

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205851

GERALD A. BRUCKER, EMPLOYEE

CLAIMANT

VS.

DREDGIT CORPORATION, EMPLOYER

RESPONDENT

**COMMERCE AND INDUSTRY/AIG,
INSURANCE CARRIER, TPA**

RESPONDENT

OPINION FILED AUGUST 28 , 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 16th day of July, 2024, in Little Rock, Arkansas.

Claimant is Pro Se.

Respondents are represented by Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 16th day of July, 2024. At the time of the hearing, the parties agreed that the issues were as follows: (1) Was the claimant an

employee of the respondent at the time of the accident; (2) If the claimant is determined to be an employee of the respondent, the compensability of the injury to the claimant's finger and hand; (3) If the claimant is found to have suffered a compensable injury, the claimant's entitlement to reasonable and necessary medical benefits.

After the hearing, the Commission received an email from the attorney representing the respondent's which provided that the respondents had no objection to the preliminary analysis being a determination of whether or not the Claimant established the existence of a compensable injury by a preponderance of the credible evidence and further stating that if the claimant failed to establish the injury, the remaining issues were moot. The claimant also responded by email stating that everyone knows that the injury happened at work. Copies of both emails are blue backed and attached to the opinion.

The respondents contend that there are no objective findings to support a work-related injury and further that the claimant was not an employee of Dredgit Corporation at the time of the injury and was an independent contractor. Additionally, the respondents contend that the claimant was not performing employment related services at the time of the injury in the event the claimant is found to be an employee of the respondent. The claimant contends that he was injured on October 6, 2021, when his ring was caught between a battery post while attempting to jump start a booster pump.

A Prehearing Order dated May 14, 2024, provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

The Prehearing Order and the claimant's and respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The sole witness was the claimant, Gerad A. Brucker. From a review of the record as a whole, to include matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witness, 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. That the claimant has failed to satisfy the required burden of proof to show that he sustained a compensable injury to his left ring finger on October 6, 2021.
3. That consequently, all other issues are moot.
4. 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 and respondents exhibit were made part of the record without objection.

The claimant testified that this all started from an accident at work where he was working on a dredging project down by the hydroelectric plant and was hired as a 1099 employee. "Honestly, we wouldn't even be here if they had just paid for the finger like

he's saying Renae said." "They contacted me. I had worked for them down in Texas and did a job down there where they hired me as a 1099 employee." He also talked about working for them later and not getting paid and ending up in jail due to all of this. They should pay for fixing my ring finger on the left hand. He stated that he was injured on October 6, 2021, and went to a Med First doctor the first morning. "The next night I felt like somebody was standing on my chest, and my finger was just pounding and - - and I was scared. I ended up going to the emergency room" where they cleaned my finger again. He said they checked his heart and he figured out he was in the wrong hospital and he should have been across the street at the VA. (Tr. 10 – 12) He had a tiny bill at UAMS and then went on to testify about the IRS and that he was a supervisor on a job telling people what to do, and was hiring people. (Tr. 15) He also discussed his company, Vetrin, LLC, a trucking company, which he no longer operates. (Tr. 16)

Under cross examination, the claimant admitted that the contract that was entered into was between Dredgit and his trucking company, Vetrin. He also admitted that there were no subcontractors, and he was paid for his hours on site. He was given authority to charge supplies and tools to Dredgit. (Tr. 18, 19) He admitted that he would show up to the work site and basically manage the project. The claimant agreed that the contract entered into was between Dredgit and Vetrin, and that he signed the contract as the President of Vetrin. (Tr. 20, 21) He also admitted that he had received three 1099's but had never received a W-2. The claimant also admitted that he had signed the contract under his authority as the president of Vetrin, and that per the contract, he was signing on as a consultant and an independent contractor, and that Vetrin received payment per the contract. (Tr. 22 - 24)

He further stated that he had accidentally gone to UAMS instead of the VA for treatment of his finger, and if he had gone to the VA as he had intended, he would not have pursued this claim and that Vetrin had received tax-free payments. (Tr. 25, 26) Claimant stated there was no agreement by an employee or Vetrin to waive his right to compensation.

The claimant went on to testify that Dredgit had hired a number of people as 1099 employees in Texas and that the company had habitually done this. (Tr. 30) He also stated that the same 20 things that apply to the IRS also apply to the state of Arkansas. (Tr. 38)

The claimant did not submit any medical documents. The respondent submitted an independent contractor agreement between Dredgit Corporation and Consultant Vetrin LLC, signed by Gerard Brucker, Owner. (Rep. 1, P. 12) Numerous Vetrin LLC invoices were also made part of the record. Some of the invoices stated that they were for Garry Brucker for Sub-Contractor Services. The AR – C Form filed by the claimant stated that the employer of Garrad Brucker was Dredgit Corp., and the accident occurred on October 8, 2021. (Resp. Ex. 1, P. 30) The records also provided that the claimant had talked to the Legal Advisor Division on multiple occasions. Resp. Ex. 1, P. 31 – 37)

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the claimant testified that he had injured his ring finger on his left hand while in the process of jump starting some equipment. He further testified that he initially went and got the injury cleaned and then later developed pain and went

to UAMS, although he intended to go to the VA. He was not from Little Rock and mistakenly went to the wrong hospital. It was noted that the two hospitals are very close to one another. No medical records were submitted for the record by the claimant.

In regard to the issue of compensability, the claimant has the burden of proving by a preponderance of the evidence, that he is entitled to compensation benefits for the injury to his left ring finger. 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. Cavananugh'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).

Under Arkansas Workers' Compensation law, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, 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 A.C.A. 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).

The injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which are those findings that cannot come under the voluntary control of the patient. A.C.A. 11-9-102 (16). It is also 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).

Here the only evidence and testimony in regard to the claimant's injuries comes from the claimant. Absolutely no medical evidence was introduced into the record. The claimant was unable to obtain representation, probably due to multiple reasons. He testified that he inadvertently had gone to the wrong hospital and if he had gone to the VA, he probably would not have filed the claim. It is clear the claimant strongly feels he was treated unfairly, but there is no alternative but to apply Arkansas law, in regard to his workers' compensation claim. Consequently, without giving the benefit of the doubt to either party, there is no alternative but to find the claimant has failed to prove by a preponderance of the evidence that he suffered a compensable work - related injury under the Arkansas Workers' Compensation Act. 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