

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F611311**

<b>JAIME JACKSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>EASTSIDE ELEMENTARY., EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>RISK MANAGEMENT RESOURCES, CARRIER</b>	<b>RESPONDENT #1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED MAY 28, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 28, 2008, at Bradley County, Warren, Arkansas.

Claimant appeared pro se.

Respondent No. 1 represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

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

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 June 14, 2006 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$28.00 in the event this claim is found to be compensable.

The claimant contends he sustained a specific injury to his right hand on June 14, 2006. He seeks payment of medical expenses, temporary total disability benefits from July 1 to August 8, 2006 and from September 15, 2006 to a date yet to be determined.

The respondents contend the claimant was not working on June 14, 2006 and did not sustain any injury arising out of and in the course of his employment. The claimant's present condition is the result of a preexisting condition. Alternatively, in the event of an award, the respondents would not be liable for any benefits before October 20, 2006 when the claimant gave notice of his injury.

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

The following witnesses testified at the hearing: the claimant; co-worker John Mosely; secretary Shirley Childs; and principal Marilyn Johnson.

The claimant, age 56 (D.O. B. April 11, 1950), is a Vietnam veteran. He was employed by the school district as a substitute janitor. He held a second job with Independent Choices (checking on elderly patients in their homes) from October 31, 2004 to May 31, 2007, (Tr. p. 18-19, 33-36, 39, 43). His health history includes a bilateral hand injury in 2001 while working for H & L Poultry, (Tr. p. 13-14, 20-21).

On June 14, 2006, the claimant injured his right hand lifting chairs, while cleaning a classroom during the night shift, (Tr. p. 7-8, 22-27). However, time cards show the claimant worked only two days in June, 2006. On June 1, 2006 he worked a night shift and on June 13, 2006, he worked a day shift, (Tr. p. 29-31, 63-64, 67-69). The claimant developed swelling in his right hand which was observed by a co-worker Mr. Mosely (Tr. p. 10, 22-27).

The claimant stated he reported the injury to the superintendent, Mr. Tolbert (Tr. p. 9-11), but Mr. Tolbert didn't believe him and no accident report was completed (Tr. p. 16-17). However, in his deposition, he stated he reported the incident to the secretary, Ms. Childs and to the principal, Ms. Johnson two days after the injury, (Tr. p. 27-29, 41-42).

The claimant sought treatment with his family physician, Dr. Morse and with orthopaedic surgeon, Dr. Charles Clark. Surgery was recommended for the knot above his wrist, but he is financially unable to pursue treatment. However, he has not sought treatment through the Veterans Administration (VA) either. He has not seen a physician since July, 2007 and takes over-the-counter medication for pain and numbness.

Former co-worker, Mr. Mosely, testified he saw the claimant pick up a chair and heard him say he sprained his hand. Mr. Mosely observed swelling on the claimant's hand. He does not remember the date of the incident, but it was in the summertime before noon. Mr. Mosely's reasons for leaving the respondents' employ were not explained.

Secretary, Shirley Childs, testified the claimant did not report an injury until October 20, 2006.

Principal, Marilyn Johnson, testified she saw the claimant sometime in the fall of 2006 after the start of the school year in mid-August. His hand was wrapped and he told her he hurt it during the summer. She asked him if he had reported the incident and he said no, the VA would take care of it. Ms. Johnson conceded that the claimant had never been instructed on the procedures to file a workers' compensation claim.

### **MEDICAL EVIDENCE**

In August, 2001, the claimant came under the care of Dr. Ken Purvis for pain in his left thumb. He was diagnosed with DeQuervain's tenosynovitis caused by his job duties at H & L Poultry. He was treated conservatively with medication and injections. His symptoms improved and the doctor returned him to work. The claimant then developed symptoms in both hands. The doctor placed him on light duty and recommended that he change his occupation. He was released with no permanent impairment.

The claimant testified that after the 2006 injury, he saw general practitioner, Dr. James Morse, and orthopaedic surgeon, Dr. Charles Clark. Their medical records were not introduced into evidence. The claimant's exhibit packet contains an instruction sheet for out-patient surgery from

Dr. Clark's office referring to a "mass right hand" dated July 18, 2007 with surgery scheduled for August 2, 2007. However, there are no narrative reports explaining the diagnosis or excusing the claimant from work. The claim was denied and the surgery was never performed.

### **DOCUMENTARY EVIDENCE**

The claimant was represented by an attorney for the 2001, H & L Poultry injury. He signed an AR-C on September 13, 2001 for an injury a month earlier on August 1, 2001.

The claimant signed an AR-C for the Eastside Elementary injury on October 10, 2006, four months after a right hand injury on June 14, 2006, attributed to lifting chairs.

### **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

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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 evidence of record shows the claimant developed DeQuervain's syndrome bilaterally in 2001. He was treated and released with no impairment and was able to work for the next five years.

There is no evidence the claimant's current condition is the result of a pre-existing condition. The respondents provided the claimant's medical records from 2001 (only) and his symptoms were limited to the thumb area. There is no evidence of a cyst above the wrist in 2001. There is no evidence the 2001 injury required further treatment or caused the claimant to miss work for the next five years. Therefore, I find the development of the cyst was a new injury in 2006.

In June 2006, the claimant developed a knot on his right hand lifting chairs. The claimant testified this happened on the night shift. According to the time cards, this would place the injury on June 1. However, a co-worker testified the injury happened on the day shift. According to the

time cards, this would place the accident on June 13, 2006.

The claimant seemed confused about the date of his injury, but he consistently relates it to an incident in June, 2006 lifting chairs while cleaning a classroom. This testimony is sufficient to meet the requirement of a specific incident identifiable by time and place of occurrence, Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W.3d 369 (2001).

Any delay in reporting this claim is excusable under Ark. Code Ann. §11-9-701, based on the principal's testimony that the claimant was never instructed on the procedure to file a claim with the school.

The claimant offered no diagnosis from his physician on the 2006 injury, however, there is a visible cyst on his wrist which satisfies the requirement of objective medical evidence and there is evidence that medical services were required based on Dr. Clark's decision to schedule out-patient surgery.

"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).

The claimant's deposition testimony was at odds with his deposition testimony on several points and he was evasive about the corroboration of his co-worker, Mr. Mosely. Some of these discrepancies can be attributed to the delay in reporting the incident, which is excusable. Mr. Mosely seemed to be truthful in his testimony frankly because it did not mimic the claimant's history. Both men were testifying about the history of the case as they remembered it, however faulty.

Therefore, I find the claimant has proven by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the employer-employee-carrier relationship existed among the parties on June 13, 2006.
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 respondents are directed to pay all related medical expenses incurred after October 10, 2006 within thirty days of receipt pursuant to Rule 30.
4. The claimant's condition is not disabling. He was able to work for other employers after the June 13, 2006 incident and no evidence was presented regarding work restrictions or the healing period. Therefore I find the claimant is not entitled to any past temporary total disability benefits.
5. The respondents are directed to pay Ms. Celia Jamison court reporter 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.

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ELIZABETH W. HOGAN  
Administrative Law Judge