

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609549

SHARON S. RANEY, EMPLOYEE	CLAIMANT
LENNOX INDUSTRIES, EMPLOYER	RESPONDENT NO. 1
ESIS, INC., CARRIER	RESPONDENT NO. 1

OPINION FILED FEBRUARY 14, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on November 16, 2007, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE PHILIP WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY HARDY, Attorney at Law, Little Rock, Arkansas.

ISSUES

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

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann §11-9-102.

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 August 28, 2006 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$371.00/\$278.00. Initially the respondents accepted this claim and paid medical expenses and temporary total disability benefits until the case was controverted on September 12, 2006. Some expenses have been paid by the claimant's group health carrier Blue Cross Blue Shield of Texas, and the claimant has received short-term disability benefits through Met-Life.

The claimant contends she gradually developed a right thumb injury which manifested

itself on August 28, 2006. The claimant seeks payment of medical expenses, temporary total disability benefits from September 13, 2006 to June 22, 2007, anatomical impairment of 22% to the thumb, and attorney's fees.

Respondents contend the claimant's injury did not arise out of and in the course of her employment. The claimant's condition is the result of joint arthritis in both thumbs.

Respondent No.2, the Fund was joined after the prehearing conference in this case; did not participate in the hearing; and is not bound by the stipulations entered into by the claimant and respondents No. 1.

The following were submitted without objection and comprise the evidence of record: The parties' prehearing questionnaires, exhibits, a DVD showing the claimant's job duties, and depositions of Dr. Marcia Hixson and Dr. David Rhodes contained in the transcript.

The following witnesses testified at the hearing: the claimant, plant nurse, Kim Chastain, and unit leader, David Earney. The claimant appeared to be sincere in her testimony.

The claimant, age 48 (D.O.B. April 21, 1959) has a twelfth grade education. She worked for Kender-Harris for 23 years producing picture frames before going to work for Lennox in the wiring department in April, 2004. Her health history includes arthritis in both hands and a back injury.

The claimant's job at Lennox changed in June 2006, and she was moved to Line 7, Bay Station, constructing large industrial-sized air conditioning units. Her job duties required her to bend, lift and use an air drill. Equipment was defective and employees would vie for the best drills, even taking them from lockers. The claimant was forced to use a defective drill. One week after she started this job, she began to experience back and hand pain, (Tr. p. 17-20, 27-44).

The claimant testified she reported this problem to her supervisor, Ms. Robbie O'Neal. Ms. O'Neal told her that her symptom would improve after she got used to the job. The claimant's condition worsened, with knots on her hand. The claimant spoke to Ms. O'Neal about a month later and requested a job change. The claimant felt she was being ignored and asked Ms.

O'Neal to speak with the manager, David Earney, but there was no follow-up and she was never removed from the line. In her fourth conversation with Ms. O'Neal, the claimant's swollen hand convinced Ms. O'Neal to send the claimant to the nurse, Kim Chastain, (Tr. p. 20-25).

The claimant knew that she had arthritis in both hands based on x-rays taken four years earlier. However, she did not require treatment until she started the Line 7, Bay Station job, (Tr. p. 25-26). Nevertheless, medical records show the claimant saw her family physician, Dr. Morgan, in January 2005 for chronic hand pain. Dr. Morgan noted joint deformity and diagnosed arthritis, (Tr. p. 45-46).

The claimant stated that she reported only a right hand injury at work, but Dr. Hixson noticed arthritis in both hands and injected her left hand as well, (Tr. p. 46-47).

Initially, the claim was accepted and two weeks of temporary total disability benefits were paid along with Dr. Daniel's bills and some of Dr. Rhodes' bills. The claimant used her group insurance to see Dr. Hixson, (Tr. 47-48).

After the October 19, 2006 surgery on her right hand, the claimant returned to work in March, 2007 and went to work in the copper department. Dr. Hixson approved these job duties as within her restrictions. Ultimately, she took leave for a back condition and she is not working presently, (Tr. p. 49-50).

David Earney, a 28 year employee with Lennox, explained the claimant's job duties while showing the DVD of her work on the line, (Tr. p. 51-68). He was not aware of the claimant's trouble reporting the injury to Ms. O'Neal, her supervisor. Ms. O'Neal as not called to testify.

Kim Chastain, a registered nurse, has worked for the respondent-employer for the last six years. She testified that employees are supposed to report injuries to their supervisors. The supervisors send the employees to the nurse to evaluate the need for treatment. If the injury is serious, the employee is sent to the company physician, Dr. Daniel, at Stuttgart Regional Medical Center. The claimant reported to the nurse that her job duties, using an air gun on Line 7 at the Bay Station, had made the arthritis in her hands worse and she had developed pain two weeks

earlier, (Depo. Tr. p. 10-14). After the carrier denied the claim, the claimant drew short-term disability benefits from Met Life from August 29, 2006 to March 5, 2007, at \$212.30 per week, (Tr. p. 12). The claimant returned to work in March, 2007 and the employer accommodated her restrictions by assigning her to the copper department. This change in job duties was approved by her physician. The claimant left work for another health condition and has exhausted 6 months of short term disability benefits (Tr. p. 13).

MEDICAL EVIDENCE

_____Pages 1-17, 20-42, 137-138, 144-147 of the respondents' exhibit packet are irrelevant to this case. Ms. Hardy continues to ignore the Commission's prehearing notice to provide only relevant documents. Excess paper slows down the review of the case and contributes to transcript costs.

On January 19, 2005, the claimant was treated by her family physician, Dr. Morgan for several health problems. He x-rayed both hands and diagnosed arthritis but did not prescribe any medication or treatment for this condition nor did he excuse her from work.

On August 28, 2006, the claimant was seen by Dr. Daniel for right hand pain and swelling, "over weekend", "Lennox WC". Dr. Daniel reviewed x-rays and diagnosed osteoarthritis which has "advanced as compared to the prior study." He commented, "She works at Lennox... I'm sure her repetitive motion job is aggravating the thumb"... "We're going to have to change job descriptions I feel certain." A Lennox form authorizing medical treatment shows, "pain in R hand & wrist related to new job description at Lennox since June 06."

The claimant saw Dr. David Rhodes on September 11, 2006. He opined that her condition was not work-related.

The patient is a 47 year old right hand dominant female, laborer, who has been working at Lennox for the past 2-1/2 years. She states that three months ago she changed her job within Lennox to a new job.

She states that she now has a sharp pain in the right thumb that is exacerbated with pinching and alleviated with rest.

I told the patient that her thumb problem is not work-related. I told her that as the arthritis is a pre-existing condition, that I would recommend the patient take anti-inflammatories and seek treatment for arthritis under her private insurance.

The claimant saw Dr. Marcia Hixson on September 21, 2006. Dr. Hixson recorded a several year history of swelling and pain in both thumbs, worse on the right. However, the claimant's symptoms had worsened in the last 2-1/2 months although she couldn't recall any change in her activities.

Dr. Hixson diagnosed bilateral basal joint osteoarthritis. Arthroplasty of the right thumbs was performed on October 19, 2006. In her report of November 22, 2006, Dr. Hixson commented, "The problems she is having with her thumb at this time were not caused by her job duties but the symptoms were definitely aggravated by the very physical nature of her work."

In a report dated January 18, 2007, Dr. Hixson advised the claimant not to do any "forceful or repetitive gripping or use the air drill with either hand." She was released to return to work on February 15, 2007 with lifting restrictions in the copper department.

On March 28, 2007, Dr. Hixson assessed impairment ratings of 22% to the right thumb and 34% to the left thumb. Dr. Hixson opined that "the claimant's work-related injury is the major cause of the impairment" and that her opinion was stated within a reasonable degree of medical certainty.

Dr. Hixson's report of June 22, 2007 indicates the claimant's healing period ended on May 9, 2007 and the claimant had returned to regular duty. Dr. Hixson opined that the claimant would need continuing medical treatment for her condition.

Dr. Hixson commented on the causal connection in her report of August 8, 2007:

Regarding job relatedness, the osteoarthritis was not caused by her job, but the symptoms which necessitated medical treatment are caused by repetitive gripping and pinching activities in the thumbs.

In his deposition, Dr. David Rhodes, an orthopedic surgeon specializing in hand surgery, testified he began treating the claimant in September, 2006. The claimant told him she had

changed job duties three months earlier and had been suffering with pain at the base of her right thumb for one month prior to her appointment. X-rays of the thumb were interpreted as showing osteophytes (bone spurs), joint narrowing and subluxation of the joint consistent with osteoarthritis, (Depo. p. 7-9).

Osteoarthritis can be caused by mechanical wear and tear or it can be biological in origin. Symptoms can wax and wane but usually worsen over time regardless of activity. Symptoms include pain, swelling, decreased range of motion and deformity of the joint, (Depo. p. 10-11).

The claimant's condition, characterized as "severe," had existed for 4-5 years, (Depo. p. 10, 12). Her condition was consistent with factory work but Dr. Rhodes felt her work at Lennox contributed to less than fifty percent of the cause. Dr Rhodes had a job description and DVD of the activities at Lennox but did not seem to be aware of the claimant's 23 year history at Kinder-Harris, making picture frames (Depo. p. 6, 9-15, 37).

In this case, the claimant developed problems in both hands. Dr Rhodes testified that it was not uncommon for a patient to develop osteoarthritis in multiple joints, lending credence to a biological or genetic cause (Depo. p. 14-15).

On cross-examination, Dr. Rhodes testified that although the claimant's life long history of factory work contributed to the development of arthritis, her work at Lennox did not make her condition symptomatic (Depo. p. 18-34, 38-39).

ATTORNEY HARDY:

Is there any way to determine in Ms. Raney's case whether or not her symptoms that she came to you with in September of 2006 were due to the job she was performing at Lennox or just the fact she had severe osteoarthritis?

DR. RHODES:

There is no way of telling.

ATTORNEY HARDY:

Okay. So you cannot state within a reasonable degree of medical certainty her symptoms that she was reporting in September 2006 were due to her job duties at Lennox Industries. Is that true?

DR. RHODES:

That's true.

Dr. Marcia Hixson, an orthopedic surgeon specializing in hand surgery, testified she began treating the claimant in September, 2006. The claimant told her she performed repetitive gripping and pinching at work but did not recall any recent change in her activities. On physical examination, Dr. Hixson found swollen and enlarged joints, decreased range of motion and crepitus, (Depo. p. 5-6).

Dr. Hixson diagnosed severe osteoarthritis at the base of both thumbs, worse on the right. This condition could have developed over a matter of weeks or years. When conservative treatment failed, Dr. Hixson performed a right thumb arthroplasty (Depo. p. 7-8). The claimant returned to work on March 20, 2007 with restrictions (Depo. p. 9)

Dr. Hixson opined that the claimant's osteoarthritis was aggravated by the claimant's job duties, pinching, gripping and twisting (Depo. p. 8-9, 13). Dr Hixson did not have a detailed job description of the claimant's duties at Lennox until March, 2007, when she was asked to review the job in the copper department. The copper job did not require repetitive pinching, gripping or twisting, (Depo. p. 8-9, 13-17).

The claimant also developed pain and swelling in other fingers which Dr. Hixson diagnosed as a chronic osteoarthritic process involving both hands. Dr. Hixson last examined the claimant in May, when the healing period ended on May 9, 2007 and issued impairment ratings of 22% to the right thumb and 34% to the left thumb in a report dated June 22, 2007. The ratings were based on examinations, surgery, the 4th Edition of the AMA Guides and physical therapy records. Dr. Hixson testified arthritis was the major cause of the impairment rating. However, she also testified that the job was the major cause of impairment, (Depo. p. 10-12, 20-22). Dr. Hixson stated that the claimant's former job making picture frames could have caused osteoarthritis (Depo. p. 24).

ATTORNEY WILSON:

...Doctor, was her symptoms brought on by the job description as she described it to you, at least by her history?

DR. HIXSON:

_____ That was my impression.

ATTORNEY WILSON:

Okay. So whether or not the osteoarthritis was caused by her work-related activity, without a doubt it was aggravated by her work-related activity, is that a fair statement?

DR. HIXSON:

That's fair.

ATTORNEY WILSON:

Okay. But for her having symptoms with her thumbs, would your care and treatment have ever been necessary?

DR. HIXSON:

No.

* * *

ATTORNEY WILSON:

...if the impairment was caused by loss of motion for taking out a part of the thumb, the bone that you mentioned that was basically osteoarthritis, because the bones were rubbing together that was caused by the job, would not the major cause of the impairment be the job?

DR. HIXSON:

Yes.

ATTORNEY WILSON:

Okay. And would that be for both thumbs?

DR. HIXSON:

Yes.

DOCUMENTARY EVIDENCE

A Lennox form dated August 28, 2006 shows the claimant complained of pain and swelling in her right hand. She said the pain began about two weeks earlier from using the airgun and pressing hard to get the screws threaded through metal. The claimant also said this activity had aggravated her preexisting arthritis.

Pictures, a job analysis, and a DVD of the claimant's job duties are also included in the respondents' exhibit packet. The claimant explained that the DVD of the job was somewhat misleading. The woman performing the job had years of experience performing these tasks; she was younger than the claimant; and she was not using a defective drill.

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.

After reviewing the evidence, I find that the claimant, who suffered from preexisting arthritis, had been able to work at regular duties for the respondent-employer since April, 2004. Her arthritis had not been treated medically and had not caused her to miss time from work. In June, 2006, the claimant’s job duties changed, and she began experiencing swelling and crepitus, objective findings, in her thumb.

I find that the claimant was performing a hand intensive, rapid and repetitive job on a factory line. The defective equipment she was using required her to exert more pressure on the drill, combining with her preexisting arthritis to produce disability and the need for medical treatment. Williams v. L & W Janitorial, Inc., 85 Ark. 1, 145 S.W.3d 383 (2004).

Therefore, I find the claimant has proven a compensable injury causally related to her employment, which is the major cause of her need for treatment. See Second Injury Fund v.

Stephens, 62 Ark. App. 255, 970 S.W.2d 331 (1998) holding that the “major cause” requirement is satisfied by evidence that an injury necessitated performance of surgery.

There were problems with the expert testimony on both sides. According to Dr. Rhodes, there is no such thing as an aggravation of a preexisting condition. However, Dr. Hixson, seemed confused about the claimant’s job duties and did not apportion the rating between the preexisting condition and the aggravation. It is my understanding that Dr. Hixson has closed her practice.

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on August 28, 2006 at a compensation rate of \$371.00/\$278.00.
2. The claimant has proven by a preponderance of the credible evidence of record that she sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.
3. Respondents No. 1 is directed to pay all medical expenses for the right hand within thirty days of receipt pursuant to Rule 30.
4. Respondents No. 1 is directed to pay temporary total disability benefits from September 13, 2006 to March 2007 during which time the claimant was in her healing period and was not working.
5. Pursuant to Ark. Code Ann. §11-9-511, the Commission orders the claimant to see Dr. Kenneth Rosensweig for assessment of anatomical impairment, apportioning the rating between the preexisting condition and the aggravation. An award of permanent partial disability benefits will be held in abeyance.
6. The respondents are directed to pay the court reporter’s fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.
7. 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).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge