

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205327

BETTY JENKINS, EMPLOYEE

CLAIMANT

**SANYO MANUFACTURING
CORPORATION, EMPLOYER**

RESPONDENT

**GAB ROBINS,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED OCTOBER 14, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on August 29, 2003, at Forrest City, St. Francis County, Arkansas.

Claimant represented by Mr. Keith Blackman, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Robert J. Donovan, Attorney-at-Law, Marianna, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 29, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation laws.

A prehearing conference was conducted on August 6, 2003, and a Prehearing Order was filed on said date. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

At the prehearing conference, the parties stipulated that the employee/employer/carrier relationship existed at all relevant times and that the

claim had been controverted in its entirety. At the hearing, the parties agreed that the claimant's average weekly wage was \$405.20 which would yield a compensation rate of \$270.00 per week for temporary total disability and \$203.00 per week for permanent partial disability if the claim was found compensable. The parties stated that the issues, as well as their respective contentions were properly set out in the Prehearing Order.

By agreement of the parties, the primary issue to be presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that she sustained a gradual onset, right carpal tunnel syndrome which arose out of and during the course of her employment with Sanyo Manufacturing Corporation; that respondents should be held responsible for all outstanding medical and related treatment, together with continued reasonably, necessary medical treatment; that she was entitled to temporary total disability beginning July 30, 2002, and continuing through the present, maintaining that her healing period had not ended; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that claimant could not prove a compensable injury within the meaning of the Arkansas Workers' Compensation Act. Respondents pointed out that if compensability was determined, no alternative jobs were available with the employer, within the physical restrictions imposed

upon the claimant by treating physicians.

In addition to the claimant, Melvin Jones was called as a witness in her behalf. Suzanne Aunspaugh and Charlotte Gibson were called as witnesses for the respondents. The record is composed solely of the transcript of the August 29, 2003, hearing containing several exhibits.

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 she sustained a gradual onset, right carpal tunnel injury which arose out of and during the course of her employment with Sanyo Manufacturing Corporation, entitling her to appropriate workers' compensation benefits.
4. Respondents are responsible for all outstanding medical and related treatment, together with continued, reasonably necessary medical

treatment, including, but not limited to a carpal tunnel release of the claimant's right upper extremity.

5. The claimant is entitled to temporary total disability benefits beginning July 30, 2002, and continuing through the present and until such time as her healing period is determined to have ended.
6. Respondents are entitled to a credit or offset during the period of time and the total amounts that the claimant received in employment benefits pursuant to A.C.A. §11-9-506.
7. Respondents have controverted this claim in its entirety for purposes of attorney's fees.

DISCUSSION

_____The facts in this case are basically undisputed. Although the claimant was a poor historian and had difficulty recalling the exact dates that her symptoms manifested themselves, as well as her course of medical treatment, her credible testimony concerning the job relatedness of her injury, as well as its prompt reporting is undisputed. In fact, there does not appear to be any genuine dispute that the claimant sustained a right carpal tunnel injury which arose out of and during the course of her employment with Sanyo Manufacturing Corporation. Rather, the primary dispute concerns claimant's entitlement to temporary total disability. This issue was confused and compounded by a collective bargaining agreement in a union contract governing

employees of the respondent/employer. However, for reasons set out further below, claimant's entitlement to temporary total disability is controlled by case law interpreting the Workers' Compensation Act as amended by Act 796 of 1993.

A brief history of the relevant facts follows.

The claimant, Betty Jenkins, is fifty-eight (58) years old. She was initially hired by Sanyo on or about July 22, 1999. The employer primarily manufactures television sets. When the claimant was initially hired, her primary job was working on an assembly placing foam in boxes for packing the TVs. The claimant eventually began working on a production line requiring the repetitive use of her hands, primarily her right hand to break off pieces of fiberboard used for TV chassis. The work involved multiple manipulations involving the right hand per unit produced. The expected production was 1,525 units per day with a 1,600 unit capacity. Although the work was extremely hard to conceptualize, it was apparent that the job involved rapid, repetitive use of the hands, primarily on the right because the claimant was right-hand dominant. The claimant first began experiencing physical problems with her right hand during December, 2001. The claimant promptly reported her physical problems to her immediate supervisor, Ruben Ivory, as well as the plant manager, Don Holland. The claimant, at all times, related her physical problems to her work. Respondents initially accepted the claim as a medical

