

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210305

RAFAEL GRACIAN (CHAVEZ)

CLAIMANT

CARGILL, INC.

RESPONDENT

INS CO-STATE OF PENNSYLVANIA,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED AUGUST 15, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondents represented by TIMOTHY BROOKS, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 29, 2003, in Springdale, Arkansas. The deposition of the claimant was taken on April 15, 2003, and has been admitted as Joint Exhibit No. 1.

A pre-hearing order was entered in this case on January 13, 2003. Prior to the commencement of the hearing, certain amendments were made in regard to the stipulations concerning the period of employment and the weekly compensation rates. The additional issue of applicability of the statute of limitations was also added. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates between December of 1985 and August of 2002, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$276.00 for total disability and \$207.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his hands/wrists
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from August 15, 2002 through a date yet to be determined, and attorney's fees.
3. The applicability of the statute of limitations.

In regard to these issues, the claimant contends he was injured on August 14, 2002, when he injured his hands and wrist—it was a wear and tear injury from years of repetitive movement. Claimant was hired at CARGILL in December of 1985.

In regard to these issues, the respondents contend that the claimant's injuries did not arise out of and in the course of his employment with the respondent. Specifically, the respondent denies that the claimant has suffered any particular activities; the respondent denies that the claimant has been engaged in repetitive movement of the type and nature which would give rise to any such injuries; and the respondent further denies any causation between any alleged mechanism of injury and any alleged injuries. The respondents also contend that if the claimant did receive an employment related injury to his hands/wrists, and he is barred from receiving benefits by the statute of limitations.

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained "compensable" injuries to his hands/wrist in the form of bilateral carpal tunnel syndrome. The burden rests upon the claimant to prove these alleged compensable injuries.

In order to meet this burden, the claimant must first prove that these alleged compensable injuries satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the actual existence of the physical injury or condition alleged to be compensable must be established by medical evidence and the actual existence of

this injury or condition must be further supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16).

It is my opinion that the claimant has satisfied the requirement of Ark. Code Ann. §11-9-102(4)(D). The actual existence of his bilateral carpal tunnel syndrome (BCTS) has been diagnosed by Dr. Timothy Yawn and by Dr. Steven Moon. Further, the diagnosis of the existence of bilateral carpal tunnel syndrome is supported by and based upon purely “objective findings” noted on electroneurological testing performed by Dr. Steven Moon on August 19, 2002. I would note that the diagnosis of the existence of bilateral carpal tunnel syndrome by these two physicians has been confirmed by Dr. Karl Haws, the respondent’s company physician in August 28, 2002.

The claimant must next prove that these medically “established” injuries satisfy the definitional requirements for a “compensable injury” found in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are:

- (1) The injury must arise out of and occur in the course of the employment;
- (2) The injury must cause internal or external physical harm to the claimant’s body;
- (3) The injury must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome, Kildow v. Baldwin Piano, 33 Ark. 335, 969 S.W. 2nd 190 (1998).

In order to prove his bilateral carpal tunnel syndrome arose out of and in the course of his employment with this respondent, the claimant must establish the existence of a causal relationship between this condition and his employment activities for this respondent. After consideration of all the evidence presented, it is my opinion that the claimant has proven the existence of this causal relationship.

The claimant’s testimony and the testimony of John Crowley, the respondent’s Assistant Human Resource Director, clearly show that the claimant’s employment activities

for this respondent, particularly those activities he was required to perform on the job (beginning in July of 2000), were hand intensive. His assigned employment duties required him to strenuously grasp and manipulate, with both hands, a high pressure hose for extended periods of time. He was also required to use both hands to strenuously grasp and manipulate a large scoop shovel for extended periods of time, shoveling up large amounts of spoiled meat and feathers. Such hand intensive activities for prolonged periods of time would reasonably be conducive to the development of bilateral carpal tunnel syndrome, a fact tacitly recognized by both Dr. Yawn and Dr. Haws.

The claimant testified that he began experiencing difficulties with his hands in the mid 1980's, when the respondent placed him on a "hanging" job. This job required him to use both hands to pick up and hang grown turkeys on shackles that were moving down a processing line.

The Respondent's Exhibit No. 2 and the claimant's testimony shows a reoccurrence of these symptoms when he was placed by the respondent in a "cropping" job in 1987. This job required him to continuously reach with his hand or hands into the chest cavity of turkeys, which were moving down a processing line, and grasp and pull out the lungs, and "crops" from the chest cavities of the carcasses.

The claimant also experienced difficulties with his hands when he was placed back on the crop pulling job in 1990 and 1991. In fact, the existence of bilateral carpal tunnel syndrome was confirmed by electroneurological studies performed by Dr. David Brown on November 7, 1991. Clearly, all of the foregoing positions required the strenuous and prolonged use of his hands, particularly in grasping.

Thus, the evidence clearly demonstrates a close temporal relationship between episodes of increased difficulties involving the claimant's hands and wrists (in the form of carpal tunnel syndrome), whenever the respondent placed him in employment positions that required prolonged strenuous use of his hands, particularly in grasping. When the

claimant was not put in such a position, it appears that his symptoms significantly lessened, even though they may never have completely resolved.

There is also no evidence that at the time of the first onset of these symptoms or during these subsequent episodes of increased difficulties, the claimant engaged in any hand intensive or strenuous use of his hands for prolonged periods outside of his employment for this respondent. There is also no evidence of any spontaneous episodes of increased difficulties that did not respond to a period of increased strenuous use of the claimant's hands. Finally, there is no evidence that the claimant has ever suffered from many systemic condition, such as diabetes, that could also produce a mimic carpal tunnel syndrome.

The claimant must next prove that his employment related bilateral carpal tunnel syndrome caused external or internal physical harm to his body. After consideration of the evidence presented, it is my opinion that the claimant has also proven this fact. The claimant's credible testimony concerning his episodes of severe pain, numbness, tingling, and the inability to grasp objects is clearly persuasive evidence of ongoing neurological damage to this portion of his body. This ongoing neurological damage is further confirmed by the presence of neurological dysfunction, which was objectively documented on the electroneurological studies of his median nerves in the area of his carpal tunnels.

The claimant has also satisfied the final definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(ii)(a). The evidence unquestionably shows that the claimant's injury is in the form of carpal tunnel syndrome.

Finally, the claimant must prove that his bilateral carpal tunnel syndrome satisfies the requirement of Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection requires the claimant to prove that the alleged compensable injury is the major cause of his disability or need for treatment. After consideration of all the evidence presented, it is my opinion that the claimant has satisfied this requirement also.

Clearly, the claimant has proven that the neurological damage which has required the medical services he has received and has resulted in, at least, temporary disability are solely the result of employment related bilateral carpal tunnel syndrome. As previously noted, there is no evidence that the claimant is experiencing systemic conditions, such as diabetes, peripheral neuropathies, etc., which could contribute to this neurological dysfunction. Thus, the claimant's employment related bilateral carpal tunnel syndrome is not only the "major cause" of his need for medical treatment and any resulting disability, but is, in fact, the sole cause.

Next, it becomes necessary to address the respondents contention that the claimant is barred from receiving benefits for his compensable bilateral carpal tunnel syndrome by the expiration of the appropriate statute of limitations. The expiration of the statute of limitations is an affirmative defense. It must not only be plead by the respondents in a timely manner, but the burden rests upon the respondents to prove all of the elements necessary to invoke its application.

I would first mention that by letter dated May 30, 2003, the respondents' counsel attempts to cite two Commission's Opinions as precedent on this issue. However, I would note that both of these Opinions are marked by the Full Commission as "not designated for publication". Under the Rules adopted by this Commission, such Opinions have no precedential value and cannot be cited as such. Thus, I have given these Opinions no consideration in resolving this issue.

Although the respondents have presented no evidence to show the exact date upon which this claim was filed, the very file number given to this claim would establish that it was filed some time in the year 2002 (a review of the Commission's file reflects that it was, in fact, filed on September 19, 2002). In order to be timely filed, the "date of injury" of the claimant's bilateral carpal tunnel syndrome can be no earlier than September 19, 2000.

Cumulative trauma injuries, such as bilateral carpal tunnel syndrome, are not

caused by a “specific incident” or “accident”. Rather, these conditions evolve over time and are caused by repetitive stress or microtrauma to a particular portion of the body, generally as the result of a particular type of physical activity. In the case of carpal tunnel syndrome, this repetitive stress and microtrauma caused by prolonged strenuous hand intensive activities (of historical note, this condition was initially called “milk maid syndrome”, as it was frequently observed in women engaged in this activity).

The claimant testified that his difficulties with his hand began in 1985 and that he continuously experienced some degree of difficulties thereafter. However, the evidence also shows that he experienced periodic episodes of increased difficulties over remaining period of employment with this respondent. The initial episode of severe difficulties was in 1985, the second was in 1987, the third was in 1989, and the fourth was in 1990, the fifth was in 1991, and the final episode occurred in 2002.

The initial episode of difficulties occurred when the claimant was assigned the job of “hanging turkeys”. This position required him to grasp, lift, and hang turkeys on the processing line. Clearly, this position required prolonged strenuous hand intensive activities. There is no evidence that the claimant was provided any medical services for these complaints or missed any work. Apparently, his position was at some point changed and he continued working.

At the time of the episode of increased difficulties in April of 1987, the claimant was performing these position of a “crop puller”. This position required him to reach into the breast cavity of turkeys and pull out the lungs and “crop”. Clearly, this position also required strenuous hand intensive activities. Again, it appears that the claimant was provided no medical services for his complaints and missed no work. He was rotated off this position by the respondent and was able to continue working.

At the time of the episode of increased difficulties in November of 1989, the claimant had again been assigned to the “crop puller” position. At that time, his difficulties appear

to have only involved his left hand. Again, there is no indication that the claimant was provided any medical services for these complaints. Nor is there any indication that he missed any work. Instead, it appears that the claimant was again rotated off this position and was able to continue working.

At the time of the episode of increased difficulties in August of 1990, the claimant had again been reassigned to the crop pulling position. Again, there is no indication that the claimant was provided with an medical services (except possibly by the respondent's first aid nurse). There is also no evidence that the claimant missed any work as a result of these increased complaints. Again, he was rotated off this position, and he was able to continue working.

At the time of the episode of increased difficulties in October of 1991, the claimant had once again been placed back on the crop puller position. At the time of this episode of increased difficulties, the claimant appears to have finally been provided with some actual medical services. These medical services included the electroneurological testing, which revealed the presence of abnormalities indicative of bilateral carpal tunnel syndrome. However, there is no evidence that the claimant missed any work as the result of this episode of increased difficulties. Again, it appears that his job was simply changed by the respondent and he was able to continue working.

At the time of his final episode of increased difficulties in August of 2002, the claimant had been assigned to a clean up job. As previously indicated, this job also required prolonged strenuous hand intensive activities. The claimant was apparently provided some medical services by the respondent and obtained some medical services, on his own, from his family physician. However, for the first time, the claimant was not returned to employment by the respondent in a less hand intensive position. Instead, he was advised that no position was available within his current limitations and restrictions.

The respondents contend that the actual “date of injury” in this claim occurred no later than November of 1991, when the claimant was diagnosed as suffering from bilateral carpal tunnel syndrome. However, I do not agree.

At the time of the 1991 episode of difficulties, diagnosed as bilateral carpal tunnel syndrome, the claimant simply had no reason to file a claim. To the best of his knowledge, appropriate medical services had been provided, and his symptoms substantially improved. He continued to be employed by the respondent at his regular wage. Thus, he had no reason to believe that he needed further medical services, and he would not be entitled to any temporary disability benefits. He also had no reason to believe that these difficulties had resulted in any degree of permanent impairment, so as to entitle him to benefits under Ark. Code Ann. §11-9-521(b). In fact, the evidence presented in no way indicates that the claimant’s episode of bilateral carpal tunnel syndrome in 1991 resulted in any degree of permanent physical impairment, so as to entitle the claimant to permanent partial disability benefits under Ark. Code Ann. §11-9-521(b).

At the time of the various episodes of difficulties prior to October of 1991, there is no evidence that the claimant knew or should reasonably have known, the nature and extent of his injury or that he was entitled to any benefits other than those provided him by the respondents. Clearly, there is no evidence that at the time of these prior episodes, the claimant would have been legally entitled to any compensation for either temporary or permanent disability.

For any injury occurring prior to July 1, 1993, the applicable case law provided that the statute of limitations did not begin to run until the true nature and extent of the injury manifests itself and the injury causes “disability” (either temporary or permanent) sufficient to entitle the injured workers to compensation for such “disability”, Arkansas Louisiana Gas Company v. Grooms, 10 Ark. App.92, 661 S.W. 2nd 433(1983); Hall’s Cleaners v. Wortham, 38 Ark. App. 86, 829 S.W. 2nd 424, Aff’d., 311 Ark. 103, 842 S.W. 2nd 7 (1992). Thus, if the

present claim does, in fact, represent a request for benefits attributable to a compensable injury resulting from damage caused by his employment related activities in 1991, the foregoing case law would appear to apply and the actual “date” of the ultimate injury would not occur until the claimant became entitled to temporary total disability benefits in August of 2002.

In a series of cases involving the Minnesota Mining and Manufacturing Company (3M), the Arkansas Court of Appeals and Arkansas Supreme Court addressed the issue of the statute of limitations as it applies to cumulative trauma injuries resulting in a permanent hearing loss. In this line of cases, the Supreme Court applied the rule announced in Grooms and Wortham to cumulative trauma injuries (i.e. injuries which had no specific date of “accident”) that occurred after July 1, 1993. The Court noted that, in permanent hearing loss cases, the actual occurrence of the hearing loss establishes that a permanent physical impairment has occurred, so as to entitle the worker to compensation for “disability” under Ark. Code Ann. §11-9-521(b). For this reason, the Court went on to hold that in hearing loss cases the statute of limitations begins to run when the permanent hearing loss became apparent to the claimant. Clearly, both requirements of Grooms and Wortham would be present at that time. The claimant would know the true extent of his injury and the injury would entitle him to compensation for “disability”, under Ark. Code Ann. §11-9-521(b).

In the present case, the claimant may arguably have known the true nature of his injury (i.e. bilateral carpal tunnel syndrome) in November of 1991, when the nerve conduction studies objectively showed the presence of this condition. However, there is no evidence that he knew or should reasonably have known the extent of his injury, that it might have a permanent effect on his future employment. Contrary to Grooms and Wortham, there was no evidence that the claimant would have been at that time entitled to compensation for permanent partial impairment and “implied” disability. Unlike a

permanent hearing loss, the mere diagnosis of the presence of carpal tunnel syndrome does not infer that it has produced or will produce any permanent physical impairment, so as to entitle the claimant to “disability” benefits under Ark. Code Ann. §11-9-521. In fact, there is still no evidence that the claimant’s bilateral carpal tunnel syndrome will result in any permanent physical impairment. The first time the claimant became entitled to compensation for “disability” for this compensable condition, was in August of 2002, when it caused him to miss sufficient work to entitle him to temporary total disability benefits under Ark. Code Ann. §11-9-521(a).

Carpal tunnel syndrome is not by its very nature, a permanent injury. However, it is often a reoccurring or continuing injury, particularly if it is not surgically corrected. Once this condition arises, it is further aggravated any time prolonged strenuous use of the hands occurs. It is my opinion that the greater weight of the credible evidence proves that that is what happened in the present claim. The claimant experienced an initial onset of carpal tunnel syndrome and subsequently experienced episodes of increased difficulties whenever he was subjected to additional stress and trauma by performing employment activities for the respondent requiring prolonged strenuous use of his hands. In the past, when the respondent would change his employment, the additional stress and trauma would be removed and his carpal tunnel syndrome would substantially lessen with only relatively minor conservative treatment. The episode of difficulties experienced by the claimant in August of 2002, was not a continuation of a simple reoccurrence of his previously diagnosed bilateral carpal tunnel syndrome. Rather, it was the culmination of a series of distinct episodes of employment related stress or trauma, with each episode independently contributing to the ultimate injury. Thus, this ultimate injury would represent “new” injury occurring in August of 2002, that would be separate and distinct from the prior individual injurious episodes of increased employment related stress and trauma that combined to cause this ultimate injury.

For the foregoing reasons, I find that the “date of injury” in the present claim occurred in August of 2002. Thus, the present claim for benefits would not be barred by the provisions of Ark. Code Ann. §11-9-702.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer existed between the parties.
3. At the time of the claimant’s compensable injury he earned wages sufficient to entitle him to weekly compensation benefits of \$276.00 for total disability and \$207.00 for permanent partial disability.
4. In August of 2002, the claimant sustained a “compensable injury” to his hands/wrists, in the form of bilateral carpal tunnel syndrome. Specifically, the claimant has proven all of the requirements imposed by Ark. Code Ann. §§11-9-102(4)(A)(ii), 11-9-102(4)(D) and 11-9-102(4)(E)(ii).
5. The medical services rendered to the claimant for his bilateral carpal tunnel syndrome by and at the direction of Dr. Timothy Yawn, constitute reasonably necessary medical services for his compensable injury.
6. The claimant has been rendered temporarily totally disabled as a result of the effects of his compensable injury for the period of August 15, 2002 through a date yet to be determined. Specifically during this period, he has proven that he has continued within his healing period from the effects of his compensable scheduled injury and had not returned to work, Ark. Code Ann. §11-9-521(a).
7. The respondents have controverted this claim in its entirety.
8. A reasonable fee for the claimant’s attorney is the maximum statutory

attorney's fee on the temporary total disability benefits herein awarded.

ORDER

The respondents shall pay to the claimant temporary total disability benefits commencing on August 15, 2002 and continuing through a date yet to be determined.

The respondents shall be liable for the expense incurred by the claimant as a result of reasonably necessary medical services provided him for his carpal tunnel syndrome by and at the direction of Dr. Timothy Yawn. Such liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the temporary total disability benefits herein awarded. One-half of this fee shall be the obligation of the respondents in addition to such benefits. The remaining one-half of this fee shall be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge