

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIMS NOS. F607745, F608290 & F609157

FLOYD D. IRONS

CLAIMANT

NORTHSIDE HEATING & COOLING, INC.

RESPONDENT EMPLOYER

**FEDERATED MUTUAL INSURANCE CO.
FIRSTCOMP INSURANCE CO.**

**RESPONDENT CARRIER NO. 1
RESPONDENT CARRIER NO. 2**

ORDER AND OPINION FILED FEBRUARY 22, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE DONALD C. PULLEN, Attorney at Law, Hot Springs, Arkansas.

Respondents No. 1 represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on January 12, 2007. A prehearing conference was held on December 5, 2006 and a prehearing order was filed the same day. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and before the hearing, the parties agreed to the following stipulations:

1. There was a compensable January 7, 2005, back injury.

2. There was also an employer-employee relationship on May 10, 2006.

3. The compensation rates are \$399/299.

4. Federated (Respondent No. 1) was on the risk from January 2005 - December 2005.

5. FirstComp Insurance Co. (Respondent No. 2) was on the risk from January 2006 - present.

The claimant contends that he sustained a gradual onset injury, which culminated May 10, 2006. The claimant contends he is entitled to additional medical benefits for the back and benefits for the hand, as well as temporary total disability benefits from July 24, 2006, to a date to be determined. The claimant further requests attorney's fees.

Respondent No. 1 contends the claimant was released from care for his back in February 2006 and he continued to work while treating for his back. Respondents contend the claimant was released to full duty and a rating was not assigned; therefore, respondents contend further treatment for the back is not reasonable and necessary. Respondents next contend that the circulatory or vascular disease of the hands is not work related with the claimant being unable to prove a causal connection to the work. Respondents further contend the job duties of the claimant were not rapid and repetitive. Respondents contend the collateral treatment for the vascular disease and the cubic tunnel are not covered by the Workers' Compensation Act.

Alternatively, Respondent No. 1 contends if the claim is found to be compensable, that the benefits be allocated between the two carriers or that the injurious exposure was in 2006, when Respondent No. 2 had coverage. Respondent

No. 1 requests an offset for any unemployment benefits the claimant drew during any periods temporary total disability was received or that may be awarded or any group medical paid.

Respondent No. 2 contends that the claimant's hand condition is not work related, there is no causal connection with work and the activities were not rapid and repetitive. Respondent No. 2 contends the condition the claimant has is typically caused by either jackhammers or is seen in baseball catchers. Neither of which the claimant does. Alternatively, Respondent No. 2 contends if the claim is found to be compensable, apportionment is proper.

ISSUES TO BE LITIGATED

1. Compensability of the gradual onset hand injury.
2. Medical benefits for the hands and back.
3. Temporary total disability benefits.
4. Apportionment.
5. Offset from group benefits and unemployment benefits.
6. Attorney's fees.

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. There was a compensable January 7, 2005, back injury.
2. There was also an employer-employee relationship on May 10, 2006.
3. The compensation rates are \$399/299.
4. Federated (Respondent No. 1) was on the risk from January 2005 -
December 2005.
5. FirstComp Insurance Co. (Respondent No. 2) was on the risk from January
2006 - present.
6. The claimant has failed to prove by a preponderance of the evidence that he
has a compensable gradual onset hand injury that was caused by rapid repetitive
activity.
7. The claimant has failed to prove by a preponderance of the evidence that
additional medical treatment for his upper back is reasonable and necessary and
related to his compensable back injury.

DISCUSSION

The claimant, 45 years old, had been employed by the respondent employer about 3 years but had been employed in the heating and cooling business for about 13 years. The claimant was injured on January 7, 2005, when a ladder he was using slipped out from under him and he hit a door jamb and fell to the floor. The claimant sought medical treatment for his back a couple months after the incident. The claimant

saw Dr. Wayne Bruffett who ordered a MRI and then continued with conservative care with Dr. Brent Sprinkle, a pain management physician. The claimant was prescribed medication and he continued to take that until October 2006, when the claim was controverted. The claimant had steroid injections while treating with Dr. Sprinkle.

The claimant began to experience numbness in his fingers and his fingers would get cold and the skin started coming off his hands so he sought treatment with his family doctor who referred him to a specialist, Dr. Robert Casali, and then to Dr. Jeanine Andersson. The claimant continued to work until July 24, 2006. On August 1, 2006, the claimant underwent surgery on the right arm and was released to light duty on December 18, 2006.

Under cross examination, the claimant contended that his hand numbness started in April 2005 and he indicated hand numbness in his paperwork with Dr. Andersson in June 2005. The claimant further confirmed that when he first saw Dr. Julie Flick on February 22, 2005, he stated his symptoms were numbness in his fingers and back pain. The claimant started having the skin come off his hands in May 2006, with skin discoloration and the nail coming off in addition to the numbness.

Brian Nalley, owner and manager of the respondent employer, testified that he does not recall the claimant making any complaints about his back after February 2006; however, he did complain about his hands in May 2006. The claimant's hands were blue and the fingernails were falling off and he complained of numbness.

Mr. Nalley testified that small hand tools are used in this business and he described a typical residential installation. This would be a one and a half day to two day job, starting with getting together the materials, loading onto a trailer, driving to the

site, unloading the supplies, building a frame to put equipment on in the attic, hammering sheet metal together, using a screw gun, running copper lines, possibly use a torch, assembling ductwork, using a stapler and cutting insulation for the ductwork. Usually, that would conclude a day's work with two or three guys varying the duties. The next day would involve assembling the ductwork and insulating the ductwork and completing the project. There are periods when hand tools are used and periods when you do not use tools. A hammer drill is used occasionally but no regular use of a vibrating tool.

Under cross examination, Mr. Nalley testified that the claimant had worked for him for about two years and was a competent, punctual employee. Mr. Nalley confirmed that use of the hands for gripping and using tools was a regular part of the job.

Since the claimant in the present claim alleges that he sustained a gradual onset injury as a result of rapid repetitive motion, the requirements of Ark. Code Ann. §11-9-102(4)(A)(ii) (Supp. 2005) are controlling and the following requirements must be satisfied:

- (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 rapid repetitive motion;

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

If the 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 the compensability of the claim and compensation must be denied. See, *Jerry Reed v. ConAgra Frozen Foods*, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a gradual onset injury to his hands that was rapid repetitive motion. The claimant presented a summary of the types of activities he would perform daily on his job as a technician working in the heating and air business. The claimant's job duties involved him using small hand tools on a regular basis throughout the day; however, the job duties varied such that the activities could not be characterized as rapid repetitive motion.

In analyzing whether an injury is caused by rapid repetitive motion, the standard as set out in *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1988), is a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition; the repetitive tasks must be completed rapidly. *Id.* The issue of whether an injury meets the rapid repetitive motion requirement will ordinarily be a question of fact, not one of law; however, although a question of fact, the Commission

must apply the appropriate law to the evidence to reach a conclusion. *Id.*

In many of the cases where it has been found that the job duties satisfy the rapid repetitive requirement, there has been some type of quantification of the activities or tasks the claimant performs such as the Court of Appeals' holding in *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998), where the claimant used an air gun to assemble blocks, with a quota goal of 1,000 units per day. She would hold the parts of the unit with her left hand and work the air gun with her right hand to attach two nuts to each block, averaging attachment of one nut every fifteen seconds. Her job required three maneuvers to be repeated in succession all day: assembling the separate parts, using the air-compressed equipment to attach the parts together with nuts, and throwing the units into a box. The Court of Appeals found this set of activities sufficient to meet the rapid repetitive requirement of the statute.

In the present case, the claimant used hand tools and performed similar activities on a daily basis but his work varied such that his work could not be characterized as rapid repetitive. Since rapid repetitive is an element that must be proven for a compensable gradual onset injury, the claimant has failed to meet his burden of proof. The claimant was diagnosed by Dr. Robert Casali on May 24, 2006, with distal digital disease and he further opined this was secondary to his occupation using heavy machinery and Dr. Jeanine Andersson opined the claimant's condition can be the result of cumulative trauma. These opinions also do not satisfy the "major cause" requirement for a gradual onset injury.

There is no requirement that a claimant show his work to be the major cause of his disability or need for treatment; rather, the claimant is required to show that his

injury was the major cause of his disability or need for treatment. *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998); Ark. Code Ann. §11-9-102(4)(E)(ii). Nonetheless, the claimant must still prove a causal connection between his employment and the injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

Since the gradual injury to the hands was not found to be compensable, the claimant remains responsible for all medical associated with his hand care.

The claimant requested temporary total disability benefits from July 24, 2006, to a date to be determined. The claimant was taken off work because of his hand condition, which was found not to be compensable; therefore, the temporary total disability issue will not be discussed.

The claimant next contends that he is entitled to additional medical benefits for his compensable back injury. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the

compensable injury.

The claimant was released for his back condition on February 15, 2006, by Dr. Sprinkle with a 0% impairment. Dr. Sprinkle recommended the claimant continue RS-4i permanently to help minimize his symptoms and gave him some limited refills on prescription medicine with a simple "return as needed." The additional medical evidence relates to the claimant's hand condition. On June 27, 2006, the claims adjuster wrote Dr. Sprinkle about the necessity for a follow-up visit for the claimant for his thoracic spine. Dr. Sprinkle provided answers to the adjuster's questions that he did not feel there were objective reasons necessitating the claimant to have a follow-up visit for pain management for his soft tissue injury beyond the date of maximum medical improvement. It does appear that Dr. Sprinkle provided that the prescription drug Ultram was reasonably necessary. On September 7, 2006, the claims adjuster wrote Dr. Sprinkle again about the claimant's request for pain medication and Dr. Sprinkle opined at that time that the claimant might need Ultram for three months following the end of his healing period. Dr. Sprinkle also opined that he would need to see the claimant for a prescription refill. From the correspondence in the record, it appears respondents paid for medication for the claimant's back pain through May 15, 2006.

After considering the claimant's testimony and after a careful review of the medical records in evidence, I find the claimant has failed to prove by a preponderance of the evidence that additional medical treatment for his upper back is reasonable and necessary and related to the compensable injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he has sustained a compensable gradual onset hand injury that was caused by rapid repetitive activity. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment for his upper back is reasonable and necessary and related to his compensable back injury. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**