

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210349

CHRISTINA HEDRICK,
EMPLOYEE

CLAIMANT

MICRO PLASTICS, INC.,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 15, 2003

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Mountain Home, Baxter County, Arkansas.

The claimant was represented by MR. MARK CARNEY, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by MR. ROBERT MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on October 1, 2003 in Mountain Home, Arkansas. A prehearing order was entered in this case on July 31, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. The employee/employer relationship existed between the parties on approximately March 3, 2002, and thereafter.

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 bilateral carpal tunnel syndrome during the course and scope of her employment with Micro Plastics, Inc.
2. Whether Respondents are responsible for paying claimant's medical bills, TTD, PPD, and attorney's fees.
3. All other issues are specifically reserved pending claimant's condition becoming medically maximized.

The record consist of the transcript of the October 1, 2003 hearing, with exhibits contained therein.

DISCUSSION

1. Timeliness of Raising "Notice" as a Hearing Issue.

Two-thirds of the way through the October 1, 2003 hearing, I inquired of the respondents' attorney the legal significance of his line of questioning as to when the claimant notified her employer that she felt that she had

work-related carpal tunnel syndrome. The respondents' attorney replied his understanding of the law that, until the employer has knowledge or notice of an alleged injury, they cannot be held liable for medical treatment incurred by the claimant. When I pointed out that "notice" was not one of the issues raised at start of the hearing, the respondents' attorney contended that notice is part of the burden of proving a compensable injury.[T. 44-46]

As I understand the Arkansas cases, a notice defense pursuant to Ark. Code Ann. § 11-9-701 is not a part of "compensability", and alleging that an injured workers' injury is not compensable does not, by itself, amount to an objection to failure to give notice pursuant to Section 701. See generally International Paper Co. v. Langley, 251 Ark. 860, 475 S.W.2d 686 (1972); Gunn Distributing Co. v. Talbert, 230 Ark. 442, 323 S.W.2d 435 (1959); Paul T. Moore v. Kennon Farms, Full Workers' Compensation Commission, Opinion filed April 18, 2002 (F009812); Richard Lamb v. Jensen Construction Co., Full Workers' Compensation Commission, Opinion filed February 27, 1997 (E510191).

The issues to be litigated by the parties and their contentions were identified by a Prehearing Order in this case filed on July 31, 2003 and were verified again by the

parties at the start of the October 1, 2003 hearing.[T. 5 and Comm. Ex. 1 p.2] The claimant's attorney timely objected when the respondents' attorney attempted to make notice a hearing issue for the first time two-thirds of the way through the October 1, 2003 hearing.[T. 45] Because the hearing issues were specifically limited by a Prehearing Order, and absent any adequate justification for amending the issues and contentions two-thirds of the way through the hearing, I find that the respondents' did not timely raise in this case a notice defense as a hearing issue two-thirds of the way through the October 1, 2003 hearing.

2. Compensability of Bilateral Carpal Tunnel Syndrome.

A claimant seeking benefits for an allegedly work related carpal tunnel syndrome injury must prove by a preponderance of the evidence that (1)the carpal tunnel syndrome arose out of and in the course of employment; (2) that the injury caused internal or external physical harm to the body that required medical treatment or resulted in disability or death; and (3)the injury was the major cause of the disability or need for treatment. In addition, the compensable injury must be established by medical evidence supported by objective findings. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

In the present case, Dr. Robbins performed objective nerve conduction studies which established the presence of bilateral carpal tunnel syndrome. There is likewise no dispute that the bilateral carpal tunnel syndrome injury caused sufficient physical harm to require surgery to each wrist, and caused some degree of at least temporary disability. Likewise, the records of Dr. Robbins and of Dr. McBride clearly indicate that bilateral carpal tunnel syndrome was the major cause of the need for bilateral carpal tunnel surgery. Accord Stevenson v. Frolic Footwear, 70 Ark. App. 383, 205 S.W.3d 413 (2000). The only remaining question in the present case is therefore whether or not the claimant has established by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment.

In the present case, neither party has offered into evidence any expert medical opinion as to whether or not the claimant's carpal tunnel syndrome arose out of her employment. Therefore, I am required to determine whether a preponderance of the non-medical evidence establishes that the claimant's work caused her bilateral carpal tunnel syndrome injury. Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

After reviewing the entire record, I find that the claimant's credible testimony indicates that the claimant was required to perform hand-intensive job functions both cleaning parts and operating machinery in order to perform her job at Micro Plastics. In addition, I find credible the claimant's testimony that she did not engage in any non-work activities of a hand intensive nature.

On the other hand, I also note that none of the doctors' notes in the record make any reference to the claimant's job or job duties at all. Furthermore, despite filing a claim for an allegedly work-related fall at work that occurred in February of 2002, the claimant filed her carpal tunnel syndrome problems at issue on group health insurance rather than filing her need for surgery with her employer for workers' compensation benefits. Complicating matters further, I note that the claimant is both diabetic and overweight, both of which I also understand to be risk factors for carpal tunnel syndrome. In light of the medical evidence establishing the claimant's weight and her diabetic condition, the fact that the claimant initially turned her bills into group insurance, and the lack of any expert medical opinion in the record addressing the degree, if any, that the claimant's job duties caused her carpal tunnel

syndrome, I find that it would require speculation and conjecture on my part in order to find that the claimant proved by a preponderance of the credible evidence that her carpal tunnel syndrome arose out of her employment. Consequently, I find that the claimant has failed to establish by a preponderance of the credible evidence that her bilateral carpal tunnel syndrome at issue rose out of and in the course of her employment. The claimant has therefore failed to establish one of the requirements necessary to establish a compensable carpal tunnel syndrome injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The respondents did not timely raise a notice defense pursuant to Ark. Code Ann. § 11-9-701.

3. The claimant has failed to establish by a preponderance of the credible evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment.

4. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable carpal tunnel syndrome injury.

ORDER

For the reasons discussed herein, this claim is respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge