BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GAROLD R. GIBSON Claimant	)	
VS.	)	
KANSAS DEPT. OF TRANSPORTATION Respondent	)	Docket No. 1,010,494
AND	)	
STATE SELF INSURANCE FUND Insurance Carrier	)	

ORDER

Respondent appealed the March 19, 2004 preliminary hearing Order entered by Special Administrative Law Judge (ALJ) Lee Kinch.

ISSUES

This is a claim for a general body disability based upon a March 17, 2003 accident where claimant was "running neuclear [sic] density test when elbow popped chasing pain into shoulder & [b]ack."[1]

At the March 17, 2004 preliminary hearing claimant requested medical treatment for his left shoulder and for temporary total disability compensation. The Special ALJ found the claim compensable and ordered respondent to provide the requested preliminary benefits. Respondent appealed and argues claimant did not injure his left shoulder as a result of the March 17, 2003 work injury. "The [r]espondent asserts that the only portion of the body injured by the [c]laimant during the course of his employment with the Kansas

[1]K-WC E-1 Application for Hearing (filed May 8, 2003).

Department of Transportation on March 17, 2003 was the left elbow. That any injury to the [c]laimant's left shoulder occurred subsequent to the work injury to the left elbow and therefore the claim is not compensable and that the [c]laimant would not be eligible for temporary total disability benefits."[2]

Claimant contends that "[i]t is clear that the plaintiff [sic] injured his left upper extremity at the time of the above described accident. It is also clear that in the beginning, the elbow was of primary concern, however, his left shoulder was also injured simultaneously . . . ."[3] Accordingly, claimant asks that the preliminary hearing Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and having considered the parties' arguments, the Board finds and concludes that the March 19, 2004 preliminary hearing Order should be affirmed.

On March 17, 2003, claimant was pulling and twisting a metal rod from the ground when he felt a "pop" in his left arm and experienced pain from his elbow into the bicep and shoulder area. Claimant reported his accident and injury to his supervisor the next day and was referred to a physician for authorized medical treatment. Claimant testified that his pain was primarily in his elbow area initially and treatment focused on that area. However, as his elbow symptoms improved claimant became more aware of symptoms in his shoulder.

Respondent admits claimant suffered personal injury to his left elbow and that the elbow injury arose out of and in the course of his employment with respondent. However, respondent contends that the left shoulder is the result of claimant's subsequent activities, most likely fishing.

Claimant was the only witness to testify at the March 17, 2004 preliminary hearing. Respondent relies upon claimant's alleged failure to complain about shoulder symptoms for over a month after the accident as evidence of the shoulder condition not being work-related.

> More specifically, the [c]laimant's own handwritten report of injury and the contemporaneous medical records prepared by Dr. Wilson and Dr. Stringer indicate that the injury was limited solely to the left elbow. That the left shoulder complaints were not made by the [c]laimant until over one (1) month after the date of the accident. That the [c]laimant had not worked for the [r]espondent since the day

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[2] Respondent's Letter Brief dated May 3, 2004 (filed May 6, 2004).

[3] Claimant's Letter Brief dated May 24, 2004 (filed May 26, 2004).

> after the accident on March 18, 2004. Thus, any worsening of his condition in his left shoulder could not be related to his work activities at KDOT. That his problems in his shoulders are more likely related to his hobby as a pro-am bass fisherman.[4]

In a handwritten note dated March 19, 2003, claimant stated that "when I pulled steel rod out of hole I felt my elbow pop."[5] Claimant was seen by Christopher R. Wilson, M.D., on March 21, 2003. Dr. Wilson's Clinic Note for that date lists claimant's "chief complaint" as "[l]eft elbow pain."[6] X-rays of only the left elbow were obtained. Dr. Wilson's "review of systems" revealed "[p]ain in the left elbow and the left lateral epicondyle in the olecranon area. Also to a lesser extent in the medial epicondyle as well."[7] Dr. Wilson diagnosed "lateral epicondylitis as well as some irritation of the olecranon area of the left elbow. His x-rays were negative for pathology."[8] Dr. Wilson injected the elbow area with Depo Medrol and Marcaine. He placed claimant in an elbow brace and imposed "restrictions of no pushing/pulling/lifting greater than 20#, no overhead activities and he will followup with Dr. Stringer next week."[9]

Claimant was seen by orthopedic surgeon Robert F. Stringer, D.O., on March 31, 2003. Dr. Stringer had treated claimant previously for left elbow problems. At the March 31, 2003 examination, claimant's symptoms were limited to the left elbow area. Dr. Stringer noted "minimal tenderness over the lateral epicondyle . . . a very slight palpable defect in the extensor tendon . . . tenderness to palpation over the medial epicondylar area . . . and . . . pain at the medial epicondyle . . . ."[10] Dr. Stringer's assessment was "left elbow pain."[11] Dr. Stringer placed claimant in a forearm support band and ordered an MRI evaluation of the left elbow. He continued claimant's light duty work restrictions with no lifting or carrying greater than 10 pounds with the left upper extremity.

Claimant returned to Dr. Stringer on April 14, 2003. At that time, in addition to the left elbow pain, claimant reported "that he has a significant amount of popping in the inter-scapular area and over the medial border of the left shoulder blade. He states that this has

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[4]Respondent's Letter Brief at 1 and 2 dated May 3, 2004 (filed May 6, 2004).

[5]P.H. Trans. Resp. Ex. 4.

[6]P.H. Trans. Resp. Ex. 2.

[7]*Id.*

[8]*Id.*

[9]*Id.*

[10]P.H. Trans. Cl. Ex. 2.

[11]*Id.*

been present since he attempted to pull up on this T handle, injuring his upper extremity at work."[12] On examination, Dr. Stringer found "a mild degree of crepitus when the shoulder is internally, externally rotated. He does demonstrate in the office a very palpable audible popping over the medial border of the left scapular consistent with a snapping scapula type problem."[13] Dr. Stringer's assessment was "left elbow pain and snapping scapula, left shoulder."[14] Dr. Stringer continued claimant's pain medication and also prescribed an anti-inflammatory medication. He continued claimant's light duty work restrictions and ordered "formal occupational therapy to include therapy on both is [sic] [elbows] as well as his left shoulder."[15]

Claimant returned to Dr. Stringer on April 28, May 21 and June 30, 2003, with continued complaints of pain in the left upper extremity. By the time of the June 30, 2003 examination, claimant's left shoulder symptoms had become his primary concern. Dr. Stringer determined that claimant may need an arthroscopy of the left shoulder to rule out a labral tear but recommended a second opinion before proceeding with that surgery.

Claimant was seen by orthopedic surgeon David A. Ball, M.D., on September 8, 2003, for a second opinion regarding his continuing complaints of left shoulder and left elbow pain. At that time claimant also had complaints of pain in his mid-dorsal spine. He reviewed the MRI scan of claimant's left shoulder, that was done on June 9, 2003, and which showed tendon irritation in the supraspinatus region and impingement changes and degenerative changes in the AC joint. The MRI scan of the left elbow done on April 9, 2003, showed arthritic changes and small joint effusion in the elbow. Dr. Ball recommended repeat x-rays of the left shoulder and left elbow as well as a whole body nuclear bone scan. At that time Dr. Ball seemed to believe that claimant was not able to return to work. Although Dr. Ball's chart states "I think this patient could be working with suitable work restrictions; that is, he would be working on a light duty basis,"[16] his records also contain an off work slip likewise dated September 8, 2003, that provides "Garold Gibson is not able to return to work."[17]

After reviewing the results of the October 13, 2003 bone scan which showed bilateral uptake in the shoulders, elbows and wrists suggestive of osteoarthritis but no

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] P.H. Trans. Resp. Ex. 3.

[17] *Id.*

abnormality in the spine, Dr. Ball concluded that there was no direct evidence of any specific injury to the elbow, shoulder or spine on March 17, 2003.[18] Dr. Ball opined that there was no indication of a need for further treatment of the left elbow and recommended permanent light duty restrictions of no repetitive use of the left arm and no lifting greater than 25 pounds.

On January 12, 2004, claimant was examined by orthopedic surgeon Edward J. Prostic, M.D., at the request of claimant's attorney. At that time claimant reported pain across his shoulders and upper back but no current difficulty at his elbow or wrists. Following his examination, Dr. Prostic concluded that:

> On or about March 17, 2003, Gerald [sic] R. Gibson sustained injury to his left upper extremity. His elbow difficulties have subsided with treatment and time. His shoulder continues to be a problem. It is suggested that he have arthroscopic subacromial decompression and evaluation of his rotator cuff. It is likely that his upper back symptoms will be solved by giving comfort to the shoulder.[19]

At the time of his preliminary hearing testimony claimant was 43 years old. He had worked for respondent approximately 10 years as an engineering technician. Following his March 17, 2003 accident, respondent was apparently unable to accommodate claimant's restrictions, and, therefore, claimant had not worked since the day after his accident.

Claimant testified that immediately following his accident his left bicep and shoulder hurt but that it was his elbow that was hurting the most. Following the initial treatment to the left elbow by Dr. Wilson and Dr. Stringer claimant's elbow symptoms improved. Claimant testified that as his elbow pain subsided he began to notice the left shoulder and upper back pain more. But claimant also said he reported the left shoulder pain to Dr. Stringer on the first visit. Although claimant admits going fishing on one occasion, claimant denies injuring his left arm or shoulder after March 17, 2003, and denies performing any activities which would aggravate his work-related injuries.

Based upon the record compiled to date, the Board finds that claimant has established a work-related injury to his left upper extremity including the shoulder and that his present need for treatment to the left shoulder area is related to the March 17, 2003 accident. An intervening left shoulder injury has not been established.

WHEREFORE, the Board affirms the March 19, 2004 preliminary hearing Order entered by Special Administrative Law Judge Lee Kinch.

IT IS SO ORDERED.

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[18] *Id.*

[19] P.H. Trans. Cl. Ex. 1.

Dated this _____ day of August 2004.

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BOARD MEMBER

c: Carlton R. Kennard, Attorney for Claimant
William L. Phalen, Attorney for Respondent
Lee Kinch, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director