

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613227

EDWARD JOHNSON, EMPLOYEE	CLAIMANT
SUPERIOR INDUSTRIES, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 17, 2009

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

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

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

This matter is currently before the Full Commission on remand from the Arkansas Court of Appeals. In an opinion delivered June 17, 2009, the Arkansas Court of Appeals reversed and remanded the decision of the Full Commission which had reversed the decision of the Administrative Law Judge. Pursuant to this remand, and after a de novo review of the record, the Full Commission is affirming and adopting the December 5,

2007 opinion of the Administrative Law Judge in its entirety.

In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 28, 2005, the relationship of employee-employer-carrier existed between the parties.
3. Some medical has been paid.
4. The claimant has proven by a preponderance of the evidence that he has sustained compensable injuries to his neck, left shoulder, and both wrists, and elbows.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the December 5, 2007, decision of the Administrative Law Judge, including all

findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on remand from the Arkansas Court of Appeals.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). 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) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority opinion affirming and adopting the opinion of the Administrative Law Judge. Based upon my review of the record, I find the claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of bilateral carpal tunnel syndrome to the wrists and hands. Accordingly, I concur in this finding. However, I find the claimant has failed to prove he sustained injuries to his neck, left shoulder and elbow. Therefore, I must dissent from the majority's finding that the claimant proved he sustained injuries to his neck, left shoulder and elbow.

This matter is currently before the Full Workers' Compensation Commission on remand from the Arkansas Court of Appeals. The Court reversed and remanded this matter to the Commission on the issues of the claimant's alleged hand and wrist injuries and neck, left shoulder and elbow injuries.

In keeping with the Court's remand directive, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of bilateral carpal tunnel syndrome to his

wrists and hands. However, I find that the claimant's condition resolved as of June 5, 2007, when Dr. Kaplan had the claimant undergo additional nerve conduction studies. In his report of June 5, 2007, Dr. Kaplan determined that the nerve conduction studies were normal but suggested possible left-sided cervical radiculopathy. In his report of June 11, 2007, Dr. Moore confirmed that there were no abnormalities in the nerve conduction studies and at that time the plan was to rule out cervical radiculopathy. In his report of July 9, 2007, Dr. Kaplan again noted that he found no evidence of Carpal Tunnel Syndrome, nor any evidence of ulnar neuropathy in the left elbow and related the claimant's problems to soft tissue disturbances rather than any neurological disease.

While the claimant did in fact have positive nerve conduction studies in December of 2006, these studies were normal by June 5, 2007. The evidence demonstrates that the respondent's plant closed down in August of 2006. The claimant admitted that the last day he worked for the respondent employer was on August 4, 2006. Presently the claimant is taking classes at Northwest Arkansas Community College and doing foster care out of his home for Alcom. The claimant testified that in addition to his classes 6 hours a week, he

provides foster care for a gentleman who stays with him 24 hours a day, 7 days a week. He also provides foster care to another gentleman for 34 hours a week. Clearly by June of 2007 the claimant did not have any measurable and objective findings of Carpal Tunnel Syndrome on either wrist. Accordingly, I find that the claimant sustained bilateral Carpal Tunnel Syndrome which had resolved on or about June 5, 2007.

The medical evidence demonstrates that an MRI of the cervical spine administered on July 18, 2007, reflected a straightening of the cervical lordotic curvature and small posterior osteophytes. In his report of August 15, 2007, Dr. Kaplan provided a summary of his evaluation of the claimant and determined that the cervical MRI reflected degenerative changes and suggested conservative treatment.

The evidence demonstrates that when the claimant originally filed this claim there was no mention of a cervical spine problem. The suggestion of a cervical spine injury did not arise until Dr. Kaplan was trying to determine the origin of the claimant's numbness in his hands, especially since the nerve conduction studies he performed were normal. The MRI reflected a small right-sided osteophyte without effacement of the cord or significant stenosis at C3-4.

There is a straightening of the spine between C4 and C6 but no effacement of the cervical cord. These are very clearly degenerative findings.

Nowhere in the medical records is there any findings of any type of left shoulder abnormality. Simply put, there are not objective findings. A compensable injury must be established by medical evidence supported by objective findings, and medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. See, Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Id. Therefore, in order to prove a compensable injury, a claimant must prove, among other things, a causal relationship between his employment and the injury. McMillan v. U.S. Motors 59 Ark. App. 85, 953 S.W.2d 907 (1997). Objective medical evidence is necessary to establish the existence and extent of an injury, but not essential to establish the causal relationship between the injury and a work-related accident. Horticare Landscape Mgt. V. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002); Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001). Moreover, objective medical evidence is not essential to

establish the causal relationship between the injury where objective medical evidence established the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. See, Wal-Mart Stores, Inc. v. VanWagner, supra; Wal-Mart v. Leach, supra. In Liaromatis v. Baxter Co. Regional Hosp., 95 Ark. App. 296, 236 S.W.3d. 524 (2006), the Court disagreed with the claimant's argument that the medical evidence must merely establish the existence of the injury. The question, stated the Court, is not whether there are new objective findings, but whether there is a new compensable injury. Id. It is the injury for which appellant seeks benefits that must be proved with objective medical findings. Id.

Objective findings are defined at Ark. Code Ann. § 11-9-102(16)(A)(i) as those findings which cannot come under the voluntary control of the patient. The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996). Objective

medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the extent and existence of the injury, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. McDonald, supra.

The first complaint of left shoulder problems arose on March 15, 2007, almost seven months after the claimant quit working for the respondent employer. At that time, the claimant was working with a keyboard, which he did not use while working for the respondent employer. In my opinion, there is nothing in the record to establish that the claimant sustained a compensable injury to his left shoulder.

As for whether or not the claimant sustained injuries to both elbows, at no time has there been any testing or any suggestion of a right elbow injury. Dr. Benafield believed there were bilateral scapholunate ligament insufficiencies. In his report of December 4, 2006, Dr. Moore determined the claimant had old scapholunate ligament disruption with both wrists. The only treatment the claimant has received is for Carpal Tunnel Syndrome, clearly unrelated to the claimant's alleged elbow problems.

Therefore, after conducting a de novo review of the record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his left elbow, left shoulder and neck while working for the respondent employer.

Accordingly, for all the reasons set forth herein, I respectfully concur in part and dissent in part from the majority opinion.

KAREN H. MCKINNEY, Commissioner