

Carpenter - F507684

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F507684

MARCUS F. CARPENTER,
EMPLOYEE CLAIMANT

MICRO PLASTICS, INC.,
EMPLOYER RESPONDENT

TRAVELERS INDEMNITY COMPANY
OF AMERICA, INSURANCE CARRIER RESPONDENT

OPINION FILED MAY 29, 2009

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

Claimant represented by the HONORABLE FREDERICK S.
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE PHILLIP
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

The claimant appeals the September 5, 2009
opinion of an Administrative Law Judge, which finds that
the claimant failed to prove by the preponderance of the
evidence that he sustained a compensable right elbow
injury on June 10, 2005, and that the claimant was not
entitled to reasonable and necessary medical care.
After a de novo review of the record, the Full
Commission reverses the Administrative Law Judge's
decision. The Full Commission finds that the claimant

suffered a compensable work-related specific incident right elbow injury and that he is entitled to reasonable and necessary medical care and, therefore, the decision of the Administrative Law Judge is hereby reversed.

History

_____ The claimant testified that he had worked for Micro Plastics as a machine operator for three and a half years. At his job, the claimant was required to lift containers of plastic parts. The claimant testified that on June 10, 2005, he had just come off break and was preparing the plastic parts for processing at the time of the accident. The claimant stated:

[I] reached down with one hand and picked up like I normally do...[with my] right hand. And I picked [the tub] up, got it about half way up, and it popped and everything went to the floor.... And I guess I worked for about five minutes after that to see if it would get any better, and it started hurting worse.

The claimant testified that he then called his floor supervisor, Barbara Habegger, over to inform her of the injury and she took the claimant to see the supervisor, Mr. Darrell Smith. The claimant testified that he then informed Mr. Smith of his injury and that he was told he could go home. The claimant testified that while he was

going home, his arm began hurting worse and that he went to the emergency room.

The claimant's supervisor, Darrell Smith, testified at the hearing. Mr. Smith testified that on the day of the accident, lead operator Barbara Habeggar came and told him that the claimant's arm was hurting. Mr. Smith testified that he assumed the arm pain was due to claimant's heart problems.

The medical records show that the claimant went to Baxter Regional Medical Center's Emergency Room on June 10, 2005. One of the records from the ER notes pain in his right elbow "for the last 1 to 2 months." The ER report goes on to state the claimant was injured when he lifted "something that was heavy." The radiology report from June 10, 2005, states "mild soft-tissue swelling and there is moderately prominent exostosis." The claimant was then referred to Dr. Todd Oliver of Regional Orthopedic Health Care. Dr. Oliver's June 16, 2005, medical record states that the claimant was diagnosed with a "traumatic case of lateral epicondylitis" and "right acute onset lateral epicondylitis/elbow sprain." Also in the June 16, 2005 medical records, Dr. Oliver noted that the claimant "was simply lifting up a heavy barrel when he felt a sudden sharp pain in the elbow." Dr. Oliver's August 19, 2005

medical note states that the claimant had received an injection, but that it had relieved pain for "only about a day." On September 19, 2005, Dr. Oliver performed right lateral epicondylitis debridement surgery on the claimant.

Adjudication

The Full Commission finds that the preponderance of the evidence shows that the claimant suffered a compensable right elbow injury. For the claimant to establish a compensable injury, the following requirements of Ark. Code Ann. § 11-9-102(4)(A)(i), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment, caused by a specific incident and identifiable by time and place of occurrence and (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability, supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(4)(D). Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

First, the Full Commission finds that the claimant has proved by a preponderance of the evidence that his injury was caused by a specific incident

identifiable by time and place of occurrence, arising out of and in the course of his employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Here, the claimant testified that his right elbow was injured on June 10, 2005, while he lifted a tub full of plastic "runners" with his right arm. The medical records show that the claimant went to the Emergency Room at Baxter Regional Medical Center on June 10, 2005, the day of the accident. The lifting incident of June 10, 2005, is also confirmed by the June 16, 2005 medical records. Dr. Todd Oliver's assessment on June 16, 2005 states that the claimant "seems to have a traumatic case of lateral epicondylitis." The

claimant's medical records contain no mention of any other right elbow injury prior to June 10, 2005. While the initial medical records from that date mention right elbow pain "for the last 1 to 2 months," the claimant never lost time due to this pain, and it clearly does not refer to the injury in question. Based on the claimant's testimony and the medical records, the Full Commission finds that the claimant's injury was caused by a specific incident arising out of and in the course of his employment.

Second, the claimant has shown an injury causing internal or external physical harm to the body which required medical services or resulted in disability, supported by objective findings. Ark. Code Ann. §§ 11-9-102(4)(D) and (16)(A)(i). On June 16, 2005, Dr. Todd Oliver diagnosed the claimant with a "traumatic case of lateral epicondylitis", which shows that the claimant suffered an injury requiring medical services. Objective findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). On June 10, 2005, the radiology report notes the presence of soft tissue swelling, which is not under the voluntary control of the patient and which satisfies the objective findings

requirement of Ark. Code Ann. §§ 11-9-102(4) (D) and (16) (A) (i). The Full Commission finds that the claimant has shown proof by a preponderance of the evidence establishing an injury that caused internal or external physical harm to the body which required medical services, supported by objective findings.

In addition to finding that the claimant has met all of the elements of a compensable specific incident injury, the Full Commission also finds that the claimant is entitled to reasonable and necessary medical treatment, including care provided by Dr. Jennifer Sadler and Dr. Todd Oliver and for the right lateral epicondylitis debridement. The employer shall 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) (Repl. 2002). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable

injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The claimant initially presented to the Baxter Regional Medical Center Emergency Room with right arm pain on June 10, 2005. The claimant was treated by Dr. Jennifer Sadler at the emergency room and then referred to Dr. Todd Oliver of Regional Orthopedic Health Care for further treatment. The claimant was prescribed wrist splints and braces. On August 19, 2005, the claimant received an injection in his elbow, but this only relieved his pain for a single day. Dr. Oliver prescribed physical therapy and anti-inflammatory medications for the claimant. On September 19, 2005, the claimant underwent right lateral epicondylitis debridement. The Full Commission finds that the course of treatment the claimant received related to his right elbow is reasonable and necessary, as it is meant to reduce or alleviate symptoms resulting from his work-related injury.

In conclusion, the Full Commission finds that the claimant has shown, by a preponderance of the

evidence, all of the elements of a compensable specific incident right elbow injury and that the claimant is entitled to the reasonable and necessary medical care, including care provided by Dr. Jennifer Sadler and Dr. Todd Oliver and for the right lateral epicondylitis debridement. Therefore, the Full Commission finds that the Administrative Law Judge's opinion should be, and hereby is, reversed.

For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code. Ann. §11-9-715(b)(2).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner