

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305634

BRIAN SABINSKE, EMPLOYEE	CLAIMANT
MORGAN BUILDINGS & SPAS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, CARRIER	RESPONDENT

**OPINION FILED APRIL 22, 2005**

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

Claimant represented by HONORABLE JOHN C. BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE MARK A. MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

Decision of Administrative Law Judge: Reversed.

**OPINION AND ORDER**

This case comes on for review by the Full Commission from an appeal by the respondents from a decision filed by an Administrative Law Judge April 22, 2004. The Administrative Law Judge found, in relevant part, that the claimant proved by a preponderance of the credible evidence that he sustained a specific incident injury on April 17, 2003, which aggravated a preexisting condition, and that his continued physical problems are directly and causally related to said injury. The Administrative Law Judge found further that should the claimant undergo surgery to his

wrist, he is entitled to temporary total disability benefits beginning on the date of said surgery. It is from this decision respondents appeal.

Respondents contend that the claimant's request for surgery to repair his preexisting scaphoid nonunion is contrary to the medical opinions presented in this claim, and that the claimant sustained only a temporary exacerbation which was appropriately compensated. Our carefully conducted de novo review of this claim in its entirety reveals that the respondents are correct in their contentions. Specifically, the claimant has failed to prove by a preponderance of the credible evidence that his requested surgery is causally related to his compensable injury of April 17, 2003. Therefore, and for the reasons set forth herein below, the decision of the Administrative Law Judge is reversed and this claim is hereby denied.

On April 17, 2003, the claimant sustained a work related right wrist injury that resulted when he used his right hand to break a fall. The claimant was seen by Dr. Spades on the date of his injury, and on the following day by Dr. Thomas E. Day at Arkansas Orthopedics.

Contemporaneous X-rays of the claimant's right wrist revealed an apparent mid pole scaphoid fracture, which was displaced. Dr. Day suspected that the claimant's condition would require ORIF, and due to his lack of experience with this procedure, he referred the claimant to a hand specialist. In addition, Dr. Day placed the claimant in a thumb spica splint, prescribed him pain medication, and pending his examination by a specialist, he took the claimant off of work.

The claimant was seen by Dr. R. Jeffrey Cole on April 22, 2003. Based upon his comprehensive evaluation of the claimant, Dr. Cole assessed the claimant with scaphoid nonunion, right wrist, "age indeterminate." Dr. Cole opined that arthritis was already forming in the claimant's wrist and that a "salvage procedure" in the form of scaphoid excision with a 4-corner fusion was possible for the future. Dr. Cole scheduled the claimant for an MRI and placed him on restricted work duty. Dr. Cole did not view the claimant as a surgical candidate at that time due to his recent history of MI. In his notes of that visit, Dr. Cole made the following relevant statement:

The patient's original scaphoid fracture would not be work related however his fall resulted in an exacerbation of a pre-existing problem.

On April 23, 2003, the claimant saw Dr. Thomas Joseph at Orthopedics of Pocahontas for "further assessment." X-rays taken on that date confirmed a nonunion of the claimant's scaphoid fracture, which Dr. Joseph stated appeared to be an "old fracture." Dr. Joseph informed the claimant that his treatment options included surgery in the form of bone grafting and screw fixation. Should this procedure fail, Dr. Joseph explained that an excision and intercarpal fusion would be required.

An MRI taken on May 3, 2003, revealed an abnormal signal seen in the proximal and distal folds of the scaphoid, which most likely indicated edema. The claimant's estimated healing time was 8 to 12 weeks.

In his clinic report dated May 13, 2003, Dr. Cole made the following statement:

I have discussed treatment options with Mr. Sabinske recommending conversion to a removable thumb spica splint. This would be worn in a weaning fashion over the next three weeks. Based upon the MRI findings, I would not recommend efforts

at repair of his long standing scaphoid nonunion. Instead, if pain were persistent, excision of the scaphoid with a 4 corner (partial wrist) arthrodesis would be recommended.

Due to the fact that the claimant's scaphoid nonunion was preexisting, Dr. Cole did not feel that he sustained permanent or partial impairment associated with his fall. Dr. Cole opined that the claimant would reach MMI on June 2, 2003.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). Furthermore, the claimant must prove by a preponderance of the evidence that the medical treatment is reasonably necessary in connection with his compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). It is well established that a preexisting disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, Nashville Livestock Commission v. Cox, 302

Ark. 69, 787 S.W.2d 664 (1990); Conway Convalescent Center v. Murphree, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). It is also well established that in workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a preexisting condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the preexisting condition. See, Arkansas Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

The objective medical evidence in this claim shows conclusively that the claimant had a preexisting scaphoid

nonunion resulting from a fracture which the claimant testified that he sustained as a teenager. That the claimant sustained a compensable injury on April 17, 2003, for which he received all appropriate and necessary medical treatment, is not disputed in this case. The disputed issue in this claim is whether the claimant's proposed surgery is reasonably necessary in relation to his compensable injury of April 17, 2003. In order for this to be so, the claimant must show a causal connection between his injury and his proposed treatment. The claimant fails in this claim to prove such a causal connection exists.

First, the medical records do not specifically state the exact nature of the claimant's April 2003 wrist injury, but Dr. Cole described the injury as an exacerbation of a preexisting injury. Due to the fact that Dr. Cole assessed the claimant at MMI as of June 2, 2003, it must be assumed that Dr. Cole considered this "exacerbation" to be temporary.

The claimant testified that he broke his wrist when he fell on April 17, 2003. However, as previously mentioned, it is well documented that the claimant had an

"old fracture" at the time of his fall, and that he did not sustain a new, or acute fracture. To illustrate this point, Dr. Cole stated on April 22, 2003, that cystic changes present within the distal pole were "clearly indicative of a nonunion rather than an acute fracture." Rather, the record indicates that the claimant's fall on April 17, 2003, merely "drew attention" to the claimant's old injury never having properly healed. In regards to this, Dr. Cole stated:

Mr. Sabinske returns for follow-up of his scaphoid nonunion. He sustained a fall at work calling attention to his previous scaphoid nonunion. This had potentially healed in a fibrous fashion.  
(Emphasis added)

Furthermore, the medical record demonstrates that the claimant's "injury" of April 17, 2003, had completely resolved by June 2, 2003, at which time he had reached MMI, and that the claimant had suffered no permanent impairment from his fall. In addition, Dr. Cole stated unequivocally that the claimant's scaphoid nonunion is unrelated to his injury of 2003, and that the claimant's proposed wrist surgery would be a "salvage procedure" to repair that nonunion.

Based upon the above and foregoing, we find that the claimant has failed to prove by a preponderance of the evidence that his proposed surgery is causally related to his fall of April 17, 2003. Instead, the evidence preponderates in favor of the claimant's proposed surgery being solely connected to an old fracture that did not heal properly, and which is likely to cause the claimant future problems in the form of arthritis if not corrected. Although the claimant's fall of 2003 did cause temporary pain and swelling in the area of the claimant's old injury, it did not combine with the claimant's preexisting infirmity to produce a permanent disability for which additional compensation, namely surgery, is sought. On the contrary, the claimant has fully recovered from his fall of 2003, and his condition is restored to the condition that existed before his injury. Fortunately, the claimant's fall brought attention to the claimant's preexisting condition, and to the potential problems which are likely to result from that condition, i.e., arthritis. His fall, however, did not create the scaphoid nonunion for which surgery is potentially recommended. The record clearly demonstrates

that the claimant's fall of April 17, 2003, temporarily exacerbated the claimant's preexisting wrist condition. Accordingly, the decision of the Administrative Law Judge is hereby reversed and this claim is denied.

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 must respectfully dissent from the Majority's opinion reversing the Administrative Law Judge's award of benefits and finding that the requested surgery is not causally related to claimant's compensable injury. I find that claimant's preexisting condition was aggravated by his compensable injury. Accordingly, I find that claimant is entitled to additional medical treatment.

Claimant injured his right wrist when he tripped and fell to the ground while carrying a piece of 23 foot

nine metal over his head. Claimant had injured that wrist 20 years before. However, it is undisputed that claimant's wrist was asymptomatic prior to his fall at work. Claimant testified at the hearing, some 10 months after the fall, that he was still experiencing pain and swelling in his wrist.

The majority found that claimant's fall caused "temporary pain and swelling in the area of the claimant's old injury" and that claimant "has fully recovered from his fall of 2003." The record clearly contradicts these findings. In fact, the Administrative Law Judge stated in his opinion that the swelling was "readily observable."

I find, therefore, that claimant's wrist has not returned to its pre-injury condition and that the preexisting condition in claimant's wrist was aggravated by the fall. The ongoing pain and swelling that claimant experiences is causally connected to his work injury and necessitates the requested surgery. As such, I find that claimant has incurred a compensable aggravation to his previously asymptomatic preexisting condition and is

entitled to additional medical treatment, namely the requested surgery.

For these reasons, I dissent.

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SHELBY W. TURNER, Commissioner