

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505204

VANDY SHAW, EMPLOYEE

CLAIMANT

**TYSON POULTRY, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED AUGUST 15, 2007

Hearing before Administrative Law Judge Barbara Webb on May 17, 2007, in Pine Bluff, Jefferson County, Arkansas.

The claimant appeared pro se.

The respondents were represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on May 17, 2007, before Administrative Law Judge Barbara W. Webb. A pre-hearing conference was held in this case on April 10, 2007. A Pre-hearing Order was entered in this case on April 10, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the April 10, 2007 Pre-hearing Order was made Exhibit 1 to the hearing record. By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on May 4, 2005, when the claimant sustained a compensable injury.

3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$255.00 for temporary total disability and \$191.00 for permanent partial disability benefits.
4. The respondents have paid a portion of claimant's medical treatment by Dr. Clark, Dr. Gullett and Dr. Rhodes.

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Claimant's entitlement to additional benefits.
2. Claimant's entitlement to payment of medical bills.
3. Claimant's entitlement to vocational rehabilitation.

The record consists of a one volume transcript of the May 17, 2007 hearing consisting of the testimony of Vandy Ray Shaw and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (Medical records from Dr. David Silas); Claimant's Exhibit No. 2 (Medical Records from Dr. Gullett); Claimant's Exhibit No. 3 (Medical record dated 6-22-05 from Dr. Silas); Claimant's Exhibit No. 4 (School transcript); Respondent's Exhibit No. 1 (Medical records); and Respondent's Exhibit No. 2 (payment records).

FACTUAL BACKGROUND

The claimant is forty-eight years of age (b.d. 09-12-58). He completed the eighth grade. He is not able to read or write very well. He has worked in general labor jobs, including farm work. In the 1980's, he worked for Sunbeam for seven years. He helped construct the Townsend Park school in 1998-1999. He began

working for Tyson on November 22, 1999. He worked on an assembly line sealing bags with a sealer machine for approximately two years. He drove a jack driver for one year and returned to the sealing machine in 2003. On May 4, 2005, he reported that he was having pain in his hands and arm. He received a steroid shot and returned to his normal duties. The pain eventually progressed into his two pinky fingers causing his fingers to fold into his palms. He originally treated with Healthcare Plus and was referred to Dr. Clark. Dr. Clark treated him conservatively with shots in his hands. When he showed no improvement, he was referred to Dr. Silas for nerve conduction tests to determine if he had carpal tunnel. He was diagnosed with carpal tunnel and damaged nerves. He was given prescription medication and taken off work. He returned to work with restrictions placed by Dr. Silas in July of 2005. He was assigned to pulling boxes. He treated with his regular doctor, Dr. Hussain, and subsequently treated with Dr. Gullet. He was kept on splints, continued physical therapy, and received steroid shots. When conservative treatment failed, he was referred to a hand surgeon, Dr. Rhodes. Surgery was performed on his right hand in October of 2005. He returned to work for approximately seven months but was unable to work due to continued swelling and soreness in both hands. He explained that he was unable to perform the work and the cold bothered his hands. He returned to Dr. Rhodes in November of 2006, and was diagnosed with arthritis. He explained that he quit working for Tyson in June or July of 2006. He testified that the only medical bills that were not paid consisted of his \$20.00 co-pays for two visits to Healthcare Plus and his \$20.00 co-pay for his

one treatment with Dr. Hussain. All medications were paid by the respondents except the prescription medication for arthritis as a result of his diagnosis in November of 2006. Shaw testified that he had previously been stabbed with a knife in the head and was taking prescription pain medication which he also took when his hands kept him from sleeping.

On cross-examination, Shaw agreed that following his surgery, he was released to return to work on December 14, 2005, with a thirty pound weight limit, increasing ten pounds per week. He was released to full duty on January 25, 2006. He returned to Dr. Rhodes on November 29, 2006, and December 27, 2006. He was told by Dr. Rhodes that he had done everything he could do and that his current complaints were related to his osteoarthritis and were not work-related. Shaw testified that he did not believe he could be trained to perform a job that required any kind of reading because of the prior stabbing in his head and glaucoma in both of his eyes. He testified that he had filed for disability but has not received any payments.

Medical records reflect that the claimant originally presented with problems in his fingers in April of 2005. He returned for a follow up evaluation for bilateral mallet fingers of both little digits with Dr. Clark on May 10, 2005. He was treated with stack splints. On May 24, 2005, his fingers had healed sufficiently to return him to light duty work and he was referred for a nerve conduction study and evaluation of bilateral carpal tunnel syndrome. On June 2, 2005, Shaw underwent evaluation and a nerve conduction study performed by Dr. Silas. He was diagnosed with ulnar

nerve entrapment and carpal tunnel syndrome. Silas recommended wrist splints for both wrist and prescribed Medrol and Neurontin. On June 22, 2005, Shaw was released to limited duty. On July 26, 2005, he returned for reevaluation and it was noted that the Neurontin and Naprosyn appeared to have been helping his condition. On August 15, 2005, he was evaluated by Dr. Gullett after being treated by his regular physician, Dr. Hussain, with Celebrex. Dr. Gullett diagnosed Shaw with bilateral trigger fingers, bilateral mallet fingers of the fifth digits, ulnar nerve entrapment, and carpal tunnel syndrome. He continued the splints and medications per Dr. Silas and referred him for physical therapy and returned him back to light duty work. Shaw returned to Dr. Gullett on August 29, 2005, and reported that his right hand was doing better but had continued complaints of pain and swelling in his left hand. It was noted that the NCV's revealed that he had carpal tunnel on the right, but the studies were normal on the left. He was diagnosed with tendonitis in his left hand. On September 26, 2005, he was seen again by Dr. Gullett and reported that he was "Some better. Still a little sore on the left hand". Shaw stated that he could "live with the right hand", but expressed difficulty with getting his grip strength. Shaw was able to fully flex and extend all fingers on his left hand and it was noted that the left hand was "working well". The clinic notes further reflect that Shaw had documented CTS and ulnar nerve problems on the right, but "not to the point where he wants to have anything done." Dr. Gullett observed that he did not think any type of operative intervention was indicated and that there was no further treatment that would help Shaw. Gullett referred Shaw to a hand surgeon for

evaluation and recommendations. On October 12, 2005, Shaw was examined by Dr. David Rhodes. Dr. Rhodes ruled out left upper extremity nerve compression and assessed him with right upper extremity median nerve compression at the wrist and ulnar compression at the elbow. He recommended right median nerve decompression at the wrist and right ulnar nerve decompression at the elbow. On October 28, 2005, Shaw underwent surgery for the right carpal and cubital tunnel release. On November 30, 2005, he was returned to Dr. Rhodes for a post-surgical evaluation reporting improvement in his right upper extremity. He was assessed as doing well and released to return to work with a ten pound weight restriction, increasing ten pounds per week. On December 14, 2005, he was seen again "without any complaints" and "doing well". Shaw was released to work with a 30 pound weight limit, increasing 10 pounds per week. On January 25, 2006, Shaw returned stating that he continued to have tenderness in his right palm but no longer has numbness or tingling in the right upper extremity. He was told that it was normal and to massage the wound with cocoa butter and that usage of the hand would not cause damage. He was given a prescription of Naproxen and returned to "work full duty with a 0% impairment". On November 29, 2006, Shaw returned to Dr. Rhodes complaining of pain in his fingers with decreased range of motion and stating that he had not been taking his Naprosyn. Shaw was diagnosed with right mall joint arthritis. He was given Naproxen with directions that it was "extremely important" that he take the Naproxen and instructed to follow-up with his primary physician and consult with a rheumatologist. On December 27, 2006, he returned

with complaints of bilateral hand joint pain aggravated by the cold making his hand stiff. It was noted that there was minimal swelling in his right and left hands. He was assessed with bilateral hand osteoarthritis. Dr. Rhodes noted that "I told the patient that the osteoarthritis should be followed-up with a rheumatologist. I told the patient that osteoarthritis is not work-related but he should get it followed-up under his private insurance."

DISCUSSION

The claimant contends he is entitled to additional benefits, including additional medical treatment, payment of unpaid medical bills, and vocational rehabilitation. The respondents contend that all benefits have been paid to which the claimant is entitled.

Additional Medical Treatment

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Respondents are responsible only for medical services which are causally related to the compensable injury.

In the instant case, it is undisputed that the claimant suffered compensable injuries to both hands at work and received medical treatment, including surgery. The primary dispute is whether claimant has established a causal connection

between the current need for medical treatment with his work-related injuries. In a workers' compensation case, a claimant must prove a causal connection between the work-related accident and the disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

Claimant primarily relies on the medical reports of Dr. Clark, Gullet, and Rhodes to demonstrate on-going problems with his right and left upper extremities which he asserts could only be caused by his work. However, a full review of the medical evidence in this case demonstrates that Shaw responded to both conservative and surgical treatment for the work-related injuries suffered by him to the point where his condition improved and he was released without impairment. In response to a question "What other medical treatment are you wanting?", the claimant testified "I don't see no other medical treatment that would help my fingers".

There has not been sufficient evidence offered to support either a recurrence or aggravation of the work-related carpal tunnel and related injuries. Dr. Rhodes has diagnosed the claimant with osteoarthritis which he classified as "not work-related". This is clearly not a case where the medical opinion offered is not definitive. The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-102(16)(B)(Supp.1999) which requires that medical opinions be stated within a

reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 1005) (“probably did” found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that “could” was insufficient to satisfy standard); Crudup v. Regal Ware, Inc. , 341 Ark. 804, 20 S.W.3d 760 (2001) (“theoretical possibility” did not meet standard of proof); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities). In the instant case, Dr. Rhodes opined without qualification that the claimant’s current problems with his hands were due to the osteoarthritis and not related to his work.

The Arkansas courts have frequently discussed the distinction between a recurrence and an aggravation of a preexisting injury. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from the previous injury. Pinkston v. General Tire & Rubber Co., 30 Ark. App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an

independent intervening cause. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998). In the instant case, the preponderance of the evidence demonstrates that the claimant's need for medical treatment is precipitated by the osteoarthritis, an independent intervening cause and is not the responsibility of the respondents.

A claim for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. Arkansas Department of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). The claimant must show that the "major cause" of the injury is the workplace. When making this determination, the claimant does not receive the benefit of the doubt. Ark. Code Ann. § 11-9-704(c)(4)(Supp. 1995); Glencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991).

In the present case, the claimant has not presented sufficient evidence to demonstrate that the major cause of his current condition is a result of any work performed by the claimant. Without such proof, the claim against respondents must fail.

Unpaid Medical Bills

_____ Claimant contends that a portion of his medical bills related to the treatment for his carpal tunnel syndrome and other work-related problems were not paid by respondents. These bills consist of three \$20.00 co-pays which he paid when seeking treatment with his regular physician, Dr. Hussain, and with Healthcare Plus. Based on the claimant's own testimony, this treatment was sought on his own

initiative and was not provided by his approved and authorized treatment providers. The treatment was paid by his private health coverage and not under workers' compensation. For these reasons, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to reimbursement for these specific unpaid medical expenses. In addition, I find that the respondents have offered credible evidence that they have paid all reasonable and necessary authorized medical expenses incurred by claimant in connection with his work-related injuries.

Vocational Rehabilitation

The Arkansas Workers' Compensation Law provides that when an injured worker's disability condition becomes stable and no further treatment will improve that condition, the disability is deemed permanent. In order to be entitled to any vocational rehabilitation, the claimant must first prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of the compensable injury. Davis v. Dillmeier Enters, Inc., 330 Ark. 545, 956 S.W.2d 155 (1997). In addition, the claimant must prove by a preponderance of the evidence that suitable employment which is within his physical and mental limitations is available with the employer, that the employer has refused to return him to work, and that the employer's refusal to return him to work is without reasonable cause. Roark v. Pocahontas Nursing & Rehab., ___ Ark. App. ___, ___ S.W.3d ___, 2006 Ark. App. LEXIS 342 (May 10, 2006). In the instant case, the claimant cannot meet his threshold burden of proof. The medical evidence in this case demonstrates that

claimant did not sustain permanent physical impairment as a result of his compensable injury. Rather, Dr. Rhodes released him with a 0% impairment to return to full duty work. Claimant testified that he returned to work for approximately seven months but eventually quit due to the cold weather and problems with his hands which was subsequently diagnosed as non-work-related osteoarthritis. In addition, the evidence demonstrates that respondents have returned the claimant back to work within his restrictions until he was released from medical treatment for his work-related carpal tunnel syndrome and related injury. Alternatively, the evidence demonstrates that the claimant would have difficulty participating in successful rehabilitation or retraining due to his problems arising from the stabbing to his head and the glaucoma in both eyes. Based on the preponderance of the evidence, I find that the claimant has failed to establish his right to vocational rehabilitation pursuant to Ark. Code. Ann. § 11-9-505.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on May 4, 2005, when the claimant sustained a compensable injury.
3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$255.00 for temporary total disability and \$191.00 for permanent partial disability benefits.

4. The respondents have paid a portion of claimant's medical treatment by Dr. Clark, Dr. Gullett and Dr. Rhodes.
5. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical and related disability benefits in that all reasonable and necessary medical treatment and disability benefits as a result of his compensable injury was provided to claimant and claimant was released to return to work without permanent impairment or restrictions.
6. Claimant has failed to prove by a preponderance of the evidence that he is entitled to payment of certain unpaid medical bills consisting of the co-pays to Healthcare Plus and Dr. Hussain.
7. Claimant has failed to prove by a preponderance of the evidence that he is entitled to vocational rehabilitation.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

HONORABLE BARBARA WEBB
Administrative Law Judge
