

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408458

CHARLES SMITH, EMPLOYEE	CLAIMANT
SUPERIOR INDUSTRIES, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, CARRIER	RESPONDENT

**OPINION FILED FEBRUARY 28, 2006**

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment for his July 22, 2003, compensable injury, as well as proving, by a preponderance of the evidence that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof.

Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer for approximately five years in several different areas. At the time of his injury on July 22, 2003, he was working the pack line. According to the claimant wheels would come down a hanger and he would pull the wheel off, set it in front of him and inspect it. The claimant testified that on the date of the injury he felt his left wrist pop as he was taking a wheel off the hanger. He reported the injury to his supervisor, Lisa, and then to Fred, the plant's safety person at the time. Fred then sent the claimant to the company doctor who diagnosed the claimant with wrist strain and prescribed a splint. The claimant wore the splint for a couple of weeks.

The claimant sought treatment from his family physician, Dr. Byrum, for the flu. While he was there he mentioned to Dr. Byrum that his hands were going numb. Dr. Byrum thought that the claimant might have carpal tunnel syndrome and he referred the claimant to Dr. Cooper. The

claimant did not report this to Lisa or to anyone else. For several weeks the claimant felt numbness, but he did not associate it with his work. The claimant was ultimately referred to Dr. Cooper, an orthopedist who referred the claimant to Dr. Benefield. The claimant underwent nerve conduction studies which indicated that the claimant had bilateral carpal tunnel syndrome. Dr. Benefield recommended an MRI which demonstrated that the claimant had a torn tendon in his left wrist.

A "compensable injury" is defined as an accidental injury causing internal or external physical harm to the body arising out of and in the course of employment. Ark. Code Ann. § 11-9-102(4) (A) (Supp. 2003). Act 796 of 1993 redefined the term "compensable injury" to exclude an injury that was inflicted upon the employee at a time when employment services were not being performed. Olsten Kimberly Quality Care v. Petty, 55 Ark. App. 343, 934 S.W.2d 956 (1997); Ark. Code Ann. § 11-9-102(4) (B) (iii) (Supp.2003). Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002) defines "compensable injury" as "[a]n 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." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However,

injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In our opinion, the claimant has failed to prove by a preponderance of the evidence that there was a causal connection between the ligament tear in his left wrist and the wrist pop that he felt on July 22, 2003. The claimant sought medical treatment at that time and was diagnosed with wrist strain. The claimant went back to work without restrictions until September 23, 2003. It was at that point

that the claimant complained to his family physician about numbness in his hands. However, the claimant was not at the doctor's office to seek medical treatment for that, but for something completely unrelated.

There is simply no evidence relating the claimant's ligament tear to the symptoms the claimant had in November of 2003 when the MRI was performed. When the claimant presented to Dr. Byrum on September 26, 2003, the only discomfort was numbness in his hands. At the time he gave a history of his wrist popping on September 18, 2003, to Dr. Benefield. As the medical evidence bears-out, the claimant had the "popping" in July of 2003. Simply put, we cannot find that there is a causal connection between the claimant's ligament tear and the pop in his wrist in July 2003. Accordingly, we reverse the decision of the Administrative Law Judge and find that the claimant is not entitled to additional medical treatment at the respondent's expense for his ligament tear.

The claimant also asserts that he sustained a work-related gradual onset of carpal tunnel syndrome. As

such, the claimant is not required under the provisions of Act 796 of 1993 to establish that his work duties required rapid repetitive motion in order to establish the compensability of his carpal tunnel syndrome injury. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still prove that he sustained a carpal tunnel syndrome injury arising out of and in the course of employment, that a work-related injury is the major cause of his disability or need for medical treatment, and the compensable injury must be established by objective medical findings.

In our opinion, the claimant cannot prove by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome as a result of his job duties. The claimant's history concerning the numbness and tingling in his hands is completely inconsistent. On July 24, 2003, there were no complaints. On September 26, 2003, when the claimant was evaluated by Dr. Byrum, for an unrelated illness, there was numbness and tingling in his hands. The claimant contends that this had gone on for approximately

two and a half years. However, the claimant never complained when he was at the doctor on July 24, and July 31, 2003, about the pop in his left wrist. When the claimant was evaluated by Dr. Cooper, the claimant told Dr. Cooper that the left hand numbness began approximately one month after the wrist pop and the right hand started after that. When the claimant saw Dr. Benefield approximately one month later, the claimant gave a history of his hands going to sleep at night for over a year. In our opinion, the claimant is not a credible witness. The inconsistencies that he told his doctors bear out in the medical records. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those

portions of the testimony that it deems worthy of belief.

Id.

Therefore, after we consider all of the evidence, we find that the claimant has failed to prove by a preponderance of the evidence that he has bilateral carpal tunnel syndrome. Accordingly, we reverse the decision of the Administrative Law Judge. This claim is hereby 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

\_\_\_\_\_The Majority reverses the Administrative Law Judge's decision finding that the claimant suffered compensable injuries in the form of bilateral carpal tunnel syndrome and a tear to a tendon in his left wrist. The

Majority also reverses the Administrative Law Judge's finding that the claimant is entitled to medical treatment and temporary total disability benefits for those injuries. In my opinion, the evidence indicates that the claimant's injuries were compensable and that he should be entitled to medical treatment and associated benefits for those injuries. Accordingly, I must respectfully dissent.

The Majority essentially finds that the claimant has not shown his injuries were compensable because he allegedly gave inconsistent statements to doctors regarding his injuries. In my opinion, the evidence indicates the claimant provided consistent, credible information regarding his injuries.

The claimant sustained an admittedly compensable injury to his left wrist on July 23, 2003. The claimant testified that the injury occurred when he took a wheel off the line and his wrist popped. The claimant testified that he had a knot on his wrist and that he reported the incident to his supervisor. The respondent directed the claimant to see Max Beasley, a nurse practitioner, for treatment.

A note from Beasley, dated July 24, 2003, indicates that the claimant suffered from pain in his left wrist and that the claimant attributed the pain to an injury sustained while taking wheels on and off a hanger. The note, which appears to have been presented by Beasley, indicates, "He denies any tingling or weakness of the fingers of his left hand." On the same date, X-rays were performed but returned as negative for any fracture. The claimant was diagnosed with a wrist sprain and given a splint. He was instructed to wear the splint at work, to apply moist heat to his wrist two to three times a day, and to lift no more than five pounds with his left hand.

On July 31, 2003, the claimant returned to Beasley. Beasley opined that the claimant's condition had improved and released him to return to work. Beasley further noted that the claimant felt the splint brought stability to his wrist and asked to continue using the splint. Beasley agreed to allow the claimant to continue and use the splint over the course of the next week or two.

The claimant returned to work. A note from Dr. James D. Byrum, dated September 23, 2003, provides the claimant complained of suffering from persistent numbness and tingling in his hands for approximately two and a half years. Dr. Byrum noted that the claimant's job required him to pick up tires and inspect them. Dr. Byrum also referred the claimant to see Dr. Cooper to investigate if the claimant suffered from carpal tunnel syndrome.

On October 13, 2003, Dr. Scott Cooper treated the claimant. The doctor's note from that visit reveals that the claimant reported a "pop" in his left wrist, "2 months ago, while working". The note indicates that the claimant reported suffering from numbness in his left hand approximately one month later and then subsequently developed numbness in his right hand. The note further indicates that the numbness was not constant in nature.

A doctor's note from the same clinic, dated November 3, 2003, indicated that the claimant, "has a greater than one year history of his hands going to sleep at night." The note further indicates that the claimant injured

his wrist on September 18, 2003 while carrying wheels at work.

A note from Dr. Bryan Benafield, Jr., dated November 12, 2003, indicates that the claimant had an, "ulnar sided TFCC tear," and that based on nerve conduction studies, the claimant suffered from carpal tunnel syndrome.

On November 25, 2003, Dr. Benafield performed a left carpal tunnel release and a left wrist arthroscopy with triangular fibrocartilage complex debridement. On January 16, 2004, Dr. Benafield performed right carpal tunnel release on the claimant. On May 11, 2004, Dr. Benafield opined that the claimant should not return to his former employment. He further indicates that the claimant's carpal tunnel was related to his work.

The Majority argues that the claimant has not shown his TFCC tear was causally related to his admittedly compensable injury in July 2003. They opine that the claimant was only initially diagnosed with a strain which allegedly resolved. In my opinion, the Majority's conclusion that the claimant's left wrist injury resolved is not

supported by the record. While the claimant was released to return to work on July 31, 2003, his condition was such that Beasley allowed him to continue and wear his splint. Additionally, I note that Beasley gave the claimant exercises, "to prevent any residual weakness," and told him could follow up on an as-needed basis. In my opinion, these statements indicate that the claimant's condition had not resolved and that his TFCC tear was likely due to the admittedly compensable injury from July 2003.

In finding no causation existed, the Majority also asserts that the claimant gave inaccurate history regarding the date his wrist "popped." Specifically, the Majority indicates that on September 26, 2003 the claimant only reported numbness in his hands and that he indicated his wrist popped on September 18, 2003 when dealing with Dr. Benafield. I note that the claimant consistently related his injury back to the incident in July 2003. In fact, the only discrepancy in the claimant's reporting the injury occurring in July 2003 appears to be seen on Dr. Benafield's note from November 3, 2003. However, even on that note there

are notations indicating that the claimant was loading heavy wheels when he felt a pop in his wrist. Accordingly, in my opinion, any discrepancy was either due to error on the doctor's part or was due to the claimant being a poor historian.

Next, the Majority opines that the claimant has not shown causation in proving compensability for his bilateral carpal tunnel syndrome. They assert that the claimant gave contradictory statements to various doctors regarding the onset of his symptoms. Specifically, they note that the claimant did not complain of wrist numbness or tingling in his hands when treated on July 24 and July 31, 2003 but later complained he had presented with numbness and tingling for multiple years. In my opinion, the fact that the claimant did not complain of numbness or tingling in his hands at the time his wrist popped is of no consequence. The claimant testified his left wrist popped on July 22, 2003. On the first date of treatment, July 24, 2003, the claimant complained of pain over the dorsum of his left wrist. He also denied tingling and weakness in his left hand. However,

the doctor's note from that date appears to me to be dealing only with the claimant's symptoms at that time. In my opinion, it is likely that the claimant was simply not suffering from tingling or weakness in his left hand at that time. In asserting this opinion, I note that the doctor's note dated October 13, 2003 indicates that the claimant suffered from numbness but that it would "come and go".

Additionally, I note that there is nothing in the doctor's note from July 24 or July 31, 2003 that indicates the claimant was ever asked about having a history of having numbness or tingling in **either** hand in the past. As such, I find that if he failed to disclose symptoms regarding his history, specifically in reference to the right hand, it was simply because he was only concerned with the immediate, pressing concern of having pain over his left wrist.

Next the Majority notes that the claimant told Dr. Bynum that he had suffered from numbness and tingling for two and a half years, but that he told Dr. Cooper his numbness started one month after the accident. They further note that the claimant told Dr. Benafield his hands had been

going to sleep for over a year. Based on these discrepancies the Majority concluded that the claimant was not credible.

In my opinion, even given any discrepancies that the claimant made in his statements to the doctors, he still provided consistent information that he attributed the numbness and tingling due to his work for the respondents. Additionally, on May 11, 2004, the claimant's treating physician, Dr. Benafield issued an opinion indicating he believed the claimant's TFCC tear and carpal tunnel syndrome were related to his work. When considering Dr. Benafield's opinion, the rapid and repetitive nature of the claimant's job duties and the lack of any evidence explaining any other reason for his bilateral carpal tunnel syndrome, I find that the claimant has shown that his bilateral carpal tunnel syndrome was directly related to working for the respondents.

For these reasons, I must respectfully dissent.

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SHELBY W. TURNER, Commissioner