

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F305594

CAROLYN KING, Employee	CLAIMANT
COMET CLEANERS, Employer	RESPONDENT
THE TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 25, 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 PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 29, 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 during March 2003.

At the time of the hearing the parties also agreed to stipulate that claimant earned an average weekly wage in the amount of \$300.00 which would entitle her to compensation at the rate of \$200.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits.

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

1. Compensability of overuse injury to both upper extremities.
2. Related medical.

3. Temporary total disability benefits from April 25, 2003 through a date yet to be determined.

4. Attorney fee.

The claimant contends she sustained an overuse injury to both upper extremities which arose out of and in the course of her employment. She is in need of medical treatment and has remained temporarily totally disabled since her date of termination on approximately April 25, 2003.

The respondents contend that the claimant did not suffer a compensable repetitive use injury. The claimant did not complain of injury until after her termination for cause. Moreover, the claimant told co-workers that she suffered from wrist problems as a result of past work.

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 an average weekly wage in the amount of \$300.00 which would entitle her to compensation at the weekly rates of \$200.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits is likewise accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while employed by the respondent.

FACTUAL BACKGROUND

_____ The claimant is a 36-year-old woman with a tenth grade education who has primarily worked in the laundry and dry cleaning business throughout her adult life. Claimant went to work for respondent on February 7, 2003, and primarily was hired to operate the “wet press.” Claimant testified that as the operator of the wet press she was required to press all jeans, shirts which were too big for the shirt press, blouses which were too small for the shirt press, some dry cleaning, and touch ups. Claimant testified that this was a full time job which she began each day at 6:00 a.m.

Claimant testified that approximately two months after she began working for the respondent she started having pain in her hands which radiated up her arm into the back of her neck. Claimant attributed this pain to her work on the press machine. Claimant testified that she reported these problems to her co-workers and eventually to Vickie Boyer, the co-owner of respondent.

Claimant’s employment with the respondent ended in May of 2003. Thereafter, on July 3, 2003, claimant sought medical treatment from her family physician, Dr. David Tucker, who diagnosed claimant as suffering from bilateral carpal tunnel syndrome. Claimant has filed this claim contending that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of her employment with the respondent.

ADJUDICATION

A claimant contending that they suffered a compensable carpal tunnel syndrome injury is not required to prove rapid repetitive motion. *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for medical treatment. A.C.A. §11-9-102(4)(E)(ii); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W. 2d 239 (1998). In addition, a compensable injury must be established by medical

evidence supported by objective findings. A.C.A. §11-9-102(4)(D).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. Specifically, I find that claimant has failed to offer objective findings establishing an injury.

As previously noted, claimant sought medical treatment from her family physician, Dr. David Tucker, on July 3, 2003. Dr. Tucker in his report of that date noted that claimant had a positive Tinel's sign and a positive Phalen's sign. As a result, Dr. Tucker diagnosed claimant as suffering from bilateral carpal tunnel syndrome and recommended a nerve conduction study. The nerve conduction study has not been performed; therefore, the question arises as to whether Dr. Tucker's diagnosis of bilateral carpal tunnel syndrome is supported by objective findings. I find based upon the evidence presented that objective findings are not present.

The facts in this case are similar to those presented in *Duke v. Regis Hairstylists*, Full Commission Opinion filed September 12, 1995 (E402336). In that particular case, the claimant worked as a hairstylist and was diagnosed as suffering from carpal tunnel syndrome. The diagnosis in that case was based in part upon a positive Tinel's test and a positive Phalen's test. The Commission noted that both of these tests relied upon a patient's description of a sensation produced by a physical stimulus created by the physician. Because the findings were based upon the patient's description of a physical sensation, the Commission found that these tests were not objective findings as required by A.C.A. §11-9-102(5)(D). The Commission's decision was affirmed by the Arkansas Court of Appeals in *Duke v. Regis Hairstylists*, 55 Ark. App. 327, 935 S.W. 2d 600 (1996). The Court noted that the tests performed, including Tinel's sign and Phalen's sign, were based upon the claimant's description of sensations produced by various stimuli.

Therefore, the Arkansas Court of Appeals held that these tests were under the voluntary control of the patient and did not constitute objective findings.

Likewise, in this case, Dr. Tucker based his diagnosis of bilateral carpal tunnel syndrome on positive Tinel's and Phalen's sign. These findings are not objective findings as required by A.C.A. §11-9-102(5)(D). Having failed to offer objective findings establishing an injury, claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE