

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705580

RICHARD WILSON	CLAIMANT
SMURFIT STONE CONTAINER, INC.	RESPONDENT
BROADSPIRE SERVICES, INC. CARRIER	RESPONDENT

OPINION FILED JULY 29, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On May 6, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 2, 2008, and a pre-hearing order was filed on April 3, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his left wrist on February 6, 2006, which was accepted by the respondents.

4. All medical has been paid.

5. The claimant is entitled to a weekly compensation rate of \$351.00 for temporary total disability and \$263.00 for permanent partial disability.

6. The respondents accepted and paid a 13 percent impairment to the claimant's left wrist.

By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's correct impairment rating.
2. Attorney's fees.

Claimant's contentions are:

"The claimant contends that on November 30, 2006, Dr. Benafield gave him a 41 percent rating to the upper extremity and 25 percent rating to the whole person. That on February 2, 2007, the respondent paid the claimant \$6,256.77, based on a 13 percent rating. The claimant contends he is entitled to the additional 28 percent from the 41 percent rating given by Dr. Benafield and attorney's fees."

Respondents' contentions are:

"The respondents contend that the claimant sustained an injury to his wrist on or about February 6, 2006. The respondent contends that the aforementioned claim was accepted as compensable and that all benefits which the claimant is entitled have been paid."

DISCUSSION

The central issue in this matter is the determination of the appropriate impairment rating associated with the claimant's admittedly compensable injury on February 6, 2006. The claimant, on direct examination, had the following exchange:

Q. And back then, I show that you had an accident. What kind of accident did you have? What happened?

A. I was driving a forklift, and I went to make -- I was making a turn, and the power steering went out, and it took me in a -- caused pain -- or caused injury.

The claimant was seen by Dr. Berestnev on February 7, 2006. In a letter dated the same day, Dr. Berestnev states, "The patient stated that he was driving a forklift when the power steering went out and jerked his left wrist. He states that he has left wrist pain. On physical examination, his left wrist is swollen compared to the right one. Primarily the swelling is in the projection of the right ulnocollateral ligament. The patient has no pain on extension and flexion in the left wrist, but he has pain on ulnar and radial deviation. The patient has pain to palpitation over the medial and lateral aspect of the wrist. The patient has pain on palpitation of the right ulnocollateral ligament. The patient has a positive Finkelstein's sign, negative Tinel's and Phalen's sign. No pain to palpitation over the thenar and hypothenar space eminence. The patient has good extension and flexion strength in each finger. There are no fractures or dislocations on the x-ray of the left wrist."

The claimant had the following surgical procedure performed by Dr. Benafield: 1. Left wrist arthroscopy. 2. Left triangle fibrocartilage complex debridement. 3. Debridement and pinning of lunotriquetral joint for excision of mass left ulnar wrist. These procedures were done due to the admittedly compensable injury of February 6, 2006.

Dr. Benafield determined that the claimant reached maximum medical improvement on October 30, 2006. Dr. Benafield then had an impairment evaluation done on the claimant. The evaluation showed impairment to the hand as 32 percent, the wrist as 13 percent, and the elbow as 1 percent. It also reported a total upper extremity impairment of 41 percent and 25 percent impairment of the whole person. In response to a letter dated December 22, 2006, from the respondent's medical case manager, Dr. Benafield responded to the following question as such: "What is the impairment rating to the wrist only?" Dr. Benafield answered, "13 percent." Dr. Benafield was also asked, "What does the wrist impairment relate to as a whole person impairment rating?". Dr. Benafield answered, "25 percent."

It is clear that when Dr. Benafield stated the whole person impairment at 25 percent, he included the ratings given to the hand, wrist, and elbow even though the question asked of him was to only consider the elbow.

ADJUDICATION

The claimant testified that he had and still has difficulties with his left hand as a result of his work related injury. However, the medical records do not support his claims. An x-ray of his left hand on February 6, 2006, shows findings of "no fracture, subluxation, dislocation, or soft tissue abnormality identified."

A letter from Dr. Berestnev on February 7, 2006, reports that the claimant "has good extension and flexion strength in each

finger.” On May 5, 2006, Dr. Hanby reports the claimant “has good range of motion of his fingers...” On May 10, 2006, Dr. Benafield reports that the claimant “has full range of motion of the fingers...”

Other than the above reports regarding the claimant’s fingers there is little to no medical evidence of injury to the claimant’s hand, except the mention of pain in the left hand on the initial visit to the emergency room and a negative x-ray that resulted from the claimant’s complaints.

Even the AR-C form filed with the Commission fails to mention any injury other than a wrist tear. The only in depth reporting of any hand injury comes from the impairment evaluation report that found a 32 percent rating to the claimant’s hand. The lack of medical evidence or even post operative complaint in the medical records about the hand difficulties is of great weight. I find that the appropriate rating is that of 13 percent to the wrist. The rating of the hand and elbow are not proper and the claimant failed to prove by a preponderance of the evidence that they are related to the admittedly compensable injury of February 6, 2006.

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 made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 2, 2008, and contained in a pre-hearing order filed April 3, 2008, are hereby accepted as fact.

2. The 13 percent impairment rating is the proper rating for the left wrist in this matter.

3. The claimant failed to prove by a preponderance of the evidence that the ratings to his hand and elbow were associated with his work related injury.

4. No controverted benefits were awarded in this matter that could entitle the claimant's attorney to a fee.

ORDER

_____The claimant failed to prove by a preponderance of the evidence that he is entitled to any controverted benefits, inasmuch this case is hereby dismissed.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE