

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605443

DEWAYNE D. DeFOURE, EMPLOYEE	CLAIMANT
RIB CRIB BBQ & GRILL, EMPLOYER	RESPONDENT
UNION INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 30, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on December 18, 2006, at Searcy, White County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 18, 2006, to determine the claimant's entitlement to additional workers' compensation benefits.

This claim was previously assigned to another Administrative Law Judge who is no longer employed by the Commission.

A prehearing conference was conducted in this claim on October 17, 2006, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations agreed to at the prehearing conference still applied. Specifically, the parties agreed that the employee/employer/carrier relationship existed on April 11, 2006, as well as July 8, 2006, and at all other relevant times; that the claimant sustained compensable injuries to his low back and left knee as the result of a work-related incident on April 11, 2006; that the claimant's average weekly

wage was \$380.00, entitling him to a temporary total disability rate of \$253.00 per week; and that respondents had controverted claimant's neck and right wrist injury claims. At the hearing, the parties further agreed that respondents paid temporary total disability through November 13, 2006.

By agreement of the parties, the following issues were presented for determination:

1. Whether the claimant sustained a compensable neck injury on April 11, 2006 at the same time of the admitted, work-related incident and injuries.
2. Whether the claimant's July 8, 2006, right wrist injury was a compensable consequence of his admitted injuries.

In the event the claimant could prove the additional injuries claimed, his entitlement to additional medical benefits must be determined. The claimant specifically reserved the right to pursue additional temporary total disability or permanent partial disability after November 13, 2006.

Claimant contended, in summary, that in addition to his admitted compensable low back and left knee injuries, he also sustained an injury to his neck during the same April 11, 2006, incident. Further, the claimant contended that as a result of his admitted compensable injuries, he sustained a right wrist injury on July 8, 2006, which was a compensable consequence of the April 11, 2006, injuries. The claimant requested that respondents be held responsible for the outstanding medical expenses for the controverted neck and right wrist injuries while reserving the right to pursue additional benefits, pending a determination on the agreed issues.

The respondents point out that it has accepted claimant's low back and left knee injuries related to the April 11, 2006, incident and have paid appropriate benefits. Respondents contended that the claimant had pre-existing physical problems and that his family physician opined that his complaints of neck pain were unrelated to the work-related incident since it occurred six (6) weeks after the low back and left knee injuries. Respondents further maintained that the claimant's right wrist fracture was the result of pre-existing medical conditions, including diabetic neuropathies and other problems with his legs that could have caused the fall which occurred at the claimant's home.

The claimant was the only witness to testify. The record is composed solely of the transcript of the December 18, 2006, hearing containing volumes of exhibits, together with the claimant's discovery depositions which was introduced as "Claimant's Exhibit B" and retained in the Commission file in bound form.

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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained a cervical injury which is directly and causally related to the April 11, 2006, incident when the claimant sustained compensable injuries to his low back and left knee.
4. The claimant has proven, by a preponderance of the credible evidence, that his right wrist injury on July 8, 2006, was a compensable consequence of the April 11, 2006, admitted injuries.
5. Respondents are responsible for all outstanding hospital, medical, and related expenses for the July 8, 2006, wrist injury. The healing period for the claimant's right wrist injury ended on or before November 13, 2006. The claimant would not be entitled to any additional temporary total disability related to the controverted right wrist claim.
6. Claimant's entitlement to additional benefits after November 13, 2006, has been specifically reserved.

#### DISCUSSION

Again, the claimant was the only witness to testify. The claimant began working for Rib Crib BBQ & Grill in Searcy, Arkansas, in December, 2005. The claimant was hired as a cook. He eventually became the kitchen manager. The claimant sustained admitted, compensable injuries on April 11, 2006. The claimant testified that while coming out of a walk-in cooler, carrying a tray of meat, he tripped

on a door-stop in the floor and fell on his left side. At the time the injury occurred, the claimant was alone. He immediately reported the incident to the employer's general manager, Sherry Burton, when she arrived at work. The claimant continued working and did not seek medical attention until later the same day as the accident. The claimant description of the injury, the reporting of the injury, as well as the claimant's initial course of treatment and work history is set out below:

Q Mr. DeFoure, what happened on April the 11<sup>th</sup> of 2006?

A I got there at approximately 6:00 o'clock and started getting stuff out and redoing it. I was coming out of the walk-in cooler and tripped over a door stop in the floor. I had a 35 to 40-pound tray of meat. (Indicating) Of course, I discharged it upon my fall, and I just caught myself on the left-hand side on the concrete.

Q You were showing us that you were carrying this tray of meat on your right shoulder?

A Yes, sir. They put it on big sheet pans at night, and then you have to bring it out in the morning to see what's still good and rewrap it and stuff like that.

Q Was anybody else there?

A Not at that time.

Q When was the first time that somebody else showed up?

A Sherry Burton, the General Manager at that time, showed up at about 7:00 or 7:15; and the moment she come in, I reported it to her.

Q Okay. Now, let's go back for a moment, Mr. DeFoure. When you fell with the tray, you said that you tripped over a door stop?

A The people who had come in and redone the restaurant from the Chinese restaurant had put a door stop right behind the door, and we had our prep stations behind the door. When we'd come out – the door was kinda spring-loaded; and when it shut real heavy, then I tripped over that little door stop that was right there.

Q When you fell, how did you fall?

A (Indicating) When I tripped, I just kinda went out like this and caught myself on the left-hand side with my wrist and my arm and my left side and my left knee.

Q Okay. Did you strike the floor?

A Most definitely.

Q Did you fall to your side or just straight to the floor?

A To my side and straight, just on my left side.

Q All right. Now, after that incident occurred, Mr. Defoure, you said you reported this accident to Ms. Burton; correct?

A Yes, sir.

Q Did you begin to receive some medical treatment?

A When I did that and there was nobody there, I went to what we called the medical box and got me some Tylenol and took that.

Q Was that before Ms. Burton showed up?

A Oh, yes, most definitely.

Q Okay. After Ms. Burton showed up, did you seek out some medical treatment?

A Not then. I went ahead and tried to work that day. Then that afternoon, she made me go to the doctor probably about 2:00 or 2:30.

Q It looks like the first doctor you saw was Doctor Koch.

A Yes, sir. That's our company doctor.

Q And you were later seen by Doctor Ron Williams and Doctor John Yocum; correct?

A Yes, sir.

Q What parts of your body were giving you problems during this period of time?

A (Indicating) My left knee and my lower back and kinda like my shoulder.

Q You're pointing to your left shoulder?

A It was all on my left side that was hurting at the time. That's the side I fell on.

Q Okay. Were you having problems with your neck at that time?

A At that time – that didn't start until probably about a month later when I had to continue seeing Doctors Koch and Ransom.

Q Okay. Let's stop for a second. Did you start losing time from work immediately?

A No, sir. They tried to get me to take off, but I needed to work. When I went on the afternoon it happened, he wanted to give me three days off with light duty. Well, we don't have light duty. So I come on back and continued to work, but Sherry made it light on me and told me not to unload no trucks and stuff like that to help me out.

Q You're referring to Ms. Burton?

A Yes.

Q When did you start actually being off work?

A Well, I couldn't take it no more after 5-12. She seen that day that I was hurting bad and dragging my left leg. She made me go back to Doctor Koch and Ransom that day, and I've been off since. (Tr.10-14)

Respondents exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt, reasonably necessary medical and related treatment. In addition, respondents initiated payment of temporary total disability once the claimant took off work, and continued to pay temporary total disability through November 13, 2006. The claimant was initially examined and treated by Dr. C. W. Koch, Jr., and Dr. C. E. Ransom in the same clinic. Drs. Koch and Ransom were identified as the company doctors. However,

said physicians also happen to be the claimant's family doctors. The claimant was first seen by Dr. Koch on April 11, 2006, at which time his primary complaints involved swelling in the left knee, as well as low back pain. The claimant was taken off work for one day, treated with ice packs and medication, and permitted to return to light-duty on April 13, 2006, and full-duty after the weekend, to return on an as needed basis. (Cl. Ex. A, p.1)

The claimant continued working until May 12, 2006, at which time his employer observed him dragging his left leg and insisted that he return to the company doctors. The claimant has not returned to work since that time. The claimant maintained that he took over-the-counter medication and pain pills until seeking additional medical treatment, and that his condition grew progressively worse until returning to the doctor. The claimant returned to Dr. Koch on May 12, 2006, with complaints of pain in his back and down his left leg, at which time the claimant was scheduled for an MRI of the lumbar spine. The MRI was performed on May 19, 2006, which showed degenerative disc disease at L5-S1 with some compressive effects on the right L5 nerve root. The claimant returned and was seen by Dr. Ransom for follow-up on May 23, 2006, at which time he was diagnosed with a lumbosacral sprain, as well as a sprain of the left knee, at which time the claimant was referred to Dr. Ron Williams, a neurosurgeon in Little Rock, Arkansas, for evaluation of the low back injury. In response to an inquiry from the nurse case manager, Dr. Ransom further opined that the claimant's injury was the major cause

for his current lumbar spine status. (Cl. Ex. A, pp.2-6)

The claimant returned to Dr. Koch on May 31, 2006. At that time, the claimant continued to complain about back pain. Dr. Koch noted that the degenerative changes did not correspond with the claimant's pain pattern. Dr. Koch further noted that the claimant complained, for the first time, of pain in his neck which Dr. Koch did not believe was causally related to the injury because the symptoms first manifested themselves almost seven (7) weeks after the work-related incident. (Cl. Ex. A, p.7)

The claimant returned and was seen by Dr. Ransom on June 6, 2006, with additional complaints of pain to the left knee. Dr. Ransom indicated that the claimant requested a referral to Dr. Bowen, a knee specialist in Little Rock, Arkansas. Dr. Ransom attempted to refer the claimant to Dr. Bowen at the claimant's request. However, the carrier, instead, referred the claimant to Dr. Yocum, a different orthopedic specialist in Little Rock, Arkansas, for treatment of the left knee. In addition, the claimant was referred to Dr. Ron Williams for evaluation of the low back. The claimant stated that when he saw Dr. Williams, he also complained about his neck and that respondents refused to authorize any diagnostic studies or treatment for his neck, apparently based upon the earlier report from Dr. Koch. Thereafter, respondents paid medical and related treatment by Drs. Williams and Yocum by referral of an authorized treating physician.

The record reflects that the claimant sustained another injury on July 8, 2006,

when he fell at home, injuring his right wrist. The claimant's description of the incident follows:

Q Let's talk about your wrist for a moment, Mr. DeFoure. An incident took place on July the 8<sup>th</sup>. Tell us about that.

A Well, it was my son's birthday, and my wife had set up a table and grill out in the back yard. We was going to cook hot dogs for his birthday. I had carried cups and stuff out to that table, and I was going back in to get another pack of hot dogs. When I went to step up on the back porch with my left leg, I had a pain in my back that went to my knee and I fell.

When I did, I heard something crack in my wrist. Then I laid there until the ambulance got there, and they took me to the emergency room.

Q This was your right wrist?

A Yes, sir.

Q When you had fallen in April, you fell on your left side?

A Yes, sir. (Tr.21)

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Q What caused you to fall?

A When I went to step up with my left leg, I had a severe pain in my left back that went down into my knee; and it threw me. It was just like it did at work. There wasn't no escaping it.

Q Had you had that kind of sensation before of trying to step up and feeling this pain in your back and into your leg?

A That's the reason why Ms. Burton sent me home on May the 12<sup>th</sup>, because I got to where I couldn't even walk on it. I was having to drag it.

Q Even if you were on a flat surface, would have have that kind of sensation?

A Yes, sir.

Q Okay. This happened to be stepping up when you got that sensation?

A Yes, sir, and it was all at once. There wasn't no warning or nothing, and I didn't have nowhere to go but the ground. (Tr.22-23)

Concerning the right wrist injury, the claimant was initially examined at the White County Medical Center Emergency Room where x-rays revealed no fracture or acute boney abnormality. The claimant was next seen by Dr. Ransom who in turn referred the claimant to Dr. John G. Slater, Jr., an orthopedic specialist at OrthoArkansas which was the same clinic where he was being treating by Dr. Yocum for the left knee injury. Dr. Slater first examined and evaluated the claimant on July 11, 2006. Dr. Slater diagnosed a sprain of the right wrist which he opined was causally related to the work-related incident. He placed the claimant's wrist in a short arm cast with a note to keep him off work for six (6) weeks. Dr. Slater anticipated a full recovery without permanent partial impairment. (Cl. Ex. A, pp.20-22)

As previously pointed out, the claimant was receiving temporary total disability during the period that Dr. Slater took the claimant off work. Accordingly, the claim related to the right wrist is a medical only claim. At the hearing, the claimant conceded that he was having no problems whatsoever related to the disputed right wrist injury.

By agreement of the parties, two (2) principal issues are presented for determination. The first is whether, in addition to the claimant's admitted injuries, he also sustained a cervical injury on April 11, 2006. A second issue is whether claimant's July 8, 2006, right wrist injury is a compensable consequence of the

admitted injuries.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavenaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the

incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, if the injury does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett v. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962). See also, *Wentz v. Servicemaster*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

Despite the claimant's assertion that he did not experience any neck or shoulder problems before April 11, 2006, the record reflects otherwise. On cross-examination, claimant acknowledged experiencing neck and shoulder problems in 1992 as well as 1993, and again in 1998, which he attributed to arthritis. On further cross-examination, the claimant admitted experiencing shoulder pain, bilaterally, as reflected in medical reports of February 7, 2003. The record reflects that the claimant experienced a multitude of physical problems prior to April 11, 2006, including shoulder problems, cervical problems, knee problems, and low back problems, as well as other health problems including diabetes and high blood pressure. In fact, the claimant had a prior social security claim in 2003 and was incarcerated from 2003 through 2005, at which time the claimant complained of significant back problems. The claimant candidly conceded that his overall physical condition was better at the time of the hearing than when he was incarcerated because he had gotten proper medical treatment. The claimant also acknowledged

that he was actively seeking work and was not making a claim for additional temporary total disability. However, claimant's attorney specifically reserved the issue of entitlement to additional indemnity benefits after November 13, 2006.

I find that the claimant has failed to prove that his cervical complaints are causally related to the April 11, 2006, incident when the claimant injured his low back and left knee. The only symptoms that manifested themselves following the admitted incident involved the low back and left lower extremity. Further, the claimant's family physician opined that the cervical complaints, which the claimant described as "a crick in the neck" did not manifest itself until almost seven (7) weeks after the claimant's trip and fall. (Cl. Ex. A, p.7)

The only remaining issue is whether the claimant's fall at home on July 8, 2006, was a compensable consequence of the admitted injury. When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is compensable, unless it is the result of an independent intervening cause. *Jeter v. B. R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 53 (1998).

Rather than conduct a further analysis of the record in this cause, suffice it to say that I find that the claimant's fall at home was as a consequence of the low back injury. The claimant credible testimony, together with the medical opinion of record supports this conclusion. As previously noted, respondents paid the claimant appropriate temporary total disability during the period of healing for his right wrist

sprain. However, respondents are responsible for the medical and related treatment as the result of the right wrist injury.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that his cervical injury is causally related to the April 11, 2006, admitted injury. Accordingly, claimant's request for payment of outstanding medical and related expenses, together with continued reasonably necessary medical treatment for the alleged cervical injury is hereby respectfully denied and dismissed.

I find that the claimant has proven entitlement to medical treatment related to the July 8, 2006, right wrist injury. Accordingly, I hereby make the following:

AWARD

Respondent, Union Insurance Company, is hereby directed and ordered to pay all outstanding hospital, medical, and related expenses related to the claimant's right wrist injury of July 8, 2006.

This being a medical only claim, no attorney's fees are appropriate pursuant to Ark. Code Ann. §11-9-715.

All additional issues are specifically reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge