

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H205003**

CHARLIE J. CLARK, Employee

CLAIMANT

TYSON POULTRY INC., Self-Insured Employer

RESPONDENT

OPINION FILED **APRIL 27, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by J. MATTHEW MAULDIN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 16, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 17, 2022, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on or about April 3, 2022.
3. The claimant's compensation rate is \$683.00 for temporary total disability, based on an average weekly wage of \$1024.00.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant sustained a compensable injury on or about April 3, 2022.
2. If compensable, whether claimant is entitled to temporary total disability benefits from September 2, 2022, through October 23, 2022, medical benefits, and an attorney's fee.

3. Respondents raise lack of notice before July 6, 2022.

The claimant contends that “he is entitled to treatment for his left wrist, and to temporary total disability benefits from his date last worked to a date yet to be determined. Claimant reserves all other issues.”

The respondents contend that “claimant cannot prove an accidental injury, caused by a specific incident and identifiable by time and place of occurrence, which caused internal or external physical harm to the body, arising out of and in the course of employment, which required medical services or resulted in disability or death, and established by medical evidence supported by objective findings. Alternatively, regarding the notice defense, claimant first notified respondents of an alleged left wrist injury on July 6, 2022; accordingly, respondents contend that they are not liable for benefits prior to July 6, 2022 when they received notice of the alleged injury. Respondents contend that claimant is not entitled to medical benefits. Respondents contend that claimant is not entitled to temporary total disability benefits. Respondents respectfully reserve the right to supplement this prehearing questionnaire at a later date.”

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 17, 2022 and contained in a pre-hearing order filed that same date, as well as the announcements prior to the hearing, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left wrist on or about April 3, 2022.

FACTUAL BACKGROUND

The pre-hearing order in this matter asserted that the claimant was injured on or about April 3, 2022. The testimony of the claimant makes that date impossible, as March 21, 2022 was the first doctor's visit for his alleged injury. While somewhat confusing, the summary of the testimony will reflect what was said at the hearing; claimant did admit that he wasn't positive of the date of his alleged injury, but was clear that it was before his first examination of his left wrist injury.

HEARING TESTIMONY

Claimant testified that he was employed in the maintenance department at Tyson's in March and April 2022. He said on or about April 3, 2022, he "weaved a belt and turned my wrist, you know, while I was pulling on the wire. It just felt like a heat flash in my wrist." When asked to describe the injury in more depth claimant said "it's like a stainless-steel belt, and you got to weave it together, you know, it's continuous around the machine, and you have to weave that together, and each side you have to pull. It's hard to do. It's a technique. It's more finesse than it is strength, but when you are first doing it, it's pretty aggravating when you are pulling it hard, but that's the gist of it." Claimant said the injury was to his left wrist and did not believe it was serious at the time, but it started hurting and claimant wanted to go to the doctor. At the time he determined he wanted to seek medical attention—which was weeks after the alleged injury—claimant stated that he told his supervisor, Eddie Coleman, that he had hurt his wrist. He first went to Marathon Clinic, and the records were dated March 21, 2022. Claimant testified that he was sent to Berryville to have x-rays. He did not remember what he told the first doctor he saw. As claimant continued to have pain in the wrist, he eventually

filed a formal report with the nurse at Tyson after he had seen Dr. Lewis. (The records show the first visit with Dr. Lewis was on June 21, 2022, and claimant's report to the nurse was July 6, 2022.)

Claimant said that after he filed the report with the nurse, he had surgery on his left wrist and was off work for a period of time, but workers' compensation did not pay for his treatment or time off work. Claimant acknowledged that he had a shoulder injury at Tyson that predated his alleged wrist injury which was accepted by respondent. When asked how his wrist was doing as of the date of the hearing, claimant stated that it was still sore, and that he had restricted movements. However, he was still doing physical therapy on it, and he reported that it was getting better each time that he went.

On cross-examination, claimant admitted that he reported his shoulder injury on June 2, 2021, which was the day that it occurred. Claimant confirmed that his wrist injury was not a gradual occurrence but something he related to a specific moment in time. Claimant denied any problems with his left wrist prior to the alleged injury in April 2022. Claimant conceded that it was Tyson's policy to report all work-related injuries immediately, but that he did not report his alleged left wrist injury until he told his supervisor Eddie Coleman. Claimant was unclear when he made the report to Mr. Coleman, stating that it could have been within a week or more than a week. When pressed for when the report to Mr. Coleman was made, claimant said that it was when he saw Dr. Bei He, which was on March 21, 2022. When it was pointed out to him that the visit with Dr. He was earlier than he had previously testified, claimant admitted he was unsure of the date. Claimant said he reported the injury to Tyson on July 6, 2022, because he was going to be off work in a cast, and he wanted to file with UNUM to be paid while he was off work.

Claimant stated he moved from the maintenance department to the refrigeration department shortly after the alleged injury. Once claimant moved to the refrigeration department, Eddie Coleman was no longer his supervisor.

Claimant was asked about the injury as described in Dr. He's records, and said he did not tell Dr. He that the issues with his wrist were not work related. Claimant also disputed the entry in Dr. Brady Luttrell's records that indicated that his left wrist issues were not due to an injury. Claimant was then asked about the records from Dr. Natasha Lewis, and specifically this entry on June 21, 2022 "he denies any particular injuries that initiated his symptom onset." Claimant said "I told them all I hurt it at work, but I don't understand why they are not..." He did not know that the short-term disability form that Dr. Lewis completed for him described his left wrist condition as neither an injury related nor work related.

Claimant was shown the team member's statement of injury or illness and agreed that he completed the report on July 6, 2022. Claimant agreed that he had answered "none" on the section that asked about the date the injury was reported to his supervisor. He said that he had not formally reported it. He disputed what Elaine Snyder, LPN, recorded on her narrative of her encounter with claimant on July 6, 2022: "reports that he is unsure how it happened but feels that on 4/3/22 he hurt it here."

On redirect-examination, claimant said that while he was working in refrigeration in July, he put on the team member statement of injury or illness that his supervisor was Eddie Coleman because he was referring to when the injury happened. Claimant clarified that he put "none" on that form where it asked the day it was reported to the supervisor, that he meant "formally I hadn't filled out no paperwork or nothing." Claimant was clear that the day he went to a clinic called "Bright Blue", which is also known as Marathon Health, was the same day that he told Eddie Coleman about his injury.

On re-cross examination, claimant was definite that he was claiming a specific instance injury as opposed to a gradual onset injury. Claimant disputed the entry on Dr. He's March 21, 2022, record that said he had progressive problems in his left wrist for at least three months.

REVIEW OF THE EXHIBITS

Because it is the cause of the injury, rather than the existence of it, that is in question in this case, an exhaustive look at the medical records is unnecessary. The parties duplicated several records in their submissions, and this review will be done in chronological order.

Claimant first saw Dr. Bei He on March 21, 2022. Dr. He's note begins "claimant denies injury at work, report pain gradually increased over time, report formation of nodules on the dorsal aspect of the wrist. Patient reports that it has been progressive in the past three months, worse in the past two weeks. Patient works maintenance and would need to use tools that require repetitive motion with his hands. Patient reports his workload has increased. Patient denies previous injury to his left wrist and also reports the decline of his general health." Claimant's left wrist was x-rayed during that visit and the impression was "no acute fracture with mild to moderate degenerative disease and borderline widened scapholunate interval." While there was no chart entry submitted for a visit with Dr. He on April 5, 2022, a limited sonography of the left wrist was performed on that date, listing Dr. He as the ordering provider. The impression of that test was "questionable 2.1-centimeter focus on transverse imaging in the area of interest is not confirmed on longitudinal imaging. No definite cyst identified. If of significant clinic concern, consider MRI without and with contrast."

Dr. He's records show a visit with claimant on April 15, 2022, in which he terms the problem with claimant's left wrist as a ganglion cyst: "chronic, unchanged. Likely the cause of his left wrist pain, told him this likely from nature of his work and repeated trauma".

While claimant did not remember seeing both Dr. He and Dr. Luttrell the same day, the records show that he saw Dr. He around 10:00 a.m. and Dr. Luttrell at 2:06 p.m. on April 15, 2022. Claimant saw Dr. Luttrell for more than just his wrist pain, as the chief complaint for this visit was

hypertension. As noted above, Dr. Luttrell in the patient's active problem list, the only thing listed that relates to the present workers' compensation claim is "synovial cyst of the left wrist." Regarding that synovial cyst, Dr. Luttrell determined that claimant needed to be referred to an orthopedic surgeon for further evaluation.

Claimant next saw Dr. Natasha Lewis, an orthopedic surgeon, on June 21, 2022. She determined that the left wrist x-rays from March 2022 demonstrated a stage III scapholunate advanced collapse of the left wrist; that surgery was performed on September 2, 2022. In that visit, Dr. Lewis asked claimant about the cause of the injury and recorded "He denies any particular injuries that initiated his symptom onset." On October 18, 2022, claimant was released to return to work on one-handed duty only.

In the record from Mercy Physical Therapy on October 19, 2022, physical therapist Jodie Hill recorded "patient reports he initially injured left wrist at work while pulling on the belt. I felt a bit of a burn, thought I had maybe sprained it." Claimant had a course of physical therapy treatment which began in October 2022 and continued through December 30, 2022, but nothing in this physical therapy reports are germane to the issues of this case.

ADJUDICATION

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450,

384 S.W. 3d 630. I believe the medical records provide objective findings that claimant had a problem with his wrist that required medical services to remedy. Claimant was unsure of the precise date that the alleged injury occurred, but that is not fatal to a claim, *Edens v. Superior Marble & Glass*, 346 Ark. 487, 492, 58 S.W.3d 369, 373 (2001) “Although the inability of the claimant to identify the exact date of an injury might be considered by the Commission in weighing the credibility of the evidence, the statute does not require that the exact date be identified in order for the injury to be compensable.” He testified that he wasn’t sure of the date he was hurt, but that it was before he first saw Dr. He on March 21, 2022. I’m unclear why he didn’t review his medical records to refresh his memory before he testified at his deposition or at the hearing, but I don’t find his lack of clarity as to the precise date an impediment to his claim.

However, claimant failed to meet his burden of proof that his wrist issues arose from the course of his employment. I find similarities between this matter and *Luster v. Ben E. Keith Co.*, 2012 Ark. App. 197, which included these two paragraphs:

“In this case, the objective medical evidence indicated a three-month gap between the date of the accident and the report of the injury, calling into question whether Mr. Luster's back injury was indeed a result of the work-related accident. Although the Commission emphasized the conflicting testimony regarding the exact date of the incident, it was undisputed that Mr. Luster fell from a ladder while working sometime in March 2010. Mr. Luster's inability to identify a certain date does not bar him from receiving compensation; however, it was within the Commission's province to consider this confusion about the date as a matter of credibility. The Commission clearly weighed the conflicting evidence against Mr. Luster, finding his entire testimony to be suspect.

Because the medical records make no mention of the ladder incident until the back injury was discovered in June 2010, Mr. Luster's testimony was the only evidence linking the injury to the March 2010 fall. Given the span of three months, reasonable persons might disagree as to the actual cause of the injury. Our standard of review requires that we defer to the Commission on such questions of fact and credibility. The Commission noted that the following medical evidence contradicted Mr. Luster's testimony: medical records of

March 10, 2010, indicated that he related his back pain to slipping and falling on ice the previous February; and the medical records had no mention of any incident involving the ladder until June 14, 2010, when he sought emergency treatment for a kidney stone and was told that he had additional problems. The Commission further noted that, at the time of the fall, Mr. Luster told Ms. Grant and Mr. Shutes that he was fine. Based on this evidence, the decision of the Commission displays a substantial basis for the denial of Mr. Luster's claim. Therefore, we must affirm.”

Much like Mr. Luster’s claim, there was not only a delay in claimant reporting in this matter,¹ but there are also contradictory statements in the medical records. For me to find claimant’s testimony was credible, I’d have to find:

1. Dr. He misreported what claimant said on March 21, 2022, when he denied the wrist issue was work related.
2. Dr. Luttrell erred when the question about if claimant had suffered an “injury” was marked “no.”
3. Dr. Lewis misheard claimant when she wrote that he denied any specific incident caused his injury.
4. Elanie Snyder, the LPN that took the report of injury from him on July 6, 2022 didn’t accurately record what he said when she wrote: “reports that he is unsure how it happened but feels that on 4/3/22 he hurt it here.”
5. Claimant asked Dr. Lewis to assist him in filing for UNUM benefits in September 2022 and she was mistaken that his condition was due to an illness as opposed to an injury.

I find it is more likely that these records are accurate. Mr. Clark’s testimony was insufficient

¹ To be clear, I am not convinced that claimant reported the injury to Eddie Coleman as early as he said he did. Claimant filled out a Statement of Injury/Illness on July 6, 2022, and wrote “none” in the box that asked: “Date Injury Reported To Supervisor.” While Mr. Coleman’s testimony might have supported claimant’s testimony on that point, the absence of it did not decide this matter.

to explain why the records before he made the formal report are uniformly contrary to his testimony about the time and nature of his injury, why the initial report of injury said he wasn't sure how he hurt his wrist, and why the UNUM form filed after surgery did not classify his left wrist condition as an injury. As such, I find claimant failed to prove his claim by a preponderance of the evidence.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left wrist on or about April 3, 2022. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE