

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F901100

| | |
|---|------------------|
| TIMOTHY MCKINNEY, EMPLOYEE | CLAIMANT |
| SANITATION SOLUTIONS, INC., EMPLOYER | RESPONDENT NO. 1 |
| COMMERCE & INDUSTRY INSURANCE CO., INSURANCE CARRIER | RESPONDENT NO. 1 |
| SANITATION SOLUTIONS, UNINSURED | RESPONDENT NO. 2 |
| SCOTT'S P&E D/B/A/ S&B SANITATION, UNINSURED | RESPONDENT NO. 3 |

OPINION FILED SEPTEMBER 15, 2010

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

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

Respondent No. 1 represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE GUNNER DELAY, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 3 represented by the HONORABLE KEVIN BARHAM, Attorney at Law, Paris, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondent No. 1 appeals a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury in the form of carpal tunnel syndrome in late August or early September of 2008. Specifically, it was

found that the claimant's carpal tunnel was made aware to the claimant after July 31, 2008. The Administrative Law Judge found that respondent No. 1 was liable for benefits. After conducting a de novo review of the record, it is our opinion that the claimant became aware of his symptoms on July 10, 2008. Therefore, the claimant's benefits should be paid for by the respondent employer, Sanitation Solutions, owned by Dillon Lee, an uninsured employer.

It is apparent that the claimant suffers from carpal tunnel syndrome. The question is whether or not the claimant's employer was uninsured or insured at the time that the claimant's symptoms were aware to him. The case of Cottage Café v. Patricia Collette, 94 Ark. App. 72, 226 S.W.3d 27 (2006) and Pina v. Wal-Mart Stores, Incorporated, 91 Ark. App. 77, 208 S.W.3d, 236 (2005) are controlling in this case. In the Cottage case, the Court of Appeals stated that the Commission was in error when it adopted a "manifestation" approach to determining which insurance carrier was liable for benefits. The Court in Cottage reversed and remanded the case to the Commission to determine the respective liabilities of the insured's based on a finding "as to when the claimant became aware of the

injury pursuant to the standard enunciated in Pena v. Wal Mart Stores, Inc.,..."

In this case, it is apparent that the claimant became aware of his symptoms at least as early as July 10, 2008. The claimant had been experiencing swelling, and he experienced pain, numbness, and tingling around July 10, 2008. The following testimony from the claimant's deposition is specifically enlightening regarding when the claimant's symptoms occurred prior the alleged specific incident on August 25, 2008.

Q Before that pop that you felt -- First, let me back up. What day has all this taken place, that you're grabbing the door handle and yanking on it?

A The first time was in the last part of July and the second time was in August 25th.

Q Which time did the pop occur?

A The big pop or the starting pop?

Q Okay.

A My hands hurt for about a month and a half.

Q The one you just told me about; when did that happen?

A The last one, August 25th.

Q Prior to that, how long had you had

popping or any sensation in your left hand?

A I don't understand the question.

Q Before the big pop you just told me about, how long had you been noticing any type of symptoms in your left hand?

A About a month. My hands were swelling up, getting stiff and sore.

Q Had you reported that to anyone at Sanitation?

A Yes.

Q Who?

A Scott Lee.

Q Did you report it to him the first day you noticed swelling in your hands?

A No. Sometimes you don't see him for three or four days.

Q Did you fill out any type of accident report?

A No, I give a verbal report that my hands were hurting.

Q When you told Scott, what was said back to you? What did he say to you?

A He basically ignored me.

Q Do you remember where you were at the first time you noticed any symptoms in your left hand?

A Not exactly working. I was working throwing trash and it was hurting every time I picked up a bag.

Q And you said that you had the problems for about a month.

A My hands were swelling up, hanging on to the steering wheel, they'd start going to sleep, tingling.

Q And before those symptoms of swelling and tingling, had you had any other soreness or any odd sensation in that left hand?

A No.

Q And you mentioned something about there being other pops besides the big one you told me about a minute ago. Was there another specific incident, or was it something that would just pop up while you were working?

A There was twice climbing in and out of the vehicle that the door -- seatbelt got hung in the door, and the first time it happened it was hard to open, but not near as hard as the second time it happened.

Q The second one is the time you told me about a minute ago --

A Yeah.

Q -- where --

A It's like I was shot.

Q When did the first one happen?

A I don't know; maybe a couple weeks

before that.

Q You said that Joe had been having problems ever since you started there?

A Yes, sir.

Q And were you having to carry his half of the load as far as loading stuff, the whole time you worked?

A Only sometimes.

Q Before July 10th?

A Right around July 10th is about when it started. I'm trying to be exact. I don't have a journal on every day.

Q I understand.

A It could have been a little earlier; it could have been a little bit after, but that's the landmark point that I can remember.

Q His court date?

A His court date and whenever he and I were having lots of problems.

Q That's fair enough. What about the right hand; explain that to me what you think caused the right hand problems.

A It was swelling up about the same time because you use both hands equally. Some of them bags of trash weigh upwards of 80 to 100 pounds, some of them not so much. So you got to grab a bunch of them with two hands, and I just wasn't used to throwing, you know, four to eight

tons of trash a day.

It is clear, in light of the holding of the Court in the Cottage case, that the claimant became aware of his symptoms at least by July 10, 2008 when the respondent employer was uninsured. Accordingly, we find that the decision of the Administrative Law Judge finding liability with respondent No. 1 should be reversed, and find that respondent No. 2 is liable for benefits associated with the claimant's carpal tunnel syndrome.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner