

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F504747**

**KARL J. KOCH, EMPLOYEE**

**CLAIMANT**

**McDONALD'S STORE 5712, EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JUNE 4, 2007**

Hearing before Administrative Law Judge O. Milton Fine II on April 13, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On April 13, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A pre-hearing conference took place on November 27, 2006. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1, which I accept. These stipulations, which I accept, are the following:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times.

3. Respondents have controverted this claim in its entirety.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant amended the issue concerning compensability to change the alleged date of injury to January 21, 2005, resulting in the following being litigated:

#### Claimant:

1. Whether the Arkansas Workers' Compensation Act is constitutional.
2. Whether the injury the Claimant sustained on or about January 21, 2005 is compensable.
3. Whether Claimant is entitled to reasonable and necessary medical care.

#### Respondents:

1. Whether Claimant sustained a compensable injury.

### Contentions

As noted above, Claimant at the hearing amended his issues and contentions to reflect that the date of his alleged injury was January 21, 2005. In addition, at the close of the evidence in this case, Respondents amended their contentions to add the defense of lack of notice. As a result, the contentions now read:

#### Claimant:

1. The Arkansas Workers' Compensation Act is unconstitutional.
2. Claimant sustained a compensable left wrist injury arising out of the course and scope of his employment when he tripped on a mat and fell at work with the Respondent on or about January 21, 2005, and is entitled to all related benefits.

Respondents:

1. The Claimant was not injured in the course and scope of his employment.
2. There are no objective medical findings.
3. The Claimant was not at work on January 22, 2005 or January 23, 2005.
4. Claimant provided no notice to Respondents of his alleged injury until at least after his January 23, 2005 emergency room visit.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. As held by the Arkansas Court of Appeals, the Arkansas Workers' Compensation Act is constitutional on the points argued by Claimant, and his motion to recuse is without merit.
4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his left wrist on January 21, 2005.
5. The reasonable and necessary medical care issue is moot in light of the above finding.

**CASE IN CHIEF**Summary of Evidence

\_\_\_\_\_ Claimant was the sole witness at the hearing. In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant's Exhibit 1, a compilation of his medical records, consisting of one unnumbered index page and seven individually numbered pages.

Testimony

Karl Koch. Claimant testified that his full name is Karl Justin Koch. He is 23 years old, married, and a resident of Mountain Home. After obtaining his general equivalency degree in 2002, he went into the military, where he was a diesel generator mechanic. However, he injured his knee while training for duty in Iraq. This information is reflected in his emergency room records.

He stated that he was injured on Friday, January 21, 2005. Claimant was working late; he was already supposed to have gone home. The manager had stepped out, and Claimant's co-workers were goofing off instead of taking the dishes or pans to be washed. Around 10:30 or 10:45 p.m., shortly before closing, while Claimant was carrying four dishes—two of the tall pans stacked together, with two of the smaller, six-inch pans on top—he stepped on a rubber mat that had grease and food on it and under it. The mat slid, and Claimant fell. The pans fell into the sink, and he fell all the way to the floor. Claimant testified that he experienced a “[s]light pain” in his left wrist when this happened. He attributed the wrist injury to his effort to catch himself while at the same time trying not to drop the pans. At the time this occurred, his knee had fully recovered.

Claimant's testimony was that no one witnessed the fall; his co-workers were at the front counter and in the front lobby. He said that he told no one that he had fallen because he was embarrassed. At 11:30 p.m. that night, Claimant left the restaurant and went home. At that time, his wrist was hurting. While the manager had returned and was doing paperwork, Claimant did not report the fall to him before leaving.

The next day, according to Claimant, his wrist became very swollen. He applied ice to it. Claimant stated that when he awoke the next day, Sunday, his "wrist was black and blue and was throbbing with pain." After talking with his grandmother, Claimant decided to go to the emergency room.

He testified that he called Respondent McDonald's, his employer, from the emergency room because he was scheduled to be at work at 5:00 p.m. that day. Claimant stated that he told a woman named "Galen" at McDonald's about the fall, and was told that while he was excused from work that day, he needed to come in the next day and speak with "Steve," the head manager. Claimant's testimony was that he met with "Steve" and told him about the fall, that he had been placed in a temporary cast on Sunday, and that he was scheduled to see an orthopedist. He asked "what I needed to do for workers' comp.," and "Steve" replied that he was not eligible because he had not filed within 24 hours of the incident.

The next Friday, January 28, 2005, Claimant saw Dr. McBride, an orthopedic surgeon, who replaced the temporary cast with a permanent one that Claimant wore for four weeks. Claimant returned to work after speaking with "Ron," the area manager for McDonald's. After working preparing french fries for two days, Claimant was sent home because, according to what he was told, the cast was a health risk. Two weeks later,

Claimant contacted a supervisor for McDonald's and she told him that he was fired. He stated that she gave no reason for his termination.

According to his testimony, in February 2005 Claimant worked for his father, a plumber, in order to pay his bills. While working on a water pipe, his cast became wet and had to be replaced.

Claimant testified that arthritis is beginning to bother his left wrist. He continues to have problems with his wrist and would like to see a doctor about it. He described his current problems:

To this day, if a low front comes in, it gets cold, my wrist locks up on me. It dislocates. If I try to squeeze something real tight, I can't keep grip on it. My wrist will lock up or it'll pop out of place.

In addition, he stated that if he moves his wrist "in the wrong direction," he encounters a "sharp shooting pain that goes, it starts in my fingers and goes up my wrist." On the stand, Claimant demonstrated what he meant by moving his wrist in a certain fashion. When he did so, a popping action was visible. He testified that he wanted that condition fixed. Also, he asked that the Commission order Respondents to cover his medical bills, including this emergency room and orthopedist visits and the x-ray taken at the ER. Claimant asked that he be allowed to see Dr. Michael Moore, who he contended was a specialist in injuries like the one he is claiming to have.

On cross-examination, Claimant admitted that the popping in his left wrist that he demonstrated on the stand also happens to his right wrist. He stated that the condition in his right wrist is not related to his claim, but to a fall off of his dirt bike that occurred while he was still in the military, and to a skating accident prior to his military service. Claimant testified that the right wrist no longer bothers him.

As for the confusion surrounding the date of the alleged injury, Claimant testified that his May 2005 Form C reflected an accident date of February 2005 because of the length of time it took to obtain an attorney. He said that it thought the date was clear after his visit with his attorney. But he admitted that he had access to his medical records, which would have given the date of the injury, before the date of the hearing. During the month of February, he was still in the wrist cast. He stated that he was told that he had a fracture and that was the reason for the cast.

Claimant testified that as reflected on his patient information form, he worked for Karl's Plumbing, his father's business. He worked there on his "off days" while he was also employed by McDonald's, and worked there full time after his termination. He denied that he ever told anyone that he actually hurt his wrist at Karl's Plumbing, and stated that his father's business was not covered by workers' compensation.

When asked about his meeting with Steve Smith, the McDonald's supervisor, Claimant testified that Smith told him that he could not file a claim because more than 24 hours had elapsed since the alleged fall.

Claimant stated that his wrist was x-rayed, but that he did not get to see the results. He testified that he showed his wrist to the physician at the ER, and that it and his hand were still black and blue at the time.

He confirmed that the only medical expenses incurred in connection with this claim are his visits to the emergency room on January 23, 2005 and the visit to Dr. McBride on January 28.

On re-direct, Claimant testified that the "ultimate diagnosis" on his emergency room record was "Fracture, left wrist."

Respondents called no witnesses.

### Records

The medical records of Claimant that were introduced at the April 13, 2007 hearing and are part of Claimant's Exhibit 1 reflect the following:

On January 23, 2005 at 8:40 p.m., Claimant presented to the emergency room at Baxter County Regional Medical Center. According to the handwritten notes in the record, which are barely legible, Claimant complained of pain in his left wrist that he said was caused by a fall on his outstretched hand. He had no lost feeling or power. He was diagnosed with a fracture of the left wrist and prescribed Vicodin. X-rays taken of the wrist that night "demonstrate[d] no obvious fracture."

According to his patient questionnaire from Regional Orthopedic Health dated January 28, 2005, he described his problem as a "broken wrist [left]" that occurred at work when he "slipped on a rubber mat." He gave the date of the accident as January 22, 2005, and his last day at work as January 24. Claimant described the pain as sharp, constant and throbbing, and stated that his wrist felt worse when he grabbed, lifted, or pulled anything. In addition, he mentioned that he suffered from swelling of the joints.

Claimant's patient evaluation on January 28 by Dr. Anthony McBride at Regional Orthopedic reflects the following history:

The patient is a 20-year-old right hand dominant gentleman who injured his left wrist at work on January 22<sup>nd</sup>. He slipped on a rubber mat, falling on his wrist. He had immediate onset of pain. He was seen in the emergency department and x-rays revealed no evidence of obvious fractures at that time. He has been wearing a splint but still has pain.

His examination reads:

He is a pleasant, thin gentleman in no acute distress and cooperative. His left wrist reveals minimal swelling over the dorsum, towards the navicular, with no lacerations, abrasions, or bruising. He has exquisite tenderness to palpation over the anatomical snuffbox. There is no crepitation with flexion or extension of the wrist. He has no tenderness over the distal ulna. There is no anterior or posterior drawer laxity noted. The hand has no edema in the fingers with good capillary refill noted. The right wrist is noted to have a voluntary subluxation of the intercarpal bones, which is palpable and visibly noticeable when the patient clenches his fist and radial deviates.

Dr. McBride's x-ray report was the following:

X-rays of the left wrist from January 23<sup>rd</sup> reveal no evidence of fractures or subluxation. Repeat films of the left wrist taken in clinic today reveal no evidence of fractures or subluxation. We have a comparative view of the right wrist that reveals no evidence of fractures or subluxation, essentially identical wrist anatomy.

As a result of the foregoing, Dr. McBride assessed Claimant as having a left wrist sprain and placed him in a cast for three weeks.

An appointment note for Claimant dated February 8, 2005 reflects that he presented with a wet cast that was broken down at the palm. He stated that a broken water pipe saturated the cast. The cast was removed and replaced with another short arm fiberglass cast.

## **ADJUDICATION**

### **A. Constitutionality**

Claimant filed on April 6, 2007, a "Motion to Recuse and Notice of Intent to Introduce Evidence at Hearing." Therein, he argues, *inter alia*, that the provisions of the Arkansas Workers' Compensation Act that provide for the establishment of administrative law judges are unconstitutional. The motion and related documents have been blue-backed to the record in this case.

The points raised in the motion are identical to those considered and rejected by the Arkansas Court of Appeals in *Long v. Wal-Mart Stores, Inc.*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Ark. Ct. App. Feb. 21, 2007), *pet. for rev. denied*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Ark. Sup. Ct. May 3, 2007). The Act is constitutional, and Claimant's motion is hereby denied.

B. Compensability

Claimant has alleged that he incurred an injury to his left wrist as a result of a fall at McDonald's on January 21, 2005.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged wrist injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The medical evidence, supported by objective findings, shows that Claimant suffered a wrist sprain. The emergency room record for January 23, 2005 shows that Claimant had swelling in his left wrist. This swelling was still perceptible when he was examined again on January 28, five days later. However, there was no evidence of a wrist fracture, according to the multiple x-rays taken.

That, however, leaves the question of, inter alia, whether this sprain arose out of and in the course of his employment at McDonald's. Claimant testified that the incident occurred on Friday, January 21, 2005, at around 10:30 or 10:45 p.m. while he was carrying pans to be cleaned. But January 21 was the third separate date he has given. As he admitted at the hearing, his Form C listed February 2005 as the date at issue. His patient questionnaire from Regional Orthopedic Health Care reflects the date of injury as January 22, 2005. As he admitted at the hearing, at the time the Form C was filed there should have been no question regarding when he allegedly fell. Moreover, his visit to Regional was only seven days after the alleged accident, so the citation of January 22 in his paperwork at that time is puzzling. His emergency room form from his January 23, 2005 visit reflects no date of injury or where it allegedly took place—in fact, it does not even reflect McDonald's as Claimant's place of employment.

Claimant testified that there were no witnesses to his alleged fall. He did not even inform his supervisor or even one of his co-workers that night what had occurred. This is despite the fact that by his own testimony a number of other employees were on site when he allegedly fell, and the manager had returned to the business prior to Claimant's departure. By his own account, Claimant did not inform anyone at McDonald's about the alleged fall until nearly two days later, while he was at the emergency room. He did not

work at McDonald's those two days, and as was brought out in cross examination, he worked for his father's plumbing business on his "off days."

As for the injury itself, while Claimant described his left wrist and hand as being black and blue on Sunday, January 23, 2005, his emergency room record contains no such description—although swelling of the wrist is noted. Claimant demonstrated while on the witness stand that his left wrist can "pop"—an action that I observed. However, Claimant admitted on cross-examination that his right wrist has the same condition (which comports with Dr. McBride's x-ray report that the two wrists have "essentially identical . . . anatomy"), and that while it was also injured in the past, it gives him no trouble.

The determination of a witness's credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

At this point, I must state that I find Claimant's credibility to be questionable. This determination is based upon not only his testimony when arrayed against the evidence in his medical records and the inconsistencies recounted above, but his demeanor on the witness stand as well.

To show that his wrist sprain arose out of his employment, Claimant must show that a causal connection existed between the injury and his employment. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "in the course of employment" when it occurs "within the time and space boundaries of the employment,

while the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly." *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997); *Pilgrims Pride Corp. v. Calderera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996). See *Sartor, supra*. The only evidence of this is Claimant's uncorroborated testimony. He must prove this element, like the others, by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)). In light of the above, I simply cannot find that Claimant has met his burden of proof on this point.

Consequently, I find that Claimant has not proven by a preponderance of the evidence that the wrist injury is compensable.

C. Reasonable and Necessary Medical Care

Because of the above finding, the other issue litigated at the hearing— whether Claimant is entitled to reasonable and necessary medical care—is moot and will not be addressed.

**CONCLUSION**

Claimant's argument that the Arkansas Workers' Compensation Act is unconstitutional has been rejected previously by the Arkansas Court of Appeals, and is thus denied here as well. He bears the burden of proving by a preponderance of the evidence that his wrist sprain is compensable. He did not do this. Therefore, his claim also must be, and hereby is, denied and dismissed.

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**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge