

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F601584**

<b>ROGER RHEA, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>RITTER COMMUNICATIONS, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>AG-COMP. SIF CLAIMS, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 26, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 3, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE PHILLIP WELLS, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to additional workers' compensation benefits.

On October 3, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing and the parties' contentions relative to the afore. The Pre-hearing Order his herein designated a part of the record as Commission Exhibit #1.

The testimony of Roger Rhea, the claimant, coupled with medical reports and other

documents comprise the record in this claim.

### **DISCUSSION**

Roger Rhea, the claimant, with a date of birth of May 9, 1954, is a high school graduate who commenced his employment with respondent on May 22, 2000, as a telecommunication technician. Claimant installs telcom equipment and networking equipment.

On January 20, 2006, the claimant was involved in an accident which serves as the basis for the present claim. In describing the mechanics of the accident claimant testified:

I was at a site to run a telephone wire for a customer, and to do that, we had to have a lift. One of their personnel secured the forklift with a cage on it. And when we started to run the wire, we got up to about six or eight feet, and I stopped him to get to the wire behind some conduits. And when I stepped to the front of the cage, the cage fell from the forklift. (T. 7).

Claimant noted that he suffered injuries to several fingers of his left hand in the accident.

The claimant was transferred to the emergency room where the wounds were cleaned and stitched. Claimant followed up with his family physician Dr. Arnold Gilliam, and was thereafter referred to an orthopedic surgeon at NEA Clinic, Dr. Stroope. Claimant was referred to Dr. Moore in Little Rock following the evaluation by Dr. Stroope.

The testimony of the claimant reflects that Dr. Moore performed surgery on the middle finger of the left hand. Claimant noted that following the surgery the finger was sore, stiff and hurt constantly. In demonstrating the limitations in left middle finger claimant was unable to touch the palm of his left hand with the finger. Claimant observed that the stiffness is within the joint itself. The testimony of the claimant reflects that in his consultation with Dr. Moore it was his understanding that there would be two surgical procedures available to him relative to the

injured finger.

The testimony of the claimant reflects that after he healed from the first surgery he consulted with Dr. Moore about the second surgical procedure. Claimant now desires to proceed with the second surgery. Claimant has reviewed the report of Dr. Collins, another orthopedic surgeon, who has indicated that the second surgical procedure is not a guarantee of improvement in the finger. Claimant has never seen or been examined by Dr. Collins.

The claimant testified that he has considered the risks inherent in any surgical procedure, to include the second procedure offered by Dr. Moore, as well as the benefit which would include more range of motion. Claimant testified regarding benefits to him of having greater range of motion in his finger relative to his job duties and the use of his hands:

Everything. Manipulating small telephone wires into tight spaces, connect blocks, very small, delicate instruments and screws, connections in tight, very tight spaces sometimes where you can't get in with your right hand, you have to use your left hand. You have to guarantee use of both left and right hands. (T. 11).

While the claimant is right hand dominant he testified that his job requires the use of both hands. Claimant further testified regarding the impact that the limitation in his left middle finger has had on his ability to work:

It slows me down. Sometimes it takes longer, of course normally than it would if I could just put the wires in with my fingers normally. The dexterity involved with placing wires into connections and putting them into a form and connect box requires the use of all your fingers. (T. 12).

Claimant is aware that Dr. Collins has opined that the second surgical procedure could actually reduce the range of motion in the finger.

On cross examination, claimant acknowledged that Dr. Moore did not offer and guarantee

of increase range of motion in the middle left finger with the second surgical procedure.

Claimant also testified that he was aware of Dr. Moore's report reflecting that one of the reasons for the range of motion reduction is because of scarring. Claimant understands that additional surgery could result in additional scarring.

Following his surgery by Dr. Moore, the testimony of the claimant reflect that he underwent occupational therapy relative to his left hand, which continued until some time in June 2006. While he has not had any further occupational/physical therapy relative to the left hand since June 2006, claimant testified that done some therapy on his own to try to increase the range of motion in the left middle finger:

Flexing it back and forth first thing in the morning. As I'm sitting at home watching TV I'll flex my fingers. (T. 16).

Claimant acknowledged that the range of motion improve in his left long finger when he had the therapy. The claimant testified that he was not aware that additional physical therapy had been recommended. Claimant concedes that was seen by Dr. Rhodes who recommended in his report more therapy before going through with the second surgical procedural.

The medical in the record reflects that the claimant was seen at the emergency room of Great River Medical Center on January 20, 2006, for treatment growing out of the accident. The claimant was discharged from the emergency room following diagnostic studies and treatment with directions to follow-up with his primary care physician. (JX. #1, p. 1-7).

On January 23, 2006, claimant was seen at NEA Clinic by his primary care physician, Dr. Arnold Gilliam, for follow-up treatment of his injuries growing out of the January 20, 2006, accident. Following the claimant's January 30, 2006, visit to Dr. Gilliam he was referred to Dr.

Henry Stroope, an orthopedic physician at NEA Clinic.

The January 31, 2006, consultation report of Dr. Stroope reflects an assessment of a flexor tendon laceration of the left long finger. The report further reflects:

**RECOMMENDATION:** My recommendation since this is a Workers' Compensation injury is that we try to seek the best care possible for the patient. Therefore, I will refer him to Dr. Michael Moore in Little Rock for consideration of primary repair of his flexor digitorum profundus tendon laceration of his left long finger. This will be pending approval from the Workers' Compensation personnel. (JX. #1, p. 13).

On February 1, 2006, the claimant underwent surgery under the care of Dr. Michael Moore, in accordance with the recommendation of Dr. Stroope. Specifically, the claimant underwent a left long finger FDP repair with intact superficialis tendon procedure by Dr. Moore. The operative report of Dr. Moore regarding the claimant reflects, in pertinent part:

**INDICATIONS:**

Mr. Rhea is a pleasant gentleman who sustained a laceration over the volar aspect of the left long finger approximately 1 ½ weeks ago. Since this incident, he has not been able to flex the DIP joint. The sensation in his finger is intact. There is a transverse wound just proximal to the PIP joint flexion crease. The wound is clean and without evidence of infection. Mr. Rhea is now admitted for repair of the left long finger FDP tendon. The indications, risk and potential complications of surgical treatment were discussed. The complications include but are not limited to neurovascular injury, infection, finger stiffness and reflex sympathetic dystrophy. In addition Mr. Rhea understands that there is a chance that he may require a flexor tenolysis following healing of the flexor tendon. (JX. #1, p. 15).

The claimant was seen in follow-up by Dr. Moore on February 6, 2006. (JX. #1, p. 16-17).

Claimant attended occupational therapy at Cooper Rehabilitation Center from February 13, 2006 through February 24, 2006, and from April 5, 2006, through April 26, 2006. (JX. #1, p. 20-23; 27-30; 33-42).

The claimant was again seen by Dr. Moore on April 27, 2006, relative to the left long

finger injury. In an April 27, 2006, correspondence to respondent-third party administrator, Dr. Moore noted of the claimant:

. . . He does not report pain symptoms in the left long finger. He has regained full passive motion of the finger. He still has limited motion of the left long finger DIP joint related to scarring. The profundus tendon appears intact.

\* \* \*

I discussed treatment options with Mr. Rhea, which included accepting the final result, or proceeding with a left long finger tenolysis. I reviewed the indications, risks, and potential complications of surgical treatment and all questions were answered. The complications include, but are not limited to, neurovascular injury, infection, rupture of the flexor tendon, persistent, limited motion, and reflex sympathetic dystrophy. Following this discussion, Mr. Rhea elected to proceed with a left long finger flexor tenolysis. The surgery will be performed on 06/19/06. He can resume regular activities. He will continue passive range of motion and strengthening exercises of the finger. Mr. Rhea understands and agrees with the treatment plan as outlined and all questions were answered. (JX. #1, p. 43).

The claimant also executed a Supplemental Operative Consent form on April 27, 2006. (JX. #1, p.44).

On June 5, 2006, the claimant was evaluated by Dr. David M. Rhodes, a Little Rock orthopedic physician with Martin Bowen Hefley Knee & Sports, P.A., at the request of the case manager and pursuant to the directions of respondent, relative to tenolysis procedure. Following his examination of the claimant Dr. Rhodes assessed the claimant's complaint as "status post left long finger profundus repair two weeks post-injury with resultant decreased range of motion of the left long finger". The June 5, 2006, report of Dr. Rhodes further reflects:

**PLAN:**

1. I told the patient that there is a possibility of adhesion formation versus a possible failure of repair of the FDP tendon. I would recommend that the patient continue with therapy to possibly increase

his range of motion. If after a few more months of therapy, he still lacks range of motion then he may opt for a tenolysis at that time. (JX. #1, p. 47).

The claimant was again seen by Dr. Moore on July 20, 2006, in follow-up of his left long finger injury. Dr. Moore noted that the claimant had completed his therapy program, and still had limited active motion of the left long finger related to scarring of the flexor tendon. Dr. Moore's July 20, 2006, report reflects that the claimant relayed that he would like to regain more motion in the left long finger and desired to proceed with the left long finger flexor tenolysis. (JX. #1, p. 48). In a September 8, 2006, correspondence to the claimant's attorney Dr. Moore noted of the claimant:

Following surgery, he developed residual stiffness at the DIP joint, which is not uncommon following flexor tendon surgery. Mr. Rhea has completed therapy treatments.

The treatment options at this point are to accept the final result or proceed with a left long finger flexor digitorum profundus tenolysis, which may improve the active motion of the finger. The surgery is elective in the sense that Mr. Rhea had the option of accepting the final result or proceeding with treatment that may improve the motion of the finger. He felt that the limited motion of the finger did significantly affect the function of his left hand. Therefore, he elected to proceed with the flexor tenolysis, which is a reasonable treatment option. In addition, the tenolysis is necessary in order to improve the motion of the left long finger. Mr. Rhea understands the risks of surgery, . . . . Furthermore, he understands that the surgery may not significantly improve the motion in the longer finger. Following a discussion of the treatment options and risks of surgery, Mr. Rhea felt the benefit of potentially improving the left long finger motion was worth the risk of surgery. These statements are made within a reasonable degree of medical certainty. (JX. #1, p. 49).

Finally, the record reflects the presence of an October 26, 2006, medical opinion report of Dr. William C. Collins. While not examining the claimant, Dr. Collins' report reflects that he carefully reviewed the medical records of the claimant which were submitted. The report reflects

four options and summaries relative to the claimant.(RX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 20, 2006, the relationship of employee-employer existed between the parties.
3. On January 20, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$488.00/\$366.00, for temporary total/permanent partial disability.
4. On January 20, 2006, the claimant sustained an injury arising out of and in the course of his employment.
5. The evidence preponderates that the left long finger flexor digitorum profundus tenolysis surgical procedure is reasonably necessary medical treatment in connection to the injury received by the claimant on January 20, 2006.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 20, 2006.
7. The respondent has controverted the claimant's entitlement to the additional surgical procedure relative to his left long finger growing out of his compensable injury of January 20, 2006.

### **CONCLUSIONS**

The compensability of the injuries growing out of the claimant's January 20, 2006, accident is not disputed. Claimant asserts that as a result of the injuries sustained to the fingers of his left hand, and specifically the left long finger, he is in need of an additional surgical procedure. Respondent asserts that the claimant has been provided all appropriate benefits to which he is entitled, and that the surgery now requested by the claimant is not reasonably necessary in connection with the work-related injury received.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant seeks additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The sole issue before the Commission at this juncture is whether the surgical procedure requested by the claimant is reasonably necessary in connection with his compensable injury. Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medical procedure or device is reasonable and necessary is a question of fact. Medical treatment intended to reduce or enable an injured worker to cope with chronic pain may constitute reasonably necessary medical treatment. *Billy Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562).

In his January 20, 2006, accident the claimant sustained injuries to the fingers of his left hand, which is the subject of the present claim for additional surgery. While the claimant has returned to his pre-injury duties with respondent, he nevertheless continues to experience residual in the left long finger of restriction in the range of motion. The claimant underwent the initial

surgery to the left long finger on February 1, 2006, after having been referred to a Little Rock orthopedic surgeon and hand specialist, Dr. Michael M. Moore. The operative report noted the possibility of an additional surgical procedure. The claimant has followed the treatment plan of his authorized treating physician, to include a period of occupational therapy.

The claimant presents credible testimony regarding the importance of maximum range of motion in his fingers, to include those of his non-dominant hand. Dr. Moore has not recommended further occupational therapy. Further, Dr. Moore has authored a report regarding the reasonableness of the surgical procedure. The claimant has sustained his burden of proof by a preponderance of the evidence that the requested surgical procedure is reasonably necessary in connection with his compensable injury of January 20, 2006. Respondent has controverted the claimant's entitlement to the additional surgical procedure.

#### **AWARD**

The respondent is herein ordered and directed to pay all reasonable and necessary medical, hospital, nursing and other apparatus expenses, to include a left long finger flexor digitorum profundus tenolysis, as well as medical related travel growing out of the compensable injury of January 20, 2006.

Maximum attorney fees are herein awarded to the claimant's attorney on indemnity benefits growing out of this award, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**