

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403777

JOSEPH W. HEFLIN, EMPLOYEE	CLAIMANT
FIRESTONE TUBE COMPANY, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 15, 2006

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

Claimant represented by HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed October 18, 2005.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on March 8, 2004 and at all other relevant times.

3. Claimant sustained a compensable left shoulder injury on March 8, 2004.

4. Claimant's average weekly wage was \$683.00; his temporary total disability rate is \$453.00; and Claimant's permanent partial disability rate is \$340.00.

5. Respondents paid Claimant temporary total disability benefits from April 12, 2004 to August 23, 2004.

6. Respondents accepted a 7% permanent impairment rating to the body as a whole for Claimant's left shoulder injury, and are paying permanent partial disability benefits for that rating.

7. Claimant did not sustain his burden of proving that he is entitled to reasonably necessary medical treatment for his neck complaints in connection with his compensable left shoulder injury. While there is proof in the record that Claimant's neck condition arose out of the same activity that gave rise to his compensable left shoulder injury, there is no proof in the record of a causal connection between the left shoulder injury and his neck condition.

8. Claimant did not sustain his burden of proving that he suffered a compensable neck injury as a compensable consequence of his compensable left shoulder injury. None of the three doctors testified to a causal connection between Claimant's compensable left

shoulder injury and his neck condition. Further, Claimant did not prove objective medical findings that would establish his alleged compensable consequence, a neck injury. Although there are findings on the studies in the record, no doctor attributes Claimant's neck pain to these findings.

9. Claimant did not sustain his burden of proving that he is entitled to temporary disability benefits. He was off work from September 1, 2004 until December 6, 2004 due to his neck condition, not his compensable left shoulder injury. Thus, he cannot meet the statutory definition of "disability," which requires incapacity because of compensable injury.

10. Because no indemnity benefits are awarded herein, Claimant is not entitled to an attorney's fee.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I respectfully dissent from the Majority's decision affirming and adopting the Administrative Law Judge's October 18, 2005 opinion. Based upon my de novo review of the record in this claim, it is my opinion that the Claimant has met his burden of proving that the medical treatment he received for his neck complaints was reasonable and necessary in connection with his compensable left shoulder injury. Also, I believe that Claimant has met his burden of proving that he is entitled to temporary total disability benefits from September 1, 2004 through September 22, 2004, and temporary partial disability benefits from September 23, 2004 through December 6, 2004.

_____It was stipulated that Claimant sustained a compensable injury on March 8, 2004, to his left shoulder. The parties also stipulated that Claimant's average weekly wage would yield a compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial

disability benefits. It was further stipulated that the respondents paid temporary total disability benefits from April 12, 2004 through August 23, 2004, and permanent partial disability benefits for a seven percent (7%) permanent impairment rating to the body as a whole for the left shoulder.

_____The issues to be determined were: 1) whether the claimant is entitled to reasonably necessary medical treatment in connection with his compensable left shoulder injury; 2) alternatively, whether claimant sustained a compensable neck injury as a compensable consequence of his compensable left shoulder injury; 3) whether the claimant is entitled to temporary disability benefits, 4) and whether the claimant is entitled to a controverted attorney's fee.

_____The claimant has worked at Firestone Tube Company since 1983. The Claimant suffered an accident at work on March 8, 2004. Claimant explained how the injury occurred.

- Q. Okay. Can you explain to the Judge exactly what happened, how you suffered this injury?
- A. I was - - I'm a splicer. And I went to get a tube off the top of the

skid. And in the process, pulled the tube off and all the weight shifted and went to my left hand, pulling the tube out of my right hand. And it just jerked me down.

Q. Okay. Joe, I'm trying to imagine this. Did you have a tube in your -
- both hands and did you testify that it dropped off the skid?

A. Yes, sir.

Q. Okay.

A. In my job, the skids are high and you have a two-step stool. When you get your tubes off the top, you go up the stool, and they stick. They weigh 44 and a half pounds a piece, and you get two per leaf.

Well, the rubber sticks sometimes and you have to grab it; you have to whip it, and pull at the same time. Well, if it come - - breaks loose, you know, quick, well, all your weight's coming, and you grab at the middle of the tube. Well, when I grabbed, grabbed this and this, and the tail-end come across and jerked this hand loose and I was up on the stool.

Immediately after the accident Claimant felt "burning in the front part of my shoulder and then the back part of my

shoulder." Claimant was first seen by Nurse Practitioner Bosold after the accident and reported that he "had burning in my left shoulder, the front and the back. And I had numbness in these two fingers and the inside of this third finger."

_____ Claimant had an MRI done on March 15, 2004 with an impression of "lateral impingement with tendinosis and/or partial tears of the rotator cuff tendons." Claimant had surgery on his left shoulder on April 12, 2004, and was then sent for physical therapy. Claimant continued to complain of numbness and tingling in his fingers.

_____ In a report dated June 23, 2004, Dr. Tucker made the following observation.

His [Claimant's] main complaint today is continued numbness and tingling in his index and ring finger. This has been present since his accident, but has not improved with his shoulder surgery. At this point in time I am concerned that we are dealing with a herniated disc or other type of compression on the ulnar nerve.

X-rays: We got C-spine films today. The disc at 5-6 is definitely smaller. There also appears to be some changes to the foramen.

_____ Claimant was seen again by Dr. Tucker on June 25, 2004. Dr. Tucker opined that there was no herniation in the cervical spine, but that epidural steroids may be helpful and to continue physical therapy. Claimant continued to complain of neck pain and numbness in his fingers during his physical therapy.

_____ On September 8, 2004, Dr. Tucker composed the following letter.

_____ To Whom It May Concern:

Mr. Heflin sustained a shoulder and neck injury at work on 3/8/04 and underwent surgery on the shoulder 4/12/04. At that time the severity of the shoulder pain masked his neck pain. His shoulder injury is now resolving and the neck pain has become more prominent. It is my medical opinion that the neck pain is a result of the injury he sustained on 3/8/04.

_____ Claimant was seen by Dr. Scott Schlesinger on September 20, 2004. The following history of present illness was given.

Mr. Heflin is a 44-year-old male who was injured at work on 3/8/04 pulling off a skid on (sic) this his left arm. He says he immediately had left shoulder pain

and tingling in the median three digits of the left hand. He denies any neck pain prior to the accident. He did not have any pain in the neck with the accident, but started having it with physical therapy on the shoulder. He has no radicular pain in the arm, but just neck pain. The tingling has persisted in the ulnar three digits of the left hand. He has had shoulder surgery by you on 4/12/04. He went back to work recently, but only worked 7 days and his neck pain increased with working. He has had on (sic) epidural steroid injection by Dr. Ackerman, which he says helped for a couple of weeks.

Dr. Schlesinger interpreted the data as follows.

I have carefully reviewed the multiple images of the MRI of the cervical spine independent of the radiologist and have requested and compared this to the radiologist's interpretation. There are degenerative changes only at C5-6 and C6-7. There is no disc herniation, nerve root compression, spinal stenosis or foraminal stenosis. There is no abnormal signal in the cord. My findings are in agreement with the radiologist's interpretation.

The following was Dr. Schlesinger's plan for the Claimant based on his examination.

In this case, it is my neurosurgical consultative opinion that the neck pain

is due to aggravation of underlying cervical degenerative disc disease, which he certainly had prior to the accident. If his history is accurate, then the physical therapy done for his shoulder may have aggravated underlying degenerative arthritis of his neck. I believe the numbness and tingling in the ulnar three digits of the left hand are probably related to stretching of the brachial plexus at the time of his shoulder injury. This does not conform to an ulnar nerve distribution, but rather lower portion of the brachial plexus.

. . .

I would recommend that he have a physical therapy evaluation with neck exercises and cervical stabilization for his neck pain. I would recommend that he be treated with anti-inflammatory medications. He might benefit from 1-2 more epidural steroid injections for this aggravation of this underlying cervical disc disease.

_____ Claimant was seen by Dr. Cathey on November 23, 2004. Dr. Cathey agreed with Dr. Schlesinger's September 20, 2004 opinion. Dr. Cathey suggested chiropractic treatment since that has helped the claimant for some unrelated chronic lower back pain. Claimant was released back to work on December 6, 2004.

_____Dr. Tucker authored another letter regarding Claimant's condition on May 18, 2005.

_____To Whom It May Concern:

It is my medical opinion that Mr. Heflin's neck pain was caused by his injury on March 8, 2004. I believe the injury involved both the neck and shoulder. I think the injury to (sic) that he sustained on March 8, 2004 is the major cause of his continued neck pain and left arm numbness. I do believe that his continued treatment for the neck pain was necessary and reasonable and that the restrictions placed on him from September 1, 2004 through November 5, 2004 was due to the March 8, 2004 injury to the left shoulder and neck. This is my medical opinion within a reasonable degree of medical certainty.

_____When subsequent complications are the natural and probable result of the original injury, the employer remains liable. The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osmose Wood Preserving v.

Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). The determination of whether a causal connection exists is a question of fact for the Workers' Compensation Commission. Carter v. Flintrol, Inc., 19 Ark. App. 317, 720 S.W.2d 337 (1986).

While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. Wal-Mart Stores. Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

_____It has long been recognized that 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 (Claim Nos. 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).

_____ In my opinion, Claimant has proven by a preponderance of the evidence that his neck complaints and finger numbness were a subsequent complication which were a natural and probable result of the original injury. Both Dr. Tucker and Dr. Schlesinger have opined that Claimant's continued complaints of neck pain and finger numbness were related to the March 8, 2004 accident.

_____ Although the neck pain did not manifest until a few months after the accident, the finger numbness has been present since the March 8, 2004 accident. Dr. Tucker opined that it would not be unusual for the pain from the shoulder injury to mask the neck pain. There is no indication in the record of any subsequent injury or accident to suggest any other explanation for Claimant's neck pain.

_____ Dr. Schlesinger opined that Claimant had a brachial plexus injury caused by stretching during the March 8, 2004 accident. Dr. Tucker testified about what the brachial plexus is during his deposition.

_____ Q. What is brachial plexus?

A. It's where the nerves come out of the neck. It's sort of the relay box where different nerves as they come out of the neck become the nerves that go down to your shoulder and arm.

Q. So, these nerves that come out of your neck are the ones that go down your shoulder into your fingers?

A. Yes.

_____ Dr. Tucker also testified as to how to determine if there is a brachial plexus injury.

_____ Q. Is there any way to determine where in the brachial plexus there was damage, stretch damage?

A. Only by the physical exam.

Q. Sure. And, Doctor, again is it your opinion to a reasonable degree of medical certainty that this injury that Mr. Heflin sustained at work, this stretching type injury, was the cause of his neck pain? Is that correct, and the tingling?

A. It's consistent with the mechanism of his injury. And - - it's consistent with the mechanism of his injury and I, based upon his report to me, I believe it happened then, within a reasonable degree of medical certainty.

_____ Based on the foregoing it is my opinion that Claimant has met his burden of proving a causal connection between his neck complaints and finger numbness and the original accident of March 8, 2004.

_____ Claimant received physical therapy, epidural steroid injections, chiropractic treatment, and medications in relation to his neck complaints and finger numbness. In

my opinion, all treatments received in relation to diagnosis and treatment of Claimant's neck and finger complaints has been reasonable and necessary in connection with his March 8, 2004 injury.

_____ Claimant seeks temporary total disability benefits from September 1, 2004 through September 22, 2004; he seeks temporary partial disability benefits from September 23, 2004 through December 6, 2004. Claimant returned to work on August 23, 2004 and worked until September 1, 2004, at which point his neck pain was intolerable and Dr. Tucker took Claimant off work on that date due to his neck and neck-related complaints. Dr. Cathey kept claimant off work until December 6, 2004 due to those same complaints.

_____ "Disability" means incapacity because of compensable injury to earn the wages the employee received at the time of the compensable injury. Ark. Code Ann. §11-9-102(8). Temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood, based on certain factors.

Arkansas State Highway & Transp. Dep't v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

_____Claimant, in my opinion, has proven a causal connection between his neck complaints and his original injury of March 8, 2004, and is entitled to the periods of temporary disability described above. Respondents would be entitled to all offsets allowed by Ark. Code Ann. §11-9-411.

For the foregoing reasons, I respectfully dissent from the Majority's decision affirming and adopting the Administrative Law Judge's October 18, 2005 opinion.

SHELBY W. TURNER, Commissioner