only claim and provided the claimant with treatment through the company doctor, Dr. Sudhir Kumar. In addition to Dr. Kumar, the claimant was also examined and treated by her family physician, Dr. James F. Franks. The claimant was eventually referred to Dr. Apurva Dalal with East Arkansas Orthopedics in Forrest City, Arkansas. Dr. Dalal ordered nerve conduction studies which confirmed right carpal tunnel syndrome. Dr. Dalal opined that the claimant would benefit from surgical release of the right carpal tunnel. The record reflects that the claimant was initially reluctant to undergo surgical release. At the claimant's request, Dr. Dalal released the claimant to light-duty work which apparently the employer initially accommodated. In addition, it appears that respondents also initially paid for the examination and evaluations by Dr. Dalal. (Resp. Ex. A, pp.7-9)

For reasons which were not explained, the respondent insurance carrier subsequently controverted the claim in its entirety. The record does reflect that, at one point, the claimant's employment was terminated because of a blood alcohol test which was positive for alcohol in the claimant's blood. However, after the claimant filed a grievance, it was subsequently determined that the claimant did not have a drinking problem and her termination was overturned and her employment reinstated. The record further reflects that the claimant attempted to work in a restricted capacity following her initial release, but was unable to continue working. Respondents acknowledged that there

were no alternative jobs available at the plant within the claimant's physical restrictions. There was considerable testimony offered concerning the collective bargaining agreement between the employees' union and the employer; however, for reasons set out further below, this agreement does not affect the claimant's entitlement to indemnity benefits, if compensability is overcome.

COMPENSABILITY

In the present claim, the claimant does not contend that her injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, she contends that she 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, she 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).

Proof of rapid repetitive motion is not required when an injury is diagnosed as carpal tunnel syndrome because carpal tunnel syndrome is, by definition, a rapid repetitive motion injury. *Kildow vs. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998).

In the instant case, the claimant has satisfied each and every element necessary to establish compensability. It is undisputed that there is medical evidence supported by objective findings to support compensability. Further, there is no dispute that the claimant's injury is the major cause of her disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii); *Medlin vs. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998).

Compensability having been established, the only remaining issue concerns claimant's entitlement to temporary total disability.

The claimant's injury is a scheduled injury under our workers' compensation laws. With a scheduled injury, the claimant need not demonstrate that she is totally incapacitated from earning wages to receive temporary total disability benefits. Rather, the claimant must be unemployed

and within her healing period to be entitled to temporary total disability. *Wheeler Construction vs. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001); *Farmers Cooperative vs. Biles*, 77 Ark. App. 1, ___ S.W.3d ___ (2000).

I feel compelled to point out that although benefits can be increased by order of the Commission pursuant to A.C.A. §11-9-505 when an employer without reasonable grounds refuses to return an injured employee to work, and written rules promulgated by the employer with respect to seniority or the provisions of a collective bargaining agreement controls in determining the availability of employment; the employer cannot use the collective bargaining agreement to reduce benefits the injured worker is otherwise entitled. Therefore, any testimony related to the employer's collective bargaining agreement is not relevant.

Finally, it is undisputed that the claimant received unemployment compensation at the rate of \$207.00 per week for at least six (6) months. Accordingly, respondents are entitled to a credit or offset for those benefits. (Tr.67, 96)

Ark. Code Ann. §11-9-506(b)(Repl. 2002) provides:

(b) Provided, however, if a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment benefits but only to the extent the temporary total disability otherwise payable exceeds such unemployment benefits.

AWARD

Respondent, Great American Alliance Insurance Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$270.00 per week beginning July 30, 2002, and continuing through the present, and until such date as claimant's healing period is determined to have ended.

All accrued benefits shall be paid in lump sum and without discount; however, respondents may claim credit for the total amount of unemployment compensation that the claimant has previously received.

Respondents are further directed and ordered to pay all outstanding medical and related treatment for claimant's carpal tunnel syndrome, to date, and respondents remain responsible for continued, reasonably necessary medical treatment, including, but not limited to surgical release if still warranted and recommended by Dr. Dalal.

Additionally, claimant's attorney, Mr. Keith Blackman, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to A.C.A. §11-9-715.

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

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge