

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F607002

HENRY KU, Employee	CLAIMANT
WAL-MART ASSOCIATES, Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED JUNE 27, 2007

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

Claimant appearing *pro se*.

Respondents represented by DALE BROWN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 30, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 27, 2007, and a pre-hearing order was filed on that same date. 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 relationship existed between the parties on or about May 1, 2006.
3. The claimant was earning an average weekly wage of \$394.00 which would entitle him to compensation at the weekly rate of \$263.00 for temporary total disability benefits.

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

1. Compensability of injuries to claimant's right and left wrists.
2. Related medical.
3. Temporary total disability.

4. Notice.

At the time of the hearing respondent requested a credit for any wages paid to claimant during any period of benefits which might be awarded.

The claimant contends he suffered a compensable injury to both his left and right wrists. He requests medical and temporary total disability benefits.

The respondents controvert this claim in its entirety. The respondents contend that the claimant's injury or condition, if any, did not arise out of and in the course of employment with the respondent and is unsupported by any objective and measurable findings. The respondents further contend that the claimant's claim is barred for his failure to give timely and proper notice of his injury as prescribed by the Arkansas Workers' Compensation Act.

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 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 February 27, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left and right wrists while employed by the respondent.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left and right wrist injuries.

4. Claimant is not entitled to temporary total disability benefits as a result of his

compensable injury.

5. Claimant provided notice of his injury to respondent before he received any medical treatment; therefore, respondent is liable for payment of all medical benefits incurred in this case.

FACTUAL BACKGROUND

The claimant is a 23-year-old man who began working for respondent in February 2006 as an accounts payable specialist. Claimant testified that a major portion of his job involved data entry. When claimant began working for the respondent he was required to key in various invoices using "10-key". Claimant also testified that he had to use a mouse to click between various screens and enter numbers. Claimant offered as an exhibit one page from a typical invoice which indicated that he had to key some 33 to 35 entries for each line. This particular invoice had approximately 1700 lines. Claimant testified that he performed the job this way for the first five months of his employment. After five months much of the invoice information was already in the computer and claimant simply had to click between each line of an invoice.

In addition to the data entry the claimant was also required to spend time working on "exceptions" which are basically described as potential errors in invoices. Claimant testified that this process also involved using a keyboard and the 10-key.

Claimant testified that in May 2006 he began having pain in both his wrists. After attempting to work through the pain claimant reported the problems to his supervisor and was sent by the respondent to Dr. Berestnev on June 19, 2006. Dr. Berestnev diagnosed claimant's condition as bilateral overuse syndrome of the hands. Dr. Berestnev recommended treatment which included exercises, over-the-counter medication on an as needed basis, and modification of claimant's work station. Dr. Berestnev released claimant to return to work with the limitation of avoiding 10-keying for one week.

One week later on June 26, 2006, Dr. Berestnev ordered physical therapy for the purpose of strengthening and conditioning. He also released claimant to return to work with no restrictions. Claimant testified that following this visit the respondent controverted his claim and did not pay any additional benefits. Claimant continued to work for the respondent and had increased pain. He sought medical treatment from his family physician, Dr. Emerson, on July 26, 2006. She diagnosed claimant's condition as tendinitis and referred claimant to an occupational therapist for evaluation and treatment. She also recommended wrist braces and medication. Claimant did undergo some occupational therapy and continued to be evaluated by Dr. Emerson who eventually ordered an EMG/nerve conduction study. This testing was performed by Dr. Johnson in September 2006 and returned as normal. Dr. Johnson in a report dated September 28, 2006 indicated it was possible that claimant had an overuse-type syndrome. Dr. Emerson in a letter dated October 2, 2006 indicated that the normal EMG study supported her diagnosis of tendinitis.

Claimant's final medical treatment occurred in November 2006 when he was evaluated by Dr. Dickinson who diagnosed claimant as suffering from overuse syndrome of the wrists and prescribed an exercise program.

Claimant has filed this claim contending that he suffered a compensable injury to his wrists while employed by the respondent. He seeks payment of medical treatment and temporary total disability benefits.

ADJUDICATION

Claimant contends that he suffered a gradual onset injury to both his left and right wrists as a result of the repetitive motion he performed for the respondent as an accounts payable specialist. In order to prevail on a gradual onset injury the claimant has the burden of proving by a preponderance of the evidence that he suffered an injury which

caused internal or external harm to the body which arose out of and in the course of his employment and which required medical services or resulted in disability or death; that the injury was caused by rapid repetitive motion; that the injury was the major cause of the disability or need for treatment; and he must offer medical evidence supported by objective findings establishing an injury. A.C.A. §11-9-102.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to both his left and right wrists while employed by the respondent.

As previously noted, the claimant began working for the respondent in February 2006 as an accounts payable specialist. As an accounts payable specialist, the claimant was responsible for inputting a large amount of data into a computer using a 10-key system. Claimant offered into evidence a sample invoice indicating that each line had some 33 to 35 key entries and that this particular invoice had 1700 lines. Testimony from the claimant as well as Katherine Jared, the claimant's supervisor, indicated that claimant would spend an average of one to one and a half days 10-keying invoices before working on exceptions. Exceptions were potential errors which were reviewed by the specialist and appropriate action taken. While reviewing exceptions was not as data entry intensive as entering the information from the invoices, it nevertheless required claimant to use the keyboard and to 10-key. In addition, Jared testified that after the claimant completed one invoice and exceptions he might have other invoices in a particular week or he might help other associates input data from their invoices. Jared also admitted that an employee's productivity in inputting data was part of an evaluation in determining an employee's pay.

It should be noted that there was some testimony regarding the fact that beginning in July 2006 much of the data from the invoices was already on the computer. However, by the time this change was made claimant had already begun having problems and in fact

had been sent by the respondent to Dr. Berestnev.

Furthermore, claimant testified that even after the process changed, he would click “okay” approximately 1700 times with a mouse while checking the invoice for correctness. Claimant testified that the clicking caused his finger to get tired so he used multiple fingers and also switched hands. Claimant testified that after his problems began with his right arm he began using his left arm more and as a result developed problems with that arm as well.

While claimant did not spend his entire work week entering data using a 10-key, I believe the evidence does indicate that claimant spent a significant portion of his time prior to his problems beginning entering data using the 10-key system. In addition, even while not using the 10-key system claimant was required to use the computer and engaged in typing and data input activities. In short, I believe that the evidence presented supports a finding that claimant’s job duties with the respondent required him to engage in rapid repetitive motion.

I also find that claimant has met his burden of proving by a preponderance of the evidence that he suffered an injury which caused internal harm to his body which arose out of and in the course of his employment and that it required medical services. Here, when claimant complained of the pain in his hands to the respondent, respondent sent claimant to its chosen treating physician, Dr. Berestnev. Dr. Berestnev diagnosed claimant’s condition as bilateral overuse syndrome of the hands. When Dr. Berestnev ordered physical therapy, the respondent controverted the claim and claimant sought medical treatment from his family physician, Dr. Emerson. Dr. Emerson diagnosed claimant’s condition as tendinitis.

Claimant was evaluated one time by Dr. Johnson who indicated that it was possible the claimant had an over-use type syndrome. He was also evaluated by Dr. Dickinson who assessed claimant’s condition as overuse syndrome of the wrists.

Based upon the testimony of the claimant, who I find to be credible, as well as the medical evidence, I find that claimant has proven that he suffered an injury which caused internal harm to his body which arose out of and in the course of his employment and that it required medical services. I also find based on this same evidence that claimant's injury was the major cause of his need for medical treatment.

Finally, I also find that claimant has offered medical evidence supported by objective findings establishing an injury. While the EMG performed by Dr. Johnson returned normal, the medical evidence reflects that when claimant was seen by the occupational therapist muscle spasms in the claimant's arm were observed. This is contained in the occupational therapist report of August 9, 2006. In addition, Dr. Emerson in her report of August 9, 2006 indicates that claimant brought to her an occupational therapist report noting palpable spasms in the forearms. As a result, Dr. Emerson prescribed claimant Flexeril for muscle spasms and pain in the forearms. Muscle spasms are recognized as an objective finding and a physical therapist's recognition of muscle spasms is sufficient to support objective findings. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W. 3d 124 (1999).

Based upon the foregoing evidence, I find that claimant has satisfied all elements of compensability and find that he suffered a compensable injury to his left and right wrist while employed by the respondent.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

Claimant has requested temporary total disability benefits as a result of his compensable injury. However, claimant admitted that other than missing time from work for a few hours while going to doctors' appointments, he did not miss any work for the respondent. When claimant was limited from 10-keying by Dr. Berestnev, respondent placed claimant on alternative duty. Claimant was subsequently released by Dr.

Berestnev to return to full duty without restrictions and claimant continued to work for the respondent subsequent to that time. While claimant may have missed a few hours of work while attending doctors' appointments, I find that claimant has failed to prove by a preponderance of the evidence that he missed sufficient time to entitle him to temporary total disability benefits. Pursuant to A.C.A. §11-9-501(a)(1) a claimant is not eligible for temporary total disability benefits unless they miss at least seven days from work. Here, claimant did not miss seven days from work; therefore, he is not eligible for temporary total disability benefits.

The final issue for consideration involves notice. Respondent contends that claimant did not provide proper notice; therefore, respondent is not liable for payment of compensation benefits. However, the evidence in this case indicates that claimant reported the problems with his left and right hands to the respondent and was sent by respondent to Dr. Berestnev. Claimant did not seek medical treatment from his family physician until after that period of time. Accordingly, I find that claimant provided proper notice to the respondent; therefore, respondent is liable for payment of all appropriate compensation benefits.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left and right wrist while employed by the respondent. He is entitled to payment of all reasonable and necessary medical treatment provided in connection with his compensable injury. Claimant is not entitled to temporary total disability benefits as a result of his compensable injury.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE