

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312538

BOBBY C. HILL,
EMPLOYEE

CLAIMANT

WATKINS MOTOR LINES, INC.,
EMPLOYER

RESPONDENT

LIBERTY INSURANCE CORPORATION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 26, 2005

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant appears pro se.

Respondents represented by the HONORABLE DAVID C. JONES,
Attorney at Law, Little Rock, Arkansas.

Decision of administrative law judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed August 25, 2004. The administrative law judge (ALJ) found that the claimant sustained compensable injuries to his right wrist and left knee as the result of a specific incident occurring on September 24, 2002. The ALJ found that the respondents were liable for medical treatment and temporary total disability compensation. After reviewing the entire record *de novo*, the Full Commission reverses the

opinion of the administrative law judge. We find that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury on September 24, 2002.

I. HISTORY

The testimony of Bobby Charles Hill, Jr., age 49, indicated that he became employed with Watkins Motor Lines, Inc. in about 1996. The parties stipulated that the employment relationship existed at all relevant times, "including September 24, 2002." The administrative law judge examined the *pro se* claimant:

Q. Tell us what happened on September 24, 2002?

A. I was making a delivery at Candy Bouquet warehouse off of East Sixth Street here in Little Rock. They don't have a dock. We use a pallet jack to bring the big pallets of candy to the back of the trailer. They take a forklift and set it down to the floor level, and a pallet that this - this candy probably weighs 1,500 to 2,000 pounds a pallet, that had snapped in half, broke in half, and as the forklift driver picked it up, the back half of it fell. I was trying to hold it up, and as he come off the trailer, it fell, and I fell behind it landing on my hands and knees on the concrete.

According to a "Timetable" prepared by the claimant, the following incident occurred on September 24, 2002: "Fell out of back of trailer at Candy Bouquet hurting right wrist and left knee. Reported the incident to Linda Cope, Operations

Manager, Watkins Motor Lines. (See enclosed Delivery Receipt)". An accompanying Delivery Receipt indeed indicated that cartons of candy food had been delivered to Candy Bouquet, Int'l Inc. on September 24, 2002. The record indicates that the receipt was signed by the claimant. However, the Receipt shows no indication of an injury.

The respondents stipulated at hearing that the claimant reported an injury to Linda Cope on September 24, 2002.

The claimant testified that he reported the accident to Pat Blakely the next day. Mr. Blakely, apparently the respondents' operation manager, testified, "I had forgotten the date actually. I mean, I didn't know what the date was, because I haven't looked at it because it's been so long ago. It was the next, I'll say, business day and be really honest, because I don't remember if it was a Friday to a Monday or Monday to a Tuesday or Wednesday, but within a day or two and to be totally honest and sure that I know I'm saying the right thing."

Dr. Kevin Hiegel reported on April 18, 2003, "Bobby comes in with right wrist pain, bilateral knee pain and ankle pain. He has a probable ganglion cyst on his right wrist and has had decreased range of motion secondary to this....He has

a lesion consistent with a ganglion cyst on his right wrist....Examination of his knee shows crepitus bilaterally. Otherwise, unremarkable. X-ray shows degenerative changes." Dr. Hiegel's assessment included "arthritis of the knees and wrist."

The claimant presented to Dr. Stephen A. Hudson on August 13, 2003:

Mr. Hill is a 48 year old male who is here today for complaints of bilateral knee pain and right wrist pain. He reports today that he has a history of a motorcycle accident when he was 14 years of age. He states he had significant trauma to both his knees and his knees were "rebuilt." It sounds like he had more work done on the left knee than the right. He had repeat surgery done on the left knee when he was in his 20's and has had some problems with his knees since that time. Today he reports that he fell a few days ago and has had some increase in swelling and pain in his knees and also in his right wrist. He does think that he fell onto his right wrist when he fell.

When questioned about previous problems with this wrist, he states that he does have some arthritis in the wrist and some occasional pain in the wrist prior to the fall. His past medial (sic) history is significant for hypertension....

At his right wrist there is no significant swelling. He does have some tenderness to palpation in the scapholunate region on the dorsum and volar surfaces....

On examination of his knees, at his left knee, he has multiple healed surgical scars over the knee. On the medial aspect there is a vertical and a horizontal scar crossing on the medial side. There

is some mild swelling in this area and scar tissue....On examination of his right knee, he has multiple healed surgical scars, mostly on the medial side of the knee. There is less swelling on this side and less tenderness....

X-rays taken today, AP and lateral of the bilateral knees along with a sunrise view, shows moderate degenerative changes, mostly in the medial compartment, more in the left knee than the right knee with associated osteophytes along the medial compartment. There is also narrowing of the patellofemoral space with osteophytes around the patella. AP and lateral of the right wrist shows an adult patient. There is some increased density of the lunate on the AP projection. On the lateral view there is a vertical lucency through the mid portion of the lunate. There is some slight sclerosis along this line, however. It is well aligned and is not significantly displaced.

Dr. Hudson assessed "1. Bilateral knee DJD, post traumatic in origin. 2. Right wrist lunate fracture, acute versus chronic with possibility of avascular necrosis or Kienbock's disease in the lunate....I discussed with him today that I cannot tell if this is anew (sic) injury to his wrist. He does report that he had been having some pain and stiffness in the wrist prior to the fall, but he did have an acute injury. I am going to set him up for an MRI of his right wrist to see if this will show signs of this being an acute injury versus a chronic injury. If it is acute, then we will consider internal fixation of this."

An MRI of the right wrist was taken on August 15, 2003, with the following impression:

1. Fracture of the lunate, probably old, with subsequent lunate avascular necrosis.
2. Suggestion of a subtle non displaced fracture of the dorsal aspect of the triquetrium which may be acute.
1. Nonspecific wrist joint effusion and fluid in the distal radial ulnar joint, as described. The fluid in the distal radial ulnar joint could reflect triangular fibrocartilage tear which is not well defined on this examination.

The claimant followed up with Dr. Hudson on October 30, 2003:

Since he was last seen he has been wearing his wrist splint and has gone elk hunting in Colorado. He reports that he was doing well with the wrist until this past week, when he fell, while moving his mother into a nursing home and landed again on the right wrist. He has had an increase in pain and swelling in the wrist since that time....

On examination of his right wrist today he has some swelling about the wrist and he is tender in the dorsum, in the area of the scapholunate interval, or over the lunate....

X-rays taken today, AP, lateral and a clenched fist views, are similar to his previous x-rays. They reveal a chronic sagittal fracture through the lunate on the lateral view. There is some mild associated degenerative change around the lunate and increased density of the lunate. He has a slightly radius ulnar negative wrist. There is no significant change from his previous x-rays.

Dr. Hudson assessed, "Degenerative change of the right wrist with chronic lunate fracture....I discussed with him again that since this seems to have calmed down after his first episode of falling, he may have just reaggravated it with this new fall, so I am going to place him back in a splint and I gave him some samples of Bextra 20 mg with a prescription and we will see how he does."

The record contains a recorded interview with the claimant dated December 1, 2003. A representative of the respondent-carrier indicated that she was to take a statement "regarding an incident that occurred on or about June 15th, 2002." The claimant indicated that an incident had occurred in January 2003. The claimant stated that, while unloading merchandise at a warehouse for Candy Boutique, he had fallen approximately four feet from a truck and landed on his hands and knees.

Dr. Hudson dictated the following on December 22, 2003:

Mr. Hill is a 48-year-old male who has been having pain for several months in his right wrist. He suffered a fall in August and landed on the outstretched right wrist. He had pain in the wrist and knees at that time. When seen in the clinic x-rays showed what appeared to be a chronic fracture of his lunate with a split through the body with sclerosis around the edges and some arthritic changes. He was treated with a splint to try to treat this non-operatively. He has

continued to have pain in the wrist. He has had two separate falls after this which have aggravated the symptoms and presents for surgical repair....

Dr. Hudson assessed "Chronic lunate fracture of the right wrist....The plan is for possible resection of the lunate and possible proximal row carpectomy versus interlineated intercarpal fusion depending on the amount of arthritis found at the time of surgery." Dr. Hudson performed an "excision of avascular pole of the lunate and four corner fusion of the lunate, capitate, triquetrum and hamate" on December 24, 2003.

A pre-hearing order was filed on June 2, 2004. The claimant contended that he sustained compensable injuries to his right wrist and left knee as the result of a specific incident occurring September 24, 2002. The claimant contended that he was entitled to reasonably necessary medical treatment. The claimant contended that he was entitled to temporary total disability compensation from December 4, 2003 through April 14, 2004.

The respondents contended that the claimant's "physical problems, need for treatment, and disability" were not related to a work-related injury on September 24, 2002. "Even if compensability is overcome, respondents contend that

the claimant sustained independent intervening accidents subsequent to the alleged incident on or before August 13, 2003, and, again, on or before October 30, 2003, which was the reason for his need for treatment and disability." The respondents also claimed an offset pursuant to Ark. Code Ann. §11-9-411.

The parties agreed that "the primary issue to be presented for determination concerns compensability. If answered affirmatively, claimant's entitlement to associated benefits must be determined."

The record contains June 16, 2004 correspondence to the respondents' attorney, apparently from Dr. Hudson:

This is in response to your letter concerning Bobby Hill and an attempt to answer questions posed about Mr. Hill's surgery. As you noted, he first reported to me on his original visit on August 13, 2004 (sic), that he had suffered a fall and injured his right wrist and both of his knees; the date he gives me for the fall at the time of his original visit was August 11, 2003. At that initial visit on August 13th x-rays of the wrist showed no acute injuries, and knee x-rays just showed some degenerative changes. The x-rays of the wrist showed a vertical lucency in the mid portion of the lunate that did not appear to be acute but appeared to be at least sub-acute, or chronic, so it is difficult to tell if this was an acute injury or not.

An MRI subsequently showed some findings of avascular necrosis of the bone, which would indicate a chronic injury and would not be seen in

an acute injury, so it is difficult for me to determine at what point this injury originally occurred; however, it did cause an exacerbation of his symptoms that we were unable to get resolved with rest and splinting. He subsequently needed fusion of the bones of his wrist to decrease his symptoms.

Dr. Hudson wrote to the claimant on June 28, 2004:

Concerning the first question: What kind of fall it would take to break this bone in your wrist. It is somewhat difficult to say with any certainty, but it would generally be a fall onto an outstretched hand with some moderate degree of force. It could be just a fall from a standing height onto the wrist, or it could be seen in a more high energy fall or something like a car wreck, but it could be something as simple as a fall from a standing height.

As far as number two: The bone that was removed from the wrist. A portion of the lunate. The bone basically showed signs of avascular necrosis, which is a loss of blood supply, which sometimes occurs after a fracture. Usually this takes anywhere from three to six months to begin developing, so other than that, it is difficult to say with any certainty how long ago the injury had occurred. I can just say with reasonable certainty that it was not a new or acute fracture, but was more of a chronic injury.

Dr. Hudson continued to write to the respondents' attorney in correspondence dated August 16, 2004:

I think his original fall did exacerbate his symptoms to the point that he needed to have treatment for it but it is difficult for me to say with any degree of medical certainty whether this was from a fall at work or from a previous injury because I cannot determine with any reasonable

degree of confidence the date of the original fracture.

Similarly, as far as his left knee is concerned, he does have some degenerative changes on the x-rays, more chronic in nature than an acute injury, however, these could have been exacerbated by a fall that caused an increase in symptoms, which would need to be addressed....

The administrative law judge essentially found that the claimant sustained compensable injuries to his right wrist and left knee on September 24, 2002. The ALJ found that the claimant proved he was entitled to reasonably necessary medical treatment, including surgery from Dr. Hudson, and a period of temporary total disability compensation. The respondents appeal to the Full Commission.

II. ADJUDICATION

The claimant contends that he sustained an accidental injury on September 24, 2002. Ark. Code Ann. §11-9-102(4)(A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

In the present matter, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. The claimant testified that he fell from a trailer on September 24, 2002, landing on his hands and knees. Although the respondents stipulated that the claimant "reported an injury to Linda Cope on September 24, 2002," Ms. Cope did not testify and there was no corroborating evidence of an injury. The "Timetable" prepared by the claimant (received by the Commission in July 2004) states that the claimant fell and hurt his right wrist and left knee. There is indeed an accompanying Delivery Receipt which shows that the claimant was present at Candy Bouquet on September 24, 2002. We note, however, that the Delivery Receipt does not show an injury. Nor is there any other independent documentation or probative report of an injury on that date.

The first medical treatment of record did not occur until April 18, 2003. Dr. Hiegel reported right wrist pain, bilateral knee pain and ankle pain. But there was no indication of an injury on any date, including September 24, 2002. Nor were there any objective medical findings showing a compensable injury on September 24, 2002. In that regard,

Dr. Hiegel noted a probable ganglion cyst on the claimant's right wrist, along with bilateral knee crepitus and degenerative changes. None of these findings corroborate an accidental injury occurring September 24, 2002.

The claimant began treating with Dr. Hudson in August 2003 for bilateral knee pain and right wrist pain. Dr. Hudson noted at that time that the claimant "fell a few days ago." There was no mention of a September 2002 injury. Dr. Hudson assessed bilateral degeneration of the knees and right wrist lunate fracture, but he was not sure if the claimant had sustained an "acute injury." In October 2003, the claimant reported to Dr. Hudson that he had hurt his wrist while helping move his mother into a nursing home. Again, there was no report of a September 2002 injury. In the interview with the adjuster on December 1, 2003, the claimant stated that an incident had occurred in January 2003. The Commission notes that, if the claimant was a credible witness and was merely confused about which date he fell, we could possibly find that the claimant sustained a specific incident "identifiable" by time and place of occurrence, albeit not precisely "identified." Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W.3d 369 (2001). Nevertheless, the

claimant contends that he sustained an accidental injury on September 24, 2002. The record does not corroborate the claimant's contention or testimony, and there is no probative evidence demonstrating an accidental injury occurring on September 24, 2002.

In correspondence beginning December 2003 and following, Dr. Hudson continued to state his belief that the claimant had fallen in August 2003. Even so, Dr. Hudson was never able to state with any reasonable certainty that the claimant's need for treatment was related to a fall in August 2003 or any other date. The Full Commission specifically notes Dr. Hudson's June 2004 correspondence in which Dr. Hudson was not sure whether the claimant's problems were "acute" or "chronic." Dr. Hudson finally wrote with regard to the alleged wrist injury, "I can just say with reasonable certainty that it was not a new or acute fracture, but was more of a chronic injury." Even if the claimant had proven by a preponderance of the evidence that he sustained a compensable injury on September 24, 2002, which the claimant did not, Dr. Hudson's opinions on causation were not stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B).

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a "compensable injury" pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). The claimant therefore did not prove he was entitled to medical treatment or temporary total disability compensation. We therefore reverse the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority finds the claimant did not sustain a compensable injury to his left knee or right wrist. In supporting this opinion, the Majority opines that there was no corroborative evidence that the claimant sustained an injury on September 24, 2002. This finding disregards the claimant's consistent,

credible testimony that he fell off a truck and as a result, suffered from injuries to his knee and wrist. Their opinion further fails to address Pat Blakely's testimony that the claimant fell off the truck and suffered from wrist problems after that date and fails to consider James Hill's testimony that he was a witness to his father's ongoing problems with his knee and wrist after the date of the injury.

Additionally, the medical reports indicate the claimant had a "chronic" injury to his wrist, that the claimant had an old fracture to his wrist, and that there was no change to his condition from the time of his injury to the time he received treatment. These reports illustrate that the claimant's condition was caused by falling out of the truck rather than due to any non-work related activity. While I recognize the claimant waited eight months to seek medical attention for his conditions, I find that he has established by a preponderance of the evidence that he did, in fact, suffer from compensable injuries to the left knee and right wrist. For these reasons, I respectfully dissent.

The claimant fell from a truck on September 24, 2002. At the time of the hearing, the respondent

stipulated that the claimant reported an injury shortly thereafter, but denied that he was actually injured. The Majority opinion now finds that the claimant did not establish that such an injury occurred. In supporting this finding, the Majority notes that the claimant did not seek medical attention immediately after sustaining the injury. The Majority also finds that there were no objective medical findings corroborating the claimant's injuries.

A causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962). If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d

497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

I disagree with the Majority's finding that there is no corroborating evidence of the claimant's injury. The claimant's testimony was corroborated by Blakely and by his son. Furthermore, it appears undisputed that the employer's managers were so certain that the claimant's injuries were due to the injury sustained on September 24, 2002 that they convinced the claimant to file for workers' compensation benefits, even after the claimant indicated he did not want to file for benefits because he did not want his manager, Linda Cope, to get in trouble for failing to report his injury. Furthermore, Blakely testified that shortly after the incident on September 24, 2002, he observed the claimant limping and asked him what was wrong. At

that time the claimant disclosed that he had fallen off the truck and injured his wrist and knee. Blakely said that shortly thereafter, the claimant began wearing a wrist brace. Blakely went on to testify that at a later, uncertain date, he observed a large knot on the claimant's knee.

The claimant's testimony regarding the fall is further corroborated by his son's testimony that prior to September 24, 2002, the claimant had no problems with his knee or wrist but that afterwards, he had a knot on his knee. The claimant's son went on to indicate that after September 24, 2002 the claimant continued to have problems with both his wrist and knee.

While I recognize the claimant previously had surgery at the ages of 14 and 19 on his knee, the claimant and his son testified that he did not have a knot on his knee prior to falling off the employer's truck, but did have one after. This indicates that the claimant's prior existing knee condition was likely worsened by his fall.

The Majority opinion also opines that the treating physician, Dr. Hudson, was unable to state within a reasonable degree of medical certainty whether

the claimant's fracture was acute versus chronic and that because he was unable to give such an opinion or give an opinion on causation within a reasonable degree of certainty, the claimant had not met his burden of showing by a preponderance of the evidence the reason for his injury.

Courts have consistently ruled that objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Furthermore, the Court has indicated, "medical opinions need not be expressed in terms of reasonable medical certainty in speaking of a causal connection when there is supplemental evidence supporting the causal connection. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S. W. 2d 875 (1992), citing Hope Brick Works v. Welch, 33 Ark. App. 103, 802 S.W.2d 476 (1991).

Additionally, I find the medical records do show that the claimant suffered injuries related to the September 2002 incident. The claimant went to the doctor regarding his wrist and knee in April 2003. He

was diagnosed with arthritis and a possible ganglion cyst. The claimant returned to work with a brace on his wrist, thinking his pain would go away.

In August 2003, after falling, the claimant returned to the doctor and submitted to an MRI, which revealed he had, "History of remote wrist fracture and recent re-injury with recurrent wrist pain". The MRI report also concluded the claimant had, "Fracture of the lunate, probably old, with subsequent lunate avascular necrosis." These notes indicate that the claimant's MRI revealed an injury that was likely chronic in nature. Since there is no explanation for the claimant's wrist injury between the time of falling off the truck in September 2002 and falling in August 2003, it is apparent to me his "chronic" condition existed before he went to the doctor in August 2003 and ultimately was caused by his fall from the employer's truck.

The claimant was treated again on October 30, 2003 after reporting he had fallen while moving his mother into a nursing home. The doctor's notes indicate, X-rays taken today, AP, lateral and a clenched fist views, are similar to his previous x-rays. They reveal a, "chronic sagittal fracture through the lunate

on the lateral view. There is no significant change from his previous x-rays." The report goes on to give an "Assessment" indicating, "Degenerative change of the right wrist with chronic lunate fracture." These notes indicate that the claimant sustained a fracture in his wrist prior to his initial MRI in August 2003, and that the fracture was chronic in nature. This is important because it illustrates that even in August 2003, the claimant had already been diagnosed with a "chronic" fracture which likely was not due to the immediately preceding incident where the claimant fell. It also shows that the claimant's fall outside of work did not exacerbate his condition in any objective way. The chronic nature of the claimant's condition is further supported by the History and Physical Report, completed on December 23, 2003, which indicates, "X-rays of the wrist reveal a fracture through the body of the lunate...There is sclerosis along the fracture edges indicating a chronic injury."

On June 16, 2004 Dr. Hudson wrote, "At that initial visit on August 13th x-rays of the wrist showed no acute injuries." The letter also indicated, "An MRI subsequently showed some findings of avascular necrosis

of the bone, which would indicate a chronic injury and would not be seen in an acute injury" The letter went on to indicate that it would be difficult to tell if the injury was chronic or acute and that his fall caused an, "exacerbation of the claimant's symptoms." It is particularly important to note that Dr. Hudson does not mention any objective change in the claimant's condition, only in his symptoms. When considered in conjunction with the previous medical reports indicating the claimant's condition was chronic in nature and that his x-rays showed no change in his condition, the report is indicative that even though the doctor could not express whether the claimant's initial fracture was caused by the fall on September 24, 2002, there was no objective medical change in his condition subsequent to August 2003. As there is no other plausible explanation in the record regarding what would cause the claimant to have wrist pain in April 2003, it is more likely than not his injury was due to the September 24, 2002 incident.

Ultimately, the claimant sustained injuries due to falling out of the employer's truck. The respondent admits the claimant reported the injury and

it is undisputed the claimant's claim for worker's compensation was encouraged by his managers because they were aware his injuries were related to work. While the claimant did wait to seek medical attention the evidence indicates that his conditions were caused by falling off the employer's truck and did not change due to his subsequent falls. As such, I would find the claimant should be entitled to benefits. For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner