

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H302298

NICHOLAS LONG, Employee	CLAIMANT
SIMMONS PREPARED FOODS, Employer	RESPONDENT
SEDWICK CLAIMS MANAGEMENT, Insurance Carrier/TPA	RESPONDENT

OPINION FILED JANUARY 23, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant unrepresented and appearing PRO SE.

Respondents represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On October 26, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 2, 2023, and a Pre-hearing Order was filed on October 3, 2023. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on June 19, 2022.
3. The claimant sustained a compensable injury in the form of a laceration above his left eye on June 19, 2022.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to compensation for facial disfigurement that resulted from a compensable laceration above his left eye under A.C.A. §11-9-524.

The claimant's contentions are as follows:

“On 6/19/2022 I was sent inside the oven to remove chicken. I complained about the frozen floor and approximately two hours after cleaning out freezer I slipped on ice and had a facial laceration by my left eye. I have a 1.5-inch scar.”

The respondents' contentions are as follows:

“Respondents contend that all appropriate benefits have been or will be paid.”

The claimant in this matter is a 28-year-old male who sustained a compensable laceration above his left eye on June 19, 2022, while employed by the respondent. The claimant testified that he was working to remove chickens from a freezer that was not functioning when he slipped on some ice. The claimant's face hit a freezer rack causing a compensable laceration to his face. The respondent's on-site facility nurse took the claimant to an emergency department in Van Buren, Arkansas, and he was treated by Dr. Lee Morgan Johnson.

A medical record from that visit dated June 19, 2022, was introduced into evidence and is comprised of four pages found at Claimant's Exhibit 1. Dr. Johnson reported the claimant's compensable laceration in the left temple area to be a 1cm laceration. A photograph of the claimant's laceration prior to it being treated is found at Respondent's Exhibit 1, page 1. The claimant's laceration was not stitched by Dr. Johnson; however, it was closed using glue.

The claimant has asked the Commission to determine whether he is entitled to compensation for facial disfigurement that resulted from his June 19, 2022, compensable laceration above his left eye under A.C.A. §11-9-524. A.C.A. §11-9-524 states:

(a) The Workers' Compensation Commission shall award compensation for serious and permanent facial or head disfigurement in a sum not to exceed three thousand five hundred dollars (\$3,500).

(b) No award for disfigurement shall be entered until twelve (12) months after the injury.

The claimant's compensable laceration occurred on June 19, 2022. The hearing in this matter was conducted on October 26, 2023. More than 12 months have passed as A.C.A. §11-9-524(b) requires. Section (a) of §11-9-524 states in part, "The Workers' Compensation Commission shall award compensation for serious and permanent facial or head disfigurement...." The claimant testified that the scar from his compensable laceration has remained the same since its existence. I had the opportunity to view the claimant's scar at the hearing and the close-up photograph of the claimant's scar taken just prior to the hearing in this matter, found at Joint Exhibit 1, page 1. I do find that the claimant's 1cm scar is permanent as required by A.C.A. §11-9-524(a).

The claimant must also prove that the facial or head disfigurement, here, a scar, is "serious." I have reviewed case law and was unable to find suitable precedent regarding A.C.A. §11-9-524's term of "serious" facial or head disfigurement. Black's Law Dictionary defines serious as:

SERIOUS. Important; weighty; momentous, grave, great, as in the phrases "serious bodily harm," "serious personal injury," etc. Ward v. State, 70 Tex.Cr.R. 393, 159 S.W. 272, 282; McKee v. State, 93 Tex.Cr.R. 217, 246 S.W. 1035, 1036.

In my personal viewing of the claimant's scar at the hearing in this matter, I found it difficult to discern the presence of the scar, even when I understood its location. The close-up photograph of the claimant's scar, found at Joint Exhibit 1, does make the scar much easier to

discern. However, I do not believe that the scar above the claimant’s left eye rises to the level of “serious” even though it is permanent; as such, the claimant is unable to prove his entitlement for compensation for facial or head disfigurement under A.C.A. §11-9-524.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness 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 the pre-hearing conference conducted on October 2, 2023, and contained in a Pre-hearing Order filed October 3, 2023, are hereby accepted as fact.

2. The claimant has failed prove his entitlement to compensation for facial disfigurement that resulted from his compensable laceration above his left eye under A.C.A. §11-9-524.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**