

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214745

DWIGHT D. SEAGRAVES,  
EMPLOYEE

CLAIMANT

DELTA CONSOLIDATED INDUSTRIES,  
EMPLOYER

RESPONDENT

GAB ROBINS,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 9, 2005

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

Claimant represented by HONORABLE KRISTOFER E. RICHARDSON,  
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by HONORABLE CAROL L. WORLEY,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed November 3, 2003. The administrative law  
judge found that the claimant proved he sustained a  
compensable injury on June 17, 2002. After reviewing the  
entire record *de novo*, the Full Commission reverses the  
opinion of the administrative law judge.

I. HISTORY

Dwight Seagraves, age 30, received emergency treatment  
in November 2000 after reporting that he had fallen at work  
and had injured his right wrist. An emergency physician's

note on November 7, 2000 indicated, "2 yrs ago, when welding, Pt fell into toolbox injuring right wrist." X-rays on November 7, 2000 were interpreted as "unremarkable," and the claimant was diagnosed with "Sprain wrist, r side."

The claimant returned to the emergency room on August 24, 2001. The claimant reported that he had been thrown from a horse the previous evening. The conclusion from Medical Imaging was "Normal hand. Normal wrist." The claimant was diagnosed with "wrist sprain." Following the horse accident, the claimant testified, "After about five or six days it quit hurting completely, and I didn't have no problems out of it until - Until the day my wrist popped at work."

The claimant contended that he sustained an accidental injury on June 17, 2002. The claimant testified, "I was welding on tacking, a toolbox within the tack hole, and I was prying on the toolbox like I normally do and my wrist popped. When it popped, I reported the injury."

An Incident Investigation Report was filled out on June 17, 2002. The claimant testified that his safety representative, Kelly Manuel, completed the report. An incident was reported on June 17, 2002 during the claimant's shift at 10 p.m. Mr. Manuel explained the incident in

writing: "Associate was tacking a 350260 together when his wrist popped causing him pain to a pre existing injury to the right wrist." The claimant testified that "350260" was "the numbers of a certain toolbox that we weld." Mr. Manuel described the Root Cause as "pre existing injury due to fall from horse." Additionally, Mr. Manuel marked a space beside "Repetitive motion" and wrote, "used his wrist a lot and it popped causing pain." The Immediate Corrective Action was "stopped tacking place on one-handed duty for remainder of shift." The report was signed by the claimant's supervisor, Phillip Jones. Mr. Jones' testimony at hearing indicated that he knew very little about what had happened.

The claimant testified that the Investigation Report accurately reflected what he told the respondent-employer. The claimant testified that he presented to his family physician the day after the alleged accident. The record indicates that the claimant presented to NEA Apache Clinic on June 18, 2002, where it was reported, "c/o R wrist pain x 10 mos." The claimant testified that he did not tell the doctor that he had been suffering wrist pain for 10 months. There was no mention in the physician's report of a workplace incident.

The claimant testified that he was referred to Dr. James Marvel, who evaluated the claimant on June 21, 2002:

Dwight is a 29-year-old who was thrown from a horse in August of last year. He has been having problems with his right wrist....

X-rays show a fracture of the proximal pole of the navicular bone. This is not particularly displaced, but it's also probably avascular and is not healed....

Dr. Marvel recommended conservative treatment. Dr. Marvel's description of "Past History" did not relate any sort of incident at work. Dr. Marvel treated the claimant conservatively with a cast.

Heather Parsons, the respondent-employer's human resource administrator, testified, "I was first notified of Mr. Seagraves' injury when he came in to bring in a doctor's note taking him off of work, and he informed me it was related to an incident he had last year where'd he also filled out family medical leave papers." Ms. Parsons testified that the claimant would not have submitted paperwork to her for a work-related incident. Ms. Parsons testified that the claimant did not report to her at that time that he had sustained a work-related injury.

Dr. Marvel noted on July 16, 2002, "Dwight brought some x-rays taken last August at St. Bernard's Hospital that do

not show the fracture of the carpal navicular. I have tried to explain to him that these do not mean that he did not have the fracture at that time just because the x-rays are negative, but in trying to establish that something was not pre-existing that might be important, I have placed him back in a cast today."

The claimant was eventually referred to Dr. G. Thomas Frazier, who reported on October 2, 2002:

Mr. Dwight Seagraves is a 29-year-old right-handed male who presents today for second opinion in regards to a right wrist injury that he sustained in August 2001 when he fell off a horse onto the extended right upper extremity. He had x-rays obtained initially that were reportedly normal. He has had some persistent swelling and pain as well as loss of motion in the right wrist although it is diminished from its original level.

Dwight re-injured his wrist on 6-18-02. At that time he was lifting a toolbox lid while welding on it felt a "pop" in his wrist. He was evaluated by Dr. Tedder and then referred to Dr. Marvel who placed his right wrist in a cast....

Examination of his right wrist shows mild swelling with tenderness to palpation localized to the proximal pole of the scaphoid and over the radiocarpal joint....AP and lateral x-rays of the right wrist show a proximal pole fracture with probable non-union.

It is my assessment that Dwight has a proximal pole fracture of the right scaphoid at the wrist with possible non-union....

Today I discussed treatment options with Dwight and have recommended that we proceed with open

reduction and screw stabilization of the proximal pole fracture. I would like to obtain the x-rays from August 2001 and if they are negative for fracture it is most likely that he has had an asymptomatic non-union, which then subsequently was made symptomatic by his most recent injury of 6-18-02....Dwight will contact me if he wishes to proceed with surgical treatment of the right scaphoid proximal pole non-union and will otherwise return on a prn basis.

The claimant testified that he underwent surgery from Dr. Frazier.

Ms. Parsons testified, "I saw him maybe three or four times during the 26 weeks when he would come in to bring me doctor's notes or maybe pick up a check, and then I saw him the second week in January where I informed him that he had ran out of short term disability benefits and I was no longer able to hold his job for him." Ms. Parsons testified that she first heard of a work-related injury involving the claimant "Several weeks after his employment ended when Mike Bishop had come in and asked me if I knew anything about it."

Dr. Frazier wrote to the claimant's attorney on April 22, 2003:

My opinion in this matter is based solely on the historical information provided to me by Mr. Seagraves. He recalls falling off a horse in August 2001, injuring his right wrist. He had x-rays at that time, which were reportedly normal. He had some pain and swelling in his wrist, as

well as loss of motion, which subsequently improved.

Mr. Seagraves subsequently reinjured his wrist on 06/18/02 at which time he was lifting a toolbox lid. As you pointed out, he did not report or experience any continuing symptoms between his initial right wrist injury in August of 2001 and his subsequent injury on 06/18/02.

Based on my initial examination on 10/02/02, at which time he was found to have a nonunion of a proximal pole fracture of the right scaphoid, it is my opinion that he most likely sustained a nondisplaced fracture of the proximal pole of the scaphoid on his initial injury of August of 2001. There was most likely a fibrous union of the fracture that subsequently was disrupted by the injury of 06/18/02; therefore constituting an aggravation of a pre-existing, though asymptomatic, condition....

Mr. Seagraves claimed entitlement to worker's compensation. The claimant contended that he sustained a compensable injury on June 17, 2002. The claimant contended that he was entitled to reasonably necessary medical treatment and temporary total disability compensation. The respondents contended that the claimant did not sustain a compensable injury and that they did not receive notice until December 15, 2002.

Hearing before the Commission was held on September 26, 2003. The claimant testified that he had experienced some improvement, "but there's still pain. It still hurts....The pain is less than it was, yes, sir, but it still hurts."

The administrative law judge found, "The claimant has proven, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with Delta Consolidated Industries as the result of a specific incident identifiable by time and place of occurrence on June 17, 2002, which caused internal, physical harm to his body and which is supported by objective medical evidence, specifically, a fracture of the right wrist, which required medical services and resulted in disability." The administrative law judge awarded temporary total disability compensation and reasonably necessary medical treatment. The respondents appeal to the Full Commission.

## II. ADJUDICATION

The claimant contends that he sustained a compensable injury to his right wrist on June 17, 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i).

In the present matter, the Full Commission reverses the administrative law judge's finding that the claimant sustained a compensable injury on June 17, 2002. The evidence shows that the claimant has suffered right wrist problems since at least November 2000. The claimant reported that he had fallen and injured his right wrist in November 2000, and the claimant also reported at that time that he had fallen two years earlier and injured his right wrist. The claimant was diagnosed with "wrist sprain" in August 2001 after the claimant reported that he had been thrown from a horse and had again injured his right wrist. The claimant testified that he recovered from the horse accident after five to six days.

The claimant testified that he sustained an accidental injury on June 17, 2002. The Commission is not required to believe the testimony of the claimant but may accept and translate into findings of fact only those portions of the testimony deemed worthy of belief. Morelock v. Kearney Co.,

48 Ark. App 227, 894 S.W.2d 603 (1995). The Incident Investigation Report from June 17, 2002 does mention that the claimant's wrist "popped" at work, but the Report lists the "root cause" as "pre existing injury due to fall from horse." When the claimant presented to his family physician on June 18, 2002, it was reported that the claimant had complained of right wrist pain for 10 months. The report of a 10-month history of right wrist pain in June 2002 corresponds almost precisely with the history of the claimant falling from the horse in August 2001. The June 18, 2002 report also belies the claimant's testimony that he did not experience recurring problems after the August 2001 nonwork-related incident.

Nor did Dr. Marvel record a workplace incident when he saw the claimant on June 21, 2002. Instead, Dr. Marvel related the claimant's problems to the horse accident. Ms. Parsons' testimony indicated that the claimant did not think he had sustained a work-related injury. The claimant filed for benefits through his group health insurance and did not follow the known procedures for reporting a work-related incident. The claimant's group health paid for the majority of the claimant's treatment, including apparently the claimant's surgery. We recognize that Dr. Frazier opined in

April 2003 that the alleged specific incident had "disrupted" and "aggravated" a prior orthopedic condition. The authority of the Commission to resolve conflicting evidence also extends to medical testimony. The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). The Full Commission finds that Dr. Frazier's opinion in the present matter was based on an inaccurate history provided by the claimant and cannot be relied on for compensability.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant sustained a compensable injury on June 17, 2002. We find that the claimant was not a credible witness, and that the claimant failed to prove he sustained a compensable accidental injury pursuant to the provisions of Ark. Code Ann. § 11-9-102(4)(A)(i) *et seq.* This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

I dissent from the Majority opinion and find that claimant incurred a compensable aggravation of a pre-existing asymptomatic condition as a result of his work injury.

In reversing the Administrative Law Judge's award of benefits, the Majority relies almost entirely on a finding that the claimant was not a credible witness. They also dismiss Dr. Frazier's opinion as being based upon "an inaccurate history provided by the claimant" and conclude that it cannot be relied upon to establish compensability of this injury.

The Majority's conclusion regarding claimant's credibility is curious in that his testimony is almost always supported by documentation. For example, the incident on June 17, 2002, at his place of employment, was noted by his immediate supervisor in the Incident Report that was prepared contemporaneous with the incident. Further, claimant never concealed that he hurt his wrist while riding a horse and even, quite candidly, advised his employer of that incident. It is also true that claimant initially advised his doctors that his problem related to the horse riding incident since it seemed to be a much more serious event than that which occurred at work. However,

the seriousness of the job related accident did not become clear until x-rays demonstrated that claimant's wrist had a displaced fracture, a condition not found in x-rays following the horse riding incident.

The Majority also relies heavily on the handwritten note from Dr. Tedder's office of June 18, 2002. They assert that this report establishes that claimant had been suffering from wrist pain for 10 months. However, this notation is somewhat ambiguous and its actual meaning is open to debate.

I also disagree with the Majority's failure to give weight to Dr. Frazier's opinion of April 22, 2003. His report is ignored because of the Majority's conclusion that it was based upon an inaccurate history given to him by the claimant. However, the report makes clear that his opinion regarding the nature of claimant's injury is based, not on any history imparted to him by claimant, but rather the x-ray of August, 2001, which showed a normal wrist and hand, when contrasted with his examination of claimant in October, 2002 when claimant had a fracture of his right scaphoid.

In my opinion, the real question in this case is whether the work injury resulted in a compensable aggravation of a pre-existing condition. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004).

A review of the medical evidence clearly establishes that claimant's medical treatment and disability resulted from his job related accident. The Majority avoids that issue by declaring claimant's testimony to be without credibility and that claimant, therefore, cannot meet his burden of proof. However, claimant's testimony could be entirely disregarded and the objective and verifiable medical evidence is more than sufficient to establish that claimant suffered a job related aggravation of an pre-existing asymptomatic condition on June 17, 2002. I find, therefore, that claimant's work injury is at least a "factor" in his current need for treatment and benefits. Williams, supra. As such, I find that claimant is entitled to additional medical treatment for the compensable injury.

For these reasons, I dissent.

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SHELBY W. TURNER, Commissioner