

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 MARCH 10, 2006

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 Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Arkansas Court of Appeals has remanded the above-styled matter to the Full Commission. *See, Seagraves v. Delta Consolidated Industries*, CA05-622 (Jan. 4, 2006). The Court of Appeals has remanded to the Full Commission "so that it may make specific findings of fact on the issue of whether appellant aggravated a pre-existing condition." Pursuant to the remand from the Court of Appeals, the Full Commission finds that on June 17, 2002, the claimant sustained a compensable aggravation of a pre-existing condition.

I. HISTORY

Dwight Daniel Seagraves testified that he was thrown from a horse in August 2001. An x-ray of the claimant's right hand and right wrist was taken in August 2001, with the conclusion, "Normal hand. Normal wrist."

The claimant testified:

Q. We're here today over an injury occurring on June 17, 2002 while you were working at Delta Consolidated. If you could, just tell us what happened that day.

A. 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.

The record contains an Incident Investigation Report dated June 17, 2002, indicating, "Associate was tacking a 350260 together when his wrist popped causing him pain to a pre existing injury to the right wrist." The report indicated that the "Root Cause" was, "pre existing injury due to fall from horse." The claimant testified that Kelly Manuel filled out the Investigation Report, and that it was signed by Phillip Jones. Phillip Jones testified that he remembered "very little" about the Incident Investigation Report. Mr. Jones did testify, "I think he reported he

popped his hand lifting a box or something, and that is something we do, we fill out an incident report."

The claimant testified that he was placed on light duty following the accident, but that he was unable to work with his right hand.

Dr. James Marvel provided the following interpretation of an x-ray report on July 16, 2002: "The fracture of the carpal navicular is again noted and unchanged."

Dr. Marvel interpreted an x-ray report on August 16, 2002: "The fracture proximal pole of the navicular bone is still noted. There is no healing at the present time noted." Dr. Marvel also wrote on August 16, 2002, "Dwight's right navicular fracture is not healed yet. In fact, it's still tender. I have placed him back in another short-arm cast with a thumb-spica and he is going to continue using his bone-growth stimulator. He will come in next month to have his cast removed and x-ray of the navicular and check with Dr. Harp for further treatment. He really needs to get back to work. If this is not showing some signs of healing, he may wish to go ahead with an open surgery on this."

Dr. John H. Harp noted on September 17, 2002, "X-rays today show no clear union at the proximal pole of the

scaphoid....I have had a long discussion about his injury and his continued symptoms in spite of casting and a bone growth stimulator. I have recommended referral to Dr. Tom Frasier (sic) in Little Rock concerning this scaphoid fracture and the patient has agreed with my recommendation. He has been off of work for three months and would like to return to function as soon as possible and I think a hand surgeon referral will help him achieve this goal."

Dr. G. Thomas Frazier wrote to Dr. Harp on October 2, 2002:

Mr. Dwight Seagraves is a 29-year-old right-handed male welder who presents today for second opinion in regards to a right wrist injury that he sustained in August 2001 when he fell off of a horse onto the extended right upper extremity. He had x-rays obtained initially that were reportedly normal....

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. Dwight was subsequently evaluated by you and was referred here for further evaluation of his left wrist injury....

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. There is no evidence of avascular necrosis.

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. In the interim Dwight's right wrist was fitted with a thumb spica splint that he should wear full-time removing only for hygiene purposes. I have cautioned him against strong lifting, grasping or repetitive activities or rotational motion. 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. The claimant testified that following surgery, "I can move my wrist a lot more."

On February 3, 2003, Dr. Frazier indicated that the claimant could return to work with a restriction of no lifting over five pounds with the right upper extremity. The claimant testified that he did not return to work for the respondent-employer but instead filed for unemployment.

The claimant's testimony indicated that he began a construction company in approximately April 2003.

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.

A pre-hearing order was filed on August 28, 2003. The claimant contended that he sustained a compensable injury "as the result of a specific event on June 17, 2002; that he is entitled to temporary total disability for the period

beginning June 18, 2002, and continuing through February 3, 2003; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded."

The respondents contended that the claimant did not sustain a compensable injury. The respondents contended that "claimant's need for medical treatment is associated with a pre-existing non-work related problem and that respondents are not liable for any benefits. Alternatively, respondents contend that if compensability is determined, it (sic) is entitled to a credit or off-set for any unemployment or short-term disability that the claimant received following the alleged injury." The respondents also contended that they did not receive notice of an alleged work-related injury until December 15, 2002, so that they were not responsible for benefits before that date.

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

A hearing was held on September 26, 2003. The claimant testified that he was drawing unemployment.

The administrative law judge found, in pertinent part:

3. 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.

4. The claimant is entitled to temporary total disability benefits at the rate of \$324.00 per week beginning June 18, 2002, and continuing through February 3, 2003.

5. Respondents are responsible for all medical and related expenses as the result of claimant's June 17, 2002, injury, and respondents remain responsible for continued, reasonably necessary medical treatment.

6. The claimant's injury was timely reported on June 17, 2002, and respondents affirmative defense concerning lack of notice does not apply in this case.

7. Respondents are entitled to a credit or offset for benefits previously paid by the employer's group health care plan, as well as an offset for short-term disability benefits previously paid pursuant to Ark. Code Ann. §11-9-411(Repl. 2002).

8. Respondents are not entitled to a credit or offset for any unemployment compensation the claimant received after February 3, 2003.

The respondents appealed to the Full Commission. We reversed the opinion of the administrative law judge and

found that the claimant did not prove he sustained a compensable injury. The claimant appealed to the Arkansas Court of Appeals, which has remanded to the Full Commission.

II. ADJUDICATION

A. Compensability

An aggravation is a new injury resulting from an independent incident. *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Ins. Co. v. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body .. 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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). The claimant's

burden of proof shall be a preponderance of the evidence.
Ark. Code Ann. §11-9-102(4)(E)(i).

In the present matter, the Full Commission finds that the claimant sustained a compensable aggravation on June 17, 2002. The claimant testified that his right wrist popped while prying on a toolbox at work on June 17, 2002. The claimant's testimony therefore indicates that there was a specific incident identifiable by time and place of occurrence, and that the specific incident arose out of and in the course of the claimant's employment. The claimant testified that he immediately reported the injury. The record contains evidence corroborating the claimant's testimony, *i.e.*, the Incident Investigation Report dated June 17, 2002. This Investigation Report indicated that the claimant "popped his hand lifting a box...." The claimant's reporting of the injury and the accompanying Incident Investigation Report therefore show that the injury was made known to the employer immediately after it occurred, thus establishing the notice requirements of Ark. Code Ann. §11-9-701.

In July 2002, Dr. Marvel interpreted a post-injury x-ray to show a "fracture of the carpal navicular." Dr.

Marvel initially prescribed conservative treatment. The record therefore shows that the June 17, 2002 accidental injury caused physical harm to the claimant's body, and that the injury required medical services. Dr. Frazier examined the claimant in October 2002 and reported "mild swelling" in the claimant's right wrist. This report of swelling constitutes an objective medical finding. *See, Parker v. Atlantic Research Corp.*, CA03-1362 (Ark. App. 6-30-2004). The Full Commission also notes Dr. Frazier's April 2003 report. Dr. Frazier noted that the claimant had fallen off a horse in August 2001, but that x-rays from August 2001 had been normal. Dr. Frazier opined regarding the claimant's physical condition after the June 17, 2002 accidental injury, to wit: "There was most likely a fibrous union of the fracture that subsequently was disrupted by the injury of 06/18/02 (sic); therefore constituting an aggravation of a pre-existing, though asymptomatic, condition."

Pursuant to the remand of the Court of Appeals in the present matter, the Full Commission finds that on June 17, 2002, the claimant sustained a compensable aggravation of a pre-existing condition. The decision of the administrative law judge is affirmed.

B. Temporary Disability

An employee who has suffered a scheduled injury is to receive temporary total disability compensation during his healing period or until he returns to work. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

In the instant matter, the claimant sustained a compensable scheduled injury pursuant to Ark. Code Ann. §11-9-521. The claimant's injury occurred on June 17, 2002. The claimant testified that he was thereafter unable to perform even light duty with his injured right upper extremity. The claimant subsequently treated with several physicians, and the record indicates that the claimant remained within a healing period for his compensable injury. The claimant ultimately underwent surgery from Dr. Frazier. On February 3, 2003, following surgery, Dr. Frazier released the claimant to light duty. The record in the present matter therefore demonstrates that the claimant reached the end of his healing period no later than February 3, 2003. The Full Commission also notes the claimant's testimony that he had subsequently filed for and had received unemployment compensation. A claimant's receipt of unemployment compensation makes him ineligible to receive temporary total

disability compensation. *Allen Canning Co. v. Woodruff*, CA04-1364 (Ark. App. 9-7-2005). Finally, we note the claimant's testimony that he had begun his own business in April 2003.

The Full Commission affirms the administrative law judge's finding that the claimant proved he was entitled to temporary total disability "beginning June 18, 2002, and continuing through February 3, 2003."

Based on our *de novo* review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission finds that on June 17, 2002, the claimant sustained a compensable aggravation of a pre-existing condition. The Full Commission finds that the claimant sustained each element of compensability pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). The claimant proved that all of the medical treatment of record was reasonably necessary in connection with his compensable aggravation. The claimant proved he was entitled to temporary total disability compensation from June 18, 2002 through February 3, 2003. The Full Commission therefore affirms in its entirety the opinion of the administrative law judge. Pursuant to Ark. Code Ann. § 11-9-411 (Repl. 2002), the

respondent is entitled to a credit for any short-term disability benefits paid to the employee. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2)(Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner