

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F611688

REGINALD DENT, Employee	CLAIMANT
JOHN WESTLIN CONCRETE, Employer	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE, Carrier	RESPONDENT

OPINION FILED JULY 5, 2007

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

Claimant appearing *pro se*.

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

STATEMENT OF THE CASE

On June 6, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 26, 2007, and a pre-hearing order was filed on April 27, 2007. 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 employee/employer/carrier relationship existed among the parties on August 11, 2006.
3. The claimant was earning an average weekly wage of \$360.00 which would entitle him to compensation at the weekly rates of \$240.00 for total disability benefits and \$180.00 for permanent partial disability benefits.
4. Respondents paid some temporary total disability and medical benefits.

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

1. Compensability.
2. Temporary total disability benefits.

3. Medical benefits.

At the time of the hearing claimant indicated that he would request temporary total disability benefits for two periods of time. The first period would be October 17, 2006 through November 28, 2006. The second period would begin January 29, 2007 and continuing through a date yet to be determined.

The claimant contends that he suffered a compensable injury to both elbows on August 11, 2006. He contends he is entitled to temporary total disability and medical benefits.

The respondents contend the claimant did not sustain a compensable injury that arose out of and in the course of his employment with John Westlin Concrete, Inc. Without waiving other defenses, the respondents contend that there are no objective findings to support the claimant's claim.

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 April 26, 2007, and contained in a pre-hearing order filed April 27, 2007, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Specifically, there are no objective findings as required for compensability.

FACTUAL BACKGROUND

The claimant began working for the respondent in late July or early August 2006 pouring concrete footings for a subdivision in Columbia, Missouri. While performing this job for respondent claimant was required to use a jackhammer for approximately one to one and a half weeks. Claimant testified that on August 11, 2006 he suffered an injury to both of his elbows and arms while operating the jackhammer. Claimant testified that he reported the problems to his supervisor, Gary Jordan. Claimant was subsequently placed on light duty work by the respondent and was eventually sent to the emergency room at Boone Hospital Center in Columbia. Claimant was diagnosed as suffering from bilateral epicondylitis/tendinitis of the elbows. Claimant was instructed to use Ibuprofen as medication and he was released to return to work with limitations of no heavy lifting or gripping.

Claimant subsequently came under the care of Dr. Motchan who also diagnosed claimant's condition as bilateral epicondylitis/elbow tenosynovitis. Dr. Motchan prescribed medication and ordered physical therapy. Dr. Motchan eventually referred claimant to Dr. Hummel, an orthopaedic surgeon, who diagnosed claimant's condition as bilateral epicondylitis and ordered physical therapy as well as aggressive work hardening.

The respondent initially accepted this claim as compensable and paid some compensation benefits. Respondent subsequently controverted this claim and as a result claimant requested a hearing contending that he suffered a compensable injury and requesting payment of temporary total disability benefits and medical benefits.

ADJUDICATION

The claimant contends that he suffered a compensable injury to both of his elbows and arms while using a jackhammer for the respondent on August 11, 2006. Thus, this claim is for a specific injury identifiable by time and place of occurrence. The Commission

has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury. Specifically, I find that claimant has failed to offer medical evidence supported by objective findings establishing a compensable injury.

Under Arkansas workers' compensation law, it is not sufficient that an employee make complaints of injury to his employer and receive medical treatment for that injury. Arkansas workers' compensation law requires that a compensable injury be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i); *Watson v. Tayco, Inc.*, 79 Ark. App. 250, 86 S.W. 3d 18 (2002).

In this particular case, I have reviewed the medical records which have been submitted by both the claimant and the respondent. My review of those medical records fails to reveal any findings which are considered objective under Arkansas workers'

compensation law. The medical records reflect that x-rays taken of the claimant's elbows and arms were read as negative. Likewise, there are no findings such as swelling, bruising, or muscle spasms. The medical reports do mention tenderness in the claimant's elbow area; however, muscle tenderness is not considered an objective finding. *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W. 2d 570 (1999).

In summary, in order to prove a compensable work related injury under Arkansas workers' compensation law, a claimant must offer medical evidence supported by objective findings establishing an injury. In this particular case, while claimant made complaints of bilateral elbow pain to his supervisor and he was provided medical treatment for that condition, there must be some objective findings establishing an injury. In this particular case, the medical records do not contain any objective findings. Absent objective findings establishing an injury, a claimant cannot prove a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered compensable injuries to his elbows and arms while employed by the respondent. Specifically, there are no objective findings establishing a compensable injury. Therefore, claimant's claim for compensation benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charge for preparing the hearing transcript in the amount of \$277.25.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE