

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701096

CHARLES CAMPBELL	CLAIMANT
ROCKLINE INDUSTRIES	RESPONDENT
VALLEY FORGE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED **MAY 19, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by MICHEAL ALEXANDER, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 25, 2008, in Springdale, Arkansas. The deposition of Dr. Michael J. Standefer was taken on January 25, 2008, and has been admitted as Claimant's Exhibit No. 2.

A pre-hearing order was entered in this case on October 2, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On January 9, 2007, the relationship of employee-employer-carrier existed between the parties.
2. On January 9, 2007, the appropriate weekly compensation rates are \$504.00 for total disability and \$378.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his neck or cervical spine on January 9, 2007.
2. The claimant's entitlement to medical services, temporary total disability from February 9, 2007 through June 3, 2007, and attorney's fees.

In regard to these issues, the claimant contends:

"a. The claimant contends that on or about January 10, 2007, he sustained an injury to his cervical spine arising out of and in the course of his employment with Rockline Industries.

b. The claimant contends that he is entitled to temporary total disability benefits from February 9, 2007 until on or about June 3, 2007 and reasonably necessary medical treatment.

c. The claimant contends that his attorney is entitled to an appropriate attorney's fee."

In regard to these issues, the respondents contend:

"Respondents contend that claimant's neck condition is not the result of a compensable workers' compensation injury."

DISCUSSION

The central issue in this case is whether the claimant sustained a "compensable injury" to his neck or cervical spine, as the result of a specific incident on January 9, 2007. The burden rests upon the claimant to prove all of the elements necessary to establish this alleged compensable injury.

In order to meet this burden, the claimant must show by the greater weight of the credible evidence that his neck or cervical difficulties satisfy all of the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The injury must arise out of and occur in the course of the employment.
- (2) The injury must be caused by a specific incident.
- (3) The injury must be identifiable by time and place of occurrence.
- (4) The injury must result in internal or external physical harm to the claimant's body.
- (5) The injury must require medical services or result in disability.

In order to satisfy the first three of these definitional requirements, the claimant must prove by a preponderance of the evidence the existence of a causal relationship between his cervical difficulties and a specific employment related incident or accident. However, he need not prove the existence of this causal relationship to an absolute or mathematical certainty. Rather, it is only necessary that he show that such an employment related incident was the more likely or probable cause of his cervical difficulties. It is also unnecessary that the claimant establish that such an employment related incident was the sole or even major cause of his cervical difficulties. The employment related incident need only be one of the causes of the current difficulties. It may also be merely an aggravation of a pre-existing condition. Finally, expert medical opinion is not absolutely necessary in order to prove the existence of this causal relationship. The existence of this relationship can be reasonably inferred from the facts established by the record as a whole.

In the present case, the claimant's testimony is the only direct evidence presented to prove both the occurrence of a specific employment related incident and to establish the existence of a causal relationship between such an incident and his cervical difficulties. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be arbitrarily

disregarded. If such testimony is credible, it may be sufficient, in and out itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident. It would also be legally competent to prove the existence of a close temporal relationship between the occurrence of this incident and the initial onset of cervical difficulties that would be indicative of the occurrence of a physical injury to this part of the body.

It was the claimant's testimony that, toward the end of his shift, on January 9, 2007, he was performing his assigned employment activities that involved driving a forklift. As he approached a crosswalk that ran across the aisle, down which he was driving backward, he turned or twisted his head to the right, in order to see any workers that might be getting ready to enter the crosswalk. At that time, he felt his neck pop. When he turned his head back around, he felt his neck pop again and felt pain down into his right shoulder and into his right arm. However, he completed the final two to two and a half hours of this shift and did not report the incident or difficulties to anyone at the respondent. He stated that when he got home he did tell his wife that he had "popped" his neck that day and that his neck was "kind of stiff." It was his testimony that the next morning he informed Ronnie Fanning and Susan Quillan, who he described as "office personnel", of the incident and his difficulties. He conceded that he did not request medical treatment and did not "think much about it." He stated that his difficulties with his neck and arm progressed and that his whole right hand began getting numb. Approximately a week or so following the incident, he informed John Craig, who he describes as the "safety guy" about his employment related accident and injury. At that

time, he was sent by Mr. Craig to the company doctor at the Arkansas Occupational Health Clinic.

The claimant's testimony was in part corroborated by that of his wife, Phyllis Campbell. Mrs. Campbell testified that the claimant came home from work and told her about turning his head over his shoulder and experiencing a pop. She also testified that he advised her that he had informed two people at work of the accident and injury. She too testified that the claimant saw the doctor within a week of the accident at work.

However, the claimant's testimony is not corroborated by much of the other evidence presented. Ronnie Fanning denied that the claimant ever informed him of any job related accident and injury to his neck in January of 2007. He further testified that had the claimant reported any work related incident, he would have seen that the appropriate incident report was completed. Susan Quillan testified that she did not recall the claimant ever informing her of any employment related accident or injury involving his neck in January of 2007. She further testified that had he told her that his neck had popped while operating his fork lift, she would have advised him to immediately report this incident to the manufacturing resource coordinator. I find the testimony of these witnesses to be credible.

Thus, the evidence presented clearly shows that the claimant did not report any accident or injury to anyone at the respondent until January 23, 2007, which would be two weeks following the alleged incident. At that time, he was immediately sent to the company doctor. During this two week period, the claimant continued to perform his assigned employment duties with no restrictions and without any apparent difficulty or complaint.

When the claimant did report an employment related accident and was sent for medical treatment, his history of the onset of these difficulties does coincide with that given in his testimony. This same history was subsequently related to the claimant by Dr. Standefer.

The claimant acknowledged that he was aware of the company policy concerning the reporting of the employment related accidents and injuries and had, in fact, sustained two prior employment related injuries. He offers no real explanation for his lengthy delay in formerly reporting his accident and injury, as well as requesting medical treatment.

The medical evidence shows that the claimant has extensive arthritic and degenerative defects involving his cervical spine. These defects have significantly restricted the space available for the nerve roots to exit through the spinal column, particularly at the C5-6 level on the right. In his deposition, Dr. Standefer testified that the incident described by the claimant as occurring on January 9, 2007, could have at least temporally caused further restriction of this space and caused impingement with irritation of the exiting nerve roots. However, he stated that it was also possible that these difficulties could have been caused by any turning or twisting of the head, employment related or otherwise, as well as various other forms of trauma, some of which would be so slight as to go unnoticed by the claimant. His conclusion that the described employment related incident was the likely or probable cause of the claimant's cervical difficulties was based upon the accuracy of the claimant's history that his cervical difficulties first appeared contemporaneously with this described work incident.

After consideration of all the evidence presented, I find that the claimant's testimony is not sufficiently credible to establish the existence of a causal

relationship between an employment related incident or accident on January 9, 2007 and any difficulties, which he has experienced with his neck or cervical spine.

The medical evidence shows that any cervical difficulties, which the claimant may be experiencing, would be in the form of an aggravating of a pre-existing condition. The medical evidence further shows that even relatively minor stress or trauma to the C5-6 area of his cervical spine could have caused the further compromise of the space available for the nerve roots to exit through the vertebral foramina and produced symptoms involving both the claimant's neck and radicular symptoms into the upper extremities. Thus, any numbers of activities or events (employment related or otherwise) could have caused or precipitated the claimant's cervical and radicular difficulties.

The only basis to conclude that the described employment related incident, on January 9, 2007, was the more likely or probable cause or precipitating factor would be a close temporal relationship between such an incident and the initial onset of the claimant's cervical and radicular difficulties. The greater weight of the credible evidence presented simply fails to show this close temporal relationship.

The claimant's testimony concerning the existence of this temporal relationship, is outweighed by other more credible evidence presented. Clearly, his testimony would be inconsistent with his ability to continue to perform his regular employment activities without any apparent complaint or difficulty for two weeks following January 9, 2007. It would also be inconsistent with his failure to seek any medical treatment for any cervical or radicular complaints for almost two weeks following this incident. Finally, it would be consistent with his failure to report any incident or injury for two weeks

following January 9, 2007. I recognize that the claimant testified that he did report the incident and injury. However, his testimony, in this regard, is refuted by the very individuals to whom he claims to have made this report. I simply find the testimony of these witnesses to be more credible.

As the claimant has failed to prove by the greater weight of the credible evidence that a specific employment related incident on January 9, 2007 was the more probable or likely cause of his cervical and radicular complaints, he has failed to prove the occurrence of a physical injury to his cervical spine that arose out of and occurred in the course of his employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence. His failure to prove these three definitional requirements for a "compensable injury" is fatal to his claim.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On January 9, 2007, the relationship of employee-employer-carrier existed between the parties.

3. On January 9, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$504.00 for total disability and \$378.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a "compensable injury" to his neck or cervical spine on January 9, 2007. Specifically, he has failed to prove the occurrence of physical injury to this portion of this anatomy that occurred on that date that arose out of and occurred in the course of his employment and that was

caused by a specific incident, as required by Ark. Code Ann. §11-9-102(4)(A)(i).

5. The respondents have denied the occurrence of any compensable injury to the claimant's neck or cervical spine and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE