

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608932

CASSANDRA SMITH, EMPLOYEE

CLAIMANT

BAPTIST HEALTH, SELF-INSURED EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT, TPA

RESPONDENT

OPINION FILED JANUARY 18, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 18, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE DANIEL W. MARVIN, 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 workers' compensation benefits.

On November 21, 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 is herein designated a part of the record as Commission Exhibit. #1.

The testimony of Ms. Cassandra Smith, the claimant, and Ms. Sherry Gann, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Ms. Cassandra Smith, the claimant, with a date of birth of February 23, 1972, is a high school graduate with two years of post-secondary education. Claimant commenced her employment with respondent on March 16, 1998. Prior to commencing her employment with respondent claimant work at a postal distribution center. Claimant acknowledged that she sustained an injury in the form of tendonitis to her right wrist in approximately 1997 while working at the mail distribution center. The 1997 right wrist complaint was treated with medication and resolved.

There is no evidence in the record to reflect that the claimant registered complaints relative to her right wrist following her employment with respondent in 1998 until the incident which serves as the basis for the present claim. Additionally there is no evidence in the record to reflect that the claimant sought or required medical treatment relative to her right wrist between 1998 and July 2006.

Claimant discharged the employment duties of a unit manager which is clerical in nature and entailed distributing patient charts from shelves. The credible testimony reflects the on or about July 19, 2006, the claimant reached and retrieved a chart from its position. The chart was to the claimant's rear and as she reached around, secured the chart and was in the process to handing it to the social worker who has requested it she experienced a sharp pain in her right wrist. Claimant was of the opinion the her symptoms would resolve, and, as a consequence of the afore continued working and did not report the incident to supervisory personnel. Claimant worked her following scheduled shift. Thereafter the claimant was off work for her previously scheduled vacation.

The testimony of the claimant reflects that while she continued to experience symptoms in her right wrist she did not seek medical treatment while she was away in Ohio for a week of her vacation. Claimant denies sustaining an injury to her right wrist during the time she was away from work on vacation. Claimant credibly testified that she elected not to seek treatment during her vacation because she was away from. Though scheduled to be off for two weeks of vacation, claimant returned home after one week, and thereafter to work. Claimant explained that she was asked to come in and work due to a shortage of personnel.

On August 2, 2006, claimant reported her injury to her supervisor, Ms. Sherry Gann. An incident report was completed by the claimant on August 7, 2006. Respondent denied the compensability of the claimant's right wrist claim. As a consequence of the afore claimant sought medical treatment under the care of her family physician, Dr. Phillip Tracy. Claimant was subsequently referred by Dr. Tracy to Dr. David M. Rhodes, a orthopedic surgeon.

Ms. Sherry Gann testified that she has been the claimant's supervisor since June 16, 2006. Ms. Gann's testimony reflects that during the period of her supervision claimant had never registered complaints relative to her right wrist prior to August 2, 2006. Further, the testimony of Ms. Gann reflects that when the claimant reported her injury she stated that it had been sustained in July 2006. The evidence in the record reflects that the claimant has presented a consistent account of the mechanism of her right wrist complaint. From a procedural standpoint Ms. Gann noted the respondent require that any injury be reported within twenty-four hours or its occurrence.

While the medical in the record reflects that the claimant was seen on June 17, 1999, at Jacksonville Medical Clinic by Dr. Phillip Tracy for a complaint of right wrist pain in which a

previous history of tendonitis was noted, there is no other documentation of treatment or injury to the right wrist prior to August 2006. A August 7, 2006, Employee Report of Accident & Injury contained in the record relative to the claimant reflects the entries that the claimant injured her right wrist two weeks ago when she grabbed a chart incorrectly while performing job duties. (RX. #1, p. 20).

The evidence preponderates that the claimant reported her July 2006, right wrist injury to respondent on August 2, 2006. During the course of its investigation of the claim claimant disclosed that she had a wrist splint dating back to her right wrist tendonitis sustained in prior employment. (RX. #1, p. 21). Respondent controverted the compensability of the present claim.

Following the above claimant sought and obtained medical treatment under the care of her primary care physician, Dr. Tracy. On August 30, 2006, Dr. Tracy arranged for the claimant to undergo nerve conduction study relative to her right upper extremity which yielded a normal study. (RX. #1, p. 22). Thereafter, the claimant was referred by Dr. Tracy to Dr. David M. Rhodes, an orthopedic physician.

On September 26, 2006, claimant was evaluated by Dr. Rhodes pursuant to the above referral. The September 26, 2006, report of Dr. Rhodes reflects, in pertinent part:

HISTORY OF PRESENT ILLNESS: Ms. Smith has a new complaint of ulnar sided right wrist pain. She says it is a sharp pain that is exacerbated with ulnar deviation and alleviated with rest. She states it first started bothering her the first week of June when she was sorting some papers at work. She says it causes a sharp pain.

PHYSICAL EXAM:

RIGHT UPPER EXTREMITY: Pain with ulnar deviation of the wrist. No swelling noted. No erythema. Neurovascularly intact throughout. Pain with supination and pronation of the wrist with full supination and

pronation.

* * *

ASSESSMENT:

1. Right ulnar abutment syndrome.

PLAN:

1. We'll start the patient on Naproxen 500 mg. po b.i.d.
2. We'll give the patient a Brown wrist immobilizer and a Medrol Dosepak.
3. See her back in two weeks for follow-up.
4. If the patient continues to have pain we'll get an MR arthrogram of the right wrist. (RX. #1, p. 23).

On November 2, 2006, the claimant underwent additional diagnostic studies in accordance with the September 26, 2006, plan of Dr. Rhodes. The diagnostic studies, which included RF x-ray-wrist arthrogram right and MR MRI-wrist with cont right, disclosed the presence of objective finding supportive of an injury in the right wrist. Specifically, the November 2, 2006, MRI-wrist with contrast on the right reflects:

IMPRESSION:

Rent or tear deep to the meniscal homolog about the volar capsular margin of the wrist with communication with the distal radial ulnar articulation, Arthrographic contrast floods the distal radioulnar joint secondarily. Considerations would include a posttraumatic tear along the dorsal margin of the wrist joint along its ulnar aspect versus a congenital variant. Correlation with the patient's clinical history or trauma or injury to the ulnar aspect of the wrist is recommended. (CX. #2, p. 2).

The testimony of the claimant reflects that she has seen Dr. Rhodes since the above studies and that he has recommended surgery. Claimant has continued to work and has not been taken off work by her treating physician relative to the right wrist complaint. The record does reflect photographs of the clamant's work station and the chart file.

After a thorough consideration of all of the evidence in this record, to include the

testimony of the witness, review of the medical evidence 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 or about July 19, 2006, the relationship of employee-employer existed between the parties.
3. On or about July 19, 2006, the claimant sustained an injury to her right wrist arising out of and in the course of her employment with respondent.
4. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's right wrist injury of on or about July 19, 2006.
5. The respondent has controverted this claim in its entirety.

CONCLUSIONS

The claimant contends that she suffered an injury to her right wrist within the course and scope of her employment with respondent in July 2006, which requires medical treatment and may result in a period of total incapacitation following surgery. Claimant seeks corresponding medical, and ultimately indemnity, benefits relative to the right wrist injury. Respondent maintains that the claimant did not sustain a compensable injury. Further, respondent asserts that the claimant did not timely report an alleged injury.

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

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i).

In the instant claim the evidence preponderates that the claimant sustained an injury to her right wrist on or about July 19, 2006, which cause internal harm to the wrist and ultimately required medical services. Further, the evidence preponderates the presence of objective findings establishing the injury, as reflected in the November 2, 2006, MRI studies. The claimant's right wrist injury was caused by the specific incident of reaching and grabbing the chart file incorrectly on or about July 19, 2006, while discharging employment duties.

Claimant present credible testimony surrounding the events which serves as the basis for the present claim. While it is undisputed that the claimant sustained a prior injury to her right wrist in the form of tendinitis with her former employer, the evidence in the record reflect only one instance of the claimant receiving medical treatment relative to her right wrist subsequent to her 1998 employment by respondent, which was on June 17, 1999. The evidence, medical and testimony, is devoid of any complaints relative to the claimant right wrist following the June 17, 1999, entry in the progress note until August 2, 2006.

The claimant identified the date of the injury to her right wrist as approximately two days prior to her scheduled vacation in July 2006. Claimant continued to work on the day of her

injury following its occurrence and the following day. Thereafter claimant commenced her scheduled vacation. It is not a prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred, rather the claimant must only prove that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). In the instant claim, the claimant sustained her injury on or about July 19, 2006.

Claimant did not report the July 19, 2006, compensable right wrist injury to supervisory personnel of respondent until August 2, 2006. The claimant did not seek medical treatment nor did she miss time from work as a result of the July 19, 2006, compensable right wrist injury prior to the August 2, 2006, reporting.

Should the claimant fail to establish by a preponderance of the evidence either of the requirement for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastic*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The claimant has sustained her burden of proof by a preponderance of the evidence each of the requirement for establishing the compensability of her July 2006, right wrist injury. Respondent has controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 mandates that the employer provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitute reasonable and necessary treatment under the afore statute is a question of fact. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). In the instant claim, the evidence preponderates that the medical treatment rendered to the claimant by Dr. Phillip Tracy, as well as referrals therefrom, to include Dr. David M. Rhodes, is reasonably necessary in connection with

the claimant's July 2006, compensable right wrist injury and the cost for which respondent is liable. Respondent has controverted this claim in its entirety.

AWARD

Respondent is herein order and directed to pay all reasonably necessary medical, hospital, nursing and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable right wrist injury of on or about July 19, 2006. Said sums accrued shall be paid in lump without discount.

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.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE