

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607070

MICHAEL TESTERMAN, EMPLOYEE	CLAIMANT
RAMSEY CHEMICAL & EQUIPMENT CO., EMPLOYER	RESPONDENT
ACCIDENT FUND INS. CO. AMERICA, CARRIER	RESPONDENT

OPINION FILED JANUARY 17, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 25, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant appeared by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, 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 August 22, 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 same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The parties agreed after receipt and review of the claimant's wage records that the appropriate compensation benefits are \$318.00/\$236.00, for temporary

total/permanent partial disability benefits. Further, the claimant stipulate that he is under an obligation to pay child support from the state of Virginia, and that there is an arrearage.

The testimony of Mr. Michael Testerman, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Michael Lee Testerman, the claimant with a date of birth of December 3, 1953, is a high school graduate with some post-secondary education. Claimant was in the United States Army for three years and is right hand dominate.

The testimony of the claimant reflects that he commenced his employment with respondent in either 2001 or 2002. Claimant explained that he started out working temporary and later became a full time employee of respondent. Claimant explained that respondent-employer is in the business of manufacturing spray systems, rigs on the back of Terminix trucks. Regarding his employment duties with respondent-employer, claimant testified:

I was a welder, fabricator, welder, kind of an electronics person that put together Terminix spray machines. You had to tank Those. (T. 11).

Claimant testified regarding the various tools and devices he used in performing his job duties:

Cutting metal with a chop saw, which is like a d-wall (phonetic) fold down in the saw. And then a wire sheet welder to assemble them. And then the engine and so forth and putting them on. (T. 11).

Claimant attended college in Sacramento for four years and was a machinist welder for Middleton (phonetic) Technology. Claimant denies that he had any injuries, disabilities, or medical problems relative to his left arm prior to February 2006.

In describing the February 2006, injury in the employment of respondents which serves as

the basis for the present claim, claimant's testimony reflects:

I was at the back of my station, and the manager his assistant came back with a person from the golf course, which is down the street about a quarter mile, country club. And they wanted a small piece of metal 10 to 15 inches cut for him, just one cut. And prior to that happening, the helper that I had back there was employed with Ramsey had broken the leg off of the chop saw stand itself. I didn't know it was broken off, the leg.

It had four legs on a small stand about the size of your pedestal.

It's not near to you waist, but it's up waist high to me.

And then I proceeded to cut the metal. I cut the guy a piece of metal off - -

Rotary. Rotary with a metal blade. I cut the piece of metal off and handed it to him, and started to walk away. And while it was still, some of the saws don't have a brake on it, but was still rotating - -

Oh, yes. It was turning, and when I walked away, it fell off the - -

The whole saw, the stand and all fell over and I caught all of the weight of it on my wrist [left] here. (T. 12-13).

Claimant testified that he told the assistant manager that he needed to get to St. Vincent "real quick" because he had a serious injury. Claimant's testimony reflects that the incident was witnessed by Mr. Keith Reed, the assistant manager, who was standing beside him and another individual, Michael Bolton.

Claimant noted that the wound was bleeding and that no first aide was administered before leaving for medical treatment. Claimant explained:

No, sir. I just ripped it, and pulled it together with a lot of pressure. And we went to the front of the building. (T. 14).

Pursuant to the direction of the assistant manager the claimant was transported to the emergency room of St. Vincent-North for medical treatment relative to his left wrist injury.

Claimant's testimony reflects that x-rays were obtained of the left wrist. Claimant further testified that the accident had resulted in cuts to the tendons as well as two cut to the bone. The wound was stitched, a bandage applied, and a surgery date scheduled. Thereafter the claimant returned to work.

Claimant noted that while he was still on the job, he was not performing any duties. Claimant testified that his boss, Randy April, took him to Dr. Frazier for treatment who admitted him for surgery. Claimant estimates that the surgery was performed approximately two weeks following the accident.

After the surgery claimant returned to the employment of respondent. Claimant noted:

I had a few assistant things, just what I could with my right hand or just give advice to the new guy that we had there, David. (T. 17).

Claimant asserts that he was not able to do very much with his left hand following surgery.

Claimant observed the his left hand "just won't move". (T. 17). Claimant acknowledged that he had a small brace on the wrist following surgery. Claimant maintains that there were no jobs at respondent-employer that could be performed with one hand. Claimant's testimony reflects regarding his postoperative employment activities:

No, they - - just mostly assisted the new guy there and instructing him to wire things up, and how the stuff should be, and - - I mean no. Nothing manual. (T. 17-18).

Claimant acknowledged that he continued to receive his pay check and he continued under the care of Dr. Frazier. Claimant went to physical therapy at St. Vincent-North twice per week for approximately two months. Claimant testified that while the physical therapy stretched some things out some, he was never able to completely move his fingers.

The testimony of the claimant reflects that he saw Dr. Frazier in either May or early June 2006. Claimant noted that the problems with his left wrist/fingers were still present. In describing his physical problems from the injury claimant testified:

I can't move my fingers. I didn't know whether I could go back to physical therapy and have it to where I could raise my hand or so I wanted to schedule some more with the therapist. (T. 19).

Claimant expressed plans to schedule further physical therapy relative to his left wrist/hand injury. Claimant noted that since he last saw Dr. Frazier in May 2006, his left arm has not improved any; that he is unable to use his left hand to pick up anything; and that he is unable to move the fingers on the left hand. Claimant's testimony reflects the presence of stiffness in the left arm/hand with efforts to force movement resulting in pain. Claimant noted that the cold weather increases his symptoms in the left arm/hand. Claimant's testimony reflects that he was compliant in the taking of his prescription medicines, which included antibiotics and pain medicine. Claimant testified that he would like to return to Dr. Frazier or any other doctor that the Commission selected relative to his injury. The testimony of the claimant reflects, regarding the status of his left arm since the injury:

It's much worse. I just have no use too much with it at all. There's nothing i can do and then there's knots coming up here now and I don't know what - - (T. 22).

Claimant maintains that the bill for his treatment with Dr. Frazier has not been paid. There is a balance of \$9,642.98, remaining on the bill. Claimant is unaware of any other outstanding unpaid bills for medical treatment growing out of his injury. Claimant testified that the last check he received from respondent-employer was the end of May 2006.

The claimant has not returned to work since May 2006. The testimony of the claimant reflects that he has not looked for any kind of work that was lighter or less strenuous than welding. Claimant acknowledged that he went to the unemployment office in an effort to get benefits, however was not awarded any because he had been terminated from his last employer.

Claimant applied for unemployment benefits on June 21, 2006. Claimant acknowledged that he completed a questionnaire with the Arkansas Employment Security Department reflecting that he could begin full time work immediately. Claimant added his availability for work depended on the type of work he could perform with the physical restrictions he was and continues to experience regarding his left arm/hand. (T. 26).

On cross-examination claimant acknowledged that he continued to work for respondent following his injury. Claimant characterizes his status with respondent-employer following the injury as being there although unable to physically perform his regular job. Likewise, claimant concedes that he received a paycheck during the afore period. Claimant was fired by respondent-employer at the end of May 2006 because he had taken some equipment and sold it.

Claimant testified that he was not aware that Dr. Frazier released him to full duty without any limitations or restrictions on his activities on March 20, 2006. Claimant is able to make a fist with his left hand and to straighten his fingers out. Claimant denies that he has arthritis in his hands.

A February 20, 2006, report of Dr. G. Thomas Frazier, regarding an office visit of the claimant of the same date reflects, in pertinent part:

Mr. Testerman is a 52-year-old, right-hand dominant male, welder who presents for follow-up of a laceration to the left wrist that he sustained on 02/15/06 in a work-related injury. He was seen at St. Vincent Medical

Center/North Emergency Room by Dr. Jim Box. The wound was irrigated and closed and his left hand and wrist were placed in a splint. There was some concern at that time regarding extensor tendon lacerations. He was referred for follow-up of his left wrist and hand lacerations.

Mr. Testerman's past medical history is negative for diabetes mellitus, hypertension, organic heart disease, kidney disease, blood dyscrasias, gout, or rheumatoid arthritis.

* * *

Examination of the left wrist shows an oblique, 6 to 7 mm laceration beginning over the mid dorsum of the wrist and extending ulnarly to near the ulnar styloid. There is weak wrist extension and absent extension of the long, ring and small finger metacarpophalangeal joints. There is no fluctuance or erythema from the laceration, though there is some mild swelling.

AP and lateral x-rays of the left wrist show no evidence of fracture.

It is my assessment that Mr. Testerman has sustained a left wrist laceration with probable lacerations of the extensor digitorum communis to the index, long, ring, and small fingers, as well as the extensor digiti quinti and extensor carpi ulnaris tendons. (CX. #1, p. 7).

On February 22, 2006, claimant underwent surgery under the care of Dr. Frazier at Arkansas Specialty Orthopaedic Surgery Center relative to the February 15, 2006, left wrist laceration. The February 22, 2006, surgical procedures consisted of repair to extensor carpi ulnaris left wrist with a palmaris longus tendon graft; repair of the extensor digitorum communis of the left index, long, ring and small fingers; and repair of extensor digiti quinti. (CX. #1, p. 4-6).

The claimant was seen in follow-up by Dr. Frazier on March 6, 2006. The March 6, 2006, office note of Dr. Frazier reflects in pertinent part, regarding the claimant:

Today the postoperative dressing was removed; it was in some disrepair. The surgical incision and traumatic laceration over the dorsoulnar aspect of the left wrist is well healed with some mild swelling and tenderness to palpation. The tendon repairs appear clinically intact.

Today we removed the sutures from Mr. Testerman's incision and instructed him in a scar management program, as well as edema control measures. His left upper extremity was fitted with a resting splint that he will wear full-time, removing only for hygiene purposes. (CX. #1, p. 3).

Claimant was scheduled to return in two (2) weeks following the March 6, 2006, visit.

At the time of the claimant's follow-up visit of March 20, 2006, he had been engaged in an outpatient therapy program at St. Vincent Medical Center/North relative to the left wrist laceration. Claimant's chief complaint during the March 20, 2006, visit to Dr. Frazier was stiffness in the left wrist and fingers. The March 20, 2006, office note reflects:

Examination of the left wrist shows the dorsoulnar laceration is well-healed. There is moderate thickening of the scar. The extensor tendon repair appears clinically intact. There is decreased active and passive range of motion of the index, long, ring and small finger metacarpophalangeal joints.

Today I recommended to his continued use of the resting splint, removing only for hygiene purposes and active range of motion exercises. He was referred for outpatient therapy at St. Vincent Medical Center/North. He will discontinue the splint in 2 weeks and begin strengthening exercises. He may resume activities as tolerated, without restriction, at this time. (CX. #1, p. 2).

The March 20, 2006, office note reflects that the claimant was to return to Dr. Frazier in four (4) weeks for follow-up of the left wrist laceration and tendon repairs.

Claimant was again seen by Dr. Frazier on May 10, 2006, relative to the left wrist laceration. The May 10, 2006, office note reflects that the claimant's chief complaint was continued stiffness in the ring and small fingers. Claimant was continuing to wear a brace on the left wrist at night. The May 10, 2006, office note further reflects:

Examination of the left wrist shows the dorsoulnar laceration is well-healed and nontender. There is no swelling, fluctuance, or erythema. There is diminished palmar flexion secondary to dorsal scarring, measuring approximately 25 to 30 degrees. There is satisfactory resting posture of the

digits with moderated limitation of left ring and small finger metacarpophalangeal joint flexion, measuring 0 to 60 degrees.

Today I recommended to him that he resume his outpatient therapy program. He states that he is working on his worker's compensation claim, although it had not officially been covered for workers' compensation. Therefore, the therapy coverage remains problematic.

Mr. Testerman will return to see me in 4 weeks for follow-up of his left wrist laceration and tendon repairs. (CX. #1, p. 1).

On June 21, 2006, claimant applied for unemployment compensation benefits. The records of the Employment Security Department reflects that claimant last worked for respondent on May 15, 2006, at which time his employment was terminated for selling property belonging to respondent-employer. In completing the eligibility information claimant indicated that he could begin full time work immediately and that he did not have any disabilities that would limit his ability to perform his normal job duties. (RX. #1, p.3-6).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical records 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 February 15, 2006, the relationship of employee-employer-carrier existed among the parties.
3. On February 15, 2006, the claimant earned wages sufficient to entitle his to weekly compensation benefits \$318.00/\$236.00, for temporary total/permanent partial disability.
4. On February 15, 2006, the claimant sustained an injury to his left wrist/hand

arising out of and in the course his employment.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 15, 2006.

6. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The claimant asserts that he suffered a laceration injury to his left wrist within the course and scope of his employment with respondents which required medical treatment and rendered him totally incapacitated from engaging in gainful employment. Claimant seeks the afore corresponding workers' compensation benefits as well as controverted attorney fees.

Respondents contend that the claimant did not sustained a compensable injury, and that in the event that compensability is established, the claimant was released to full on March 20, 2006, and would not be entitled to temporary total disability benefits thereafter.

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 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 finding, 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).

The evidence in the record preponderates that the claimant suffered an injury to his left wrist on February 15, 2006, in the form of a laceration which required medical treatment. Further, the February 15, 2006, left wrist laceration was sustained while the claimant was performing employment duties for respondent-employer. The February 15, 2006, left wrist laceration required medical treatment, to include surgery and physical therapy. The injury was witnessed by the supervisory personnel of respondent-employer. Further, respondent-employer arranged for the claimant to obtain initial emergency medical treatment at St. Vincent Medical Center/North. Thereafter, claimant was referred by the attending emergency room physician to an orthopedic specialist, Dr. G. Thomas Frazier. The claimant has sustained his burden of proof by a preponderance of the evidence that he sustained a compensable injury to his left wrist on February 15, 2006. *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W.2d 570 (1999). Respondents have controverted the payment of all benefits in this claim.

Ark. Code Ann. §11-9-508 (a) mandates the employer to 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). As noted above, in the instant claim respondents arranged for the claimant to receive emergency medical treatment at the emergency room of St. Vincent Medical Center/North on the date of the occurrence. Following initial emergency medical treatment the claimant was referred by the attending emergency room physician to Dr. Frazier. The medical in the record recites a history of the claimant's injury consistent with his testimony before the Commission. Further, claimant underwent surgery relative to his injury and continued under the care of Dr. Frazier thereafter. The evidence preponderates that the medical treatment rendered to the claimant relative to his February 15,

2006, compensable injury was reasonably necessary in connection with the injury. Respondents have controverted this claim in its entirety.

The claimant's compensable February 15, 2006, left wrist laceration is a scheduled injury pursuant to Ark. Code Ann. §11-9-521. An employee who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during the healing period or until he returns to work. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). While the claimant maintains that he was physically unable to perform his regular job duties as a welder in the employment of respondent-employer subsequent to the February 15, 2006, left wrist laceration injury, the evidence discloses that he continued in his employment through May 15, 2006, at which time his employment was terminated for causes unrelated to the injury. Further, the evidence in the record reflects that the claimant did perform employment services for respondent-employer between the February 15, 2006, injury and the termination of his employment on May 15, 2006.

The medical reflects that on March 20, 2006, while the claimant continued to experience residuals relative to his compensable injury and was referred to outpatient therapy relative to same, he was nevertheless released to resume activities "as tolerated" without restrictions. Claimant continued performing employment duties for respondent-employer through May 15, 2006. Claimant was last seen by his treating physician on May 10, 2006. While the claimant continued to experience residuals of his compensable injury during the May 10, 2006, visit and was recommended to resume his outpatient therapy program, he was not directed to refrain from working his treating physician. The evidence does not reflect that the claimant has been rendered totally incapacitated from engaging in gainful employment since the termination of his

employment on May 15, 2006. *Superior Industries v. Thomaston*, 72 Ark. App. 7, 32 S.W.3d 52 (2000). Claimant has failed to sustain his burden of proof by a preponderance of the evidence that he is entitled to payment of temporary total disability benefits subsequent to May 15, 2006.

AWARD

Respondents are herein ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses growing out of the February 15, 2006, compensable left wrist laceration injury of the claimant, to include medical related travel. Said sums accrued shall be paid in accordance with Rule 099.30.

Maximum attorney fees are herein awarded to the claimant's attorney on any indemnity benefits subsequently awarded in this claim 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.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE