

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F206118

CATHERINE MCCANN, Employee	CLAIMANT
DAY & NITE CLEANERS, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JULY 30, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant appearing pro se.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 7, 2003, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on March 5, 2003, and a pre-hearing order was filed on that same date. 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 at all relevant times.
3. The claimant sustained a compensable injury to her right forearm on February 8, 2002.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$200.00 for 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. Claimant's entitlement to temporary total disability benefits for 33 weeks beginning February 8, 2002.
2. Compensability of carpal tunnel syndrome.
3. Additional medical.

The claimant contends that as a result of her compensable injury she is entitled to temporary total disability benefits for a 33-week period beginning February 8, 2002. She also contends that as a result of her compensable injury she has developed carpal tunnel syndrome and requests additional medical care as a result thereof.

The respondents contend that there is no medical evidence which supports a period of temporary total disability extended from the date of injury for several months thereafter. Dr. Teitelbaum evidently found no objective evidence of physical problems which would support physical incapacity, nor was the claimant told not to work. Some months after the injury the claimant was sent to see another physician and received a diagnosis of carpal tunnel syndrome. Respondents likewise disclaim responsibility for this.

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 witness and to observe her 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 March 5, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury.
3. 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 while employed by the respondent.

4. Respondent has agreed to pay for any outstanding medical treatment relating to claimant's compensable right forearm injury including, but not limited to, Dr. Teitelbaum.

FACTUAL BACKGROUND

Claimant testified that she was hired by the respondent to work as an assembler putting together orders of laundry and dry cleaning. At some point in time the respondent asked the claimant to drive its pickup and delivery truck. Claimant testified that on or about February 3, 2002, she was picking up a heavy bag of laundry at a doctor's office when she twisted her right arm. Claimant testified that she had to use her left arm the rest of the day and injured it as well.

Claimant sought medical treatment from the hospital emergency room on two occasions before she came under the care of Dr. Teitelbaum. Dr. Teitelbaum diagnosed the claimant as suffering from a strained right forearm and a sprained left wrist.

Claimant contended that she returned to work for respondent on February 8, 2002, with her right arm in a sling and a brace on her left arm. When she informed the respondent that she was unable to drive she contends that she was terminated.

In April or May of 2002 the claimant moved to Las Vegas and approximately two weeks thereafter began working part time as a secretary for a trailer park. In November 2002 claimant returned to the Fort Smith area and sought medical treatment on November 6, 2002, from Dr. Murphy in Dr. Teitelbaum's clinic. Dr. Murphy suspected bilateral carpal tunnel syndrome and referred claimant for an NCV/EMG test. This testing was performed on November 25 and revealed bilateral carpal tunnel syndrome.

Claimant has filed this claim contending that she is entitled to temporary total disability benefits for 33 weeks beginning on February 8, 2002. Claimant also contends

that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome and that she is entitled to payment for medical treatment associated with the bilateral carpal tunnel syndrome.

ADJUDICATION

The first issue for consideration involves claimant's contention that she is entitled to temporary total disability benefits for 33 weeks beginning on February 8, 2002. Here, claimant suffered a scheduled injury; therefore, in order to be entitled to temporary total disability benefits she has the burden of proving by a preponderance of the evidence that she remained within her healing period and that she has not returned to work. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). The evidence indicates that claimant was taken off work at the emergency room for three days. Pursuant to A.C.A. §11-9-501(a)(1), a claimant is not entitled to compensation for the first seven days of disability resulting from an injury. After that three days the claimant attempted to return to work for respondent but was unable to do so because of her inability to drive. Claimant testified that she looked for work in the Fort Smith area but was unable to become employed.

After the claimant's emergency room visit she sought medical treatment from Dr. Teitelbaum beginning on February 18, 2002. Dr. Teitelbaum testified by deposition that there is no indication that he ever took claimant off work as a result of her compensable injuries.

Finally, it should be noted that during the 33-week period for which claimant is seeking temporary total disability benefits that she did in fact move to Las Vegas and began working part time as a secretary in April or May of 2002.

In short, claimant has the burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits. Here, I find that claimant has

failed to meet that burden of proof. First, claimant was only taken off work by the emergency room physicians for three days. Thereafter, she was released to return to work. Furthermore, when claimant sought medical treatment from Dr. Teitelbaum on February 18, 2002 and on subsequent dates, Dr. Teitelbaum did not take the claimant off work. Furthermore, during the period for which claimant seeks temporary total disability benefits, the evidence indicates that claimant returned to work as a secretary in Las Vegas. Thus, while claimant did miss three days of work, this is insufficient to entitle her to compensation benefits pursuant to A.C.A. §11-9-501.

Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her compensable right forearm injury.

Claimant also contends that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. When making a claim for a gradual onset of carpal tunnel syndrome, a claimant is not required to establish that her work duties required rapid repetitive motion. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, claimant still has the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment, and that the work related injury is the major cause of her disability or need for medical treatment. A.C.A. §11-9-102(4)(A)(ii) and §11-9-102(4)(E)(ii).

Here, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent. At his deposition, Dr. Teitelbaum was asked about the claimant's carpal tunnel syndrome and whether those symptoms were present at the time of his original examination in February 2002. Dr. Teitelbaum testified that his examination revealed that claimant's problems in February 2002 were from an acute injury, not a chronic gradual onset problem such as carpal tunnel syndrome.

With respect to this issue, I note that claimant was not diagnosed with carpal tunnel syndrome until November 2002, some nine months after her compensable injury and after claimant had performed job duties for another employer in Las Vegas.

Based upon the foregoing evidence, 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 as a result of her employment with respondent.

The final issue for consideration involves claimant's contention that she is entitled to payment for additional medical treatment. It appears that this additional medical treatment primarily concerns treatment associated with her carpal tunnel syndrome. Having found that claimant's carpal tunnel syndrome is not a compensable injury, claimant is not entitled to additional medical treatment for that condition. With respect to claimant's right forearm, I do note that the respondent has agreed that it will pay for any outstanding medical treatment associated with claimant's right forearm injury, including, but not limited to, Dr. Teitelbaum.

Finally, I would be remiss if I did not mention the fact that respondents have accepted as compensable only an injury to claimant's right forearm. However, the medical reports beginning in February 2002 also indicate that claimant was diagnosed as suffering from a sprained left wrist which she attributed to her job activities on February 3, 2002. Claimant has not filed a claim for benefits associated with the left wrist injury. Furthermore, to the extent such benefits were claimed, it would appear that all benefits due and owing have already been paid since each time she sought medical treatment for her left wrist she also sought medical treatment for her right forearm which has been accepted and paid or will be paid by the respondent. Therefore, it does not appear that there would be any additional benefits due and owing on claimant's left wrist; however, this was not raised as an issue at the hearing.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury. Claimant has also failed to prove 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. Respondent has agreed to pay for any outstanding medical treatment relating to claimant's compensable right forearm injury, including, but not limited to, Dr. Teitelbaum. Based upon the foregoing, claimant's claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE