

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F301440

BEVERLY BEMROSE, Employee	CLAIMANT
HOLIDAY INN EXPRESS, Employer	RESPONDENT
WAUSAU INSURANCE COMPANIES, Carrier	RESPONDENT

OPINION FILED NOVEMBER 18, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On October 22, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 20, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked 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 the within claim.
2. The relationship of employee-employer-carrier existed among the parties in January and February of 2003.

Subsequent to the hearing in this case the parties have agreed to stipulate that claimant earned an average weekly wage of \$262.00 which would entitle her to compensation at the rate of \$175.00 per week for total disability and \$154.00 per week for permanent partial disability.

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

1. Compensability of bilateral carpal tunnel syndrome.
2. Related medical.

3. Attorney fee.

The claimant contends she has suffered an injury to her hands due to performing the same repetitive work.

The respondents contend the claimant did not sustain a compensable injury to her upper extremities which arose out of and in the course of her employment with Holiday Inn Express.

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 witnesses and to observe their 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 August 20, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$262.00 which would entitle her to compensation at the rate of \$175.00 for total disability and \$154.00 for permanent partial disability benefits is hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome.

4. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's bilateral carpal tunnel syndrome.

5. Claimant is entitled to temporary total disability benefits beginning April 16, 2003 and continuing through June 13, 2003.

6. Respondent has controverted claimant's entitlement to temporary total disability benefits.

### FACTUAL BACKGROUND

The claimant most recently became employed by the respondent on September 27, 2000 as a housekeeper. A document submitted into evidence by the respondent sets out the essential functions of the housekeeping position. According to claimant's testimony she was required to perform several job functions including making beds. This was done by stripping used bedding - comforter, blanket, sheet, fitted sheet, and pillow cases. She was next required to reassemble the bed with new sheets and pillowcases. Claimant also testified that she was responsible for gathering up dirty towels from the bathroom, vacuuming carpet, cleaning spills if necessary, cleaning the bathroom including toilet, tub, and shower, sink, kitchenette area and mirrors. In addition, she was also responsible for dusting furniture and picking up any trash in the room.

It should also be noted that some of these jobs are portrayed on a video offered into evidence by the respondent.

Claimant testified that she began developing problems with her hands approximately one year after she began working for respondent as a housekeeper. Claimant testified that she initially developed pain in her thumb along with numbness and tingling in both hands. The medical evidence indicates that claimant initially sought medical treatment from her family physician, Dr. Hart, on March 8, 2001 and again on March 29, 2001. At some point in time claimant underwent a nerve conduction study and was referred to Dr. Peter Heinzelmann, an orthopaedist, who first evaluated claimant on January 22, 2003. Dr. Heinzelmann noted that the NCV testing was indicative of bilateral carpal tunnel syndrome and recommended surgical releases. These releases were performed on April 16, 2003.

Claimant has filed this claim contending that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of her employment with the respondent.

### ADJUDICATION

The initial issue for consideration involves claimant's contention that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. In order to prove compensability of carpal tunnel syndrome, a claimant is not required to establish that their work duties required rapid repetitive motion. However, a claimant must prove that they sustained a carpal tunnel syndrome injury which arose out of and in the course of their employment, that a work related injury is the major cause of their disability or need for medical treatment, and that the compensable injury is established by objective medical findings. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 1990 (1998).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome.

First, I find that claimant has met her burden of proving by a preponderance of the evidence that the carpal tunnel syndrome arose out of and in the course of her employment with the respondent. As previously noted, claimant testified that the problems with her hands began approximately one year after she began working for respondent when she began having pain in her thumbs and numbness and tingling in her hands. As a result of those complaints of pain, claimant sought medical treatment from Dr. Hart. It appears that claimant's initial visit with Dr. Hart occurred on March 8, 2001, and the second on March 29, 2001. Dr. Hart's medical reports of that date note claimant's complaints of pain and also notes that claimant works as a housekeeper making beds and cleaning. Claimant subsequently sought medical treatment from Dr. Heinzemann in January 2003. In addition to Dr. Heinzemann's medical report, the parties also took his deposition. Dr. Heinzemann stated during his deposition testimony that at the time of his initial evaluation of the claimant she attributed her problems to job activities as a housekeeper. Dr.

Heinzelmann indicated that claimant gave a general description of her job activities for the respondent. In his report of January 22, 2003, Dr. Heinzelmann stated that he felt that claimant's carpal tunnel syndrome was related to her job activities. Dr. Heinzelmann reiterated that opinion at his deposition, stating again that it was his belief that claimant's carpal tunnel syndrome was work related. Dr. Heinzelmann stated that his opinion was based upon his belief that claimant was involved in a job which required active use of her hands. The evidence presented does indicate that claimant's job duties required extensive use of her hands and upper extremities.

Testifying on respondent's behalf was Mary Wittenburg, the executive housekeeper for respondent. Wittenburg testified that she is the housekeepers' supervisor. Wittenburg testified that before claimant began working for respondent in September 2000 she had indicated to her that her hands were already beginning to bother her.

Based upon the foregoing evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent. Although Wittenburg testified that claimant made complaints of hand pain beginning prior to her employment with respondent, there is no evidence that claimant sought any medical treatment for that condition prior to March 2001. Furthermore, I find claimant's testimony to be credible that she did not have hand pain prior to her employment with the respondent. I also find it important that Dr. Heinzelmann has opined that claimant's carpal tunnel syndrome is causally related to her job activities with the respondent. I find based upon my review of the evidence that Dr. Heinzelmann's opinion is credible and entitled to great weight. While Dr. Heinzelmann did admit that it is possible for an individual to develop carpal tunnel syndrome regardless of their job activities, it was Dr. Heinzelmann's opinion that the claimant developed carpal tunnel syndrome because of her job activities. I find this testimony to be credible and entitled to great weight. Accordingly, I find that claimant has

met her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is causally related to her employment with respondent.

I also find that claimant has met her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is the major cause of her disability and need for medical treatment. A claimant has the burden of proving by a preponderance of the evidence that the “compensable injury”, not work activity is the major cause of disability or need for treatment. *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W. 2d 239 (1998). Here, based upon the medical evidence presented in the form of Dr. Heinzelmann’s opinion and medical reports, I find that claimant’s bilateral carpal tunnel syndrome was the major cause of her disability and need for medical treatment. In fact, claimant’s bilateral carpal tunnel syndrome resulted in surgical releases performed by Dr. Heinzelmann.

Finally, I find that claimant has met her burden of establishing an injury by objective medical findings. Dr. Heinzelmann testified that a nerve conduction study test performed by Dr. Moon revealed mild bilateral carpal tunnel syndrome. As a result, he performed surgical releases in April 2003. Dr. Heinzelmann testified at his deposition that during the surgical procedure he observed nerve root compression of 30 percent on the right median nerve and 20 percent of the left median nerve. I find that these are objective findings establishing an injury.

For the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent.

Having found that claimant suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant’s compensable injury.

Having suffered a compensable scheduled injury, claimant is entitled to receive

temporary total disability benefits or temporary partial disability benefits during 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. Heinzelmann testified that at the time of his initial evaluation on January 22, 2003, he did not record any work restrictions. Dr. Heinzelmann went on to indicate that he would not necessarily take someone off work in a condition similar to the claimant's. Based upon Dr. Heinzelmann's testimony that he did not place any specific work restrictions on claimant prior to her surgery on April 16, 2003, I find that claimant is entitled to temporary total disability benefits beginning April 16, 2003, the date she underwent surgery, and continuing through June 13, 2003, the date she was released by Dr. Heinzelmann to return to work. According to claimant's testimony, she did in fact return to work for respondent on that date.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Finally, I would be remiss if I did not address claimant's complaints regarding her thumb joints. At the time of the pre-hearing conference the parties agreed to litigate the issue of compensability of claimant's bilateral carpal tunnel syndrome. At no time during the pre-hearing conference or during the hearing was a separate injury to claimant's thumb joints raised. It was only during my reading of Dr. Heinzelmann's deposition subsequent to the hearing that I discovered that Dr. Heinzelmann is of the opinion that complaints related to claimant's thumbs are separate and distinct from her carpal tunnel complaints.

Dr. Heinzelmann went on to note that he had provided no specific treatment for claimant's thumbs other than the use of anti-inflammatory medications which were prescribed in connection with claimant's carpal tunnel syndrome. Since a separate and distinct injury to claimant's thumbs was not raised as an issue at the time of the pre-hearing conference or at the hearing, compensability of that condition is not being addressed in this opinion.

### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits beginning April 16, 2003 and continuing through June 13, 2003. Respondent has controverted claimant's entitlement to temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE