

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F306361

TONI KEMP, Employee	CLAIMANT
JOHN BROWN UNIVERSITY, Employer	RESPONDENT
GUIDE ONE INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 4, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by DAVID C. JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 15, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 6, 2003, and a pre-hearing order was filed on August 11, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties in April 2003.
3. Respondents have controverted this claim following an initial evaluation by Dr. Lewis.

Subsequent to the pre-hearing conference the parties have also agreed to stipulate that claimant earned an average weekly wage sufficient to entitle her to compensation at the rate of \$201.00 per week for temporary total disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of claimant's bilateral carpal tunnel syndrome.
2. Temporary total disability benefits from June 9, 2003 to a date yet to be determined.
3. Related medical.
4. Attorney fee.

Subsequent to the pre-hearing conference the claimant also raised as an issue compensability of her ganglion cyst. In addition, respondent has requested a credit for group benefits paid on behalf of the claimant.

The claimant contends she has developed bilateral carpal tunnel syndrome and a ganglion cyst which arose out of and in the course and scope of her employment as a custodian for the respondent employer. The claimant has remained temporarily totally disabled since June 9, 2003 and has incurred reasonable and related medical in the past and will continue to incur related medical in the future. This claim has been controverted in its entirety and the claimant's attorney is entitled to a controverted attorney fee on all benefits found due.

The respondents contend there are no objective medical findings to support the claimant's claim for bilateral carpal tunnel syndrome. The respondents contend that the "major cause" of the claimant's alleged gradual onset bilateral carpal tunnel syndrome complaints are related to her pre-existing condition and not related to her employment with the insured. Respondent also contends that claimant's ganglion cyst is not a compensable injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 6, 2003, and contained in a pre-hearing order filed August 11, 2003, are hereby accepted as fact.

2. The parties' stipulation that claimant earned a sufficient average weekly wage to entitle her to compensation at the rate of \$201.00 per week for temporary total disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome and a ganglion cyst on her right wrist.

4. Claimant is entitled to temporary total disability benefits beginning June 13, 2003 and continuing through a date yet to be determined.

5. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable bilateral carpal tunnel syndrome and her compensable ganglion cyst. This includes surgery which has already been performed by Dr. Inhofe.

6. Pursuant to A.C.A. §11-9-411 respondent is entitled to an offset for benefits which have previously been paid by claimant's group health insurance.

7. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 27 year old woman who is a high school graduate with some college education. After working at the respondent for two months through a temporary service, claimant was hired full time by the respondent for its custodial department on November 10, 2000. Claimant initially worked in the respondent's administration building,

but in September 2001 was moved to the cathedral. Claimant testified that the cathedral is a three-story building with classrooms on all three floors, a sanctuary, and offices. Claimant testified extensively regarding her job activities as custodian. These job activities included cleaning seven bathrooms; scrubbing toilets; cleaning windows; cleaning mirrors; cleaning sinks; sweeping, mopping and vacuuming three floors; cleaning white boards in classrooms; stocking janitorial equipment; dusting woodwork in halls and blinds in offices; polishing brass railings in the sanctuary; and supervising work study students.

The record indicates that claimant did have some help performing her job duties from University students who were performing in a work/study program. Claimant testified that these students worked one to two hours a day for a total of five to ten hours per week.

In December 2002 the claimant gave birth to her second child. Claimant returned to work for respondent after her maternity leave in February of 2003 and began noticing problems in her wrist in March and April of 2003. Claimant testified that she reported these problems to Ron Jeffreys, a supervisor, when a cyst appeared on her right wrist. At that time claimant's immediate supervisor, Billie Capehart, was on vacation. When Capehart returned from vacation, claimant was sent to Dr. Rebecca Lewis for a medical evaluation.

Dr. Lewis' initial evaluation occurred on April 25, 2003. Dr. Lewis diagnosed claimant as suffering from right and left wrist pain and a small ganglion cyst on her right wrist. Dr. Lewis prescribed Ibuprofen, wrist splints, and recommended that claimant avoid using her right hand excessively. Claimant was next seen by Dr. Lewis on May 12, 2003 with no improvement in her condition. Dr. Lewis again released claimant to light duty work. Claimant's next visit with Dr. Lewis occurred on May 19, 2003, and claimant was complaining of continued symptoms even though she was now working only four hours per night instead of eight hours per night. Dr. Lewis in her report also noted that claimant had a new onset of numbness. Dr. Lewis recommended continued use of splints, Ibuprofen,

and light duty work. Following this visit, claimant was instructed by respondent to take a week of vacation by Jeffreys. Claimant's symptoms improved while she was off work for that week and she returned to Dr. Lewis on May 27, 2003. Dr. Lewis in her report of that date noted that claimant's condition had improved and opined that claimant's bilateral hand pain had resolved. Dr. Lewis released claimant to return to work without restrictions, but did note in her report that claimant should let her wrists rest if they became tired while performing housekeeping.

Following her release from Dr. Lewis, claimant requested a second opinion. Claimant testified that Kay Jackson, the head of respondent's human resources department, informed her that she should use her group medical insurance and take vacation days. Claimant saw Dr. Lewis on one more occasion before she sought medical treatment from Dr. Robertson, an orthopaedist who was a member of her group health network.

Claimant's first visit with Dr. Robertson occurred on June 13, 2003. At that time Dr. Robertson diagnosed claimant's condition as bilateral carpal tunnel syndrome and a ganglion cyst on the right wrist. He ordered an EMG/nerve conduction study and opined that claimant was unable to return to work. The EMG/nerve conduction study was performed on June 23, 2003, and was within normal limits. Following that study claimant returned to Dr. Robertson who gave claimant an injection in her right carpal tunnel on July 9, 2003. When the injection did not relieve all of claimant's complaints, Dr. Robertson referred claimant to Dr. Inhofe who first evaluated claimant on July 23, 2003. Because conservative treatment had not been successful, Dr. Inhofe recommended surgery on claimant's right wrist which was performed by him on August 12, 2003. A subsequent visit with Dr. Inhofe resulted in a recommendation of occupational therapy three times a week for one month and his opinion that claimant should remain off work at that time.

Claimant has filed this claim contending that she suffered compensable injuries in

the form of bilateral carpal tunnel syndrome and a ganglion cyst. She seeks payment of medical treatment, temporary total disability benefits beginning June 9, 2003 and continuing through a date yet to be determined, as well as a controverted attorney fee.

ADJUDICATION

The initial issue for consideration involves claimant's contention that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. In order to prove compensability of carpal tunnel syndrome, a claimant is not required to establish that their work duties required rapid repetitive motion. However, a claimant must prove that they sustained a carpal tunnel syndrome injury which arose out of and in the course of their employment, that a work related injury is the major cause of their disability or need for medical treatment, and that the compensable injury is established by objective medical findings. *Kildow v. Baldwin Piano and Organ*, 333 Ark. 335, 969 S.W. 2d 1990 (1998).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. First, I find that claimant has met her burden of proving by a preponderance of the evidence that the carpal tunnel syndrome injury arose out of and in the course of her employment with respondent. Claimant testified that prior to working for the respondent she had no prior hand or wrist problems. It was claimant's testimony that her hand and wrist problems did not begin until March or April of 2003 when she returned to work for the respondent after maternity leave. While Dr. Lewis questioned whether claimant's symptoms were the result of her job activities or her pregnancy, I find insufficient evidence relating claimant's carpal tunnel syndrome or its symptoms to her pregnancy. On the other hand, Dr. Inhofe in his report of July 23, 2003 stated that it was his opinion within a reasonable degree of medical certainty that the claimant's carpal tunnel

syndrome was caused by and related to her work for the respondent.

With respect to this issue, I also note that claimant's job duties required her to engage in the extensive use of her upper extremities. Claimant's job duties required her to perform various custodial job duties throughout an eight-hour shift. While it is true that claimant had some help performing these duties from work/study students and that she performed no one activity for an extended period of time, that does not change the fact that claimant was engaged in hand intensive job activities throughout her eight-hour work shift.

Based upon the foregoing, I find that claimant has met her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome injury arose out of and in the course of her employment with the respondent.

I also find that claimant has established her compensable injury by objective medical findings. While the EMG/nerve conduction study was within normal limits, I find that claimant has met her burden of proof based upon the operative report of Dr. Inhofe. Dr. Inhofe's post-operative report dated August 12, 2003 revealed objective findings observed by Dr. Inhofe during the surgical procedure.

In this fashion, superficial palmar fascia was identified and incised in line with the incision exposing the transverse fibers of the transverse carpal ligament. Dissection was continued on the ulnar aspect of the wound, isolating the ulnar neurovascular bundle, exiting Guyon canal. This was a fibrous band at the level of the pisiform bone causing a corresponding indentation in the nerve.

The contents of the canal were examined. The median nerve had an hour-glass configuration with the point of greatest constriction at the thickest portion of the transverse carpal ligament. There was a hyperemic response to the nerves just proximal and distal to that level. (Emphasis added.)

Thus, during the surgical procedure performed by Dr. Inhofe, he discovered a fibrous band which was causing an indentation on the ulnar nerve and constriction of the

median nerve. Therefore, while the EMG/nerve conduction studies were normal, objective findings were made by Dr. Inhofe during surgery and I find that these were objective findings sufficient to establish a compensable injury.

Finally, I also find that claimant's work related injury was the major cause of her disability and need for medical treatment. This finding is based upon claimant's testimony regarding her job activities and the origins of her problems, as well as the opinion of Dr. Inhofe stated within a reasonable degree of medical certainty that claimant's carpal tunnel syndrome was caused by and related to her work for the respondent.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent.

The next issue for consideration involves compensability of the ganglion cyst. Since a ganglion cyst is not carpal tunnel syndrome, in addition to the elements of compensability previously discussed, claimant must also prove by a preponderance of the evidence that her job required rapid repetitive motion. There is a two-part test for determining whether an injury is caused by rapid repetitive motion: (1) the task 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). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. *Malone, id*, citing *Baysinger v. Air Systems, Inc.*, 55 Ark. App. 174, 934 S.W. 2d 190 (1998).

Here, I find that the multiple tasks in which claimant was engaged as a custodian involved rapid repetitive motion. While claimant was not required to engage in any particular cleaning activity for an extended period of time, the record reflects that claimant was performing multiple tasks which required the rapid repetitive use of her hands to clean floors, bathrooms, and other areas in the cathedral. Claimant testified that she primarily used her right hand to scrub and wipe items which were cleaned such as mirrors, windows,

and brass rails. While claimant admittedly had some help from the work/study students, she was still engaged in various hand intensive activities throughout her eight-hour shift. In fact, Billie Capehart, the claimant's supervisor, testified that all of claimant's job duties involved the use of her upper extremity. While claimant was not required to clean certain items in a certain amount of time, I believe that the totality of the evidence indicates that claimant's job duties required her to engage in rapid repetitive motion with her right wrist.

I also find based upon this evidence as well as the opinion of Dr. Inhofe that claimant's ganglion cyst is causally related to her job activities with the respondent; therefore, I find that claimant has met her burden of proving by a preponderance of the evidence that the ganglion cyst arose out of and in the course of her employment with respondent.

In addition, also based upon the same evidence, I find that the ganglion cyst was the major cause of her disability or need for medical treatment. Specifically, the ganglion cyst was removed by the surgical procedure on August 12, 2003. Finally, claimant has offered objective medical findings establishing the ganglion cyst. The cyst was observed by Dr. Lewis and was removed by Dr. Inhofe during surgery.

Accordingly, for the foregoing reasons, I find that claimant suffered a compensable ganglion cyst as a result of her job activities with the respondent.

Having found that claimant suffered compensable injuries in the form of bilateral carpal tunnel syndrome and a ganglion cyst on her right wrist, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with those compensable injuries. This includes surgery performed by Dr. Inhofe in August 2003. Claimant testified that some of her medical treatment had been paid for by her group health insurance. Pursuant to A.C.A. §11-9-411, respondent is entitled to an offset for these payments.

The final issue for consideration involves claimant's request for temporary total

disability benefits. Claimant contends that she is entitled to temporary total disability benefits beginning June 9, 2003 and continuing through a date yet to be determined. Claimant's injury is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability benefits during their healing period or until they return to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). In this particular case, claimant was released by Dr. Lewis to return to work with no restrictions on June 9, 2003. Claimant did not return to work at that time and sought medical treatment from Dr. Robertson on June 13, 2003. Dr. Robertson on that date stated that claimant was unable to return to work. Claimant subsequently came under the care of Dr. Inhofe who also opined that claimant was unable to work. Accordingly, based upon this evidence, I find that claimant is entitled to temporary total disability benefits beginning June 13, 2003 and continuing through a date yet to be determined. On that date Dr. Robertson opined that claimant was unable to work and that limitation has been continued by Dr. Inhofe. Based upon this medical evidence, I find that claimant is entitled to temporary total disability benefits beginning June 13, 2003 and continuing through a date yet to be determined.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome and a ganglion cyst on her right wrist. She is entitled to payment for all reasonable and necessary medical treatment provided in connection with her compensable injuries. Respondent is entitled to an offset for benefits paid by claimant's group health insurance pursuant to A.C.A. §11-9-411. Claimant is entitled to temporary total disability benefits beginning June 13, 2003 and continuing through a date yet to be determined. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

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.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE