

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800459 (11/07)

LEE WILDRICK, EMPLOYEE

CLAIMANT

POCAHONTAS ALUMINUM CO., EMPLOYER

RESPONDENT

UNION STANDARD INS. CO., CARRIER

RESPONDENT

OPINION FILED JULY 30, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 16, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claim to determine the claimant's entitlement to workers' compensation benefits. On April 1, 2008, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issue to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit. #1.

The testimony of Lee Wildrick, the claimant, coupled with medical reports and other documents comprise the record in this claim. At the time of the hearing respondents sought medical records from the office of Dr. Woloszyn relative to the most recent treatment of the

claimant and were assured that the same was in the mail. It was the delay in being provide the afore medical records that resulted the rescheduling of the present hearing from its earlier setting. The parties were advised that the record would remain open for twenty-one (21) days from the date of the hearing to receive the medical records. As of the entry of this ruling the records of Dr. Woloszyn had not been received.

Between the time that the scheduled hearing was continued, as noted above, and the May 16, 2008, new hearing date the claimant underwent the recommended treatment for his right shoulder under the care of Dr. Woloszyn on May 7, 2008. The claimant produced document regarding after care from the procedure which had not been furnished to the respondents in accordance with Pre-hearing Order. As a result of the respondents' objection to the admission of the documents, the claimant was allowed to proffer the documents.

DISCUSSION

_____Virgil Lee Wildrick, the claimant, with a date of birth of October 29, 1949, is a high school graduate. Claimant commenced his employment with respondent on July 5, 2006. The claimant is employed as a department supervisor in his employment with respondent. The claimant was employed by Waterloo Industries for a period of approximately two (2) years before his employment by respondent.

The claimant also completed a locksmith course, and has continued to do some locksmith work for people occasionally. The claimant's work history also consist of telephone solicitation for Continental Marketing and Advertising for a period of time. While in Florida, the claimant and his wife owned and operated Indian Auto Sales for seven to eight years. After moving to Arkansas, claimant and his wife purchased some land and built a restaurant, which the claimant's

wife continues to operate.

The claimant commenced his employment with Skill on January 15, 2001, and continued to work there until the factory closed in March 2003. Claimant received unemployment compensation benefits for a period of time until he secured employment at Waterloo Industries. Claimant remained in the employment of Waterloo Industries for a period of approximately two (2) years. Claimant noted that he never became a full-time employee at Waterloo Industries. Claimant's employment with Waterloo Industries ceased following a dispute with a supervisor. Claimant concedes that received a short period of unemployment compensation benefits before securing employment with respondent-employer.

In describing the specifics of his job duties in the employment of respondent, the claimant's testimony reflects:

Well, I've got a group of ten people that are under me and I make sure that they cut the parts and, you know, get it sent down the line and make sure its done right. I move them around whenever I need them in the department itself. (T. 10-11).

Claimant described his responsibilities as being both the lead man and supervisor. In the discharge of his employment duties, the claimant works with the machine set-up, takes care of the hours of the people that he oversee, and does quality control. The claimant actually fill in for people in his group that may miss work. The testimony reflects that respondent-employer only runs one shift, from 7:00 a.m. to 4:00 p.m. The claimant testified that his supervisor is Tony Barnes.

The testimony of the claimant reflects that in 2001 due to difficulty with his left shoulder, which was diagnosed as a frozen shoulder, he underwent a manipulation of same under the care

of Dr. Woloszyn. The claimant was employed by Botch Skill in 2001. Regarding the onset of the 2001 left shoulder complaints, claimant testified:

It just, I hurt it somehow, you know, I'm not sure if I hurt it there or where, but it just got worse and I kept going to Vellozo and he kept putting me off, he ran every test in the country on me and kept going on, going on, going on, and finally he sent me over to Dr. Wilson [Woloszyn] and in a matter of a couple of weeks he had it taken care of. (T. 11-12).

Claimant noted that Dr. Vellozo is his primary care physician at this time, as he was during the 2001 time period. The cost of the treatment for the left shoulder complaint was turned into the claimant's health insurance.

Claimant asserts that he did not have any problem with his right shoulder prior to the injury which serves as the basis for the present claim. The claimant testified regarding the mechanics of his right shoulder injury suffered in the employment of respondents:

Well, the nearest we can figure it was about 11/12, in November, back about a week or so before. I was putting an excrusion, pulling it out from under where we keep it stored at and put it on the cart. The other man was gone at that time, that usually does this. And I felt it, and I went up and told Tony, I said my shoulder is hurting, you know. I said, well maybe it will get a little bit better, and we waited, but it didn't, it just got worse, and I just kept pulling, kept working, and finally I told Tony, I said this thing is bad, and that's when he made out the report about the deal. (T. 12-13).

Claimant identified the date of the incident as November 12, 2007. Veterans' Day, November 11, 2007, was on a Sunday. The credible testimony of the claimant reflects that the accident occurred approximately a week before the written report, Form AR-N, was prepared. There is no doubt in the mind of the claimant that the injury was sustained while pull the material from the excrusder within the course and scope of his employment. The claimant added that his supervisor, Mr. Barnes, had reported the same thing to appropriated personnel of respondents.

The claimant again received medical treatment under the care of Dr. Vellozo. Claimant is uncertain of the date he first sought treatment under the care of Dr. Vellozo regarding his right shoulder complaint, however maintains that he told him how he was injured. Claimant's testimony reflects that he does not feel the Dr. Vellozo understood what he told him regarding the history of the injury:

I don't think he did. I really don't. Now, he's got down in the report there that I told him it was two months but it was possibly about two weeks, I think he got a little mixed up. (T. 14).

On May 8, 2008, claimant underwent a manipulation of his right shoulder under the care of Dr. Woloszyn. Following the procedure claimant observed that his symptoms had been relieved and that he is presently undergoing therapy at Three Rivers Medical in Pocahontas. The claimant did not lose any time from work as a result of either the procedure or physical therapy. The claimant has filed the cost of this medical treatment received in connection with the treatment of his right shoulder injury with his group health carrier due to respondents' controversion of the claim.

During cross-examination, claimant testified that he had never been injured away from work. Claimant maintains that he has never been in an automobile accident. Further, claimant testified that he does not have any chronic medical condition like high blood pressure or diabetes. Claimant concedes that the Form AR-N reflects a date of injury of December 9, 2007, and that the form was completed on December 9, 2007, however maintains that the actual date of injury was November 12, 2007. The testimony of the claimant reflects that his supervisor, Tony Barnes, complete the top portion of the Form AR-N.

Claimant testified that it was approximately one week following the accidental injury to

his right shoulder before he went to the doctor, which was Dr. Vellozo. Regarding the prior left shoulder complaint, the claimant explained that he underwent a number of diagnostic tests, to include a cervical MRI scan, under the direction of Dr. Vellozo, while the doctor was attempting to ascertain the cause of his left shoulder pain.

The claimant credibly disputes an entry in the medical records of Dr. Vellozo reflecting ha history of frozen left shoulder years ago and re-injury in VA, in a motor vehicle accident. Claimant describes the entry as “totally wrong”, noting that he has never been in a motor vehicle accident. Claimant acknowledge that when he was seven years old he was shot in the middle of his chest.

Claimant denies that he is diabetic, and attributes the entry of same on his chart in the records of Dr. Woloszyn, to communication of Dr. Vellozo to Dr. Woloszyn. Claimant denied that he had ever been prescribed medication for high blood sugars. Claimant concedes that he was give some medicine, which may have been Glucofine:

Dr. Velloso, give me some medicine, it just about put me in a diabetic coma, and I said I am not a diabetic, and I am not taking any of this stuff no more and I have never taken it since.

I should be the one to know if I had diabetes but I do not have diabetes, I know that. I take no medicine whatsoever. (T. 27).

The claimant denied that he attributed his left shoulder complaints to lifting:

Nope. I had no idea how it happened. It could have been lifting, it could have been. . .

I do not do a lot of lifting. (T. 28).

Finally, the testimony of the claimant reflects that he has known his supervisor, Toney Barnes, only since he commenced his employment with respondent. Mr. Barnes is not a friend of

the claimant outside of work. Claimant's testimony reflects that he reported the injury to Mr. Barnes on the date of its occurrence. Mr. Barnes remains in the employment of respondent-employer in his supervisory capacity.

While the claimant's primary care physician is Dr. Paul Vellozo, a review of the medical in the record reflects that the most accurate medical history regarding the claimant is lodged in the reports of consulting physician. On September 9, 2002, the claimant was seen by Dr. Jeffrey A. Kornblum, a Jonesboro neurosurgeon, pursuant to a request of Dr. Vellozo. The consultation with Dr. Kornblum was the product of the claimant's left shoulder complaint. The September 9, 2002, report of Dr. Kornblum reflects in pertinent part:

HPI: Mr. Waldrick is a 52-year-old gentlemen seen in consultation on September 9th at the request of Dr. Paul Vellozo. He is accompanied by his wife. He notes complaints of left shoulder pain. Symptoms began about 2 months ago without inciting event. Pain has progressed with increasing difficulty an decreased function of his left shoulder and arm. He described intermittent pain shooting from his shoulder into his left arm down to his hand. He has had an occasional tingling down the arm as well. Pain increased with use of the arm. He has no complaints of neck pain and does not complain of pain originating from his neck shooting through his shoulder. He has been on various analgesics including Narcotics without relief. Cortisone injection to his shoulder noted to be without relief and limited motion of his shoulder has become significant and he has been out of work since August 29th. He does inform me that a week ago, he visited an orthopedic surgeon though no examination performed at that visit.

* * *

PMH: Positive for adult onset diabetes mellitus which is controlled at this time by his diet. Positive for lung disease (was shot at the age of 7 and lost part of his lung which was surgically removed).

* * *

IMPRESSION: Mr. Waldrick appears to have a frozen left shoulder. I

have reviewed with him that he does show degenerative changes in his neck, however he does not describe a cervical problem in his clinical history of by examination.

RECOMMENDATION: I have recommended he follow-up with an orthopedic surgeon, specifically with regard to his frozen shoulder. I have discussed with him it is possible that the cervical disc disease can be a neurogenic pain syndrome though at this juncture, I feel that it is not the etiology of his chief complaint. . . . (RX. #1, p. 15-16)

The evidence in the record reflects that the claimant underwent left shoulder major manipulation under general anesthesia on October 9, 2002, under the care of Dr. John T. Woloszyn, a Jonesboro orthopedic surgeon, pursuant to the referral of Dr. Vellozo.

There are no medical reports in the record evidencing the claimant receiving treatment or registering complaints regarding his right shoulder prior to November 2007. On November 19, 2007, the claimant was seen by Dr. Vellozo with complaints of right shoulder pain. While the entry in the chart notes regarding the claimant relates the right shoulder complaint to the claimant's work activities, it reflects the presence of pain for two months. (RX. #1, p. 24-25) A review of the records of Dr. Vellozo reflects that he instituted a similar treatment regiment relative to the claimant's right shoulder as had been in place for the earlier left shoulder complaints, to include x-rays and injections.

The claimant ultimately returned to the care and treatment of Dr. Woloszyn, who diagnosed his shoulder complaint as a frozen shoulder. The claimant underwent manipulation of the shoulder under general anesthesia on May 7, 2008, and thereafter appreciated an improvement in right shoulder complaint. The claimant was relegated to filing the cost of the treatment relative to his right shoulder complaints with his group healthcare insurance carrier when respondent-carrier controverted the compensability of the claim.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about November 12, 2007, the relationship of employee-employer-carrier existed among the parties.
3. On or about November 12, 2007, the claimant sustained an injury to his right shoulder arising out of and in the course of his employment with respondents, which required reasonably necessary medical treatment in connection with same, and for which respondents are liable.
4. The respondents have controverted the compensability of this claim in its entirety.

CONCLUSIONS

_____The claimant asserts that he sustained an injury to his right shoulder within the course and scope of his employment with respondents in November 2007, which required medical treatment and for which respondents are liable. Respondents deny that the claimant sustained an injury within the course and an scope of his employment.

The present claim is one governed by the provision of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. The claimant asserts the occurrence of a specific incident injury as the basis for the present claim for workers' compensation benefits.

To be entitled to workers' compensation benefits for a specific incident injury, claimant has the burden of proving by a preponderance of the evidence that he suffered an accidental injury, identifiable by time and place, that arose out of and in the course of his employment, caused internal or external physical harm to his body and required medical services by medical evidence supported by objective finding. Ark. Code Ann. §11-9-102 (4)(i); *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W.2d 570 (1999).

It is not a prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). The claimant must only prove that the occurrence of the injury is capable of being identified. *Id.*

In the instant claim, the evidence preponderates that the claimant did not experience complaints or require treatment relative to his right shoulder prior to November 2007. The claimant credibly testified that the injury was sustained when, while within the course and scope of his employment, he was pulling on an excrusion from its storage and placing it on a cart, he experienced pain in his right shoulder. The injury was reported by the claimant to his supervisor, Toney Barnes, on the date of its occurrence. Mr. Barnes has been identified by the claimant as a witness to the accident since the inception of the claim. Further, the claimant has credibly testified that Mr. Barnes relayed the account of the accident to appropriated personnel of respondent, and that the account corroborates the claimant's description of the accident, the resulting complaints, and date of the occurrence. There is no evidence in the record to reflect that the relationship between the claimant and Mr. Barnes was anything other than work associates. In short, the claimant and Mr. Barnes were not friends outside of the workplace and the claimant

did not know Mr. Barnes prior to the time he begin his employment with respondent. There is no evidence in the record to reflect that Mr. Barnes does not presently hold the supervisory position of the claimant that he held in November 2007, or that he is no longer employed by respondent-employer. Nevertheless, respondents did not present the testimony of Mr. Barnes to contradict any of the testimony of the claimant regarding the mechanics of the injury or the reporting of the injury on the date of its occurrence. *Barnes v. Greenhead Farming*, ___ Ark. App. ___, ___ S.W.3d___ (January 9, 2008).

_____The medical in the record reflects that at the time of the claimant's November 19, 2007, visit to Dr. Vellozo, is complaint was assessed as right shoulder bursitis. In the treatment of the right shoulder pain complaint, Dr. Vellozo injected the claimant's right shoulder with depromederoal, and other prescription medication. (RX. #1, p. 25). When again seen by Dr. Vellozo on January 8, 2008, the chart note reflects that the shot had helped the shoulder a little; that he had a frozen left shoulder years ago, required manipulation. The chart note further reflects under the entry of "o", objective, "right upper extremity; pain with abduction - adhesive . ." (RX. #1, p. 26). The last entry in the medical records of Lawrence Health Services, Dr. Vellozo, is a January 14, 2008, telephone encounter involving the claimant and a request for pain medicine. (RX. #1, p. 29).

The credible testimony of the claimant reflects that he was ultimately referred to Dr. John T. Woloszyn, a Jonesboro orthopedic surgeon, relative to his right shoulder complaint. The evidence preponderates that Dr. Woloszyn diagnosed the claimant's right shoulder complaint as a frozen shoulder, for which he recommended the same procedure as had been performed on the left shoulder in 2002, major manipulation under general anesthesia.

The credible evidence in the record reflects that the claimant attempted to await resolution of his workers' compensation claim before undergoing the above recommended procedure. Claimant continued to discharge his employment duties with respondent. As the symptoms progressively worsen, the claimant relented and under the procedure on his right shoulder under the care of Dr. Woloszyn utilizing his group health insurance. Following the May 7, 2008, procedure, the claimant appreciated an abatement of his severe pain in the right shoulder, and, at the time of the May 16, 2008, hearing was undergoing physical therapy and Three Rivers Medical Center. The claimant received a substantial improvement in his right shoulder following the procedure, evidencing the same as the best course of treatment for his complaint. *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

The evidence preponderates that the claimant sustained an injury to his right shoulder on or about November 12, 2007, within the course and scope of his employment, which is identifiable by time and place, caused internal or external physical harm to his body and required medical services by medical evidence supported by objective findings. Respondents have controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. The evidence preponderates that the medical treatment received by the claimant in connection with his November 12, 2007, compensable right shoulder injury was reasonably necessary in connection with the treatment of the injury. Respondents are liable for the payment of said treatment.

AWARD

Respondents are herein order and directed to pay all reasonably necessary medical

treatment in connection with the claimant's compensable right shoulder of November 12, 2007, to include medical related travel, as well as the cost of the claimant's treatment under the care of Dr. Paul Vellozo, and Dr. John T. Woloszyn, pursuant to Ark. Code Ann. §11-9-508.

This award shall bear interest at the legal rate, pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE