

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709523

JAMES FITZPATRICK, EMPLOYEE	CLAIMANT
ST. JOSEPH'S MERCY HEALTH CENTER, EMPLOYER	RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED MARCH 19, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on March 6, 2008, at Hot Spring, Garland County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by Mr. Randy P. Murphy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on March 6, 2008, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

This claim concerns an alleged carpal tunnel injury. Respondents have controverted the claim in its entirety, maintaining that the claimant's condition was unrelated to work activities and was not compensable.

A procedural history of the claim is warranted. Although it does not appear that the claimant filed a Commission Form AR-C, the claimant's employer, apparently, after the claimant requested medical treatment, filed a First Report of Injury, as well as a Commission Form AR-2, controverting the claim in its entirety. Thereafter, by letter dated September 17, 2007, the claimant requested a hearing, at which time the claim was assigned to the Legal Advisor Division for either a legal advisor conference and/or a mediation conference. After attempts at both a legal advisor conference and mediation

conference failed, the claim was reassigned for adjudication. A Prehearing Questionnaire Notice was sent to both parties on October 18, 2007. The parties were directed to submit simultaneous responses within twenty (20) days. Contemporaneous with sending the Prehearing Questionnaire, the administrative law Judge (ALJ) scheduled the claim for a telephone conference on November 16, 2007. Neither party submitted responses to the Prehearing Questionnaire. A prehearing conference was conducted before the ALJ on November 16, 2007, and a prehearing conference Order was filed on said date.

At the prehearing conference, the claimant contended that he sustained a compensable carpal tunnel syndrome during the course of his employment at St. Joseph's Mercy Health Center and that he should be awarded benefits, including medical and related expenses. Respondents contended that the claimant's condition was not related to his work activity and was not compensable. The claimant was apparently advised of his rights. Because the claimant did not have benefit of an attorney, and given the controverted nature of the claim, the claim was returned to the Commission's general files. Thereafter, by letter dated January 29, 2008, respondents requested that the claim be dismissed for lack of prosecution. The claim was then reassigned to the previous ALJ to address respondents' Motion. By letter dated February 1, 2008, the law judge granted the claimant twenty (20) days to respond to the Motion. No response was received. Accordingly, a Notice of Hearing was sent to both parties on February 25, 2008, scheduling the claim for a hearing on March 6, 2008. The subject of the hearing was respondents' Motion to Dismiss the claim.

The claimant appeared, *pro se*, at the scheduled hearing. The claimant strenuously objected to the dismissal of his claim. Respondents, by and through its attorney, pointed

out that the claimant had been involved in an independent intervening motor vehicle accident following his alleged injury and that it should not be held responsible for medical treatment. The claimant pointed out that the immediate claim concerned a carpal tunnel injury and that he was not making a claim for a cervical injury. The claimant further stated that he was still in the process of attempting to secure the services of an attorney. The claimant maintained that he had obtained medical evidence in support of his claim. However, the sole subject of the hearing concerned respondents' Motion to Dismiss.

At the hearing, it was pointed out by this Administrative Law Judge that the claimant did not file a claim, and that his subsequent hearing request was apparently based upon respondents' controversion of the claim. It was also pointed out that respondents' Motion was filed less than six (6) months after the claimant's hearing request and less than ninety (90) days after a Prehearing Order was filed by the previous ALJ on November 16, 2007. Respondents' attorney conceded that the Motion to Dismiss was filed premature. Accordingly, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On or about September 17, 2007, the claimant requested a hearing alleging a carpal tunnel injury which apparently manifested itself on or before August 29, 2007.
3. Respondents have controverted the claim in its entirety.
4. The claimant is entitled to additional time to either retain the services of an attorney and/or fully develop the medical evidence in support of his claim.
5. Dismissal of this claim is not warranted at this time.

DISCUSSION

In the present claim, the claimant does not contend that his injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997). Carpal tunnel syndrome is recognized as a gradual-onset injury; hence, it is not necessary that a claimant prove that his carpal tunnel injury was caused by rapid, repetitive motion. *Freeman v. ConAgra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2002).

The foregoing requirements are being provided because the claimant is acting *pro se*. The claimant has previously been encouraged to seek the services of an attorney and is, again, encouraged to consult with an attorney to determine whether he wishes to pursue his claim. Rather than conduct a further analysis of the record in this cause, suffice it to say that respondents' Motion is premature. The claimant is granted additional time to either

fully develop the medical evidence in support of his claim and/or consult with an attorney.

Respondents may renew its Motion if the claimant fails to pursue the claim.

After full consideration of the fact, issues, and the law, with notice of the hearing having been received by the claimant, together with his objection thereto, it is hereby determined that respondents' Motion should be, and it is, hereby respectfully denied.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge