

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800393

DAVID BROOM

CLAIMANT

GERBER PRODUCTS CO.

RESPONDENT

TRAVELERS INDEMNITY CO.
CARRIER

RESPONDENT

OPINION FILED AUGUST 11, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant appeared pro se.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On May 15, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 22, 2008, and a pre-hearing order was filed on April 22, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 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 this claim.

2. The claimant's healing period has not been determined.

3. Respondents have controverted this claim in its entirety.

By agreement of the parties the issues to be litigated are limited to the following:

1. Compensability.
2. Res judicata.
3. Claimant's entitlement to temporary total disability and/or permanent partial disability.
4. Wage loss if a permanent impairment rating is assigned.
5. Claimant's entitlement to related medical.

Claimant's contentions are:

"That I had a pre-existing infirmity that does not disqualify my claim if the employment aggravated, accelerated, or combined with an infirmity to produce the disability for which compensation is sought. Also to prove that the respondents position on denying my claim is valid and can be proved to the satisfaction of the court that the claim is valid. The claimant also contends that on October 21, 2004, he received an injury which was the major cause of his need for treatment and he is entitled to benefits from that date to a date to be determined."

Respondents' contentions are:

"The respondents contend that the Commission lost jurisdiction over Mr. Broom's claim for a cervical injury by virtue of the entry of an Order Approving the Joint Petition in WCC File No. F311100; alternatively, the respondents will contend that the Claimant's claim that he sustained a compensable cervical injury is barred by the doctrine of res judicata by the Full Commission's Opinion filed November 16, 2007, in connection with the claim involving the same parties, WCC File No. F311100, which decision is now final. Finally, the respondents contend that even if the Commission determines that it does have jurisdiction to entertain the claim and even if the Commission then finds that the claim is not barred by the doctrine of res judicata, then the respondents contend that the claimant did not sustain a cervical injury on October 21, 2004, or on any other date while the Claimant was employed by Gerber Products Company."

DISCUSSION

_____The claimant in this matter has requested that the Commission decide the compensability and related benefits to a work related injury that he claims occurred on October 21, 2004, while he was employed by the respondents. The respondents contend that this matter is res judicata in that a Joint Petition was filed that considered a left shoulder injury and a cervical injury. The respondents also contend that the Full Commission determined that the cervical injury was not compensable.

A Joint Petition was filed in workers' compensation file number F311100, that did contemplate both the shoulder injury and the cervical or (neck) injury that the claimant now requests a compensability determination on. The Joint Petition further stated:

"The claimant makes no claim for any injury arising out of or occurring while in the employment of the respondent-employer and hereby represents that he sustain no other injuries while working for the respondent-employer for which he is entitled to benefits under the Arkansas Workers' Compensation Act."

Paragraph 5 in that same Joint Petition states:

"In order to resolve all disputes between the claimant and the respondents, and because it will be in the best interest of the claimant, the respondents have agreed to pay and the claimant has agreed to receive the following sums in full and final settlement of his claim. Respondent No. 1 will pay to the claimant the sum of \$20,000.00 in satisfaction of all benefits to which the claimant may be entitled, including temporary and permanent disability benefits, rehabilitation benefits, and future medical expenses, and all benefits which he may be entitled under the Arkansas

Workers' Compensation Act. Respondent No. 1 will also pay any reasonable and necessary outstanding medical expenses that were authorized of and through the date of the Joint Petition hearing. In addition, Respondent No. 1 will process the AIR Healthcare statement having an outstanding balance in the amount of \$8,253.00 and will pay it in accordance with the Commission's fee schedule. Respondent No. 1 will make no further payments to the claimant for mileage reimbursement or reimbursement for out-of-pocket medical expenses or prescriptions, if any. It is expressly understood and agreed by the parties that the respondents payment to the claimant of \$20,000.00 set forth herein is the only payment the claimant will receive."

The Joint Petition in workers' compensation file number F311100 was signed by the claimant on December 27, 2007, and affirmed by a notary. The claimant was questioned about that Joint Petition by the respondents' attorney on cross examination during testimony before the Commission. The following exchange occurred:

"Q. What you signed on December 27, 2007, either is accurate and true, in which you case you don't have any other injuries for which you're entitled to benefits, or it looks to me like what you're saying here today is, I signed something, and yet I didn't mean it. All I'm asking you is, how do you explain that, Mr. Broom?

A. If we're talking about an injury that wasn't even hardly brought up at all, I guess I lied- lied on the -on that, then, because I knew another injury happened.

Q. why didn't you tell somebody at this hearing on December 27th, 2007, "Hey, what I've signed here is not correct. I'm not intending to settle this neck claim. I want to continue to go to court on that"?

A. I -

Q. You didn't tell any of us that, did you?

A. I did not deny that I did not have - I didn't have a neck claim. I - for the -okay. For the Full Commission denied the neck claim. I - I agreed - I agreed with it, fine. I don't have a neck claim. Okay? I didn't - at the time I signed that I didn't have a neck claim.

Q. well, when did your neck claim arise if you didn't have one on December 27, 2007?

A. what? 2007? Oh, you mean during the - it was October 21st, 2004.

Q. Okay. So that claim existed on December 27, 2007, when you signed this Joint Petition and took my money when you said in this document that, "I don't have any other claims." So you're telling me here today that what you said in this Joint Petition document wasn't true?

A. According – well, I could not, I guess – I don't know. I could not deny – could not say honestly, I guess, that I did not have another injury or you could not put down there I didn't have another injury because you knew I had another injury. Either way it goes, we're both – we're – you're as knowledgeable of the other injury.

Q. You knew on December 27, 2007, that you had fall on October 24th, 2004 – October 21, 2004. You knew that.

A. Yeah. I guess I didn't. I wasn't thinking of it, but I knew it, yes. So what you're saying is that since you knew that I had an injury you was asking me a question that you knew that – that was – what you put down wasn't true. And I answered that, you know, it wasn't true, either. So we're kind of both at fault there.”

ADJUDICATION

It is clear that the injury to the claimant's neck was contemplated in the Joint Petition that was approved by Order filed December 27, 2007. That Order made final any claims regarding the

claimant's purported cervical or neck injury of October 21, 2004. I find that this matter is res judicata and is to be dismissed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 22, 2008, and contained in a pre-hearing order filed April 22, 2008, are hereby accepted as fact.

2. The injury claimed by the defendant in this matter has previously been adjudicated through Joint Petition and Order filed in workers' Compensation file number F311100.

3. This matter is res judicata.

ORDER

_____This matter is res judicata and this case is dismissed in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE