mean, this was every day.

Q Paper cuts, small cuts?

A Yes. Yeah, with little cuts, yeah.

(T. pg. 12, lines 5-16).

The claimant testified that on or about August 16, 2006, he began to have a problem with the middle finger on his right hand. The claimant testified that after noticing a problem with his right middle finger he let about three or four days go by before reporting the problem to his supervisor, Mr. Hastings. Subsequent to telling his supervisor at George Fischer, the claimant did not notify Staffmark until he had to go to the emergency room. The claimant testified that he notified Dana Troutman at Staffmark who was his Staffmark supervisor. The claimant testified as follows when

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he first noticed a problem with his right middle finger:

A When I – when I first started noticing it, I – I thought it was just a – like a – I’m going to say a callus or something. I seen the red spot in my finger on the – I guess, over in the – on the line or vein, but I didn’t pay any attention to it, but then about – it was like Wednesday. Would say around, like, Friday, my hand started swelling, so I was – I was getting, you know, worried myself, like, why is this swelling? So then I – that Saturday, I don’t – I came in – Mr. Hastings didn’t work. I think he came in later that afternoon, though. And then that’s when I let him know. I just showed him my finger, saying – but I – I didn’t know it was infected at that time. I was just saying I got a callus and pick at my fingers. It was swelling, you know.

(T. p. 14, lines 12-24).

The medical records show that the claimant treated at UAMS on August 16, 2006, and was diagnosed with right long finger infection. The claimant then received an operation on his right long finger that consisted of incision and debridement. Following the August 16, 2006, surgery and visit to the emergency room, the claimant remained off work. On September 5, 2006, the claimant returned to UAMS Orthopaedic Surgery Clinic, and the following impression and recommendations were noted: “Most likely would need to be off work for 3-4 more weeks for complete healing before heavy duty work. RTC 1 week. Continue BID soaks and dressing using Xeroform.” (C. Ex. 1, pg. 11). On June 13, 2007, the claimant was evaluated for an impairment rating of his upper extremity pursuant to Claimant’s Exhibit 1, page 14, the claimant was found to have a 6% impairment to his right middle finger.

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At issue is whether the claimant sustained a compensable injury to his right middle finger on or about August 16, 2006, which was subsequently infected.

When a claimant alleges that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence: (1) the injury arose out of and in the course of his employment; and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. (A.C.A. § 11-9-102(4)(A)(i) and A.C.A. § 11-9-102(4)(E)(i)). He must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Moreover, the claimant must establish (4) that the compensable injury is supported by objective findings as defined in A.C.A. § 11-9-102(16).

On the record before me, it is simply too speculative to find that the claimant's injury to his right middle finger arose out of and in the course of his employment on or about August 16, 2006. First, it must be noted that the claimant's attorney specifically argued that the claimant's position was that he sustained a cut to his hand which became infected (T. pg. 5, lines 17-20). Even though the claimant contended that he sustained a cut on his middle finger while working for the respondents which later became infected, he testified to just the opposite. Under cross-examination the claimant admitted that there were no visible cuts, scratches, or anything where he had

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the infection on his middle finger:

Q The site where you had the infection, you didn't have any cuts on that finger, did you?

A I – I really – I had cuts on both of my hands, but I mean, I had just –

Q I'm asking about your middle finger, the finger they operated on.

A Well, no, I didn't – I didn't see none. I didn't see none at all.

Q No visible cuts, scratches, or anything? The only place that was an open wound was where you chewed your nails?

A I – I'm assuming, yes.

(T. pg. 24, lines 2-12).

In fact, the medical reports from UAMS state that the claimant denied any known trauma or injury to his finger. (C. Ex. 1, pg. 1). The UAMS progress report found at Respondents' Exhibit 2, page 2, seems to state that the infection to the claimant's right finger was due to the claimant biting his nail. The same report states that the claimant refused to accept the explanation given at UAMS, that his own body caused the infection and instead firmly believed that the exposure at work caused his infection. The report states that the claimant wished to find a second opinion regarding causation. The report from UAMS found at Respondents' Exhibit 2, page 3, stated as follows: "He did not accept that staphylococcus from his body could cause such of a severe infection. He was concerned that we did not know the type of

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antibiotics to give him or the identification of the bacteria responsible for his infection.” The same report states that the claimant still insisted that his infection was from his work.

Again, the claimant testified that when he first noticed a problem with his right middle finger it looked more like a callus under the skin; however, the claimant testified the skin was not broken:

Q Okay. This infection, you testified about it, I believe, on direct, was actually under the skin on that middle finger, wasn't it?

A Yes, sir.

Q You said it welled up and looked like a callus or a –

A Yeah, it was a red – red spot started up in this –

Q Okay. But it was under the skin. The skin wasn't broken on that underside of your hand?

A No, no.

(T. pp. 22-23, lines 19-25, 1-2).

The reports contained in the record from UAMS seemed to indicate that the claimant's condition could have arose from him biting his own fingernails and ultimately the claimant in his own testimony stated that the only way he could see that the injury happened was from biting his nails:

Q I asked you specifically – I gave you a chance to tell me at the deposition –

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A Okay.

Q – my question was, “Tell me what you think caused your problem, how you think it came to be.” Your statement was, “Okay, I bite my nails. That’s the only way I could see it happened.” Do you remember telling me that?

A I mean – yes.

(T. pg. 20, lines 9-18).

The claimant seemed to contend at the full hearing that his infection was due to the dirty water contained in the barrels where the claimant would pick up the PVC parts. However, in the middle of the hearing, the claimant’s own attorney stipulated that the claimant did not know where the infection came from:

MR. WILSON: Judge, we’ll stipulate we don’t know where the infection came from. We’ll stipulate.

(T. pg. 21, lines 8-9).

The claimant testified to numerous other activities he engaged in outside of the workplace. The claimant acknowledged that the doctors at UAMS explained to him that his infection could have come from a number of different places, including but not limited to, a handle at a grocery store:

Q You have some pets. You have two Pit Bulls you take care of?

A Yes, sir.

Q You told me that sometimes you have to go out and clean up after them, shovel poop –

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A Yes, sir.

Q – and get it out of your yard?

A Uh-huh.

Q You prepare your own food at your house –

A Sometimes.

Q – take care of yourself sometimes?

A Sometimes.

Q Okay. Sometimes you go out to the Arkansas River. You've got a boat, and you put it in the Arkansas River.

A Yes, sir.

Q You told me you – even though you said you hadn't done it around the time of the infection, you do go down to the river and, I guess, swim and –

A Yes, sir.

Q – drive your boat around, right?

A Yes, sir.

Q Okay. Did the people at UAMS not explain to you that staph could come from any one of those environments?

A Yes, they did.

Q And that's what you guys were disagreeing about?

A That was the discussion that we had, yeah, because I was telling them I hadn't been anywhere and done anything, so it was

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basically from my job.

Q Didn't they tell you, also, it could have come from a handle at a grocery store – told you it could have come from grocery cart?

A Yeah, they said that. They said – well, he was giving me examples of how you could pick it up, so, yeah, I think he did. I – I'm not sure.

(T. pp. 28-29, lines 17-25, 1-25).

It is clear from the medical records and the claimant's testimony and the claimant's attorney's own stipulation that no one knows where the claimant's infection came from. It is even more clear from the claimant's own testimony that he had no cuts on his middle finger at the time he first noticed any problems whatsoever with his right finger. For this administrative law judge to find that the claimant's injury to his middle finger arose out of and in the course of his employment would be based on pure speculation and conjecture. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Corr. v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

As noted in the medical reports and the testimony recited in the record, it is possible that the claimant's injury was caused by any number of things. In my opinion, the weight of the evidence simply fails to preponderate in favor of finding that the claimant sustained an injury to his right middle finger which arose out of and in the course of his employment. The claimant has failed to provide a record

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sufficient to prove his case. He has failed to meet his burden of proof. There is no evidence from which I can firmly find that the claimant's condition arose out of any particular circumstance. Any determination that the claimant was injured or infected while at work must be speculation and therefore is impermissible. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right middle finger on or about August 16, 2006, and therefore find that this claim is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb