

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706247

HARVEY MELTON, Employee	CLAIMANT
WAL-MART ASSOCIATES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED NOVEMBER 29, 2007

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 7, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 29, 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 at all relevant times.
3. The claimant sustained a compensable injury to his left index finger on May 16, 2007.
4. The claimant was earning sufficient wages to entitle him to compensation at the rate of \$289.00 per week for total disability benefits.

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

1. Temporary total disability benefits from May 18, 2007 through June 11, 2007.

2. Medical prior to June 12, 2007.
3. Notice.
4. Attorney fee.

Prior to the hearing the respondent agreed that claimant provided notice of his injury by at least June 1, 2007; therefore, respondent has agreed to pay claimant medical benefits and temporary total disability benefits from June 1 through June 11, 2007, as well as its portion of the appropriate attorney fee. Accordingly, the issues for consideration involve claimant's request for temporary total disability benefits from May 18, 2007 through May 31, 2007, and medical prior to June 1, 2007. The claimant's entitlement to these benefits are predicated upon the issue of notice.

The claimant contends that he is entitled to temporary total disability benefits from May 18, 2007 through May 31, 2007, medical prior to June 1, 2007, and an attorney fee.

The respondents admit that claimant sustained a compensable injury to his left index finger causing an infection on May 16, 2007. However, claimant did not give respondent notice until almost a month later on June 1, 2007, at which time he executed a Form N. By that point claimant had already sought treatment on his own so all medical expenses and temporary benefits accruing prior to that date are not the respondent's liability pursuant to A.C.A. §11-9-701(a)(1). All medical subsequent to June 1 has been paid by the respondent and that will continue until claimant reaches maximum medical improvement.

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 August 29, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant failed to provide respondent notice of his injury until June 1, 2007. Therefore, pursuant to A.C.A. §11-9-701(a)(1), respondent is not liable for payment of any benefits prior to that date.

### FACTUAL BACKGROUND

The claimant is a 51-year-old man who has worked for the respondent almost two years. Claimant was hired by the respondent to be a lens finishing machine operator in its optical lab. Claimant testified that he was responsible for operating four machines that cut lens to fit the frames of eye glasses. After a lens was cut he was required to put the lens in the frame by using a small screwdriver to tighten the lens in place.

Claimant testified that on or about May 16, 2007 he was tightening down a screw when the screwdriver slipped off and struck him in the left index finger. Claimant testified that approximately two days later he began having problems with swelling in his index finger and hand. Claimant sought medical treatment from the Veterans Administration Hospital where he was diagnosed as suffering from a joint strain of the left index finger. At the time of claimant's second visit at the VA on May 21, 2007 he was also diagnosed as suffering from a contusion. Claimant subsequently sought medical treatment from Dr. Bertram, a family physician, on May 22, 2007. At the time of claimant's next visit with Dr. Bertram he was sent to the hospital where he underwent the first of several surgeries on his index finger for an infection.

The respondent accepted claimant's injury as compensable and paid some compensation benefits and has agreed to pay all compensation benefits as of June 1,

2007. However, respondent contends that claimant did not provide notice of his injury until June 1; therefore, it is not liable for compensation benefits prior to that date. Claimant has filed this claim requesting payment of temporary total disability benefits and medical benefits prior to June 1, 2007.

### ADJUDICATION

Pursuant to A.C.A. §11-9-701, unless an injury renders an employee physically or mentally unable to do so, an employee is required to report an injury to his employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer. An employer is not responsible for payment of workers' compensation benefits prior to receipt of the employee's report of injury. Subsection (b)(1) of A.C.A. §11-9-701 indicates that failure to give notice will not bar a claim (A) if the employer had knowledge of the injury; (B) the employee had no knowledge that the condition arose out of and in the course of the employment; or (C) the Commission excuses the failure on the grounds that for some satisfactory reason notice could not be given.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant did not provide notice of his injury to respondent until June 1, 2007. Therefore, respondent is not liable for payment of compensation benefits prior to that date.

Claimant testified that he reported the incident to his lead person, Sam Craig, immediately after the incident occurred.

Q. Did it require any first aid attention at that time?

A. Well, no. What I did immediately after that, I left - - now, the lead that I had at that time no longer works there, but I informed her, Sam, that's her nickname for, I guess, Samantha or whatever, Sam, I punctured my

finger, stuck my finger with a screwdriver, I'm going to go over here to the first aid cabinet and get a Band-aid, and that's what I did, you know, wrapped it up and came back and went back to work.

Testifying at the hearing was Anna Cenovio, who was the human resources supervisor over the respondent's optical lab in May 2007. Cenovio testified that Craig's last day to work for the respondent was May 9, 2007, more than one week prior to claimant's injury. Therefore, claimant could not have reported this incident to Craig as he testified at the hearing.

Claimant also seems to contend that his failure to report an injury to the respondent was due to a reliance on a mis-diagnosis of his condition by the physicians at the Veterans Administration Hospital. The medical reports from the VA indicate that claimant gave a history of having jammed his index finger on a piece of machinery two days earlier. The medical report of May 21 also mentions the claimant having smashed his hand in a tray conveyor two days prior to May 17. Based upon those histories the VA physicians diagnosed claimant's condition as a joint strain of the left index finger and a contusion. Claimant contends that the history contained in the medical reports is incorrect and that the physicians at the VA mis-diagnosed his condition. Even if both of these contentions were true, the significant point is that claimant testified that he gave a correct history of an injury at work to the VA physicians. If claimant's testimony is correct that he gave a history of injuring his finger with the screwdriver at work to the VA physicians, then he could not have relied upon a mis-diagnosis as a failure to report an injury.

Also relevant is a review of Dr. Bertram's initial medical report of May 22, 2007. Dr. Bertram does note that claimant informed him that he uses a small screwdriver at work which causes small lacerations on the hand. However, according to Dr. Bertram the claimant also "denies known injury." Again, claimant contends that he reported a work-related injury to Dr. Bertram and if his testimony is true claimant could have reported said

injury to the respondent.

Finally, and more importantly, I believe it is important to note that much of the evidence in this case regarding when the claimant reported an injury is based upon testimony of the claimant and other witnesses. However, in my opinion the most important evidence is a piece of documentary evidence in the form of an Associate's Statement which was completed by the claimant on June 12, 2007. Claimant completed this form and in response to Question Number 4, "When Did You Report Your Injury?", claimant replied, "6-1."

In my opinion, the Associate's Statement completed by the claimant on June 12, 2007 is the most important evidence regarding when claimant reported the injury to the respondent. All other evidence in this case relies upon testimony which is not necessarily credible. For instance, claimant testified that he reported the incident to Sam Craig, his lead, but Craig did not work for the respondent on the date of the injury. When claimant completed the form on June 12, 2007, he stated in his own handwriting that he reported the injury on June 1. I find that this form is the most credible evidence as to when claimant actually reported an injury to the respondent. I find that claimant has shown no satisfactory reason why notice could not have been given to the respondent at a date prior to June 1, 2007. Therefore, pursuant to A.C.A. §11-9-701, respondent is not liable for compensation benefits prior to June 1, 2007.

### ORDER

Claimant failed to provide notice of his injury to the respondent until June 1, 2007. Pursuant to A.C.A. §11-9-701(a)(1), respondent is not liable for payment of compensation benefits prior to that date. Therefore, claimant's request for compensation benefits prior to June 1, 2007 is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the

hearing transcript in the amount of \$390.25.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE