

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F711106

MICHAEL J. KLINE, EMPLOYEE	CLAIMANT
COOPER TIRE & RUBBER COMPANY, SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 21, 2008

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE PAUL MILLER, Attorney at Law, Texarkana, Texas.

The respondent was represented by HONORABLE WILLIAM G. BULLOCK, Attorney at Law, Texarkana, Texas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 19, 2008, in Texarkana, Arkansas. A Prehearing Order was entered in this case on April 16, 2008. The following stipulations were submitted by the parties and are hereby accepted:

1. The claimant is entitled to the maximum compensation rates for 2006 if this claim is found compensable.
2. The claimant, Michael J. Kline, was as of December 12, 2006, employed by Cooper Tire and Rubber

Company at its Texarkana, Arkansas, facility as a mixer operator.

3. The claimant's medical treatment at issue, except for out-of-pocket expenses, was paid through Cooper Tire & Rubber Company's self-insured group health plan. This employee benefit is subject to the provisions of Arkansas Code Annotated Section 11-9-411.

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

Claimant:

1. Whether Mr. Kline sustained an on-the-job back injury on or about December 12, 2006, which resulted in lost time and medical expenses.

Respondent:

1. Compensability.

The record consists of the June 19, 2008, hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant contends in part that he sustained an injury from rapid and repetitive motion bending and lifting at work. Arkansas Code Annotated § 11-9-102 (4) (A) (Suppl.

2003) defines "compensable injury" in relevant part as follows:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence; if the injury is:

(a) Caused by rapid repetitive motion....

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Id.

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); Ark. Code Ann. § 11-9-102(16). For a gradual onset injury caused by rapid repetitive motion, the resulting condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

The Arkansas Court of Appeals has summarized the Court's analysis as follows in determining whether work duties are properly classified as "rapid repetitive motion" in Holland Group, Inc. v. Hughes, 95 Ark. App. 369, ___ S.W.3d ___ (2006):

In determining whether a worker's injury was the result of repetitive and rapid motion, the appellate courts have required some showing of how rapidly the repetitive actions were performed. See *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000) (Commission's denial of benefits reversed where movements repeated every twenty seconds); *Parker v. Atlantic Research Corp.*, ___ Ark. App. ___, ___ S.W.3d ___ (June 30, 2004) (where the Commission found that appellant's job duties fell within the meaning of rapid repetitive motion, considering the multiple tasks that she was required to perform at high volume and with quick and fast movements in a repetitive nature over the course of a sometimes ten-to-twelve hour shift, six to seven days a week, there was substantial evidence to support the Commission's finding that appellant's job duties required rapid repetitive motion); *Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998) (a series of repetitive motions, performed 115 to 120 times per day separated by periods of only 1.5 minutes, constituted rapid motion within the meaning of the statute); *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998) (movements repeated every fifteen seconds found to be sufficiently "rapid").

In the present case, the claimant had been employed by the respondent for eight years at the time of the hearing. For the majority of that period, he has worked as a mixer operator weighing different compounds that go into rubber. The claimant contends that he sustained a painful stress

fracture injury to his right ilium/sacroiliac joint caused by his work in December of 2007 which did not improve while he continued to perform his regular duties, but which improved slowly when he worked a period of light duty with a restriction of lifting no greater than 10 pounds.

The respondent notes that the record contains a differential diagnosis by MRI of either an occult stress fracture, a stress reaction, or possibly an infection. The respondent also notes that the claimant has a prior history of documented back complaints. The respondent contends that the claimant cannot establish that he in fact sustained a fracture, much less a fracture caused by rapid repetitive motion at work.

After reviewing the entire record, I find that the claimant proved by a preponderance of the credible evidence each of the following four requirements necessary to establish a compensable stress fracture of the right ilium caused by rapid repetitive motion of the sacroiliac joint at work in December of 2007.

1. Injury Arising Out Of And In The Course Of Employment.

The claimant came under the care of his family physician, Dr. John Nix, for symptoms which he contends began in December of 2007 and would not get better even with

a Christmas vacation from December 22, 2007, until January 3, 2008. Dr. Nix referred the claimant to Dr. Thomas Young, an orthopedic surgeon. In his initial assessment on February 28, 2007, performed after an MRI, Dr. Young noted a differential diagnosis of potential stress reaction/stress fracture or possible infection. In his report of March 14, 2007, after obtaining the benefit of both an MRI and a bone scan, Dr. Young indicated that he thought the patient experienced a stress reaction/stress fracture, and Dr. Young suspected that the condition was related to the patient's repetitive workplace duties.

On July 24, 2007, Dr. Young rendered the only expert medical opinion in the record. By that time, the claimant had been on light duty work and returned to regular duty work before Dr. Young examined the claimant a third and final time in June of 2007. On July 24, 2007, Dr. Young opined within a reasonable degree of medical certainty that objective findings indicated a stress fracture and that the stress fracture of the right ilium was the result of work-related activities.

I find that Dr. Young's expert medical opinions regarding the nature and cause of the claimant's medical problem are entitled to great weight in this case. In this

regard, I note that Dr. Young's opinions were rendered after the MRI, bone scan, and restriction to light duty during which the claimant's symptoms slowly improved. While the respondent's attorney has noted a differential diagnosis after the MRI, Dr. Young's opinion of a stress fracture was not rendered until after the bone scan and light duty work which improved the claimant's symptoms. I do not see any indication in Dr. Young's records that he ever provided the claimant any type of antibiotic treatment for the differential diagnosis of possible infection. With regard to the causation opinion, I note that Dr. Young received a detailed description of the claimant's job duties before rendering his opinion. That description is located in the record at Claimant's Exhibit 2, page 5.

The respondent's attorney presented evidence at the hearing that Dr. Young was not aware of the claimant's prior back problems when Dr. Young rendered his opinion on causation in July of 2007. The respondent therefore suggests that Dr. Young's causation opinion is based on a material mistake of fact. I would certainly agree with that assessment if the record suggested that the claimant's current injury was simply a recurrence of earlier injuries, as the respondent apparently contends as one possibility.

However, I respectfully point out that the claimant's current injury occurred in the *right* sacroiliac joint area in the *right ilium* and therefore caused symptoms on the *right* side. By comparison, the 2001 lumbar MRI in the record contains a history of low back pain and weakness in the *left* leg. The 2004 report in the record makes no reference of symptoms in *either* hip or leg, and the 2005 report again references the *left* leg. (R. Exh. 3, Pgs. 1-4) It would clearly take impermissible speculation and conjecture on my part to conclude that the claimant's diagnosed stress fracture in the *right* ilium at issue is somehow a recurrence of prior complaints which manifested symptoms in the *left* leg (2001 and 2005), or did not cause reported symptoms in *either* hip or leg (2004). Under these circumstances, I find that Dr. Young's opinions are not based on any material mistake of fact and are entitled to great weight.

Based on Dr. Young's opinions, the results of MRI and bone scan testing, the claimant's improvement on light duty work, and the lack of reference to any antibiotic treatment in the record for a possible infection, I find that the claimant established by a preponderance of the evidence that he sustained a stress fracture of the right ilium that arose

out of and occurred as a result of his bending and lifting workplace activities in December of 2007.

2. Major Cause.

The claimant did not require any time off from work for his injury, and the claimant has not made a claim for any type of disability in this claim at this time. The claimant's medical reports in the record from Dr. Nix and Dr. Young from January through June of 2007 indicate that the physicians diagnosed and treated only the claimant's work-related stress fracture. Consequently, the claimant has established by a preponderance of the evidence that his compensable injury is the major cause of the medical treatment that he received.

3. Rapid Repetitive Motion.

In the present case, the claimant weighs and transfers compounds that go into rubber. He completes each batch in one to two minutes. He runs approximately 224 batches in a twelve hour shift. He bends down and grabs about three to four scoops every two minutes from bins. He must also pick up approximately 16 pounds of rubber by hand during the two minute batch. In addition to the approximately 224 batches per shift, he must physically pick up 50 to 55 pound bags to refill the bins approximately 20 times per night (i.e., 1000

pound total weight per night). In addition, approximately every 10 minutes, the claimant must change out skids of rubber. He must reach down, pick up and slide a 100 pound skid approximately three feet and stack the empty skids. The claimant credibly testified that he performed the tasks at a fast pace. The claimant also credibly summarized that he repeatedly bends over to his right "hundreds and hundreds of times a night, at a fast rate to keep up."

I find that scooping compound and lifting rubber to complete approximately 224 batches per night, in combination with the less routine task lifting 50 to 55 pound sacks or rubber approximately 20 times per night and exchanging skids approximately every 10 minutes, considered together, require repetitive motion to perform these repetitive tasks. I also find that the preponderance of the evidence establishes that the claimant performs those tasks swiftly so as to establish that the claimant used rapid and repetitive motion to bend and lift. In this regard, I note that bending at the waist four times in two minutes to scoop compound and once in two minutes to pick up the 16 pounds of rubber off a skid would require one repetitive bending motion on average every 24 seconds (120 seconds divided by five bends) during each two minute batch. I note that tasks performed once every 20

seconds have previously been adjudged "rapid" by the Arkansas Court of Appeals. See Hapney v. Rheem Mfg. Co., supra.

I also find that the claimant has established by a preponderance of the evidence that his iliac stress fracture was caused by his rapid repetitive motion at work. I reach this conclusion based on Dr. Young's opinion that the stress fracture was caused by work activities, Dr. Young's March 14, 2007, recommendation that the claimant avoid his repetitive duties, and the evidence that the claimant's symptom improved while performing light duty work painting.

4. Objective Findings.

In the present case, the claimant underwent an MRI on February 13, 2007, which objectively indicated "moderate asymmetric marrow edema and periosteal edema observed in the medial aspect of the right ilium adjacent to the SI joint." He also underwent a bone scan on or before March 14, 2007, reported as "consistent with some increased uptake back in the right ilium as well [sic] and in the SI joint." As discussed above, Dr. Young opined that objective findings indicate a stress fracture of the right ilium. I find that the objective findings of the MRI and bone scan, as interpreted by Dr. Young, establish the nature and extent of

Mr. Kline's compensable injury by objective medical findings.

Because I find that the claimant established by a preponderance of the evidence all of the requirements necessary to establish a compensable stress fracture of the ilium caused by rapid repetitive motion, I need not reach the claimant's alternative argument that the ilium/sacroiliac joint are part of the "back" as the term "back" is used in Arkansas Code Annotated Section 11-9-102(4) (A) (ii) (b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant is entitled to the maximum compensation rates for 2006 if this claim is found compensable.
2. The claimant, Michael J. Kline, was as of December 12, 2006, employed by Cooper Tire and Rubber Company at its Texarkana, Arkansas, facility as a mixer operator.
3. The claimant's medical treatment at issue, except for out-of-pocket expenses, was paid through Cooper Tire & Rubber Company's self-insured group health plan. This employee benefit is subject to

the provisions of Arkansas Code Annotated Section 11-9-411.

4. The claimant proved by a preponderance of the evidence that he sustained a compensable stress fracture of the right ilium.
5. The respondent is entitled to a dollar-for dollar offset for medical benefits previously paid by Cooper Tire & Rubber Company's self-insured group health plan. The claimant shall be reimbursed his out-of-pocket medical expenses related to this injury.

AWARD

The respondent is directed to pay benefits in accordance with the findings of fact set forth herein. 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 (1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998); reversed on other grounds 336 Ark. 515, 988 S.W.2d 3 (1999).

Because this case was controverted in its entirety, the claimant's attorney will be entitled to a 25% attorney's fee

on any indemnity benefits to which the claimant may become entitled as a result of the findings herein, one-half of said fee to be paid by the claimant and one-half to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge