

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F701987**

**JIMMY HALBROOK**, EMPLOYEE

CLAIMANT

**BARRY, JAMES & JOHN MOSLEY**  
D/B/A ARKANSAS WHOLESALE,  
UNINSURED EMPLOYER

RESPONDENT

**OPINION FILED JUNE 10, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on March 14, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE R. DAVID LEWIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE FABER JONES, Attorney at Law, Sherwood, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, an anatomical impairment rating of 45% and attorney's fees.

At issue is whether or not the claimant and respondent were in an employment relationship at the time of the injury and 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 respondents did not participate in the prehearing conference and as a result, the parties were unable to make any stipulations. The respondents were also barred from submitting evidence or calling witnesses although they were allowed to cross-examine the claimant.

The claimant contends he was hired by John Mosley and the business employed three or more employees. The claimant injured his right index finger in a specific incident at work on February 6, 2007. He seeks payment of medical expenses currently totaling \$30,317.88, temporary total

disability benefits from February 7, 2007 to May 9, 2007 at a compensation rate of \$333.00/\$250.00, permanent partial disability benefits for an anatomical rating of 45% and attorney's fees.

The following were submitted without objection and comprise the evidence of record: the claimant's prehearing questionnaire and exhibits contained in the transcript.

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

The claimant, age 45 (D.O.B. August 31, 1962) is illiterate. For most of his adult life he has worked as a dismantler in auto salvage yards. He is right hand dominant.

The claimant testified he worked for the respondent-employer "off and on" for about a year prior to the accident earning \$12.50 an hour for a 40 hour week. The business is managed by John; Barry is the yard boss; and Clay Ryan works at the counter. Other dismantlers were Chris, Justin and Kevin.

On Monday, February 6, 2007, at 9:00 A.M., after working for an hour, the claimant cut his right index finger dismantling a car to obtain the A-frames sold to a customer, (Tr. p. 9-11, 25).

The claimant ran to the office and Clay Ryan brought him paper towels to wrap his hand. Mr. Ryan instructed Chris to drive the claimant to the emergency room (ER). The claimant has not returned to work since the accident. He needs to have the hardware removed in his hand but is financially unable to do so.

On cross-examination, the claimant conceded that he had quit work two weeks earlier and Monday, February 9, 2007 was his first day back at work. He quit because his tool box had been stolen. A police report was made; John Mosley found his tools in a pawn shop; and Clay Ryan told the claimant to come back to work. The claimant had worked about a hour pulling the parts before the accident happened.

#### **MEDICAL EVIDENCE**

The claimant was seen at the emergency room on February 6, 2007 by Dr. Ethan Shock. The claimant gave a history of injury at work with the front end of a vehicle falling on his right hand. X-rays revealed a fracture at the base of the index finger and emergency surgery was performed.

In a letter dated May 9, 2007, Dr. Shock opined that the healing period had ended. He assessed a 45% anatomical impairment rating to the index finger based on “his limitations of motion of the metacarpophalangeal and interphalangeal joints of the index finger.”

Dr. Shock also warned that hardware from the surgery might need to be removed in the future. A letter dated February 13, 2008 from a financial counselor with Dr. Shock’s office estimates the cost of hardware removal to be \$2,964.08.

### **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 employment relationship is established by the claimant’s testimony that he returned to work on February 9, 2007 and worked approximately one hour filling an order before the accident. Based on the number of employees who worked there, the Commission has jurisdiction of this claim.

Based on the lay testimony and medical records, the claimant has proven by a preponderance of the evidence of record that he sustained an injury in the course and scope of his employment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on February 6, 2007 at which time the claimant was under a contract of hire of \$12.50 per hour for a forty hour week entitling him to a compensation rate of \$333.00/\$250.00.
2. The respondents are directed to pay all medical expenses, currently totaling \$30,317.88, within thirty days of receipt of the bills. The respondents will also be liable for expenses associated with hardware removal if and when the surgery is performed. Medical expenses include out-of-pocket reimbursements to the claimant and mileage to and from the medical providers at 43¢ per mile.
3. The respondents are directed to pay the claimant temporary total disability benefits from the date of injury to May 9, 2007 when the healing period ended.
4. The respondents are directed to pay a 45% impairment rating totaling \$4,837.50.
5. The respondents are directed to pay the court reporter's expenses pursuant to Rule 20 within thirty days.
6. 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.

**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).

A copy of this Order has been forwarded to the Compliance Division for possible sanctions against the employer pursuant to Ark. Code Ann. §11-9-401 and §11-9-406.

IT IS SO ORDERED.

\_\_\_\_\_  
ELIZABETH W. HOGAN  
Administrative Law Judge