

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411959

LEWIS WATSON, EMPLOYEE	CLAIMANT
DEPARTMENT OF CORRECTION, EMPLOYER	RESPONDENT #1
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED AUGUST 28, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on June 20, 2008 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE JEFFREY H. KEARNEY, Attorney at Law, Pine Bluff, Arkansas.

Respondents #1 represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID SIMMONS, 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, loss of earning capacity and Second Injury Fund liability.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114; whether or not the claimant is entitled to wage loss disability benefits pursuant to Ark. Code Ann. §11-9-521, §11-9-522, §11-9-505 and Rule 34; and Fund liability as defined by Ark. Code Ann. §11-9-525.

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 does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on October 19, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$453.00/\$340.00 in the event this claim is found to be compensable.

The claimant contends his job duties aggravated a preexisting circulatory condition gradually progressing from 1990 to 2004, resulting in the need for medical treatment for both legs and causing permanent and total disability. The claimant seeks payment of medical expenses , wage loss and attorney's fees.

Respondent #1, Public Employee Claims Division, contends the claimant cannot meet the elements of proof for a gradual injury and the major cause element due to a preexisting condition. Alternatively, in the event of an award, the Fund is liable for any wage loss.

Respondent No. 2, the Second Injury Fund, contends the claimant is not entitled to wage loss disability benefits for a scheduled injury pursuant to Maxey, Second Injury Fund v. Tyson Foods, Inc., 66 Ark. App. 301, 991 S.W.2d 624 (1999) and Crelia v. Rheem Manufacturing Co., 99 Ark. App. 73 ___ S.W.3d ___ (2007). The Fund also contends there is no combination of impairments or disabilities to trigger Fund liability pursuant to Mid-State Construction Co. v. Second Injury Fund, 295 Ark. 1, 746 S.W.2d 539 (1988).

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

The claimant, who seemed sincere in his testimony, was the only witness to testify at the hearing. He is a very hard-working individual, holding down two jobs in the past. He worked for

Wal-Mart from 1985 to 2004 and for the respondent-employer from 1988 to 2004. He denied any problems with his left leg between the ages of 13 to 21.

The claimant (D.O.B. July 5, 1965), has a high school education and a couple of years of college courses. The claimant was born with a club foot and had thirteen surgeries on his left foot as a child. He wore a brace on his leg until he was a teenager. The claimant walks with an obvious limp and the numerous surgeries caused problems with the blood supply to his foot, (see Dr. Harris' reports of August 29, 1995 and October 15, 1995). His health history also includes a genetic blood disorder (Protein S deficiency), hypertension, and heart disease. In 2002, he sustained a workers' compensation injury when he was hit in the face with a brick.

The claimant worked at Wal-Mart as a stocker during the same period of time he was employed by the Arkansas Department of Corrections (ADC). Wal-Mart was not joined as a party to this claim.

The claimant was hired by ADC in May, 1998. No physical was required; he was not asked about his medical history; and he was not required to perform any physical activities at the training academy. He took continuing education courses in ethics and learning how to write reports, but there were never any physical requirements for his job.

Initially, the claimant was assigned to work in the control booth but after a class action lawsuit, the ADC was required to hire women. The claimant was then reassigned to escort maximum security prisoners to activities (exercise yard, showers, educational classes, etc.) within the prison. This job required extensive walking on concrete floors and climbing stairs.

In the 1990's, the claimant began developing pain and swelling in his legs and was treated on several occasions for deep vein thrombosis (DVT) and ulcerations, causing him to miss time

from work periodically. The claimant never requested light duty for his leg. In 2003, his cardiologist recommended he quit work due to heart disease. The claimant's last day of work was October 19, 2004. He applied for Social Security Disability in November, 2004 and was awarded benefits in the amount of \$1,441.00 monthly beginning in April, 2005. The claimant also receives state retirement benefits. Some medical expenses have been paid by his group carrier, Health Advantage.

MEDICAL EVIDENCE

The claimant's medical packet is not arranged in chronological order as requested by the prehearing notice. There are also duplicate reports that should have been redacted. Chronologically arranged reports give the Commission a clearer understanding of how the claimant's treatment progressed. Duplicative reports slow down the review of the record and contribute to unnecessary transcript costs.

Medical records show a long history of problems with the claimant's left leg. As I interpret the medical evidence, the 13 surgeries to the claimant's foot as a child resulted in scar tissue, producing chronic venous insufficiency and fluid retention (lymphadema). This condition is further complicated by the claimant's blood disorder (Protein S deficiency) which predisposes him to the formation of blood clots or embolisms. The claimant has been advised he will need anticoagulation medication for the rest of his life.

In August, 1990, Dr. Barnes treated the claimant for a pulmonary embolus associated with swelling in the left leg. Dr. Barnes recommended the use of an elastic support stocking and medication.

Dr. Barnes saw the claimant again in August, 1993 and April 1995. Notations showed the claimant was non-compliant with wearing the support stocking to prevent ulcers and non-compliant with taking medication to prevent DVT.

Dr. Barnes diagnosed the claimant with Protein S blood disorder on May 11, 1995.

In 1995, the claimant was treated by Dr. Harris who recorded a ten year history of thrombophlebitis and cellulitis, (see his report of August 29, 1995). In August, 1995, Dr. Harris hospitalized the claimant for treatment of thrombophlebitis and lymphadenitis/lymphangitis of the left groin. In October, 1995, the claimant re-entered the hospital with chills, fever, rigors and a swollen and painful left leg. He was treated with IV antibiotics for DVT and ulcerations of the left leg and foot.

In June, 2002, the claimant was treated by Dr. Go for the work-related injury the claimant suffered when he was hit in the face with a brick. He was briefly taken off his anticoagulation medication but quickly developed thrombophlebitis, secondary to the Protein S blood disorder.

From March to July 2003, the claimant was treated by Dr. Watson and Dr. Armstrong with antibiotics (Keflex) for ulcerations. Notations about more ulcerations also appear in Dr. Armstrong's notes of October, 2004 when he commented that the claimant's wife, who is a nurse's aide, was helping her husband with wound care. More records of ulcerative wound care appear in April and May, 2005 notations.

In 2004, the claimant came under the care of cardiologist, Dr. Sadeem Mahmood, to rule out an embolism and to evaluate the claimant's angina. The claimant was diagnosed with Rheolytic heart disease but tests for DVT were negative. Dr. Mahmood recommended the claimant apply for

a desk job. In April, 2004, the claimant applied for catastrophic leave based on heart disease and his left leg condition.

In January 2005, the claimant applied for FMLA benefits based on his cardiologist's recommendation.

In April, 2005, the claimant was evaluated for back pain and diagnostic testing revealed a bulging disc at L4-L5.

In his report of July 17, 2006, Dr. John Ellis of Oklahoma opined that the claimant was temporarily totally disabled as of October, 2004, but was permanently and totally disabled as of the date of the report.

In my opinion, this injury arose out of and in the course of the employee's employment with the above employer (ADC) and is the major cause of the above described accident, (cumulative trauma to both lower extremities).

It is a well known medical fact that lower extremity venous insufficiency is aggravated/accelerated by prolonged standing, walking, climbing, squatting, etc. The claimant's job duties required the repetitive and strenuous use of his lower extremities, i.e. walking on hard concrete floors, climbing, pushing, squatting, etc. This in turn caused permanent aggravation of his pre-existing venous insufficiency of his lower extremities, specifically his left lower extremity, causing multiple deep vein thrombosis and ulcerations.

In a report dated June 5, 2007 Dr. Mahmood agreed with Dr. Ellis' conclusion that the claimant is permanently and totally disabled.

His diagnoses include hypertension, Diastolic LV Dysfunction, Venous Insufficiency, PVD/Claudication with ulceration, Hypertensive Heart Disease without CHF, Chronic Lower Extremity Edema, and Protein "S" deficiency. The ulcerations on his left lower extremity are currently healed after 3 years of wound treatment. However, if his job requires him to stand for long periods of times (sic), the ulcerations may reappear.

It does not appear that Dr. Ellis or Dr. Mahmood were aware that the claimant also worked for Wal-Mart during the course of his treatment. Medical opinions based on inaccurate information are not binding on the Commission, Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). Neither physician assessed an impairment rating nor apportioned any rating between the preexisting condition and any compensable injury.

FINDINGS AND CONCLUSIONS

As I interpret the medical records, the claimant's preexisting condition is a circulatory problem manifesting itself in ulcerations, lymphadema and DVT. While DVT may start in a scheduled extremity, it has the potential to develop into an embolus affecting the body as a whole. Vascular disease is ratable in the AMA Guidelines, (see Table 14 at p. 198 of the 4th Ed.), but I was unable to find any rating for a club foot.

I find that vascular disease should be analyzed pursuant to Ark. Code Ann. §11-9-114 rather than Ark. Code Ann. §11-9-102. In pertinent part, Ark. Code Ann. §11-9-114 provides:

A cardiovascular ... accident ... is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm... It (must) be shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

I have no doubt that walking and standing are difficult for the claimant and are causally related to his condition but walking and standing are not extraordinary or unusual job activities. Therefore, I find the claimant cannot meet his burden of proof under Ark. Code Ann. §11-9-114.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 19, 2004.
2. The claimant has failed to meet his burden of proving a compensable injury pursuant to Ark. Code Ann. §11-9-114.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge