

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H207576**

WILLIE HINTON, Employee	CLAIMANT
B H I ENERGY INC., Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES INC., Carrier	RESPONDENT

OPINION FILED **SEPTEMBER 29, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Russellville, Pope County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 1, 2023, the above captioned claim came on for hearing at Russellville, Arkansas. A pre-hearing conference was conducted on June 1, 2023 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 pre-hearing conference 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 October 11, 2022.

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

1. Whether claimant sustained a compensable injury on or about October 11, 2022.
2. Compensation rate.
3. Whether claimant is entitled to temporary total disability benefits.
4. Whether claimant is entitled to medical benefits.

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All other issues are reserved by the parties.

The claimant contends that “Worked night shift 10/10/22 6pm-6am. Was off loading/staging camera/communication equipment was near end of shift. Felt a pull-on right hand. Completed shift. Told coworker (James Patrick) what happened, left work. Woke 1 ½ hours later with swollen arm/wrist/fingers. Called Bob Dow and reported accident at that time.”

The respondents contend that “Claimant does not have a compensable injury. All tests revealed no new objective medical findings. Strains are not compensable.”

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 June 1, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. The stipulations set forth above, as well as the one announced at the hearing, are reasonable, and are hereby accepted.
3. Claimant has met his burden of proof by a preponderance of evidence that he is entitled to temporary total disability benefits beginning October 11, 2022, and continuing through February 22, 2023.
4. Claimant has met his burden of proof by a preponderance of the evidence that he is entitled to reasonable and necessary medical benefits for his right upper extremity injury.

#### FACTUAL BACKGROUND

During the hearing, the parties stipulated that claimant was earning wages sufficient to entitle

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him to the maximum rate for temporary total disability benefits. That issue was removed from those recited in the prehearing order.

### HEARING TESTIMONY

Claimant was the only witness at the hearing. He stated that on October 10, 2022,<sup>1</sup> he was working for respondent B H I Energy at Arkansas Nuclear One power station in Russellville, moving various equipment, hoses, and things of that nature. He had felt a pop in his hand and notified his co-worker, James Patrick, of the injury. He finished the shift and went to the hotel to sleep before his next shift. He awoke with his fingers, hand, and arm swollen and hurting, at which time he contacted his direct supervisor, Robert Dow. Because he is a veteran, he went to the VA Hospital in Little Rock, Arkansas where he was x-rayed but no broken bones were found. Claimant took off that night and the following night. When he went back to work, his condition was not any better, so he went back to the hospital for more treatment. Around this time, there was a small break in the job, and he was allowed to go home. He went to the VA again and sought treatment. He was contacted by his employer and sent to a doctor that had been provided to him by the workers' compensation carrier. After he had gone two times, he was informed that the claim had been denied. Claimant then went to his primary care doctor and was treated for his injury. There was an MRI performed, and after the results of the MRI, he received a cortisone shot.

Claimant explained that he was off work from October 11, 2022, until February 22, 2023, because of the injury that he sustained, for a total of eighteen weeks. He requested that he be reimbursed for his time off work and for any medical expenses that he submitted.

On cross-examination, claimant was asked if he knew how he injured his right wrist and he

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<sup>1</sup> As noted in claimant's contentions, his shift began on October 10, 2022, but his injury occurred in the morning hours of October 11, 2022.

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responded that he did so while he was lifting camera equipment. He was asked about Respondent's Exhibit #1, which was a handwritten letter that included, "I contacted Bob Dow and informed him I had injured myself at work but did not know the exact [sic] it happen during the shift." (Claimant apparently omitted the word "time" in this sentence.) When asked to explain when he was injured and how it happened, claimant said that he was lifting camera equipment and denied that it happened gradually; he knew it was toward the end of his shift when he hurt his wrist. Claimant was shown a letter that he had written several days after the injury, and which was admitted as Respondent's Exhibit #1. He testified that he knew all along when he was injured. Claimant was asked about the Employer's First Report of Injury but had not seen it and did not know where the information came from that was included in that document. Claimant agreed that he had not noticed that his hand was swollen until after he left work and got up the next morning. When asked how he associated the swelling with packing some equipment the night before, claimant said he had informed James Patrick that he had hurt it that night. He hurt himself at the end of the shift, then went to the hotel to rest up a bit and woke up to see the swelling. Claimant denied that he hurt himself anywhere other than at work.

Claimant was asked about the third impression on the MRI that said, "There is degeneration and a possible tear." Asked if he had been treated for a tear, claimant responded that he had been wearing a splint. He said initially he was given pills, and the injury wasn't treated as a tear. As of the date of the hearing, claimant had not had surgery. Claimant did not know why the initial medical report said there was no trauma because the swelling shown in the pictures indicates that there was trauma. Claimant said there weren't many minutes left in his shift and he finished it, and called in the next night when he went to the hospital. He was scheduled to be off the following night, which gave him two days to recover and return to work on the third night. He was put on light duty status on that day. He did not go back to work at Nuclear One after one day of light duty. He testified he did not work

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again until February 26, 2023, when he returned to work for respondent BHI. When claimant is not working for BHI, he can work for other companies but did not because he was injured, nor did he draw unemployment.

When asked what was wrong with his right hand as of the date of the hearing, he said it is not as strong as it was before October 11, 2022, and remains painful. Claimant denied that he had injured his wrist before that injury.

#### REVIEW OF THE EXHIBITS

Claimant was first seen in the emergency room at the Central Arkansas Veterans Healthcare System in Little Rock on October 11, 2022. The diagnosis was that he had soft tissue swelling in his right wrist. He was excused from work for one day.

Consistent with his testimony, claimant was next seen on October 19, 2022, by a physician's assistant (whose signature is illegible) at an occupational medicine facility called I & O Medical Centers. The diagnosis from that visit was that claimant had a right-hand strain and a right flexor sprain. His physical restrictions were no lifting or pulling more than five pounds, no overhead work with his right hand, no climbing, no operation of hazardous machinery or power tools, no commercial driving, no working heights, and no tight gripping with his right hand. He returned to I & O Medical Center on October 21, 2022. The attending physician or assistant (signature again is illegible) made a referral to physical therapy and continued to restrict claimant's activities to no lifting or pulling more than ten pounds, no operation of hazardous machinery or power tools, no commercial driving, no working heights. He was scheduled to return to this provider on November 1, 2022, but according to claimant's testimony the workers' compensation carrier refused to continue to pay for his treatment. As such, he was next seen at the Department of Veterans Affairs in Hampton, Virginia by Dr. John Wing. Claimant first saw Dr. Wing on October 26, 2022, and Dr. Wing ordered an MRI and initiated therapy

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for his wrist. Dr. Wing also recorded “For the foreseeable future he is not able to work. It is unclear when he will be released to return to work.”

An MRI was performed on November 13, 2022, with the following impressions:

1. MRI of right wrist demonstrates moderate diffuse synovitis.
2. Diffuse mild tenosynovitis of the flexor tendons of the carpal tunnel, and mild tenosynovitis of the fourth extensor compartment.
3. Degeneration and possible tear of the volar band of the scapholunate ligament.
4. Degeneration and likely full-thickness perforation of the central disc of the TFCC.

Claimant next saw Dr. Wing on January 12, 2023. Dr. Wing recorded the following:

“The patient was discovered to have marked synovitis of his right wrist along with a possible tear of one of the ligaments. Patient was seen by a specialist and is currently undergoing a rest cure. Patient continues to be disabled from the wrist.”

The final entry from Dr. Wing is dated June 28, 2023. It appears that Dr. Wing saw claimant on February 22, 2023, because his note of June 28, 2023, stated that claimant had been released to return to work on February 22, 2023. Claimant’s treatment was rest along with a cortisone shot. Dr. Wing also recorded “Patient continues to have right hand pain and stiffness treatment is pending orthopedic reevaluation.”

#### NON-MEDICAL EXHIBITS

Claimant submitted two photographs from October 11, 2022, of his right wrist positioned alongside his left arm; the swelling in the right arm is evident. The remaining non-medical records that claimant submitted included a bill for services performed at Hampton Roads Ortho Spine and Sports Medicine in Newport News, Virginia for the MRI on November 13, 2022, and services rendered at that facility from a subsequent visit on December 13, 2022. It appears the total charges were \$2,063.00 but there were adjustments and refunds in the amount of \$1,498.62 and an insurance balance of \$290.00. Payments in the amount of \$274.38 were made, but the source of the payment is not clear;

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there are references to “commercial payment”. Claimant also submitted pay records to establish his compensation rate.

Respondents submitted only the handwritten letter referred to in claimant’s testimony.

#### ADJUDICATION

To prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. § 11-9-102(16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). A claimant's testimony is never viewed as uncontroverted, but the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993).

Having had the benefit of seeing claimant testify, I found him to be credible in all aspects of his testimony. As such, I believe he suffered an injury to his right wrist in the course of his employment, and that it was a specific incident that caused it. Contrary to respondent’s contention, the medical records and the photographs of his swollen wrist provided objective evidence that claimant had internal harm to his body. Therefore, claimant met his burden of proof by a preponderance of the evidence on all four elements that he suffered a compensable injury on October 11, 2022.

Claimant requested 18 weeks of temporary total disability, from October 11, 2022, until February 22, 2023. A claimant who suffers a scheduled injury is entitled to temporary total disability

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benefits until they reach the end of their healing period or until they return to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Dr. Wing's records support the contention that claimant had not reached the end of his healing period until February 22, 2023, and I am satisfied that it began on October 11, 2022.

Regarding past medical expenses, there was no bill from the VA for services it rendered to claimant for this injury. The I&O Medical Clinic bills were paid by respondents. The only bill submitted by claimant is the one from Hampton Road Ortho Spine and Sports Med. Claimant is entitled to be reimbursed for any payments he made toward treatment of his compensable injury, and for any future treatment as may be reasonable and necessary.<sup>2</sup>

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$471.50.

**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE

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<sup>2</sup> Neither the VA nor any private health insurance company was a party to this action. Nothing about this order is to be understood to absolve respondents from any responsibility it may have to make a reimbursement to either; I simply don't have the necessary information before me, and as such, that issue is among those that are reserved.