

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502138

DANNY SKAGGS,
EMPLOYEE

CLAIMANT

H & W WIRE CORPORATION,
EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 5, 2006

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

Claimant appears pro se.

Respondents represented by the HONORABLE WILLIAM C. FRYE,
Attorney at Law, Little Rock, Arkansas.

Decision of the administrative law judge: Reversed.

OPINION AND ORDER

The respondent appeals an administrative law judge's opinion filed May 12, 2006. The administrative law judge found, "The claimant has proven by a preponderance of the evidence that he sustained an injury to his right ring finger within the course and scope of his employment. The claimant was temporarily totally disabled for the period beginning December 1, 2004, and continuing through January 10, 2005. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's November 15, 2004, right ring finger injury."

After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. We find that the claimant failed to prove that he sustained an injury to his right ring finger within the course and scope of his employment with the respondent.

I. History

The claimant, age 55, (5/22/51) has worked for the respondent since on or about August 21, 2000. The claimant alleges to have injured his right ring finger while working for the respondent-employer. According to the claimant, he performed job duties as a drawing technician wherein he was required to operate two machines. The claimant maintains that he cut/pricked his right ring finger while performing his job duties.

On December 1, 2004, the claimant sought emergency treatment for his right finger, which was red, swollen and painful. At that time, the claimant reported that his right fourth finger "cracked open" Friday. The claimant also stated that he believed a foreign body may have gotten in his finger, as he specifically reported that he may have gotten a piece of wood in his finger while chopping wood over the weekend. However, x-rays were taken of the

claimant's right ring finger in an attempt to locate a possible foreign body, with the following results:

Indicate no obvious demonstration of an opaque foreign body in soft tissue, although swelling over the middle phalanx of the ring finger on the palmar side was noted.

Dr. S.R. Cullom evaluated the claimant on December 2, 2004. He assessed the claimant as having cellulitis in his right ring finger, for which he prescribed Claforin. The claimant treated with Dr. Cullom on December 3, 4, 6, 8, 13, 15, 17, 22, 27, 2004 due to problems with his finger. On January 3, 2005, Dr. Cullom directed the claimant to return if symptoms worsened or failed to improve. On January 10, 2005, Dr. Cullom released the claimant to return to work on January 11, 2005, with limited use of his right hand for one week. On January 31, 2005, Dr. Cullom released the claimant to work on February 1, 2005, with no restrictions.

On February 14, 2005, Dr. Cullom reported, in pertinent part, the following concerning the claimant's right finger injury:

Mr. Skaggs is a patient of mine. I have been treating him for a cellulitis of the right finger, due to a puncture wound. During this time, we had

to take a piece of aluminum out of his finger.
This should be a work-related incident.

Dr. Cullom's office manager reported on March 31, 2005, that Dr. Cullom had restricted the claimant from working during the entire month of December (2004), due to cellulitis of his finger.

The claimant alleges to have injured his right ring finger while working for the respondent on November 15, 2004. However, the respondent has controverted the claim in its entirety. Therefore, the claimant has brought this claim asserting his rights to benefits and compensation.

A hearing was held in this matter on April 7, 2006. During the hearing, the claimant gave testimony. The claimant testified that he works for the respondent as a drawing technician. The claimant testified, "We take three-eighths rod aluminum and draw it down to small sizes. We have two machines that run." The claimant admitted to being a machine operator, and to having suffered an injury to his right ring finger while working on November 29, 2004. The claimant maintains that he injured his hand when he picked up the wires from the top of the roller that goes in the spools. The claimant testified:

A. And I picked it up in my hand with gloves and I picked it up and it went through the glove. It cut the end of my finger or not the end but a small portion of that but I didn't realize that until, you know, I found out what was in my finger, what Dr. Cullom found.

The claimant maintains that he was off work six weeks as a result of his injury. The claimant testified:

Q. Is there any doubt in your mind that the problem with your right finger developed as a result of the incident that occurred on November 29 of 2004?

A. Well, actually when I thought back, you know, my job is hectic, you know, I've got two machines to run.

Q. Yes, sir.

A. And, I mean you can cut yourself and just go on, you know. But I noticed what happened after I thought about it.

Q. Yes, sir.

On cross-examination, the claimant admitted that the weekend before his injury, he went hunting for a couple of days. Upon being questioned about the possibility of having injured his finger during this hunting trip, the claimant testified:

Q. Did you injure your finger while you were out hunting?

A. No. What I done was push the metal on down in my finger using the cutter. I treated the wound a

couple weeks before, you know, it hurt and, you know, I put Neosporin and a band aid on it and kept it clean and it healed up and when I got to the woods using the cutter to cut down small limbs to park the trailer I felt something going into my finger and I took my glove off and I didn't see a puncture wound or nothing. That night it swelled up.

Q. Well, would this have been before the date that you're saying that you got hurt which was November 29th?

A. Yeah.

Q. And you're saying you're out in the deer woods and you felt something go into your finger?

A. Well, you know, you kind of prick your finger, you know, just like feeling something was going into it and usually it will bleed or something but his didn't bleed. It did swell up, though.

Q. Okay. How long after you felt this prick in you finger while deer hunting did it start swelling up?

A. That night. It was like six hours, maybe.

Q. And when you say it swelled up did it turn color?

A. Yeah.

Q. At that point did you think that your problem was related to -

A. At that point I didn't know.

Q. Didn't know. Well, let me ask you, if at that point the only incident you recall was the prick of your finger in the deer woods?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

The claimant admitted to reporting to work the following week and telling his supervisor, Curtis Clifton, that he had injured his finger in the deer woods. He further admitted that Mr. Williams and Mr. Hollis were present when he told Mr. Clifton that he had hurt his finger in the deer woods. The claimant agreed that on-the-job injuries are supposed to be reported to your supervisor. According to the claimant, despite his finger being swollen, he continued working two days following the incident in the woods.

Although the claimant denied having used a box cutter and a pin to get something out of his finger, he admitted to putting Peroxide on his finger and to using a pin and rubbing it on the top of it (his finger). However, the claimant maintains that the pin had been sterilized and no infection could have resulted from it. The claimant testified:

Q. Would you do it some with the box cutter? On a callous on your finger?

A. No, I don't guess. I don't remember that. Oh yeah, what you're talking about, okay. What it was, the wire rubbed across your finger, wire is hot and it will cause a callous if you hold it very long. And it will cause a callous if you hold it very long. And if the wire, if anything is wrong with the wire, you really don't want to put your hands on it because the little sliver will come off of it. We call it slivers. But that day we was running, you know, kind of fast and I didn't want to stop the machine because it would take that much longer, you know to fix it. And right before I started the machine up I noticed it was off the roller and I picked it up with my glove and hand and put it back on the roller. Then I went around the corner I felt something, you know, but it cut through my glove and cut into my finger. But that's something, you know, it's on top of callous.

Q. Is that something different from what we're talking about here today?

A. No. I don't guess.

Q. Is that something different from what we're talking about here today?

A. No, I don't guess.

Q. Well, is that when you're saying the splinter got into your finger?

A. Yeah, after I thought about it, yeah. I didn't - see, you don't have time really to even think about getting cut.

Q. And that would have been how many days before you went to the emergency room?

A. A couple weeks. I don't remember exactly.

The claimant testified that the piece of aluminum was in his finger about a week and a half before it became infected. He admitted that during that week, he did not say anything to anybody about the problem with his finger.

The claimant agreed that he went to the emergency room on December 1, 2004. The claimant essentially admitted to telling emergency room personnel that his finger had "cracked open" while chopping wood on the weekend and that he thought he had gotten a piece of wood in it.

The claimant admitted that after going to the emergency room, he did not tell Mr. Clifton or anybody else there that he thought this was work-related. The claimant also admitted that at this time, he thought this was related to the deer woods. In addition, the claimant admitted that x-rays taken were normal at that time.

The claimant also admitted to treating with Dr. Cullom. According to the claimant, Dr. Cullom found aluminum in one of the bandages. The claimant testified that he did not believe his finger problem was work-related until sometime in February. The claimant testified:

Q. So, up to that point you didn't think it was work related, did you?

A. I didn't. Until the aluminum come out and I knew what it was then. I mean I've been in the woods a lot of times and everything.

The claimant admitted to not telling Mr. Clifton or anybody else about cutting himself at work. According to the claimant, he was off work due to his finger from December 1, 2004 until his release on January 10, 2005.

Fred Clifton gave testimony during the hearing. Mr. Clifton testified that he works as a supervisor for the respondent. According to Mr. Clifton, the claimant's testimony during the hearing was the first time that he had heard the claimant link his finger injury to something that had happened at work. Mr. Clifton agreed that since the claimant returned to work in January of 2005, he has continuously worked since that time. Mr. Clifton testified that when the claimant returned to work on the Monday after Thanksgiving, that he told him he had broken his finger in the deer woods pulling up a piece of firewood that has twisted on him. Mr. Clifton essentially testified that the claimant showed him his finger and it was pretty swollen. Mr. Clifton agreed that the claimant worked some two days before seeking emergency room treatment for his finger. He also testified that he did not realize the claimant was

claiming his finger injury as a work related injury until he got the letter in February (2005). According to Mr. Clifton, by this time, all of the claimant's treatment was over, and he was back working.

Upon being questioned about him having observed the claimant using a pin and box cutter on his finger, Mr. Clifton testified:

Q. Do you remember seeing him out there as far as using a pin or a box cutter?

A. Yes. It was late Tuesday afternoon. He was sitting at a table and he was sort of picking at it, his finger.

Q. With what?

A. With a pin and I thought, I'm pretty sure he had a little box cutter and would scrape it, it wasn't an actual cutter, it was the blade.

Q. And this would have been after the deer wood incident?

A. Yes.

On redirect examination, the claimant testified:

Q. Tell me, sir. As I understand your response to Mr. Frye's question, on November 29th is when you came back from the deer woods and told your supervisor that there was a problem with your finger?

A. That's when I, just before I went to the emergency room.

Q. Okay. You went to the emergency room on December 1st.

A. Yes.

Q. Is that your testimony, it occurred a week and a half before.

A. Yes, sir.

Q. And this would have been either before Thanksgiving or - it would have been before Thanksgiving?

A. Yes, sir.

Q. So, while you were in the woods you started having symptoms or problems with the finger and it continued to develop until Monday when you told your supervisor that you were having problems with your finger. Is that correct?

A. Yes, sir.

Prior to the hearing, a prehearing conference was held on February 7, 2006, and as a result, a Prehearing Order was entered in this matter on that date. The following stipulations were submitted by the parties, and accepted by the administrative law judge:

- 1). The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2). The existence of the employment relationship at all times pertinent, to include November 29, 2004.
- 3). The claimant is entitled to a weekly compensation rate of \$350.00 for temporary total disability.

The issues to be litigated at the hearing were limited to the following:

- 1). Compensability of the claimant's right ring finger injury.
- 2). Medical benefits and temporary total disability compensation.

The claimant has alleged an injury to his right ring finger while working for the respondent.

The respondent contended that the claimant's injury is not work-related. In particular, the claimant came in and told his employer that he injured his finger while chopping wood while he was deer hunting. In addition, the medical records indicate that the claimant got something in his finger while chopping wood over the weekend. He then returned to regular duty on January 17, 2005.

After a hearing before the Commission, the administrative law judge found, "The claimant has proven by a preponderance of the evidence that he sustained an injury to his right ring finger within the course and scope of his employment. The claimant was temporarily totally disabled for the period beginning December 1, 2004, and continuing through January 10, 2005. The respondent shall pay all

reasonable hospital and medical expenses arising out of the claimant's November 15, 2004, right ring finger injury."

The respondent appeals to the Full Commission.

II. Adjudication

The claimant essentially contends that he sustained a compensable injury to his right ring finger while working for the respondent on November 15, 2004.

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). 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).

The administrative law judge found that the instant claimant has proven by a preponderance of the evidence that he sustained an injury to his right ring finger within the course and scope of his employment on November 15, 2004.

The Full Commission reverses this finding. We find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right ring finger while working for the respondent on or about November 15, 2004.

The determination of the credibility of the witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Cooper v. Hiland Dairy, 69 Ark. App. 200, 11 S.W.3d 5 (2000). In the present matter, the only evidence to support the claimant's claim of a compensable injury on that date is the claimant's own self-serving testimony. We find that the claimant was not a credible witness, as he has given inconsistent statements as to when and how he injured his finger. The claimant initially testified that he sustained his finger injury at work on November 29, 2004, which would have been the Monday after returning from the deer woods the previous weekend. However, upon being further questioned by the Commission on redirect examination, the claimant testified that he injured his finger at work a week and a half to two weeks prior to November 29, 2004, which would have been on or about November 15, 2004. However, the claimant did not

seek medical treatment for his alleged injury until December 1, 2004, which amounts to almost some three weeks after his alleged accident. There is absolutely no mention of a work-related injury in the initial medical records from his emergency room visit or any of the subsequent medical reports. According to the notes from his emergency room visit of December 1, 2004, the claimant gave a history of having "cracked open" his finger in the deer woods on Friday. In addition to this, the claimant told his supervisor, the following Monday (November 29, 2004), he had hurt his finger in the deer woods. Although sometime after this, Dr. Cullom removed a piece of aluminum from the claimant's finger (per a letter dated February 14, 2005), he does not give a precise date for its removal. However, considering that the claimant's finger had been cracked open in the deer woods on Friday, we find it is more probable than not, that the piece of aluminum entered the claimant's finger after he "cracked open" his finger in the deer woods, which probably occurred after his return to work in January of 2005 since x-rays taken on December 1, 2004 did not reveal a foreign body in the soft tissue of his finger. We also note that the claimant himself did not begin to

maintain that this was a work-related injury until sometime in February of 2005, almost some three months after the alleged incident, and after his return to work for the respondent (which occurred in January of 2005).

Therefore, given the claimant's inconsistent dates concerning when he allegedly injured his finger at work, the fact that he told the respondent and reported in medical reports that he had cracked open his finger in the deer woods, and considering that claimant waited until February of 2005 to allege this as a work-related injury, the Full Commission finds that the preponderance of the credible evidence strongly suggests that the claimant injured his finger in the deer woods during the weekend prior to November 29, 2004. Accordingly, the Full Commission finds that the claimant failed to prove by a preponderance of the evidence that his injury resulted in the course and scope of his employment with the respondent.

We recognize that Dr. Cullom has opined that the claimant's finger injury should be a work-related incident. However, 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. Maverick Transp. v.

Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000). In the present matter, we do not attach any weight to this opinion since a review of Dr. Cullom's medical reports do not demonstrate that the claimant was forthcoming with Dr. Cullom about the incident in the woods.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove that he sustained a compensable injury to his right ring finger which arose out of and in the course of his employment with the respondent. As a result, the Full Commission further finds that since the claimant did not meet his burden of proof that he sustained a compensable injury while working for the respondent, he is not entitled to any medical benefits or temporary total disability compensation. Therefore, we hereby reverse the opinion of the administrative law judge. This claim is denied and dismissed in its entirety.

_____ IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner

