

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510195

JACKIE W. GREEN, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 1 , 2007

Hearing before Chief Administrative Law Judge David Greenbaum on November 17, 2006, at Jonesboro, Craighead County, Arkansas.

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

Respondents represented by Mr. David C. Jones, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 17, 2006, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim October 4, 2006, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to an additional stipulation concerning the applicable compensation rates.

It was stipulated that the employment relationship existed between the parties at all relevant times beginning April 14, 2005, and continuing through on or

about September 14, 2005 and that the claim had been controverted in its entirety. It was further agreed that the claimant's average weekly wage was \$432.83 which would entitle him to a temporary total disability rate of \$289.00 and a permanent partial disability rate of \$217.00 per week in the event compensability was overcome.

By agreement of the parties, the primary issue presented for determination was whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. If answered affirmatively, the claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable, gradual onset, bilateral carpal tunnel syndrome arising out of and during the course of his employment with American Railcar Industries; that the respondents should be held responsible for all hospital, medical, and related expenses, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability benefits beginning the last date worked, on or about September 14, 2005, and continuing through an undetermined date, maintaining that his healing period had not ended; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability.

The respondents contended that the claimant did not sustain any type of gradual onset injuries while working for the insured, maintaining that the claimant's problems and alleged injuries are the result of his pre-existing condition and

unrelated to work activities while further contending that the claimant's job duties were not rapid and repetitive in nature. Alternatively, in the event compensability was determined, respondents maintained that it was not responsible for any benefits prior to notice of an alleged injury on or about September 14, 2005. As a further alternative, in the event compensability was determined, respondents claim a credit or offset for any benefits paid by other providers pursuant to Ark. Code Ann. §11-9-411.

The claimant testified in his own behalf. Kevin Wayne McGee, Danny Sparkman, and David Wallace Dalton were called as witnesses by the respondents. The record is composed solely of the transcript of the November 17, 2006, hearing containing volumes of medical and other documentary evidence.

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 witnesses and to observe their 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 establish, by a preponderance of the evidence,

that his bilateral carpal tunnel syndrome arose out of and during the course of his employment with American Railcar Industries.

4. The claimant has failed to prove, by a preponderance of the evidence, that his carpal tunnel syndrome and/or injury was the major cause of his disability and need for treatment.
5. The claimant has failed to prove a causal connection between his employment and his alleged injury.
6. In the event compensability is determined which is contrary to the within findings of fact and conclusions of law, respondents would be entitled to an offset or credit for benefits paid by other providers pursuant to Ark. Code Ann. § 11-9-411.

DISCUSSION

_____As will be set out further below, the record in this claim is replete with inconsistencies and contradictions. Not only is the claimant's testimony concerning the onset of his symptoms contradicted by the lay witnesses, the claimant's assertions are inconsistent with the medical evidence. The claim turns primarily on the claimant's credibility. Based upon my observations of the claimant's demeanor in response to several questions on cross-examination, I did not find the claimant to be a credible witness. He appeared to be cautious and hesitant in his responses, and at times argumentative, specifically, concerning his denial of pre-existing problems involving his upper extremities. A claimant's testimony is never

considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, that his claim is compensable, i.e., that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from the employment. *Ringier American v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993); *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 455 S.W.3d 408 (2001). Further, the claimant must prove a causal connection between the work-related accident and the later disabling injury. *Bates v. Frost Logging Co.*, 38 Ark. App. 36, 827 S.W.2d 664 (1992). The claimant must show a causal relationship exists between his condition and his employment. *Harris Cattle Co., v. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974).

The claimant does not contend that he sustained an injury as the result of a specific incident identifiable in time and place of occurrence, rather the claimant maintains that he sustained a gradual onset, bilateral carpal tunnel injury which arose out of and during the course of his employment with American Railcar Industries. Accordingly, in order to establish compensability, the claimant must satisfy the following requirements of the Arkansas Workers' Compensation Act:

(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 cause external or internal physical harm to the body;

(3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);

(4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,

(5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

In the instant case, the claimant's alleged cumulative trauma injury was diagnosed as bilateral carpal tunnel syndrome. Accordingly, the claimant must establish each of the aforementioned requirements except for rapid repetitive motion which our Supreme Court has held is not required when the injury is carpal tunnel syndrome. *Killdow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998)

A preponderance of the credible evidence reflects that the claimant's injury did not arise out of and during the course of his employment. As will be pointed out below, the claimant has a medical history of long-standing diabetes. The claimant has been insulin dependent for approximately ten (10) years. In addition, the record reflects that the claimant has failed to take his diabetes medications on a regular

basis. The medical evidence reflects that the claimant's diabetes is the major cause of his disability and need for medical treatment. In addition to proving an injury arising out of and during the course of employment, the claimant must prove that the injury was the major cause of the disability or need for treatment. *Wal-Mart Stores, Inc., v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001); *Freeman v. ConAgra Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

The claimant, Jackie W. Green, testified in his own behalf. The claimant is forty-five (45) years old. He has a ninth grade education. The claimant began working for American Railcar Industries on April 13, 2005. Before starting work, the claimant was sent to welding school. The claimant gave a detailed description of his job duties which were hard to conceptualize. Suffice it to say that the job description indicated that the welding process required the claimant to frequently squeeze the trigger on the welding tool in order to make a tack weld and involved rapid repetitive motion of the right hand. (Tr.17-20) As previously pointed out, in the event that the claimant can prove a carpal tunnel injury, proof that the job activities involved rapid repetitive motion is not required. The significance of the claimant's job duty is that the claimant's job activities did not involve rapid repetitive motion of the left hand. However, the medical evidence reflects that the claimant has undergone a carpal tunnel release on the left rather than the right. This is further evidence that the claimant's bilateral upper extremity problems are related to his pre-existing diabetes rather than to any work-related injury.

The claimant offered an extremely confusing history of the onset of symptoms involving both of his upper extremities, as well as reporting any symptoms to upper management. The claimant maintained that he began developing problems in August, 2005, when he began working increased hours and after changing job duties. The medical evidence reflects that the claimant began experiencing bilateral upper extremity problems soon after going to work at American Railcar. The claimant attributed the conflicting medical history to unrelated injuries in addition to the alleged carpal tunnel injury, specifically, burning a blister on his left hand during the first week of his employment at which time he was taken to the hospital, and a second incident at work when he allegedly suffered a heat stroke and was treated in-house before eventually going to the hospital for symptoms related to the heat stroke. It was during the claimant's visit to the hospital for heat stroke that he was referred to an orthopedic surgeon for evaluation of his bilateral upper extremity problems, Dr. Spencer H. Guinn in Jonesboro, Arkansas. Dr. Guinn ordered nerve conduction studies which were performed on August 25, 2005, which revealed moderate entrapment of the right median nerve and mild entrapment of the left median nerve. The neurologist was very suspicious that the abnormalities were related to early diabetic neuropathy because the claimant reported a history of being insulin dependent. Nevertheless, Dr. Guinn performed a carpal tunnel release on the left side rather than the more severe right on November 11, 2005. (Cl. Ex. A, pp. 10-15)

Prior to undergoing a carpal tunnel release, respondents requested that the claimant be evaluated by Dr. Michael Lack, with Occupational Health Partners in Jonesboro, Arkansas. The evaluation was performed on September 26, 2005. Dr. Lack was specifically asked to address the work-relatedness of the claimant's bilateral carpal tunnel syndrome. In his report, Dr. Lack noted that, by history, the claimant developed problems with both hands after working as a welder for two and one-half (2-1/2) weeks. He further noted that the claimant had been diagnosed with moderate CTS on the right and mild CTS on the left, and that, in addition, the claimant had evidence of diabetic neuropathy. Rather than conduct an exhaustive analysis of the report, a summary of his opinion states:

In my opinion, Mr. Green's CTS is due to his diabetes and obesity. Mr. Green's symptoms developed within 2 ½ weeks of starting to work at ARI. This is not a sufficient period of time for the development of a repetitive stress injury. Although I have not observed this job, it is not likely from the description of work provided by Mr. Green, that the work would meet NIOSH's definition of rapid, repetitive, or forceful. While the work may have increased the discomfort and the numbness, it did not cause the CTS. In addition, Dr. Guinn noted some wasting of the thenar muscles of the right hand. This is a long-term finding and should not occur in the short term. (Resp. Ex. A, p.38)

It is apparent from a review of the claimant's testimony, that he intentionally modified his testimony concerning the onset of his symptoms in order to dispute the medical conclusions of Dr. Lack. The claimant maintained that he had worked several months before his symptoms manifested themselves, specifically attributing the problems to a change in duties and an increase in hours during August, 2005. However, the claimant's assertions are inconsistent with the record as a whole, as

well as his personal course of conduct.

The claimant filed a Commission Form AR-C on October 10, 2005, relating his hand problems to a May 17, 2005, date of accident. (Resp. Ex. C)

It must further be noted that when the claimant was initially evaluated by Dr. Spencer Guinn, on September 12, 2005, he gave a history of bilateral hand numbness, tingling, and pain for at least the last four (4) to six (6) months which had been getting progressively worse. (Cl. Ex. A, p.17)

Kevin Wayne McGee, the claimant's plant supervisor, was the claimant's immediate supervisor and group leader when the claimant was hired in April, 2005. He stated that the claimant initially made complaints concerning his hands shortly after he was hired. Likewise, Danny Sparkman, another welder and co-worker, stated that the claimant complained about his hands cramping within the first couple of weeks that the claimant started work. Mr. Sparkman reportedly told the claimant that that was normal for welding and that he had experienced the same problems when he started. Mr. Sparkman stated that the claimant never indicated that his problems were work-related.

On cross-examination, the claimant acknowledged that he had been a diabetic for twenty (20) to twenty-five (25) years and had been insulin dependent for approximately ten (10) years. On further cross-examination, the claimant acknowledged that he had made numerous applications for social security disability related to high blood pressure and diabetes beginning in 1989. More recently, the

claimant had applied for social security disability related to his diabetes just before going to work at American Railcar. Despite the claimant's assertion that he had never experienced problems with his upper extremities before the within claim, the medical records reflect that the claimant, in a September 18, 2003, consultation, complained about occasional numbness in his left arm and that the episodes resolved with rest. (Resp. Ex. A, p.15) The claimant was extremely cautious and hesitant in his responses when questioned about the prior left upper extremity problems. The claimant also argued when questioned about not taking treatment for his diabetic condition which reflected he had been non-compliant with his medical needs. (Tr.42-50)

The claimant bears the burden of proving that an alleged injury arose out of and in the course of employment. This requires a finding that the injury grew out of or resulted from the job duties. The record in this case is replete with inconsistencies and contradictions. The only medical opinion of record addressing compensability reflects that the claimant's injury, disability, and need for treatment pre-existed his employment and was due to the claimant's diabetes rather than a work-related 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 he sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge