

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F204001**

<b>ROBERT C. BYNUM, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>STATE HIGHWAY &amp; TRANSPORTATION DEPARTMENT, EMPLOYER</b>	<b>RESPONDENT</b>
<b>PUBLIC EMPLOYEE CLAIMS, INSURANCE CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 17, 2003**

Hearing before Chief Administrative Law Judge David Greenbaum on April 25, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. David Dawson, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted April 25, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this case on January 22, 2003, and a Prehearing Order was filed on January 23, 2003. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection. At the hearing, the parties announced that the stipulations, as well as their respective contentions were properly set out in the Prehearing Order.

It was stipulated that the employment relationship existed at all relevant times; that claimant's average weekly wage was \$485.00, entitling him to a compensation rate of \$323.00 per week for temporary total disability and \$243.00 per week for permanent partial disability in the event the claim was found compensable; and that the claim had been controverted in its entirety.

By agreement of the parties, the sole issue presented for determination concerned compensability of claimant's bilateral carpal tunnel syndrome. If answered affirmatively, the period of claimant's claim for temporary total disability is undisputed. (Tr.23)

Claimant contended, in summary, that he sustained a gradual onset, bilateral carpal tunnel syndrome which arose out of and during the course of his employment with the State Highway & Transportation Department; that he was entitled to temporary total disability beginning August 6, 2002, and continuing through November 21, 2002; that respondents should be held responsible for all outstanding medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents do not dispute that claimant developed carpal tunnel syndrome, but maintains that it was not the result of any injury which arose out of and during the course of his employment.

The claimant testified in his own behalf. Dale Johns, claimant's

supervisor, was called as a witness for the respondents. The record is composed solely of the transcript of the April 25, 2003, hearing containing several exhibits, together with the evidentiary deposition of Dr. Brian Dickson, introduced as "Joint Exhibit B" and retained in the Commission file in bound form.

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 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. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he sustained a gradual onset, bilateral carpal syndrome injury which arose out of and during the course of his employment with the Arkansas State Highway & Transportation Department, entitling him to appropriate workers' compensation benefits.
4. Respondent, Public Employee Claims, is responsible for all reasonably necessary medical treatment related to claimant's bilateral carpal tunnel

syndrome and respondent remains responsible for continued, reasonably necessary medical treatment.

5. The claimant has proven, by a preponderance of the evidence, that he is entitled to temporary total disability for the period beginning August 6, 2002, and continuing through November 21, 2002.
6. The claimant's healing period ended November 21, 2002.
7. Respondents have controverted this claim in its entirety.
8. All additional issues are specifically reserved.

#### DISCUSSION

In the present claim, the claimant does not contend that his injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained an injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was

the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

Further, under the amended Act, medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2002).

However, because the claimant's injury has been diagnosed as carpal tunnel syndrome, the claimant must establish all of the aforementioned requirements, except for rapid repetitive motion, which is construed to be satisfied with a diagnosis of carpal tunnel syndrome. *Kildow vs. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

Rather than conduct an exhaustive analysis of the record in this cause, suffice it to say that the claimant has established, by a preponderance of the evidence, each and every requirement necessary to establish compensability of his carpal tunnel syndrome.

The claimant is forty-seven (47) years old. At the time of the hearing, the claimant had retired from the Arkansas Highway & Transportation Department, where he worked for more than seventeen (17) years. During the last years of claimant's employment, he performed multiple job activities,

including driving trucks and equipment, primarily utilizing standard transmissions of up to thirteen (13) speeds, requiring a great deal of shifting. In addition, the claimant had to load and unload equipment, requiring the use of a ratchet wrench requiring multiple movements, with significant pounds of pressure to tighten the load. In addition, the claimant serviced and maintained the equipment including using a grease gun to grease many fittings on the equipment. The claimant began experiencing problems during the mid part of 2001 with both of his upper extremities, primarily on the right, which required him to seek medical treatment. (Tr.10-18)

The record reflects that the claimant subsequently reported the injury to his employer and advised his employer that his doctor felt that the carpal tunnel injury was related to his employment. The employer turned the claim in as a workers' compensation claim. The claimant was subsequently contacted by Doris Taylor, a claims adjustor for the Public Employee Claims Division, and advised that the claim was being denied based upon medical evidence reflecting that the carpal tunnel syndrome was caused by the claimant's diabetes. (Tr.36-37)

There is no competent evidence that the claimant's carpal tunnel injury was caused by his diabetes. To the contrary, Dr. Stubblefield wrote Ms. Taylor a letter dated April 26, 2002, which is set out below:

I've been asked by Mr. Bynum to write a letter discussing the

EMG/NCV study results. Mr. Bynum relates that he has been told that his abnormal EMG/NCV study results showing carpal tunnel syndrome were not related, but instead, were due to his diabetes. I have reviewed the EMG/NCV studies and note that the neurologist who read the report found no evidence of polyneuropathy, as one would expect with diabetes, but instead found only borderline carpal tunnel syndrome. It has been my experience that carpal tunnel syndrome is most often related to repetitive activities and that carpal tunnel syndrome would be an atypical presentation for diabetic neuropathy. (Jt. Ex. A, p.18)

All of the claimant's treating physicians have related the claimant's bilateral carpal tunnel to his work. The evidentiary deposition of Dr. Brian Dickson was taken January 22, 2003, at the instance of respondents. Dr. Dickson is the orthopedic surgeon that performed the claimant's carpal tunnel releases. Portions of his evidentiary deposition are set out below:

Q. Can, do you have an opinion as to whether or not those activities caused –

A. I believe they probably did. I know he does some repetitive activity with what he does, as far as his truck driving and that driving a car can make carpel [sic] tunnel symptoms worse and that, there is some controversy in the medical literature about whether carpel [sic] tunnel syndrome is job related or not, but I do think in this case, that it did definitely exacerbate his symptoms.

Q. Okay, do you have an opinion as to what actually caused the carpel [sic] tunnel to develop in the first place?

A. Develop in the first place? If he's been doing this job, and I'm not sure how long he's been doing the job, but if he's been doing it for a while, then I strongly suspect it would be job related.

Q. Can you state within a reasonable degree of medical certainty that it was job related?

A. Yes. (Jt. Ex. B, p.8)

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Q. Is it possible for carpel [sic] tunnel to be caused by compression neuropathy? Am I pronouncing that correctly?

A. Carpel [sic] tunnel syndrome is a compression neuropathy.

Q. It is? Okay.

A. Uh-huh.

Q. Can a compression neuropathy be caused by sudden trauma?

A. Yes, it can. Yes, it can. It's much more rare, but it definitely can.

Q. Were you aware that Mr. Bynum had had a motor vehicle accident on November 12, 2000, and complained about pain in his ulna?

A. It's not in my records, no.

Q. Is it possible that that may be a cause?

A. It's possible.

Q. Also, I think Mr. Bynum has been diagnosed as type two diabetic?

A. Okay.

Q. Are you familiar with that?

A. Yes.

Q. Now, under diabetic neuropathy, carpel [sic] tunnel syndrome is also possible?

A. Carpel [sic] tunnel syndrome is possible in diabetics and

diabetic neuropathy is a separate entity. And with most nerve studies, you can detect a diabetic neuropathy and differentiate that from a carpal [sic] tunnel syndrome is caused from diabetes or from other things.

Q. Okay. So in Mr. Bynum's case, is it possible that his carpal [sic] tunnel is caused from the diabetes?

A. It's possible. There is a percentage of diabetics who have carpal [sic] tunnel syndrome.

Q. Okay?

A. But it's also possible that it exacerbates a pre-existing, you know, if you had it through whatever, that diabetes could make it worse.

Q. Is there any way that you can, could tell in that case?

A. Not that I know of.

Q. Put a percentage on, or anything like that on it?

A. No, not that I know of. No, there's not really.

Q. Now, do you rely a lot on the patient's history when he tells you what activities he was doing?

A. Yeah, uh-huh. (Jt. Ex. B, pp.10-11)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d

629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); Wade vs. Mr. C. Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); Fowler vs. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

\_\_\_\_\_ I found the claimant to be a credible witness. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has proven, by a preponderance of the evidence, that his carpal tunnel syndrome was the result of a gradual injury sustained while working for the Arkansas Highway & Transportation Department. Accordingly, I hereby make the following:

#### AWARD

Respondent, Public Employee Claims, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$323.00 per week, beginning August 6, 2002, and continuing through November 21, 2002.

All benefits having accrued, respondents shall pay same in lump sum and

without discount.

Respondents are further directed and ordered to pay and/or reimburse the medical providers for all reasonably necessary medical and related treatment, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. Kristofer E. Richardson, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge