

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G105728

WILBERT DOTSON	CLAIMANT
ALLENS, INC.	RESPONDENT
SELF INSURED	RESPONDENT

OPINION FILED FEBRUARY 6, 2012

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

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondent represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 8, 2011, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 7, 2011, and a pre-hearing order was filed on September 8, 2011. 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 pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant's temporary total disability rate is \$278 and permanent partial disability rate is \$209.

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

1. Compensability of the claimant's specific incident left wrist injury on June 2, 2011.
2. Related medical.
3. Temporary total disability from July 6, 2011, to July 24, 2011. Also temporary total disability benefits from August 5, 2011, to a date yet to be determined.
4. Attorney's fees.

Claimant's contentions are:

"Claimant sustained a compensable injury while working for Respondent on or about June 6, 2011. At that time, Claimant sustained a left hand/wrist injury while loading bailer."

Respondents' contentions are:

"It is the respondent's contention that the claimant did not sustain a compensable accidental injury in the scope and course of his employment for Allens. The respondent controverts the claimant's entitlement to workers' compensation benefits of any kind."

The claimant is a forty-seven-year-old male who was employed by the respondent as a machine operator. The claimant gave the following testimony about his job duties:

"Q. Did you have any other job responsibilities besides work on the machines?"

A. I was also a break giver.

Q. Go ahead and tell us what a break giver is.

A. A break giver is -- well, when a machine operator needs to take their lunch break or have a 15 minute break, I go to their machine and relieved them until they get back.

Q. What other job responsibilities did you have?

A. And also I was loading -- also loading the baler, sweeping, and cleaning up.

Q. Go ahead and tell us what loading the baler is.

A. Loading the baler consists of when they empty a tote bag of beans or peas, I have to pick it up, fold it up and put it inside the baler, stuff it inside of a baler."

The claimant alleges that on June 2, 2011, he was loading totes into a bailer when he heard a pop in his left hand. The claimant did not immediately report this incident to his supervisor. At the hearing, he testified that he did not report it for fear of losing his job. This was due to an experience he had with a previous employer when he was injured. However, when asked about not immediately reporting the injury in his deposition date, October 11, 2011, the claimant stated that he believed the popping was due to "middle age popping" and thus did not report the incident.

The claimant finished his shift and went home and slept. He testified that when he woke up his left wrist was swollen and hurting. The claimant gave the following testimony about the telephone call he made to Frank Hetzel about his wrist and the events that resulted from that call:

"Q. How did your wrist feel when you woke up?

A. When I woke up, my wrist was swollen and it was hurting.

Q. What did you do at that time?

A. I called Frank.

Q. Who is Frank?

A. Frank is supposed to be the safety manager at Allens.

Q. And what did you tell Frank?

A. I told Frank that my wrist popped while I was loading the baler last night at work.

Q. What did Frank tell you to do?

A. Frank told me that I need to go see Dr. Lewis and he made me an appointment.

Q. And had you seen Dr. Lewis before?

A. No.

Q. Do you have any knowledge of Dr. Lewis coming to the Allens plant and treating employees?

A. No.

Q. Had you ever been to the clinic on the plant site?

A. No.

Q. When you saw Dr. Lewis on June 2nd, where did you see her?

A. At her office.

Q. Where was that?

A. In Siloam Springs across from the corporate office.

Q. Across from Allens?

A. Yes."

At the hearing in this matter, the respondent called Frank Hetzel, the human resource safety coordinator for the respondent, as a witness. Mr. Hetzel gave the following testimony about the onsite clinic and his conversation with the claimant:

“Q. Okay. And are Allens employees allowed to go to the on-site clinic for any type of injury or illness?”

A. Yes, ma'am.

Q. So it doesn't have to be work related?

A. No.

Q. Did Mr. Dotson tell you -- when he asked you to make that appointment, did he tell you what his problem was or why he needed to see the doctor?

A. No, ma'am.

Q. Did you ask him?

A. I did not.

Q. Is that pretty common if somebody needs to go to the doctor, they just -- do they -- are they supposed to call you to get that set up, or how does that work?

A. They can ask me or another human resource person in our plant, Shirley Fuller, to make them an appointment at the on-site clinic and we do that.

Q. Is an appointment needed?

A. You have to have an appointment.

Q. You can't just show up?

A. Unh-unh.

Q. Did Mr. Dotson ever report to you having injured his wrist at work?

A. No, ma'am.

Q. Did he tell you anything about how he might have hurt his wrist or that he did hurt his wrist? what do you recall about that?

A. He called me on the telephone and asked me to make him an on-site appointment, and I did.

Q. At a later point in time, did he come to you and have a discussion with you about whether or not he had hurt his wrist at work or whether or not he needed to go back to a doctor or anything like that?

A. No, ma'am.

Q. If Mr. Dotson had reported to you that he injured his wrist at work, what would you have done?

A. I would have got the appropriate workers' comp -- compensation paperwork ready and filled them out and would have sent him to our company doctor with a physician's report and a form that tells the doctor where to file."

Upon review of Mr. Hetzel's testimony and more specifically his cross examination by the claimant's attorney, it is clear that Mr. Hetzel has a very poor memory about his interaction with the claimant or was not forthcoming to the Commission. Either way, I give his testimony little weight.

The claimant was seen at the respondent's onsite clinic on June 2, 2011. The claimant introduced a letter from Dr. Rebecca Lewis to Ms. Jody Yoakum, the respondent's director of risk management who supervises workers' compensation claims for the respondent, dated June 2, 2011. The body of that letter follows:

"Mr. Dotson presents today with chief complaint of left wrist and hand pain. The patient has worked at Allens County Plant about a year. He is a machine operator and constantly gripping. He states that he feels a ropey sensation when he flexes and extends his left wrist. The pain has gotten worse over the past several days.

The patient's left hand and wrist are examined. There is some slight swelling over the brachioradialis tendon. Range of motion is normal, however.

IMPRESSION: Acute tendonitis of the brachioradialis muscle of the left hand.

PLAN: The patient can apply an ace bandage. He is given a Medrol Dos Pak to take as directed. He is written a note prohibiting him from doing repetitive gripping for the next one week and we can recheck him in one week."

The respondent called Ms. Yoakum as a witness and she gave the following testimony about the letter from Dr. Rebecca Lewis as follows:

"Q. Okay. There's been a medical report that's been introduced as part of Claimant's Exhibit 1, which is the June 2, 2011, report of Dr. Rebecca Lewis. It's addressed to Allens, Inc. And then it says WC and then Jody Yoakum. Have you seen that report?

A. I have.

Q. And when did that -- when did you first become aware of that report? When did you receive it?

A. After the AR-C was filed, we requested a copy of his complete chart from Dr. Lewis' office. And then that report was included with the notes.

Q. So you did not receive it shortly after June 2, the date on the report?

A. I did not.

Q. It didn't come to you in the mail or anything like that from Dr. Lewis' office?

A. No.

Q. And the fact that she's addressed this to you and it says WC, does that mean conclusively that this examination related to a workers' comp claim?

A. It appears from the report that she intended to send it to us to -- that she had

examined him and that it's a workers' comp claim.

Q. Okay. But you heard Mr. Hetzel testify that if a claimant is injured -- if an employee is injured at work, that typically they are given a certain report for the doctor to fill out and there's a two-sided physician's report form that's filled out. Was anything like that ever completed in Mr. Dotson's case?

A. No. The time that we normally get dictation like this would be with a workers' comp bill. The dictation typically for a workers' comp claim comes attached with the bill when the bill is sent to our office.

Q. Did you get a workers' comp bill with that?

A. We did not."

The letter sent to Ms. Yoakum from Dr. Lewis regarding the claimant has the phrase "Allens, Inc. WC" under the date. On cross examination, Ms. Yoakum gave the following testimony about that wording:

"Q. Based on what you are seeing there, it looks like that's what Dr. Lewis intended, would you agree?

A. I would think that that could be a possibility.

Q. I mean, because she shouldn't put WC on a non-work related visit?

A. I would presume that because that says WC, she must have thought that it had something to do with his employment.

Q. And a work-related injury?

A. I don't know. She put WC on there. I would not argue that that doesn't mean workers' comp. I would presume that that means workers' comp.



Q. Okay. Did you ever talk to her when you were investigating about why she put down WC or anything like that?

A. I did not.

Q. You have that ability, is that correct?

A. Yes.”

The claimant was seen at the Mercy Medical Center on June 24, 2011. A medical report from that visit indicates the following history of present illness:

“Wilbert J. Dotson, a 47 y.o. male presents to the ED with the chief complaint of hand pain.

H.P.I. Comments: Pt presents with left wrist pain and swelling X3 weeks. Injured wrist on job and was told by a company doctor that he has tendinitis. Mild numbness to first three fingers. Very limited ROM to hand/fingers and wrists due to pain. Strong pulse with wrist cap refills. Pain 10/10 and constant. Unable to do Phalen’s test.”

Under the physical exam portion of that emergency department document we also find the following:

“Left wrist: He exhibits decreased range of motion, tenderness and swelling. He exhibits no bony tenderness, no effusion, no crepitus, no deformity and no laceration.”

At that time, the claimant was given a cockup splint and a diagnosis of carpal tunnel syndrome as well as instructions to follow up with the company doctor in one week or sooner.

On June 27, 2011, the claimant was again seen at the Mercy Medical Center emergency department. The claimant gives a history consistent with that given at the June 24, 2011, visit. The medical report notes that the swelling has gone down from the last

visit although the claimant continued to complain of pain in the left wrist.

On July 6, 2011, the claimant presented to the Mercy Physician's Plaza and was seen by Dr. William G. Swindell. At that time, Dr. Swindell took the claimant off work for a couple of weeks, ordered him to keep a splint on, to ice his wrist at night, and not to use it much. Dr. Swindell also ordered an MRI and scheduled an appointment to see the claimant back in about eight days.

On July 21, 2011, the claimant was seen by Dr. Cody Grammer at Ozark Orthopedics. Dr. Grammer indicates that an MRI revealed a bone contusion just underneath the claimant's first dorsal compartment. The medical record from that visit gives the following history of present illness:

"Wilbert Dotson returns to clinic today with a chief complaint of left wrist pain. The patient states that he has been having pain for about one month. He states that he was pushing something at work which was very heavy when his hand popped. He had an acute onset of pain at that time and has continued to have pain. He then had it pop on him again while he was pushing up out of bed and sought further treatment at that point."

Dr. Grammer also indicates in the assessment and plan portions that he believes the claimant's problem may also be due to significant de Quervain's tendinitis in the first dorsal compartment.

The respondents also called Mr. Joseph R. Orullian. Mr. Orullian is an employee of the respondent and serves as a warehouse supervisor. He was also the claimant's work supervisor. During

direct examination, Mr. Orullian gave the following testimony about the claimant's duties for the respondent:

“Q. Tell me what did he do for Allens around the time of June of 2011.

A. He was my break giver. He cleaned in the warehouse, give breaks on the lines, just right-hand man.

Q. Did he do a lot of different jobs?

A. Yes.

Q. A lot of different tasks throughout his shift?

A. Yes.

Q. Was there anything repetitive about it in the sense that he did the same thing over and over and over all day long?

A. No.”

On cross examination, Mr. Orullian gave the following testimony regarding the claimant's work effort:

Q. You mentioned when you first sat down that Mr. Dotson was your right-hand man?

A. Uh-huh.

Q. Do you remember that?

A. Yes.

Q. He was a good, hard worker for you?

A. Yes.

Q. Did whatever you asked him to do?

A. Yes, he did.

Q. When he started with you prior to you ever seeing this bandage on his wrist, had you ever known him to have any wrist problems?

A. No.

Q. Any health problems whatsoever?

A. No.

Q. Okay. And you had no hesitation to have him do any type of work that was required on your side?

A. Correct.

Q. And that included different machines and baler and break giver and all of that?

A. Correct.”

In testimony to the Commission, Ms. Yoakum indicated that after receiving the claimant's AR-c regarding this claim, she did an investigation which included receiving the documentation from Dr. Lewis from the respondent's onsite clinic which included the letter to her that indicated that this was a workers' compensation claim; however, she denied that that letter had ever been in her possession prior to her initiation of the investigation. She also asked Mr. Hetzel to inquire about any report of a work related injury. In doing so, Mr. Hetzel inquired as to whether or not Mr. Orullian had any knowledge of a work related injury. It was Mr. Orullian's testimony that he told Frank that he did not have any knowledge of the claimant sustaining a work related wrist injury; however, the claimant had discussed with him an incident where he was getting out of bed and had a popping sensation in his wrist. On direct examination Mr. Orullian gave the following testimony:

“Q. Now, did Mr. Dotson ever report to you having injured himself at work?

A. No, he had not.

Q. Did you ever observe him at work wearing some sort of a bandage --

A. I did.

Q. -- on his wrist?

A. I did.

Q. Did you ask him about that?

A. I asked him what had happened.

Q. What did he tell you?

A. He told me he was pushing himself up out of bed and he was showing me and he said his wrist popped.

Q. Did he actually demonstrate what he was doing when his wrist popped?

A. Yes, he did."

It appears from the testimony from both Ms. Yoakum and Mr. Hetzel that they based their denial of the claim, in part, due to the claimant informing Mr. Orullian that he had felt a pop in his wrist when getting out of bed. However, Mr. Orullian did not know at what time this conversation occurred. I note that in the medical records submitted by the claimant dated July 21, 2011, while the claimant is seeking medical treatment for his wrist difficulties, Dr. Cody Grammer of Ozark Orthopedics states in his clinic note, "He then had it pop on him again while he was pushing up out of bed and sought further treatment at that point." This is well after the claimant's original visit to the respondent's onsite physician, Dr. Lewis, and well after he sought treatment from other doctors including Dr. Swindell and doctors at the emergency department at Mercy Medical Center. Mr. Orullian's testimony is consistent with the claimant's medical records that he did in fact

get out of bed and feel his wrist pop; however, his alleged work related injury had occurred much earlier in time.

The claimant must prove the existence of objective medical findings. Here, it is clear from the medical report of the respondent's own onsite doctor that swelling was present in the claimant's left wrist. This is also shown through medical reports from the emergency room department at Mercy Medical Center and a bone contusion is described in Dr. Grammer's clinic note of July 21, 2011. It is clear that the claimant is able to prove the existence of objective medical findings regarding his left wrist difficulties. The claimant must also prove a causal connection between those objective medical findings and his alleged work related accident.

Mr. Hetzel testified that the claimant never informed him of a work related accident although he did make an appointment and send the claimant to see the onsite doctor. The testimony is undisputed that the onsite doctor sees both employees and employee family members for medical conditions that are both related and unrelated to work. However, it is clear from Dr. Lewis' letter to Ms. Yoakum, the director of risk management and the individual who supervises workers' compensation for the respondent, that she believed the claimant's difficulties were work related. Again, I give very little credibility to Mr. Hetzel's testimony in that he seemed unable to remember the events surrounding his conversation with the claimant other than to remember that he was absolutely

certain the claimant did not tell him his need for treatment was work related.

Mr. Orullian's testimony about the claimant getting up out of bed and hearing his wrist pop is consistent with the medical evidence that has been submitted in that it is mentioned in the July 21, 2011, report. In reviewing all the testimony including that of the claimant and the medical records that have been submitted in this matter, I find that the claimant's testimony is consistent with those medical records. Inasmuch, I find the claimant can prove a causal connection between his June 2, 2011, work related accident and the objective medical findings he has already established. The claimant has proven that he suffered a compensable injury to his left wrist. The respondent has also put on evidence that the claimant had prior injuries, some of those injuries were work related through other employers and were to his left wrist. However, I note the testimony of Mr. Orullian who indicated that the claimant was his right hand man, a hard worker and noticed the claimant having no difficulties while performing his job duties. This is clearly evidence that the claimant's left wrist was at least in a state of physical condition to perform the duties required by the respondent.

The claimant has asked the Commission to consider his entitlement to temporary total disability benefits due to his compensable left wrist injury. The claimant has made that request for temporary total disability from July 6, 2011, to July 24, 2011, and from August 5, 2011, to a date yet to be determined. In review

of the medical records, Dr. Swindell took the claimant off work on July 6, 2011, in a note found at Claimant's Exhibit 1, Page 15, due to his left wrist difficulties. On July 21, 2011, Dr. Cody Grammer placed the claimant on one handed duty for four weeks. The claimant is entitled to temporary total disability benefits from July 6, 2011, until July 21, 2011.

The claimant's request for temporary total disability benefits from August 5, 2011, to a date yet to be determined is based on the claimant's allegation that he was fired from Allen Canning at that time. The claimant gave the following testimony about the circumstances surrounding his employment ending at Allen Canning:

“Q. How many weeks did you do this job where you had the one-handed restriction?

A. I think about two weeks I believe.

Q. Were you doing the best that you could?

A. Best of my ability.

Q. What ended up happening out there?

A. Well, I was told by Mike Sorrell (spelled phonetically) if I couldn't do my job, I don't need to be there.

Q. So what did you do?

A. I took it upon myself that I was fired, so I left.

Q. What kind of medical condition did your wife have?

A. My wife has cancer.

Q. And had you had discussions with your supervisor regarding her medical condition?

A. Yes.



Q. And you testified earlier that sometimes you took off work and that was fine with your boss?

A. Yes. Joe and I have talked about it.

Q. Had you ever discussed with him that maybe you would have to move to Oklahoma to get additional medical treatment?

A. Yes.

Q. Was that discussion before or after your injury?

A. Before my injury."

On cross examination the claimant also gave the following testimony regarding the end of his employment with Allen Canning:

"Q. Okay. And then August 4th was your last day to work at Allens, last day you came in to work, wasn't it?

A. Yes.

Q. You just simply stopped coming to work after that, didn't you?

A. Correct, because I was on the assumption that when I was told if I couldn't do my job, I don't need to be there.

Q. Do you remember me asking you in your deposition about the reason you stopped coming to work and you told me at that time that -- that you basically were missing work because you were taking your wife to the doctor and taking care of her?

A. Yes, I was and still am.

Q. So isn't that really the reason, Mr. Dotson, that you stopped coming to work in August is because you were dealing and taking care of your wife?

A. Well, I couldn't -- like I was trying to explain to the guy on the day shift, the one that told me to leave my badge and everything, I told him I couldn't be traveling back and

forth from Oklahoma to Arkansas. I couldn't do it -

Q. Okay.

A. -- and leave her up there and then I'd drive back.

Q. Did anybody at Allens ever tell you that you were fired?

A. No, but Mike Sorrell (spelled phonetically) come back and told me if I couldn't do my job, I don't need to be there.

Q. Okay.

A. That's what I was told.

Q. Nobody at Allens ever told you you were fired, did they?

A. No."

In review of the testimony regarding this period of time and the claimant's departure from employment at Allen Canning, it appears to me that the claimant simply chose to leave due to his wife's unfortunate medical condition. It was the claimant's choice to leave Allen Canning which was providing him with restricted duty at the time of his departure. In essence, the claimant refused to continue the restricted duty employment that the respondent offered him. Inasmuch, I find that the claimant is not entitled to temporary total disability benefits from August 5, 2011, to a date yet to be determined.

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 witnesses and to observe their 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 September 7, 2011, and contained in a pre-hearing order filed September 8, 2011, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he suffered a compensable left wrist injury on or about June 2, 2011.

3. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment related to his compensable left wrist injury including reimbursement for any out of pocket medical expenses that the claimant has incurred that are associated with treatment for his compensable left wrist injury.

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 6, 2011, to July 21, 2011.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 5, 2011, to a date yet to be determined.

6. The claimant has proven by a preponderance of the evidence that his attorney is entitled to a fee in this matter that is commiserate with the Arkansas Workers' Compensation Act and the benefits awarded herein.

ORDER

The respondent shall bear the burden of the cost of the reasonable and necessary medical treatment regarding the claimant's compensable left wrist injury including reimbursement for out of pocket expenses the claimant has already incurred in the treatment of his compensable left wrist injury.

The respondent shall also pay the claimant temporary total disability benefits from July 6, 2011, to July 21, 2011.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

---

ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE