

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212200

BETTY J. EASLEY

CLAIMANT

**EMERSON ELECTRIC CO.
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED AUGUST 18, 2003

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE DONIS B. HAMILTON, Attorney at Law, Paragould, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on July 8, 2003. A prehearing conference was held on April 10, 2003 and a prehearing order was filed on April 11, 2003. The prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable injury on September 25, 2001.
2. The temporary total disability rate is \$298.

The claimant contends she sustained a gradual onset injury to her wrist, which manifested itself on September 21, 2001. The claimant contends she is entitled to medical benefits and temporary total disability benefits from February 19, 2003, through the current date.

The respondents contend the claimant's injury results from a congenital and non-work related condition. Further, respondents contend that the claimant will be unable to sustain her burden of proving the repetitive type requirements for a compensable injury. The respondents contend the claim was initially accepted and some initial medical benefits were paid.

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. There was a compensable injury on September 25, 2001.
2. The temporary total disability rate is \$298.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable gradual onset injury to her wrist.
4. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was not working after February 20, 2003, to the present.

DISCUSSION

The claimant, 50 years old, was an employee of the respondent for 11 years. The claimant worked the majority of her employment with respondent on the end shield

assembly. The end shield protects the end of the washer or dryer motor. The claimant testified that she worked on the end shield assembly four or five years until she was moved to switches about one year ago. According to the claimant, she would pick up stacks of 25 end shields and these weighed about 10 or 15 pounds. The claimant testified that she began having problems with her right wrist about September 2001. According to the claimant, she would lift a stack of 25 end shields about 40 times per hour.

The claimant confirmed that she sought treatment with Dr. Marion Hazzard in April 2000 for treatment of a ganglion cyst. The claimant had unrelated stomach surgery and remained off work for a period of time and did not seek further treatment for her ganglion cyst.

According to the claimant, in September 2001, she was working her end shield assembly job when she noticed her wrist would swell so that she had trouble moving her hand. The claimant testified that picking up the end shields caused her right hand to hurt. The claimant testified that her wrist would hurt on the bone of the pinky side of the wrist and the wrist would swell so you could not see the knob on the wrist. According to the claimant, her wrist hurt every day she was at work. The claimant testified that she reported her problems to the plant nurse and an appointment was made for her to see Dr. Leonis Shedd. Dr. Shedd gave the claimant cortisone shots in her wrist, prescribed anti-inflammatory pills and provided her a wrist band. The claimant treated with Dr. Shedd for over a year but continued working her regular job. The claimant sought a change of physicians in November 2002 and changed to Dr. Samuel Burchfield. The claimant also saw Dr. Marcia Hixson in Little Rock who

recommended a surgery where the bone in the wrist would be shortened. The claimant declined that surgery as too drastic. Dr. Burchfield referred the claimant to Dr. William Bourland and he recommended a less invasive type surgery; however, workers' compensation insurance denied the claim and her health insurance would not pay for the surgery. The claimant testified that she took family medical leave in November 2002 and remained off work until December 20, 2002, because she was unable to move her arm because of the right wrist. The claimant returned to work to a one-arm duty job in switches and worked one day and the plant took off for Christmas break. After Christmas break, the claimant returned to work in the guard shack and worked there until February 19, 2003. According to the claimant, she was advised by Simon Ramirez that there were no one-arm jobs available and the guard shack position was not available and he advised her to go on sick leave. The claimant testified that she is currently on sick leave for an unrelated condition, her hiatal hernia. The claimant testified that she was unaware of any job at her employer that she could perform. She testified that she would still like to see Dr. Bourland.

Under cross examination, the claimant testified that she had right wrist problems in 2000, but it was a different area, the right outside of the hand. The claimant testified that medical benefits were controverted in November 2002.

Since the claimant in the present claim alleges that she sustained a gradual onset injury as a result of rapid repetitive motion, the requirements of Ark. Code Ann. §11-9-102(4)(A)(ii) (Repl. 2001) are controlling and the following requirements must be satisfied:

(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 caused internal or external physical harm to the body which required medical services or resulted in disability or death;

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;

(4) proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion;

(5) proof by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish the compensability of the claim and compensation must be denied. See, *Jerry Reed v. ConAgra Frozen Foods*, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

The respondents accepted the claim as compensable and paid medical through November 2002. The claimant was given a change of physician from Dr. Leonis Shedd to Dr. Samuel Burchfield on November 15, 2002. The claimant thereafter began seeing Dr. Burchfield.

Initially, the claimant saw Dr. Shedd, the company doctor, and his notes indicate that he saw the claimant on September 25, 2001 and she presented with right wrist pain from picking up parts all day and the wrist has gradually developed again. On October 21, 2002, the claimant saw Dr. Shedd again and his notes revealed that the claimant first had the hand and forearm pain on September 1, 2001 and has continued to have pain since from lifting parts. Dr. Shedd referred the claimant to Dr. Marcia

Hixson, a hand specialist in Little Rock. Dr. Hixson diagnosed the claimant with a slightly longer ulnar than the radius in her wrist, a condition the claimant was born with. Dr. Hixson opined in her June 19, 2003, deposition that the claimant most likely had a degenerative tear in her triangular fibrocartilage and this can be eroded through time. Dr. Hixson opined the claimant's condition was a chronic process that developed over time. Dr. Hixson, upon questioning, opined that work can make the claimant's condition symptomatic and usually it is the symptoms which brings the patient for treatment rather than the underlying condition.

Dr. Ron Schechter examined the claimant on October 8, 2002, after a referral from Dr. Burchfield and he diagnosed a volar radial wrist mass consistent with a volar ganglion, but opined the claimant's wrist pain was the ulnar side of the wrist. Dr. Schechter suggested a referral to a hand specialist. On December 5, 2002, Dr. William Bourland diagnosed the claimant with possible torn lunotriquetral ligament and possible TFCC tear after a referral from Dr. Burchfield. Dr. Bourland administered an injection in the wrist and discussed ordering nerve conduction studies in one month as well as an arthroscopy of the wrist.

After reviewing the medical evidence and hearing the credible testimony of the claimant, I find that the claimant has proven by a preponderance of the evidence that she sustained a gradual onset injury arising out of and in the course of her employment with respondent and resulting from rapid repetitive motion.

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(A), defines "Compensable injury," as:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition;

The test for analyzing whether an injury is caused by rapid repetitive motion is two pronged: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). The tasks must be repetitive, or the rapidity element is not reached; the repetitive tasks must be completed rapidly. *Malone, supra*.

In the present case, respondents accepted the claim as compensable initially and paid benefits through November 2002. The claimant presented testimony that she worked in end shield assembly for four or five years and she would pick up stacks of 25 end shields weighing 10 to 15 pounds and repeated this process 40 times per hour. I find that the claimant has satisfied the requirements that the tasks are repetitive and that the repetitive motion is rapid. I found the claimant to be a credible witness with a lengthy tenure with the respondent employer.

Dr. Marcia Hixson opined at her June 19, 2003, deposition after being questioned about a diagnosis or conclusion she had reached concerning the claimant:

A. Yes. I thought that based on her complaints and examination and review of the x-ray, that she most likely had a degenerative tear in her triangular fibrocartilage, which is the ligament that goes between the two bones, and it can be eroded through time, especially if the ulnar is slightly longer. (D., p. 7, lines 20-25.)

Dr. Hixson was questioned about her diagnosis of the claimant where she used the word “degenerative.” Dr. Hixson responded:

A. You did. You did. It’s fibrocartilage. It is a fibrocartilage. It’s a complex. Yes, I thought that she had a tear. There are lots of different tears in this area, but the most common is a central tear, and it’s more of a degenerative type of erosion. It’s a wearing away more than an actual traumatic tear. (D., p. 15, lines 6-12.)

Dr. Hixson did opine that the claimant had a congenital long ulnar but surgery would become necessary if there was a ligament tear nor simply for the congenital condition. Dr. Hixson opined that she believed the claimant’s work made her condition symptomatic and it was the symptoms which brought her for treatment rather than the underlying condition.

The claimant contends she is entitled to additional medical treatment and took some medical leave primarily to allow her wrist to rest. I find the claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to her compensable injury.

The claimant next contends that she is entitled to temporary total disability benefits. The claimant sustained a scheduled injury to her wrist. The claimant is, therefore, entitled to temporary total disability compensation while he/she is within his/her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a)(Supp. 1999); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The claimant had changed doctors to Dr. Samuel Burchfield before the claim was controverted by respondents. A February 20, 2003, letter from Dr. Burchfield

states that the claimant has not reached maximum medical improvement, as well as opining the claimant has objective findings of her wrist that are work related. The claimant testified that her employer advised her to take sick leave, since there were no one-arm jobs available. I find that the claimant has proven by a preponderance of the evidence that she remained in her healing period and was not working from February 20, 2003, through the present. The respondents are liable for temporary total disability benefits for that period.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable gradual onset injury to her wrist. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was not working after February 20, 2003, to the present.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

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.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**