

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F800075

DEWAVEN ROWDEN, EMPLOYEE **CLAIMANT**

HYDCO, INC., EMPLOYER **RESPONDENT**

**BITUMINOUS CASUALTY CORP.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED AUGUST 28, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in Hope, Hempstead County, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 4, 2008, the above captioned claim came on for a hearing in Hope, Arkansas. A prehearing conference was conducted on April 22, 2008, and a Prehearing Order was filed on April 23, 2008. A copy of the Prehearing Order was marked as Commission Exhibit "1" and made a part of the record herein without objection, subject to any modifications made at the full hearing.

At the prehearing conference, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including February 1, 2007.

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- 3) The claimant's temporary total disability rate is \$267.00 per week and the claimant's permanent partial disability rate is \$200.00 per week.

At the full hearing, the parties agreed to litigate the following issues:

- 1) Compensability of a gradual onset injury in the form of a ganglion cyst on the claimant's right wrist.
- 2) If compensability is overcome, whether the medical treatment claimant has received has been reasonable, necessary, and related to the compensable injury.
- 3) Whether the claimant is entitled to temporary total disability benefits and attorney's fees.
- 4) Notice defense.

At the full hearing, the claimant contended the following:

- 1) The claimant developed a ganglion cyst on his right wrist as a result of the rapid and repetitive nature of his work related activities.
- 2) The medical treatment claimant has received to date has been reasonable, necessary, and related to his compensable injury.
- 3) The claimant should be awarded temporary total disability benefits from on or about February 1, 2007, to a date yet to be determined.
- 4) Respondents should be ordered to pay attorney's fees as provided by law.
- 5) Claimant gave the respondents sufficient notice of his injury.

At the full hearing, the respondents contended the following:

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- 1) The claimant's job is not rapid and repetitive.
- 2) Claimant's condition is not work related.
- 3) The claimant did not sustain a compensable injury.
- 4) Respondents affirmatively raise the notice defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant suffered a compensable gradual onset injury to his right wrist in the form of a ganglion cyst while employed by Hydco, Inc.
- 4) The claimant gave respondents adequate notice of his work related injury on December 18, 2006.
- 5) The respondents are liable for payment of all medical treatment contained in the record herein after December 18, 2006.
- 6) The claimant has proven by a preponderance of the evidence that the additional medical treatment recommended by Dr. Charles

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Sheaff in his March 20, 2007, report contained at Claimant's Exhibit 1, page 9, in the form of a neurologic consultation and nerve conduction testing is reasonable, necessary, and related to the claimant's compensable injury and shall be immediately arranged by the respondents.

- 7) As a result of the claimant's compensable injury, the claimant is entitled to temporary total disability benefits beginning February 1, 2007, and continuing to a date yet to be determined, plus the maximum statutory attorney's fees.

DISCUSSION

The claimant began working for Hydco in September of 2006. The claimant testified that he had never had any bumps or other problems with his right wrist or hand prior to working for Hydco. The claimant testified that he was hired by Hydco to be a carpenter/carpenter's helper. The claimant testified that his job duties at Hydco consisted of manually hammering nails and sawing boards while framing a bank building. The claimant testified that he was constantly hammering, nailing, measuring, and sawing.

The claimant testified that he would nail approximately 200 to 300 nails per day manually and that it would take approximately four strikes per nail in order to fully drive the nail. The claimant testified that after approximately two months of constant hammering and sawing he started noticing a bump on his right wrist. The claimant testified he first noticed the bump on his right wrist in November of 2006. The claimant testified that in December of 2006 the bump on his right wrist began

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hurting so severe that he went to see Dr. Cathryn Gonzales. The medical records indicate that the claimant saw Dr. Gonzales on December 18, 2006, and referred the claimant to Dr. Sheaff for evaluation and treatment of the ganglion cyst. Dr. Gonzales' December 18, 2006, report also stated, "We provided the pt with a work excuse for today and tomorrow." (Cl. Ex. 1, pg. 3).

The claimant testified that immediately after leaving Dr. Gonzales' office on December 18, 2006, that he presented his off work notice to his supervisor, Mr. Jack Vernon. The claimant testified that he explained to Mr. Vernon that he needed to fill out some workers' compensation papers; and that Mr. Vernon told the claimant that he would get back with him. The claimant testified that he gave Mr. Vernon the off work notice from Dr. Gonzales but that Jack Vernon never got back with him.

Thereafter, the claimant went to see Dr. Charles Sheaff at the Magnolia Hospital Surgical Clinic. The claimant testified that Dr. Sheaff recommended the cyst be lanced and gave the claimant written information to take back to his employer regarding the surgery. Dr. Sheaff's January 29, 2007, report found at Claimant's Exhibit 1, page four, is an off work notice advising that the claimant will have a surgical procedure performed on February 1, 2007. The claimant testified that he then took that note to his supervisor, Gary Garrison. The claimant testified that Jack Vernon was no longer his supervisor and that Mr. Vernon had left Hydco and that

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Gary Garrison had taken Mr. Vernon's place. The claimant testified that he once again gave the off work notice and surgery recommendation to Mr. Garrison. The claimant testified that once again Mr. Garrison said basically the same thing as Jack Vernon, that he would notify Hydco and someone would get back with him. The claimant testified that once again no one from Hydco ever contacted him or provided him any paperwork for a workers' compensation injury.

Medical records show that the claimant had the ganglion cyst removed on February 1, 2007, but continued to have problems with pain and hand strength after the surgical procedure. With continued complaints of pain, Dr. Sheaff recommended that claimant undergo a neurologic consultation and nerve conduction studies. The claimant testified that respondents refused to pay for his neurologic referral from Dr. Sheaff and that he still requests the nerve conduction studies and neurologic evaluation as recommended by Dr. Sheaff. The claimant testified that he has not returned to any type of work since his surgery on February 1, 2007.

ADJUDICATION

It must first be mentioned that I found the claimant to be a credible witness. The claimant has alleged a gradual onset injury in the form of a ganglion cyst on his right wrist. In order to prove a gradual onset injury the claimant must prove by a preponderance of the evidence the following:

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- 1) That he suffered an injury which arose out of and in the course of his employment.
- 2) That caused internal or external physical harm to the body which resulted in disability or the need for medical treatment.
- 3) That the injury was caused by rapid repetitive motion.
- 4) That the injury was the major cause of the disability or need for medical treatment.
- 5) That the injury be established by medical evidence supported by objective findings.

I find after my review of the evidence that the claimant has met his burden of proving by a preponderance of the evidence that he suffered a gradual onset injury in the form of a ganglion cyst to his right wrist while working for the respondents. I find that the claimant has met his burden of proving by a preponderance of the evidence that he suffered an injury which arose out of and in the course of his employment and that this injury was the major cause of his disability or need for medical treatment.

The claimant credibly testified that he had no problems with his right wrist or any type of cysts or bumps on his right wrist prior to going to work for the respondents.

Further, Dr. Sheaff stated within a reasonable degree of medical certainty that the ganglion cyst was likely related to the claimant's work activities. (Cl. Ex. 1, pps. 13-16). I further find that the claimant's cyst was the major cause of his need for medical treatment/surgery on February 1, 2007. The medical records show objective

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findings of the claimant's injury, that being a mass about eight inches in diameter on the radial side of the volar wrist of the claimant's right wrist. (Cl. Ex. 1, pg. 14).

Further, it was the claimant's external physical mass on his wrist which necessitated the claimant's need for medical treatment.

In order for the claimant to meet his burden of proof, the claimant must prove that his injury was 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). The Court has further indicated that multiple tasks may be considered together in determining whether the repetitive requirement is met. Baysinger v. Air Systems, Inc., 55 Ark. 174, 934 S.W.2d 230 (1996). The Court has determined that a worker who used an air gun to attach bolts at the rate of one per fifteen seconds would be sufficient to constitute rapid and repetitive motion. See, High Capacity Products v. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998). Additionally, the Court has awarded benefits when a worker performs repetitive motions at a rate of 115 to 120 times per day with 1.5 minute intervals between. See, Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998).

In the present case, the claimant testified that he was constantly sawing and

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hammering nails throughout his eight hour work day. The claimant testified that he would hammer approximately 300 nails per day and it would take approximately four strikes per nail to completely drive a single nail into a board. The claimant testified that he performed this task manually using a hammer in his right hand. If one were only to consider striking a nail approximately 1,200 times with your hammer using your right wrist in an eight hour day, we come out to approximately one strike per every 24 seconds. Additionally, I take into consideration the claimant's credible testimony that when he was not hammering, he was sawing boards also using a manual saw and his right hand and wrist. After considering the multiple tasks that the claimant was required to perform at high volume and with quick and fast movements in a repetitive nature over the course of the claimant's eight hour work day, I find that the claimant has proven by a preponderance of the evidence that his job duties required rapid and repetitive motion.

I find after my review of the evidence that the claimant has met his burden of proving by a preponderance of the evidence that he suffered a gradual onset injury in the form of a ganglion cyst while working for the respondents. I find that the claimant has met his burden of proving by a preponderance of the evidence that he suffered an injury which arose out of and in the course of his employment and that this injury was the major cause of his disability or need for medical treatment. Furthermore, I find

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that claimant's job duties required rapid repetitive motion.

Respondents have raised the notice defense. However, I find that the claimant gave adequate notice of his work related injury to his employer on December 18, 2006. Therefore, I find that the respondents are responsible for all reasonable, necessary, and related medical treatment received by the claimant after December 18, 2006. An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Arkansas Code Annotated § 11-9-508(a). The employee has the burden of proving by a preponderance of the evidence that the medical treatment is reasonable and necessary. My review of the medical evidence leads me to find that all the medical treatment contained in the record herein was reasonable, necessary, and related to the claimant's compensable right wrist injury in the form of a ganglion cyst and therefore the responsibility of the respondents. The only medical bill that would not be respondents' obligation that is contained in the record would be Dr. Gonzales' initial visit on December 18, 2006, as the claimant admittedly testified that he did not give the respondents notice of a work related injury until after his visit with Dr. Gonzales on December 18, 2006. Therefore, respondents are responsible for all medical treatment contained in the record after December 18, 2006, as I find such treatment was reasonable, necessary, and related to claimant's compensable injury. I

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also specifically find that respondents shall immediately provide the claimant with the treatment now recommended by Dr. Sheaff in the form of a neurologic consultation and nerve conduction studies. Dr. Sheaff has recommended that the claimant be referred to a neurologist for a review of his continuing wrist and hand strength problems along with nerve conduction testing, and the respondents are directed to provide the claimant with such referral and diagnostic testing immediately.

An employee that suffers a scheduled injury is entitled to receive temporary total disability benefits or temporary partial disability benefits during their healing period or until they return to work, whichever occurs first. Wheeler Const. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). It was undisputed at the full hearing that the claimant has not returned to work since his February 1, 2007, surgery. Further, the claimant credibly testified that he cannot go back to his normal work as a carpenter. (T. pg. 49, lines 19-21). The claimant testified that he is still having weakness in his arm since his compensable surgery. (T. pg. 60, lines 14-16). In this case no physician has released the claimant to return to work and the claimant testified that his condition prevents him from returning to work as a carpenter. The claimant is still within his healing period because there are additional evaluation or diagnostic procedures that might further delineate his condition and point toward treatment for it. Therefore, I find that the claimant is entitled to temporary total disability benefits from

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February 1, 2007, to a date yet to be determined. Such facts are analogous to Willmon v. Allen Canning Co., 1994 AWCC 167, Claim Number E005392, Full Commission Opinion filed November 28, 1994, wherein the Full Commission stated, “No physician has released the claimant to return to work and the claimant testified that her condition prevents her from working. She is still within her healing period because there are additional evaluation or diagnostic procedures that might further delineate her condition and point toward treatment for it. Therefore we find that the claimant is entitled to additional temporary total disability benefits from March 27, 1991, to an uncertain future date.”

It must also be noted that Dr. Sheaff specifically stated within a reasonable degree of medical certainty that it has been reasonable and necessary for the claimant to have remained off work pending the additional tests and treatment. (Cl. Ex. 1, pg. 15). Therefore, I find that the claimant has proved by a preponderance of the evidence that he is entitled to temporary total disability benefits from February 1, 2007, to a date yet to be determined because the claimant has not returned to any work since February 1, 2007, and since the claimant has not had the recommended diagnostic testing following his compensable surgery and based on the claimant’s credible testimony that he is still within his healing period.

AWARD

The respondents are 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.

Because this case was controverted in its entirety, the claimant's attorney would be entitled to a 25% attorney's fees 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 respondents in accordance with A.C.A. § 11-9-715.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb