

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F910654

FRANCES WISE, Employee	CLAIMANT
VILLAGE INN, Employer	RESPONDENT #1
FARMERS INSURANCE EXCHANGE, Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JANUARY 31, 2022

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

Claimant represented by EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent #1 represented by JASON A. LEE, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On November 4, 2021, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 8, 2021, and a Pre-hearing Order was filed on that same date. 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. On July 31, 2009 the relationship of employee-employer-carrier existed between the claimant and respondent #1.
3. The claimant sustained a compensable injury to her back on July 31, 2009.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$157.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits.

5. All prior opinions are final and res judicata.

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

1. Whether claimant sustained a compensable trigger finger injury as the result of a compensable consequence of her compensable July 31, 2009 injury.

2. Whether claimant is entitled to medical treatment for her alleged trigger finger injury.

3. Statute of limitations regarding the trigger finger injury as raised by Respondent #1.

Claimant's contentions are:

“The claimant contends prolonged use of a cane as a result of altered gait constitutes a compensable consequence of her job related injury; and, that therefore, the respondent should be held liable for medical treatment regarding her trigger finger.”

Respondent #1's contentions are as follows:

“Respondent #1 contends that on April 15, 2020, claimant presented to Dr. Jeff Johnson regarding her complaint of trigger finger in her right hand. According to Dr. Johnson's report from her visit, claimant advised him that a year after her work injury in July 2009 she began having triggering in her right ring finger. Respondent #1 contends that claimant did not request medical treatment for her trigger finger until February 2020. Respondent #1 further contends that claimant's claim for medical benefits related to her alleged trigger finger injury is barred by the Statute of Limitations. Respondent #1 further contends that claimant's alleged trigger finger injury is not a compensable consequence of her back injury in July 2009.”

Respondent #2 defers to the outcome of litigation and waives its right to attend the hearing.

The claimant in this matter is a 63-year-old female who sustained a compensable low back injury on July 31, 2009, when she fell at work. The claimant was asked in direct examination to describe her injury as follows:

Q Ms. Wise, will you just briefly explain how you got hurt back in July of 2009?

A I went - - the bathroom was flooding, and I was working the kitchen. And they asked me to go in, and there was a little old lady in there with a walker; they asked me to go in there to keep her from falling. And when I went in, I saw how bad it was, so I went back out to get a mop. And when I came back in, I went from the wet carpet onto the wet floor and fell from there.

Q So you fell?

A Yes.

Q There's a report dated July 31, 2009 that indicates that when you fell you actually landed on your right wrist.

A I - - I don't - -

Q You just don't remember?

A I don't know the details but . . .

The central issue before the Commission at this time is whether the claimant sustained a compensable trigger finger injury as a compensable consequence of her compensable back injury of July 31, 2009.

The claimant has had extensive treatment for her back injury including surgical intervention, physical therapy, epidural steroid injections, spinal cord stimulator, and chronic pain management. Upon review of her medical records introduced into evidence the first mention of difficulties with her right hand/finger is in a report from Dr. Adam Wallace at The Spine and Pain Center dated June 4, 2019. That report in part states: "The main issue is the right hand ring finger trigger finger. She reports this started with excess use of her cane while having an antalgic gait from her work related injury. She may benefit from seeing a hand specialist for further evaluation. Her pain is 3-4/10."

On April 15, 2020, the claimant was seen by Dr. Jeffrey Johnson at Ozark Orthopaedics regarding her right hand/finger complaints. Following are portions of that medical record:

HPI

Ms. Wise is a 61-year-old right-hand-dominant female seen today as a new patient at the request of Worker's Comp. for an injury to the right hand. She tells me that she fell in 2009 injuring her back and sometime around 2010 or as she describes it "a year later" she started having triggering her right ring finger. She is not had any treatment for this. She is followed by Dr. Adam Wallace, a pain management doctor in Tulsa, Oklahoma, and she was referred by Worker's Comp. for me to evaluate her hand. She is not a diabetic. She is no longer working.

She tells me that she was on crutches and a cane for years in fact she still sometimes uses a cane in her right hand.

Physical Exam

Patient is a 61-year-old female.

Examination of the right hand reveals a rather non-physiologic exam. She does note tenderness along the entire right ring finger. However she is most focally tender over the right ring finger A1 pulley. No PIP joint contractures are noted but she is hesitant to bring her hand flat on the table. She does have calluses on her hands incidentally. She is not actively triggering today but she can touch the tip of her ring finger to her palm.

She denies numbness or tingling. Sensation: Light touch sensation is intact radial, ulnar, and median distributions without paresthesias. Motor is intact AIN, PIN, intrinsics.

X-ray: 3 views of the right hand reveal no significant joint space narrowing although she does have early distal interphalangeal joint arthritis long ring and small. No acute fractures are noted of the ring finger.

Assessment/Plan

1. Pain in finger of right hand

M79.644:Pain in right finger(s)

- FINGERS

2. Trigger finger of right hand – 1. Today we discussed the natural history of her trigger finger and options for treatment. The only connection that I could draw between Worker's Comp.

in her hand is that if she has to use a cane because of a workers' comp injury that could contribute to it. She denies triggering for a year after her fall however.

The claimant's right ring finger was given a steroid injection during her visit with Dr. Johnson and she was instructed to return for a recheck in six weeks. The respondent introduced a letter written by Dr. Johnson to the respondent's attorney regarding his opinion of the cause of the claimant's right hand/finger difficulties. The body of that letter follows:

With respect to your letter dated 6/20/20, and the question as to whether or not this is related to her right hand work injury 7/31/2009, my opinion within a reasonable degree of medical certainty is as follows.

I saw Ms. Wise for trigger finger injections in early 2020. She tells me that her initial issues with her hand began a year after her injury at work. She does use a cane in her right hand. She does not tell me how frequently she uses that, however, that could contribute to exacerbation of a trigger finger but can [sic] use has not been related to causation. I see no other relationship that would directly correlate can [sic] use to her trigger finger.

Therefore, I see no direct link between her injury July 31, 2009 which did not involve her hand, her report that issues with her hand or arm began a year after this index injury, and for what I am treating her for.

Dr. Johnson's report and opinion regarding the claimant's right hand/finger difficulties clearly indicate that the claimant's right hand/finger problems began about a year after her July 2009 compensable back injury. The claimant was asked during direct examination about Dr. Johnson's report as follows:

Q Okay. Now, you saw Dr. Johnson, Jeff Johnson, in 2020 and his report says that you told him that you started having problems with your trigger finger a year after the fall. Were you having problems with the trigger finger a year after your fall?

A Not trigger finger, no. I was having numbness and pain in my hands and arms but not trigger finger.

Q So you deny that you told Dr. Johnson that you had trigger finger a year after the fall?

A Yes, I do.

Q What kinds of problems were you having with your hands and legs and feet after - - shortly after the fall?

A Tingling and pain and numbness.

Q Now, there is a report dated April the 14th of 2011 and that report does not mention anything about you complaining about trigger finger. Do you think you were complaining about trigger finger in 2011?

A I wasn't. I never even heard of it before.

Q There's also a report from Dr. Wallace, dated February 14, 2017, and it's talking about your leg getting worse and you using a cane more. Do you recall that general time span?

A Yes.

Q And in fact, Dr. Wallace recommended a stimulator for you, and we ended up having to go to a hearing about that.

A Yes.

Q You remember that?

A Yes.

Q During the period of time that we were trying to get the stimulator approved, was your condition staying about the same, getting better, or getting worse?

A Worse.

Q And as a result of your condition getting worse, were you using a cane?

A Yes.

Q Were you using that cane more than you had in the past?

A Yes.

Q Dr. Wallace's June the 4th, 2019, report says that you mentioned to him at that point that you were having triggering

in your finger. Do you remember talking to Dr. Wallace about that?

A Yes. I told them that it locked down and that I didn't know what - -

Q Okay. Now, when you say "triggering in your finger," what did - - what do you mean? I mean, I'm not asking for a medical definition, but when you were complaining to Dr. Wallace in 2019, what was going on in your hand with your figure [sic]?

A When I would pick things up, I couldn't let go of them or I couldn't open my fingers to pick them up.

Q Now, that's your right hand. Is that correct?

A Yes.

Q Is that a "yes"?

A Yes.

Q And Dr. Wallace's records indicate that you had been using your cane more during the period of time or fairly immediately before you started complaining to him about trigger finger?

A Yes.

Q Do you agree with that?

A Yes, I do.

Q If you had been having trigger finger before that, would you have mentioned it to some doctor?

A Yes. Dr. Wallace, I did.

Q Well, even before Dr. Wallace, you saw Dr. Qureshi. You saw all kinds of doctors for several years. And the workers' compensation insurance carrier was paying for your medical treatment. Is that correct?

A Correct.

Q If you were having trigger finger, would you have mentioned it to some of those doctors?

A Yes.

Q Once you mentioned the trigger finger to Dr. Wallace, you got referred to Dr. Johnson. Is that right?

A Correct.

On cross-examination the claimant was asked about her use of a cane and her visit with Dr.

Johnson as follows:

Q So that I'm clear, Ms. Wise, you indicated that you believe that your use of the cane has caused your trigger finger; correct?

A Correct.

Q And you've been using that cane since 2010; correct? At least 2010; correct?

A Correct.

Q You've used it routinely since 2010; correct?

A No. I've used it more since right before I got my - -

Q Well, what do you mean by "more"?

A I didn't use it all the time before that.

Q In each of your hearings that I've been to with you, you've always had a cane. You'd agree with that; correct?

A I guess so.

Q We've had three hearings I believe in this case; right?

A Yes.

Q Okay. And you're here today with a walking stick; right?

A Yes.

Q And you use the - - the cane that you use is with your right hand; correct?

A Yes.

Q Which is the hand that we're talking about with the trigger finger; correct?

A Correct.

Q And when you went to see Dr. Johnson in 2020, did anyone attend that appointment with you?

A No. Uber took me.

Q Okay. Were you the only one that was providing Dr. Johnson information about your history and your medical treatment and everything? Was there anyone else that was giving him information other than you?

A He had my records from the other doctors.

Q As far as asking questions though, you were the only one who was answering his questions; correct?

A Correct.

Q All right. And do you - - now, we've talked about the record and it indicates that you've suffered from trigger finger since 2010. You understand that; correct?

A I told him about it so - - that I had several - -

Q Yes, ma'am. I understand. What I'm asking you though is you understand that's what his report indicates?

A Yes.

Q All right. You don't - - but you dispute telling him that. Is that the issue?

A That's it.

Q Where would Dr. Johnson - - if no one was there with you, you would have been the only person that would have provided him that information; correct?

A Correct.

I find that the claimant's right hand/finger difficulties began about a year after her compensable back injury in July of 2009. I do not believe that the claimant can show a causal connection between her

use of a cane and her trigger finger. Specifically, Dr. Johnson states in his letter to the respondent's attorney, "She does not tell me how frequently she uses that, however, that could contribute to exacerbation of a trigger finger but can [sic] has not been related to causation. I see no other relationship that would directly correlate can [sic] use to her trigger finger." However, even if the claimant could prove causation or aggravation of a pre-existing condition, her claim would be barred by the Statute of Limitations:

b) TIME FOR FILING ADDITIONAL COMPENSATION.

(1) In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

Here, I find that the claimant's right hand/finger difficulties began roughly one year after her compensable July of 2009 back injury, which is well past the time allowed for filing for additional compensation.

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 her 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 September 8, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable trigger finger injury as a result of a compensable consequence of her July 31, 2009 injury.

3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her alleged trigger finger injury.

4. The Statute of Limitations has run regarding the claimant's allegation of trigger finger injury as the claimant's right hand/finger difficulties began sometime in 2010.

ORDER

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

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**