

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707295

GERALD HAWTHORNE	CLAIMANT
O'REILLY AUTOMOTIVE, INC.	NO. 1 RESPONDENT
GALLAGHER BASSETT SERVICES CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED JULY 17, 2008

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

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

Respondents No. 1 represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

Respondent No. 2 represented by JUDY RUDD, Attorney, Little Rock, Arkansas, waived appearance at the hearing.

STATEMENT OF THE CASE

On April 24, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on November 8, 2007, and a pre-hearing order was filed on November 8, 2007. 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. On April 16, 2007, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$276 for temporary total disability and \$207 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to his chest wall and lungs.

2. Claimant's entitlement to related medical.

3. Claimant's entitlement to temporary total disability from July 3, 2007, to February 5, 2008.

4. Attorney's fees.

The claimant contends that:

"He sustained a job related injury on April 16, 2007, that involved primarily his chest wall and lungs. The claimant contends that he is entitled to temporary total disability benefits from on or about July 3, 2007, until a date yet to be determined and reasonably necessary medical treatment. The claimant contends that his attorney is entitled to an appropriate attorney's fee."

Respondents No. 1 contend that:

"The claimant did not sustain a compensable injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act."

Respondent No. 2 was not a party to this matter at the time of the pre-hearing conference.

DISCUSSION

The central issue in this case is whether the claimant sustained a compensable injury to his chest and lung on April 16, 2007. The claimant states that he was delivering brake rotors that weighed about 50-60 pounds a piece on April 16, 2007. The claimant was holding two boxes with the rotors catty-cornered on the left side of his body above his waistline. The claimant used the boxes and his foot to open a door that existed the building. The claimant testified that the door opened up and he "started out, the next thing I knew, it came shut and jabbed the boxes into my side and I hit the door facing on the opposite side." The claimant went ahead with his delivery while experiencing pain in his left chest area. Upon his return he stated that he told one of the "guys at the wholesale desk" what had happened. The claimant was told to report the injury to Dale Gilstrap which the claimant testified he did.

The claimant testified that he then completed the work day but found himself in a great deal of pain that night so he went to St. Edward's emergency room in Fort Smith. A St. Edward's Mercy Medical Center emergency room record shows that the claimant did go to the emergency room and report left rib pain from an injury at work. The claimant was diagnosed with strained left ribs, given medication, and released to return home.

On April 20, 2007, the claimant again reported to the St. Edward's emergency room with similar complaints as he was again given medication and sent home.

On May 29, 2007, the claimant again reported to St. Edward's emergency room with worsening of the same complaints. He was diagnosed with a left chest wall injury at the left costicartilaginous junction.

On June 4, 2007, the claimant was seen at Cooper Clinic by Dr. Fareed Kannout. Dr. Kannout diagnosed the claimant with rib separation and a possible fracture. Dr. Kannout then referred the claimant to a thoracic surgeon and placed the claimant on limited duty. On July 10, 2007, the claimant saw Dr. Rowland P. Vernon, Jr., a thoracic surgeon. After various exams and diagnostic studies Dr. Vernon performed surgery on the claimant on August 15, 2007. A Cooper Clinic note regarding the surgery reveals the following information:

"This patient underwent on August 15, repair of a traumatic hernia of his left trunk. This involving primarily, in my view, a history of trauma associated at the time of our encounter with him, total disruption of his costal arch between about rib 7 and 8 and multiple posterior rib fractures as well. I think that indeed some real time elapsed in order for the anatomy to declare itself as the herniation of lung and retroperitoneal tissue into the site, although the lung hernia component was by CT scan, at least, quite small."

ADJUDICATION

In order to meet his burden, the claimant must first show that his alleged injuries satisfy the statutory requirements of Ark. Code Ann. §11-9-102. It requires that the claimant prove by medical evidence the actual existence of the physical injuries alleged to be compensable. Further, it requires the actual existence of a physical injury must be based on or supported by

objective findings as that term is defined by Ark. Code Ann. §11-9-102. There is no question that the claimant in this matter had present objective findings of injury to his left ribs, particularly between ribs 7 and 8, and lung. That damage was clearly seen and reported by Dr. Vernon through diagnostic studies and through the surgery process. After consideration of all the medical evidence presented, it is my opinion that the claimant has established by medical evidence which is supported by objective findings the actual existence of physical injury or damage to his left rib and lung area. Thus, the claimant has satisfied the statutory requirements for a compensable injury which are contained in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that his medically established and objectively documented injury meets the definitional requirements for a compensable injury that are found in Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

- (1) The injury arose out of and occurred in the course of the employment.
- (2) The injury was caused by a specific incident.
- (3) The injury is identifiable by time and place of occurrence.
- (4) The injury caused internal or external physical harm to the claimant's body.
- (5) The injury required medical services or resulted in disability.

In order to prove the first three of these requirements, the claimant must show the existence of a causal relationship between a specific employment related incident and the physical injury.

However, the claimant need not prove that the employment related incident was the sole or even major cause of the physical injury. It is only necessary that the employment related incident contributed to his ultimate difficulties. Clearly, aggravations of pre-existing conditions may still constitute compensable injuries. Further, it is not necessary that the claimant prove the existence of this causal relationship by medical evidence. Nor, is there any requirement that this causal relationship be supported by objective findings. The existence of such a relationship can be reasonably derived from the record as a whole.

In the present case, the greater weight of the credible evidence clearly shows that the claimant was involved in a specific employment related incident on July 16, 2007. I find that the claimant's testimony regarding the events surrounding his injury to be credible. The door at the O'Reilly parts store once being opened by the claimant did shut and cause the boxes that he was carrying to be shoved into his left rib area. The respondents have put on evidence and alleged that the wind was not blowing sufficiently on that day to cause this door close in such a manner as to injure the claimant. The claimant has, in deposition and some medical reports, suggested that he believed the wind did catch the door and blow the door back into the boxes which ultimately injured his left rib area. However, I do not believe that there is any way to know what actually caused the door to come closed that day. It could have been caused through some malfunction of the door, through the claimant's own pushing of the door causing it to

retract, or through some meteorological event such as wind. I do not believe that cause can be found. I do, however, believe the claimant's testimony that the door did come shut for some reason; however, causation of the closing of the door is not at question here. The question is did the door close on the claimant and I believe that occurred.

As to the credibility of the claimant, the O'Reilly store manager testified that he was a good employee. The claimant consistently told the same story to medical providers throughout the course of his treatment. The claimant's injuries are consistent with the story he attributes the injury to and the claimant reported the injury to at least two individuals at the O'Reilly auto parts store shortly after the injury occurred. For all of these reasons, I find that the claimant is credible and that the door did close on the claimant causing damage to his left rib area and lung.

I find that the injuries arose out of and occurred in the course of the claimant's employment. The incident was specific in that it occurred when the door closed and is identifiable by place and time. Medical services were required for the injuries which caused internal harm to the claimant's body. The claimant has proven by a preponderance of the evidence that he suffered compensable injuries to his left rib area and lung.

MEDICAL

After a review of all medical evidence presented in this matter, I find that the claimant is entitled to the medical

services and related treatment provided by Dr. Goodman, Dr. Nelson, Dr. Giffith, Dr. Kannout, Dr. Vernon, Dr. Stites, and Dr. Foreman.

Dr. Stites and Dr. Foreman treated the claimant for Tachyarrhythmia the claimant experienced after surgery. During deposition of Dr. Vernon the following exchange occurred between the doctor and respondents' attorney:

Q. And to your knowledge, was the rhythm disturbance in any way caused by this surgery or this condition that Mr. Hawthorne had?

A. I don't know exactly how to scientifically accurately answer that question. We observe that about 30 to 40 percent of the people who have a thoracotomy will have at least atrial fibrillation, which is a relatively common dysrhythmia. We have never been able to identify the exact mechanism which ties the two together, but we do know that they seem to occur concomitantly with a lot of frequency.

I find that this Tachyarrhythmia was substantially occasioned by the treatment for the claimant's injuries in this matter. It was not present before surgery for his injuries and the deposition of Dr. Vernon provides credible weight to a linkage of the compensable injuries and the rhythm disturbance.

TEMPORARY TOTAL DISABILITY

After review of all the evidence it is clear that the claimant is entitled to temporary total disability from July 3, 2007, until February 5, 2008. The respondents are entitled to a credit for any days during that time period that the claimant received payment for work from the respondents.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the

Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 8, 2007, and contained in a pre-hearing order filed November 8, 2007, are hereby accepted as fact.

2. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

3. On April 16, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$276 for total disability and \$207 for permanent partial disability.

4. On April 16, 2007, the claimant sustained a compensable injury to his left chest and lung. Specifically he has established by medical evidence, which is supported by objective findings, the actual existence of these physical injuries. He has further proven that these injuries arose out of and occurred in the course of his employment, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to his body, required medical services, and resulted in disability (at least temporarily).

5. The claimant is entitled to reasonably necessary medical services provided Dr. Goodman, Dr. Nelson, Dr. Giffith, Dr. Kannout, Dr. Vernon, Dr. Stites, and Dr. Foreman.

6. The claimant has proven that he was rendered temporarily totally disabled as a result of the effects of the compensable lower lumbar injury for the period of July 3, 2007, through February 5, 2007, less credit to the respondents for any day during this time period that the respondents paid the claimant for employment services.

7. The respondents have denied the occurrence of compensable injuries to the claimant's injuries. The respondents have controverted any and all benefits attributable to such injuries.

8. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on all applicable benefits herein and herein awarded to the claimant.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to the medical services provided by Dr. Goodman, Dr. Nelson, Dr. Giffith, Dr. Kannout, Dr. Vernon, Dr. Stites, and Dr. Foreman. Therefore, the respondents shall pay for those medical services and related treatment.

The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from July 3, 2007, to February 5, 2007. Therefore, the respondents shall pay benefits as such less credit to the respondents for any day during this time period that the respondents paid the claimant for employment services.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the awarded herein, with one

half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE