

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705363

MICHAEL B. CALVA, EMPLOYEE	CLAIMANT
PITONYAK MACHINERY CORP., EMPLOYER	RESPONDENT
SENTRY SELECT, CARRIER	RESPONDENT

OPINION FILED JULY 17, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on April 18, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE MARK WHITE, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE JOSEPH PURVIS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on March 26, 2007 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$347.00, in the event this claim is found to be compensable.

The claimant contends he injured his right hand during March, 2007. He seeks payment of medical expenses, temporary total disability benefits from May 7, 2007 to September 3, 2007 and attorney's fees.

The respondents contend the claimant's condition did not arise out of and in the course of his employment.

The following were submitted without objection and comprise the evidence of record: the

parties' prehearing questionnaires and attached exhibits contained in the transcript along with the February 21, 2008 deposition by Dr. Michael Moore incorporated by reference.

The claimant was the only witness to testify at the hearing.

The claimant, (D.O.B. January 31, 1974) has a high school education with some college courses. He began work for the respondent-employer on August 22, 2005 manufacturing farm equipment. His job duties require him to use welding equipment, a cutting torch and an electric grinder, (Tr. p. 7-11, 15-16).

In March, 2007 the claimant felt a pop in his right hand and developed pain and swelling, (Tr. p. 11-13, 16-18, 30-33). The claimant saw the company physician, Dr. Edattukaren the same day. Later he came under the care of Dr. Anderson who put him on light duty. His employer gave him light duty for three days picking up trash, (Tr. p. 18-20, 22-24, 28-30, 31-33). Dr. Moore performed surgery on July 23, 2007. The claimant was released to return to work on September 3, 2007.

DOCUMENTARY EVIDENCE

The claimant signed a statement on May 15, 2007 indicating that he thought his injury was caused by gripping the welder but he wasn't exactly sure. He signed an AR-N on June 8, 2007 to the same effect.

The plant manager, Gary Coco authored two statements dated May 15 and 16, 2007, indicating the claimant became angry when he was informed that no light duty would be offered without a full release from Dr. Anderson. The claimant ripped off his bandage and said he could return to work. Later he changed his mind and returned to the doctor. The very next day the respondents offered him a job driving a forklift for three days (May 16, 17, 18), which he declined. The claimant explained that the Adjuster told him his claim was being denied around this time.

MEDICAL EVIDENCE

Dr. Edattukaren saw the claimant on March 27, 2007 for right hand pain, three days in duration. The claimant was prescribed medication for tendonitis. His report shows a history of a broken hand but he did not specify the date of the injury or specify the left or right hand.

The claimant saw Dr. L.F. Anderson on May 7, 2007 for intermittent pain and swelling in his right hand, two months in duration. The claimant explained that he hurt his hand at work. The doctor diagnosed swelling over the dorsum of the hand and prescribed medication and a splint for tendonitis.

In follow-up reports on May 14, 2007 and May 15, 2007 Dr. Anderson excused the claimant from work (May 7 to May 14), referred the claimant to Dr. Moore, and placed the claimant on light duty (beginning May 15, 2007). The light duty recommended by Dr. Anderson was no lifting over 5 pounds, no repetitive motions, no grasping or gripping with his hand for one week.

Dr. Anderson's report of July 17, 2007:

..Per Mr. Calva, he had hurt his hand... at work. Mr. Calva states that he is a welder and uses his hand primarily to hold his welding rod. His diagnosis was tendonitis to his right hand... Per the information provided by Mr. Calva, it appears that his right hand pain is probably caused by repetitive motion required in his welding job.

The claimant saw Dr. Michael Moore on June 14, 2007:

Mr. Calva is a pleasant 33-year-old right hand dominant welder who has noted a six week history of a popping sensation over the dorsal and ulnar aspect of the right wrist. The popping occurs when he performs gripping. He denies a specific trauma. He reports his job requires him to perform forceful and frequent gripping using his right hand and arm...

In his examination, Dr. Moore did confirm "a popping sensation over the dorsal and ulnar aspect of the small finger." Dr. Moore diagnosed a "right small finger EDQ tenosynovitis or compartment rupture."

Dr. Moore prescribed injections and extended his light duty release for four weeks. The light duty prohibited pushing, pulling, lifting over ten pounds and welding for one week.

In response to an inquiry from the adjuster, Dr. Moore wrote:

He is a 33-year-old, right-hand dominant welder who reported that he was performing work activities on March 26, 2007 when he noted a popping sensation over the dorsum of his right hand... The clinical history provided by Mr. Calva would suggest that his current right hand pain symptoms are related to the injury that occurred on March 26, 2007. This statement is made within a reasonable degree of medical certainty.

Dr. Moore performed surgery on July 23, 2007 for a right wrist distal extensor digiti quinti compartment release.

In his deposition, Dr. Moore explained that EDQ tenosynovitis is a rare condition involving the tendon on the top of the hand that helps to extend the little finger. With inflammation of the tendon or instability in the tunnel, or compartment the tendon travels under, the patient develops a clicking, popping or snapping sensation with pain and swelling of the hand.

The inflammation can be caused by infection, irritation, overuse, or a mechanical or anatomical problem (malfunctioning tendon). There are two mechanisms of injury. If the tendon is damaged, the resulting inflammation prevents the tendon from smoothly gliding through the tunnel, gradually leading to the snapping sensation. Or if the hand is used in an awkward movement, the tendon would pop and tear the compartment, causing inflammation to gradually develop, (Depo. p. 12).

Dr. Moore opined the claimant's condition was a mechanical problem (Depo. p. 7-8). If the claimant was unsure of the cause of injury, that would seem to indicate a gradual onset but Dr. Moore could not be sure (Depo. p. 13-15). The fact that this condition was limited to only one of the 12-13 tendons in the hand indicates a specific injury (Depo. p. 17-20). Dr. Moore opined there was no permanent anatomical impairment.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability

- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements.

Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The respondents have denied this claim, contending the injury did not arise out of and in the course of employment.

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980). While objective evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the job. Wal-Mart Stores, Inc. v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

The claimant has consistently reported an on-the-job injury to his supervisor and his physicians. His job duties require extensive use of his hands which is consistent with the diagnosis. He was able to perform his job duties until he felt the popping sensation in his right hand which led to medical treatment. The surgery was effective in alleviating this condition and allowing him to return to work. Therefore, I find the claimant has met his burden of proving a compensable injury arising out of and in the course of his employment. In March, 2007 the claimant experienced a pop in his hand while performing employment services. Gradually, he developed pain and swelling

which necessitated medical treatment. Although this type of injury is rare, it is consistent with the claimant's job duties.

There was some testimony on the claimant's motivation to return to work, however, page 3 of the respondents' prehearing questionnaire, indicates the only issue to be addressed by the Commission is compensability.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on March 26, 2007 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$347.00.
2. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The respondent is directed to reimburse the claimant's mother for all medical expenses paid to Dr. Anderson and to Dr. Moore along with mileage to the medical providers.
4. The respondents are directed to pay temporary total disability benefits from May 7, 2007 to September 3, 2007 as the claimant remained in his healing period and had not yet returned to work.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

6. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge