

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G903484**

TERRY GARRETT, EMPLOYEE

CLAIMANT

**SCHOOL AND OFFICE PRODUCTS
OF ARKANSAS, INC., EMPLOYER**

RESPONDENT

ACCIDENT FUND INS. CO., CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 16, 2021

Hearing before Administrative Law Judge James D. Kennedy on the 11th day of May 2021, in Little Rock, Pulaski County, Arkansas.

The claimant is represented by Daniel Webb, Attorney at Law, Little Rock, Arkansas.

The respondents are represented by Guy Walton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 11th day of May, 2021, to determine the issues of compensability, specifically of injuries to the right hand and wrist, medical, and attorney's fees, with all other issues reserved. The respondents contested the matter in its entirety.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim, and that an employer-employee relationship existed on May 16, 2019, when the claimant contended that he sustained injuries to the right hand and wrist. The witnesses consisted of Terry Garrett, the claimant, and Paul Dean Blakely and Scott Green, both employees of School and Office Products of Arkansas, Inc. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on May 16, 2019.
3. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that the injury to his right hand and wrist was accidental and a work-related compensable injury.
4. Consequently, all remaining issues are moot.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted one (1) exhibit that consisted of thirty-six (36) pages. A question was raised by the respondents due to the fact that many of the documents had stamped on the front "UNOFFICIAL DOCUMENTS." After a discussion about the stamped documents, they were admitted into evidence. The respondents submitted an exhibit, which consisted of twenty-three (23) pages. The claimant objected to the admissibility of the first two (2) pages of the exhibit. The admissibility of the first two (2) pages was taken under advisement at the time of the hearing. During the hearing, the deposition of Terry Garrett was also admitted into the record.

The claimant testified he was forty-seven (47) years old at the time of the hearing, single, had graduated high school, and had taken some remedial classes for one (1) semester in college. (Tr. 12.) He had worked for the respondents for nine (9) to ten (10) months, usually working with his supervisor, James Blakely. His job consisted of repairing

bleachers, sometimes replacing motors and wheels, and installing backboards for basketball goals. (Tr. 12) The day of the incident, the claimant was working in Southhaven, Mississippi, at the Landers Center. He testified he was putting in “P” rail sockets and stabilizers on the first tier of the remote-controlled bleachers, while working with his supervisor, James Blakely. (Tr. 13) On the day of the injury, the claimant had worked all day, and Mr. Blakely told him to wrap things up about 4:00. The claimant testified he started placing all of their tools in the job box. The supervisor told the claimant to get the welder out of the trailer because they might have to fabricate some stabilizers for the job later that night. The claimant stated he told the supervisor to just stay there and he would go to the utility trailer and grab the welder. He then went to the utility trailer, which was a rectangular box about twelve (12) feet long, and dropped the ramp down on the trailer to enter. The welder was in front of the trailer by the tongue. He was grabbing for the welder when Mr. Blakely started pushing an item from the back of the trailer, pinning the claimant’s hand between a table saw and a dolly. After this occurred, the claimant attempted to make it to the truck and his right hand gave out. He was asked if he needed to go to the hospital and he declined, stating, “No [...] I’ll just go to the hotel room and just put an ice pack on it for now and we’ll see what it’s like in the morning.” (Tr. 16 – 18) That night, the claimant stated, “I was in severe pain, just swelling, burning, hurting, I couldn’t think straight, I was traumatized.” On the morning of the next day, the claimant was unable to zip and button his pants and was taken to the emergency room at Baptist Memorial Hospital in Desoto, Mississippi. He was x-rayed, given hydrocodone and a doctor’s note not to return to work, and told to see his primary care physician immediately upon his return to Little Rock. (Tr. 19)

The claimant testified his hand was smashed and pinned between the dolly and a portable table saw, when his supervisor grabbed some tool boxes from the back of the truck and rolled them into the trailer. The claimant admitted the emergency room records provided he had done this himself, smashing his hand into the bleacher. (Tr. 20) He stated the reason this was in the emergency room record was,

At the time I was in trauma and I was scared. I was a long ways from home, and still had a job to get done. I care about the people I work for. I went in the ER and the guy I work for, he was going through some things at home and I didn't want him flashing up, you know. He's married, bread winner of his family, he has an autistic child and he had an aunt moving in with him, and I just, I filed it on my insurance and I didn't want any flack to come back on him from my insurance company [...] I didn't want James to get in any trouble for crushing my hand. (Tr. 21)

The claimant testified he worked until 3:00 o'clock the day following the incident, had severe pain, and the pain medication "didn't take anything out." (Tr. 23) He confirmed he had not talked to Mr. Green but had seen Mr. Blakely talking to Mr. Green when he came out of the ER that morning. The claimant testified he did tell Mr. Green he was going to see his doctor the following Monday. (Tr. 24) His doctor then sent him to see Doctor Schock at Ortho Arkansas, who directed him to Doctor Norton, apparently a hand surgeon. (Tr. 25) Doctor Norton took MRIs, x-rays, and a CT scan, provided injections, and performed surgery on his right trigger finger. His finger was sticking. The claimant stated he was still seeing Doctor Norton. He also admitted he had seen Doctor Roman for brief period. He could not currently swing a hammer due to the vibration and could not use an impact hammer, a drill, or a weed eater. Any vibration could set off his RSD. The claimant testified he was unable to work since the date of May 16, 2019, and had not tendered a resignation letter. (Tr. 26, 27) He further stated he had not received any form of payment since he had been off of work and was still having throbbing pain and stiffness.

(Tr. 28) The claimant also stated the picture of the right hand was taken in Doctor Norton's office and was a fair and accurate representation of his right hand. (Tr. 29)

Under cross examination, the claimant admitted he had attended Pulaski Tech for a semester, had studied auto mechanics and auto paint and body at Metro Vo-Tech, worked construction, worked at Home Depot selling windows and doors for about a year, worked through a group called Tradesman International primarily for CDI and Baldwin and Shell, and started at School and Office Products in July 2018, where he was hired by Scott Green. (Tr. 31) The claimant was questioned about a previous injury, which consisted of a work-related injury at Dollar General in 2000, where he fell off of a ladder and tore his meniscus and cartilage. He ended up having surgery and filing a workers' compensation claim. (Tr. 32)

The claimant was also questioned about his injury at UAMS, where he filed another workers' compensation claim. He admitted to the claim but did not remember what his injury was. He also admitted he was aware that when injured at work, he was to report the injury to a supervisor and tell them what happened. The claimant was also questioned about his non-work-related injuries, which consisted of a broken neck and a left shoulder injury which affected his clavicle. The claimant admitted that his broken neck occurred when his neighbor shot him as he was leaving his house with his stepdad. The clavicle injury was from a bike injury. The claimant also admitted he had said in his deposition that, "I resisted arrest, and they beat me down." The claimant also admitted he had chronic arthritis prior to working for School and Office Products. (Tr. 33 – 35) The claimant also admitted he had developed arthritis in his hand and wrist and the only part of his body hurt on May 16, 2019, was his right hand and wrist. He also admitted his

surgery in February 2020 was for his left hand and did not have anything to do with the event on May 16, 2019. His finger was also sticking on his left hand, and he had the same surgery on the left hand as on his right. (Tr. 36)

Under additional cross examination, the claimant testified the ER report was incorrect where it provided he hit the bleachers with his hand. (Tr. 49) He admitted telling them that because he did not want to get James Blakley in trouble. “Yes sir, I did not tell the truth, no.” The claimant also agreed that if Mr. Green and Mr. Paul Blakely, the project manager, testify that the ER record tells the story about the claimant hitting his hand, they are telling the story as in the ER records, but he did tell them exactly what really happened. “I told Scott Green more than once what happened, that James Blakely crushed my hand and wrist on the job in Southhaven, Mississippi.” The claimant denied reporting to Paul Blakely and to Scott Green the story in the ER records. He also denied talking to them prior to going to the ER. (Tr. 50 – 51)

The claimant also admitted he saw his personal physician, Doctor Charles Carter, on May 20, 2019. The following questioning then occurred:

Q. Okay. Do you recall what you told him on that visit?

A. Yeah, I told him that Mr. James Blakely crushed my hand between - -

Q. Well, let’s look at page 19 of the exhibit, because it says, under Subjective: Mr. Garrett is here today ... after hours injury clinic for consideration of ... right upper extremity. He says he was pulling on something heavy about 4 days ago and felt a ‘pop’ in his wrist.

A. Uh – huh.

Q. You didn’t say anything about James Blakely crushing your hand, did you?

A. Yeah, I did.

Q. Well, that’s not what it says, does it?

A. Well, that's not what it says, but maybe you need to read deeper, I don't know. (Tr. 52)

Under further cross examination, the claimant admitted he did not tell the truth to the hospital in Mississippi. "I didn't tell them. I claimed it on my insurance, and I did not tell the truth." The claimant denied that Mr. Green told him he was not sure that workers' compensation was going to accept his claim because he was mad and hit his hand on some bleachers. The claimant also denied changing his story in order that the workers' compensation claim would not be denied. (Tr. 53, 54) The claimant stated the reason he did not tell the truth was because he was scared, he was a long way from home, he cared about the people that he worked for, and due to his pain and trauma. (Tr. 57)

On redirect, the claimant admitted when he went to OrthoArkansas on May 23, the report provided he caught his hand between a dolly and a table saw. (Tr. 64)

The respondents called Paul Dean Blakley, who testified he was employed by School and Office Products of Arkansas and worked as the project manager. (Tr. 66) He admitted the claimant worked on one of his crews and was working a job on May 16, 2019, in Southaven, Mississippi. He admitted the claimant sent him a text with a picture of his hand, but there was no context as to what happened to the hand. (Tr. 67) Later, the claimant denied being bitten by a spider when asked, but stated he had hit an outrigger. Mr. Paul Blakely testified he told the claimant to talk to Scott Green, and he followed up with Mr. Green the next morning. (Tr. 68)

Under cross examination, Mr. Paul Blakely admitted he was not with the claimant on May 16, 2019, in Mississippi, and had no personal knowledge as to what happened, only what the claimant told him. (Tr. 69) He further testified James Blakley was his cousin, who no longer worked for the respondent, and had no idea where he was. (Tr. 70)

The respondents then called James Scott Green to testify. He testified he was the president of the company and was the person who hired the claimant. He was aware the claimant was working a job in Southaven, Mississippi. (Tr. 72) He testified he received a message from the claimant about 5:30 the morning after the injury. The message was broken and stated that the claimant could not zip his pants and was having some issues. Mr. Green testified he called the claimant about 7:25, left a voicemail, and later talked to him right before he went into the ER. The claimant told him, “he got pissed off and he punched the bleacher, which is the same thing that he told Paul.” This was the same thing that he told the ER. He went on to state the claimant did not tell him anything about a trailer. (Tr. 73, 74) He admitted that, if he remembered correctly, he did not think that self-harm would be something covered by workers’ compensation. (Tr. 75) He also testified that, several days after the event, he received a message from the claimant stating that he had misremembered what had happened. (Tr. 76)

Claimant’s Exhibit One consisted of thirty-six (36) pages of medical records. The claimant presented to Holland Family Practice and Doctor Carter on May 20 and 21, 2019, with the report providing on May 20 that the claimant presented with a very swollen hand and fingers due to a right arm injury. The report provided the claimant shoved hard on a metal stake, felt a pop, and later lifted a heavy welder and felt it pop again. The pain increased overnight. One day later, on May 21, 2019, the report provided the claimant’s injury was due to a co-worker, who slammed a dolly into his hand just before he was lifting a welder and there was a pop. (Cl. Ex. 1, P. 1 – 4) The report dated May 29, 2019, provided the claimant would undergo surgery for fractures of the carpal bones on June 14. (Cl. Ex 1, P. 5, 6) Doctor Carter provided a work release on May 20, 2019, for an

unknown period of time. (Cl. Ex. 1, P. 9) The claimant also presented to Doctor Schock of OrthoArkansas on May 20, 2019, who three (3) days later issued a “Return to Work Order” that provided the claimant may not return to work until further notice. (Cl. Ex. 1, P. 10, 11)

Doctor Norton’s office notes dated May 20, 2019, provided that the claimant presented with pain in the right wrist and hand which resulted from pulling something heavy about four (4) days ago when he felt a pop in his right wrist. The x-rays provided for no obvious fracture and for no malalignment or suggestion of instability pattern. (Cl. Ex. 1, P. 12) The claimant returned to Doctor Norton on May 23, 2019, with the report providing for a left hand problem. This report provided that the claimant caught his right hand between a dolly and a table saw and went on to provide under assessment that there was a crush injury to the right hand with pain and swelling possibly due to an occult fracture, ligament injury, or complex pan syndrome. (Cl. Ex. 1, P. 13 – 16)

The claimant returned to Doctor Norton and OrthoArkansas on June 14, 2019. The report provided an MRI showed significant edema within the carpal bones, as well as the base of the metacarpals, with continued pain and swelling in the hand. The report also provided the injury occurred at work and was believed to be a direct result of a work injury. (Cl. Ex. 1, P. 17 – 21) The actual MRI report of June 14, 2019, provided for severe bone marrow edema of the carpal bones. (Cl. Ex. 1, P. 22) A report from St. Vincent’s Nuclear Medicine department provided there was a relatively marked increase in blood flow, blood pool activity, and delayed uptake diffusely involving the right carpal bones following a crush injury. (Cl. Ex. 1, P. 23, 24)

On November 20, 2019, the claimant presented to Doctor Brent Sprinkle for a nerve conduction study, which provided for a focal median neuropathy of both the left and right wrist. (Cl. Ex. 1, P. 25, 26) The claimant returned to Doctor Norton on March 17, 2020, who issued a statement that provided the claimant had reached maximum medical improvement (MMI) on January 7, 2020, and was unable to work from May 16, 2019, until the date of MMI. (Cl. Ex. 1, P. 27, 28) The claimant also submitted a report from the Baptist Medical Center Emergency Department in Mississippi, which provided that the claimant presented on May 17, 2019, and could return to work on May 20, 2019. (Cl. Ex. 1, P. 29) The claimant's final OrthoArkansas note dated July 3, 2019, provided that the claimant was suffering from complex regional pain syndrome of the right upper extremity and would continue treatment with Doctor Roman. (Cl. Ex. 1, P. 30 – 32) The claimant also submitted a photo of a clearly swollen hand and an x-ray. (Cl. Ex. 1, P. 33, 34)

The respondents also submitted medical records from the ER visit in Mississippi, with the date of service being May 17, 2019. The report provided the claimant presented to the ER with complaints of dorsum of the right hand pain with onset after an object crushed up against his hand at work yesterday. (Resp. Ex. 1, P. 4) The report on the same date also provided that the claimant complained of right wrist pain after hitting his hand against bleachers at 1500 5/16/19. "I was hitting the bleachers with a hammer, but then I got pissed off and hit it with my hand." (Resp. Ex. 1, P. 7) This action was also mentioned in the triage notes. (Resp. Ex. 1, P. 8)

The deposition of the claimant, which contained ninety-five (95) pages plus exhibits, was also admitted into the record by the respondents. During the deposition, the claimant admitted Doctor Norton performed surgery on his right hand due to his trigger

finger (middle) that kept getting stuck. The claimant also admitted to surgery on his left hand. The claimant related the surgery of the right hand back to the event in Mississippi, with the surgery occurring on December 26, 2019. The surgery on the left hand occurred in February 2020, and his fingers on the left hand started doing the same thing as the fingers on his right hand, with his thumb and middle finger sticking. The claimant agreed the left hand problem was not related to the work event in Mississippi. (Resp. Ex. 2, P. 42 – 45) The claimant also admitted he was aware that if he suffered a work-related injury he was to report it to his supervisor, James Blakely. (Resp. Ex. 2, P. 48) The claimant drew two (2) very rough drafts of the trailer that were made a part of the deposition. The claimant also admitted in his deposition that he did not tell the truth about the accident when he went to the ER in Mississippi, stating he did not want to get his supervisor, James Blakely, in trouble. (Resp. Ex. 2, P. 70) The claimant was also questioned about the statement about him getting “pissed off” and hitting his hand. In response he stated, “I was in such pain, I didn’t know what I had told the ER.” (Resp. Ex. 2, P. 77)

DISCUSSION AND ADJUDICATION OF ISSUES

The initial issue to be determined is the admissibility into evidence of the first two (2) pages of Respondents’ Exhibit One. The claimant objected to the admissibility of the records from Baptist Health which were dated May 10, 2018, on the basis of relevancy and the contention that they were more prejudicial than probative, based upon Rule 402 of the Arkansas Rules of Evidence. The admissibility of the two (2) pages was taken under advisement at the time of the hearing. The law is clear that the Commission has broad discretion with reference to the admission of evidence and its decision will not be reversed absent a showing of abuse of discretion. Brown v. Alabama Elec. Co., 60 Ark.

App. 138, 959 S.W.2d 753 (1998). The Commission is given a great deal of latitude in evidentiary matters; specifically, Ark. Code Ann. § 11-9-705(a) states the Commission “shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure.” Additionally, the Commission is directed to “conduct the hearing in a manner as to best ascertain the rights of the parties.” Based upon the above, and the contents of the information in the first two (2) pages of the respondents’ exhibit, the pages in question are determined to be more prejudicial than probative and found to not be admissible into evidence.

In regard to the primary issue of compensability of the injury to the right hand and wrist, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for his injuries under the Arkansas Workers’ Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh’s, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Here, it is clear the claimant had issues with his right hand and wrist. The ultimate question is how and why. At the time of the hearing, the claimant contended his right hand was smashed and pinned between a dolly and a portable table saw when his immediate supervisor, James Blakely, pushed items into the trailer from the back while they were working in Mississippi on May 16, 2019. It is undisputed that the claimant was in the trailer to retrieve a welder. The morning after his claim of injury, he testified he was

unable to zip his pants and was taken to an emergency room in Mississippi, in or near the city where they were working. The emergency room report provided that the claimant complained of his right wrist after hitting his hand against the bleachers at 1500 5/16/19. Additionally, the report provided the statement by the claimant, “I was hitting the bleachers with a hammer, but then I got pissed off and hit it with my hand.” The testimony of Paul Dean Blakely, a project manager for the respondents, testified the claimant denied being bitten on his right hand by a spider, which is apparently not uncommon in this line of work, but stated he had hit an out-rigger. James Scott Green, the president of the respondent-employer and the person who initially hired the claimant and who talked to the claimant the day after the alleged incident, testified the claimant told him that, “he got pissed off and he punched the bleacher, which is the same thing that he told Paul.” Mr. Green also testified the claimant did not mention the trailer and if he remembered correctly, he told the claimant self-harm was not covered by workers’ compensation.

The medical report by Doctor Carter dated May 20, 2019, provided that the claimant had a very swollen hand and the claimant shoved hard on a metal stake, felt a pop, and later lifted a heavy welder and felt it pop again. The report the following day provided the claimant’s injury occurred when a co-worker slammed a dolly into his hand just before he was lifting a welder and there was a pop.

The claimant testified he did not tell the truth about the incident when he initially presented to the emergency room in Mississippi due to the fact he did not want to get his supervisor, James Blakely, in trouble. The claimant admitted during his testimony that the emergency room records provided he had done this to himself. He contended the reason for the emergency room record was, “At the time I was in trauma and I was scared.

I was a long ways from home, and still had a job to get done. I care about the people I work for.” The claimant admitted he had previous workers’ compensation claims and was aware of the importance of telling his supervisors about an accident. The claimant had surgery on his right wrist and later his left wrist due to similar issues. He also admitted the issue with the left wrist was unrelated to the workers’ compensation claim.

Ark. Code Ann. § 11-9-102(4)(A)(i) provides that a compensable injury means an accidental injury causing internal or external physical harm to the body. The words “accidental injury” have been held to mean something happening without the design of, and being unforeseen and unexpected by, the person to whom the injury happens. Hagger v. Wortz Biscuit Co., 210 Ark. 318, 196 S.W.2d 1 (1946) The burden of proving a specific-incident compensable injury is the employee’s and must be proven by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i).

In the present matter, we have a claimant who initially provided on his visit to the emergency room in Mississippi that he was injured due to becoming angry and intentionally hitting the bleachers. This testimony corresponds to the believable testimony of his supervisors and what they say they were told. Intentionally hitting a solid object with your fist is not accidental. Later, when the claimant became aware of the fact that an intentional act might not be covered by workers’ compensation, the story about the cause of the injury changed. No credence is placed in the claimant’s testimony that he was far from home, scared when he went to the emergency room, and that he wanted to protect his co-worker. Although there is no doubt the claimant would have been concerned about his right hand and wrist, he admitted that he had previously experienced work-related injuries, also suffered a gunshot wound, and consequently should have been

capable of providing a truthful and consistent story about the occurrence of his injury in an emergency room. Additionally, the claimant admitted to having surgery on both hands due to similar issues and confirmed that the surgery on the left hand was not caused by the work-related incident.

It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985). The claimant has the burden of proving he suffered an accidental work-related injury, and his story changed significantly from his initial emergency room visit. Consequently, there is no alternative but to find that the claimant failed to satisfy the required burden of proof to show he suffered an accidental injury to his right hand and wrist that was work-related.

After reviewing all of the testimony and evidence that is before the Commission, and weighing the evidence impartially without giving the benefit of the doubt to either party, there is no alternative but to find the following:

1. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that the injury to his right hand and wrist were accidental and a work-related compensable injury.
2. Consequently, all other issues are moot.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge