

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202832

PAMELA MURPHY, EMPLOYEE	CLAIMANT
ALLEN WHITE COMPANY, INC., EMPLOYER	RESPONDENT
HIGHLANDS INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 9, 2003

Hearing before Administrative Law Judge J. Mark White on October 30, 2003, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Gregory B. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Gill A. Rogers, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 30, 2003, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on August 4, 2003, and a Prehearing Conference Order was entered that same day. A copy of the August 4, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employer/employee/carrier relationship existed between the parties on January 24, 2002; that the claimant suffered compensable bilateral carpal tunnel syndrome on January 24, 2002; and that the claimant earned a sufficient weekly wage to be entitled to a compensation rate of \$259 for temporary total disability benefits and \$194 for permanent partial disability benefits.

The parties agreed that the issues to be presented for determination were whether the claimant is entitled to additional temporary total disability benefits; the extent of permanent impairment; and controversion and attorney's fees. The issue of additional medical treatment was identified in the prehearing conference, but at the hearing the parties agreed to waive that issue.

The claimant contends that she is entitled to additional temporary total disability benefits from on or about June 14, 2002, to a date yet to be determined; that she is entitled to medical mileage, medical benefits and treatment recommended by Dr. Prychodko; and that she is entitled to permanent partial disability in accordance with the ratings of 28% to each upper extremity as assigned by Dr. Prychodko.

Respondents contend that the claimant's healing period ended on April 4, 2002, when Dr. Hilborn returned the claimant to work. Alternatively, the

respondents contend that if the claimant re-entered her healing period the date of reentry was July 19, 2002, when Dr. Prychodko took claimant off work, and that this healing period ended on January 17, 2003, after successful treatment by Dr. Prychodko and Dr. Bindra. Respondents further contend that the impairment ratings assessed by Dr. Prychodko are excessive and are not in accordance with the AMA Guides and are thus invalid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with ARK. CODE ANN. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from June 14, 2002,

through January 31, 2003.

4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to an additional 10% impairment rating for mild ulnar nerve entrapment at the elbow.
5. The claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits of 20% to each upper extremity.
6. The respondents have controverted all the indemnity benefits considered herein.

DISCUSSION

I. History

The claimant worked as a machine operator for the respondent-employer. She described her work as being a “fast, repetitive production job” involving sewing and assembling furniture. As a result of her employment, she developed bilateral carpal tunnel syndrome. The respondents accepted her injury as compensable and paid benefits.

The claimant was treated by Dr. Richard Hilborn, who ultimately performed a carpal tunnel release of the right hand on March 6, 2002, and of the left hand on

March 20. Dr. Hilborn recorded in his notes that the claimant recovered well and released her to light duty on April 4, 2002. The claimant disputes Dr. Hilborn's characterizations of her condition at that time. She testified that she continued to experience pain in both hands, and that she had not been ready to return to work when Dr. Hilborn released her. The day after Dr. Hilborn released her, the claimant requested a change of physician. She did return to work, but she testified that she experienced progressively worse problems with her hands. She maintained a daily diary of the specific problems she encountered with her hands, and her diary is admitted into evidence as part of Joint Exhibit 1. The claimant continued working until June 13, 2002, when she voluntarily terminated her employment. She did so because her hand problems prevented her from adequately performing her job duties, and she wanted to avoid further damage to her hands.

The respondents granted the claimant a change of physician, and she saw Dr. Andrew Prychodko on July 19, 2002. Dr. Prychodko took the claimant off of work and ordered a nerve conduction/EMG test, performed August 1, which revealed bilateral moderate carpal tunnel syndrome and "likely" bilateral mild ulnar neuropathy. Dr. Prychodko treated the claimant conservatively, and then referred her to Dr. Randy Bindra for further treatment. Dr. Bindra opined that the claimant's continuing symptoms arose "from the palmocutaneous branch of the median nerve

which is either scarred down or partially divided at surgery. This could be resolved with desensitization." Dr. Bindra ordered physical therapy to assist the claimant in desensitizing the nerves in her wrist. The claimant testified the physical therapy provided her great relief, and Dr. Bindra released her from care on January 31, 2003. Dr. Prychodko likewise released the claimant from care on February 14, 2003, and assessed a permanent impairment of 28% to each upper extremity.

Dr. Michael Moore performed an independent medical examination, including a nerve conduction/EMG study, at the request of the respondents on October 16, 2003. Dr. Moore opined that the claimant's clinical history and physical examination were consistent with a residual bilateral carpal tunnel syndrome, but that the claimant's history and examination revealed no evidence of cubital tunnel syndrome. Dr. Moore noted the claimant's decision to forego additional surgery and agreed it was a reasonable decision, but he said that surgery might be an option if the claimant's problems worsened again. Dr. Moore assessed a permanent impairment of 20% to each upper extremity.

II. Temporary Total Disability Benefits

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period or until she returns

to work, which ever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Injuries to the wrist generally, and carpal tunnel syndrome specifically, are considered scheduled injuries. *See, e.g., Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002); *Woods v. Tony Bull Motor Co.*, Workers' Compensation Commission E901847 (Sept. 5, 2000).

The respondents paid temporary total disability benefits to the claimant for her time off from work up through the time of her surgery and subsequent recovery. She returned to work after April 4, 2002, at which point her indemnity benefits ceased. She continued working until June 13, 2002, when she voluntarily terminated her employment.

I found the claimant to be a credible witness in all respects. Her testimony was plausible, internally consistent, and consistent with the medical evidence. She credibly testified that her symptoms grew progressively worse from the time of her surgery up until the day she terminated her employment, June 13, 2002, which means her need for treatment continued in that same time. The claimant's healing period is not defined by when she was working or capable of working; it is defined

by when she was in need of treatment. Because she was experiencing renewed symptoms on June 13, 2002, and because the respondents concede that Dr. Prychodko's subsequent treatment was reasonably necessary, I find that the claimant was in her healing period on the day she terminated her employment, June 13, 2002.

But the test for temporary disability benefits is two-fold: the claimant is entitled to benefits during her healing period or until she returns to work, *whichever occurs first*. It does not appear that the Court of Appeals or Supreme Court have considered a situation quite parallel to this: whether a claimant's entitlement to temporary disability benefits for a scheduled injury under Ark. Code Ann. § 11-9-521 (a) may revive after an extended return to work, or whether entitlement permanently ceases with the first good-faith return to work. The courts have found that an "unsuccessful" return to work will not terminate a claimant's entitlement to temporary benefits. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Farmer Cooperative v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The claimant in *Poulan* returned to work for only two days, and the claimant in *Biles* "never left work". *Id.* The present claimant, in contrast, returned to work for some two months before voluntarily terminating her employment to seek additional medical treatment for her hands. The Full Commission has found that where an employee

has “re-entered” a healing period, his entitlement to temporary disability benefits revives despite the previous return to work. *Long v. L & J Mechanical*, Workers’ Compensation Commission F008439 (Sept. 30, 2003).

I find that the present claimant’s return to work, from April 4, 2002, to June 13, 2002, was an “unsuccessful” return to work akin to those in *Poulan* and *Biles* cited above. The claimant did work for two months, but she credibly testified that she began to experience mild swelling on the first day she returned to work, and her hand and wrist problems grew progressively worse over the following days. She credibly testified that she terminated her employment on June 13, 2002, to “save” her hands. Given these facts, I find that her return to work was unsuccessful. An unsuccessful return to work will not bar additional temporary disability benefits for a scheduled injury. *Farmer Cooperative v. Biles, supra*.

Even if the claimant’s return to work could not be characterized as “unsuccessful”, I conclude that a claimant’s entitlement to temporary disability benefits for a scheduled injury may revive even after an extended return to work, where the claimant remains in her healing period and ceases work due to complications from her compensable injury. Such a conclusion is consistent with the legislative purposes of the workers’ compensation acts, “to pay timely temporary and permanent disability benefits to all legitimately injured workers who suffer an

injury or disease arising out of and in the course of their employment” and “to return the worker to the work force.” As the Court observed in *Biles, supra*, “[I]t would be ludicrous to assume that the legislature sought to penalize workers who sustain scheduled injuries, or to deter such workers from making a good-faith effort to return to the work force following such an injury.”

Because the claimant had not successfully and finally returned to work, and because she remained in her healing period, I find that she was entitled to temporary total disability benefits beginning June 14, 2002.

The claimant has not returned to work and is now attending college. Her entitlement to temporary disability benefits therefore continues until the end of her healing period. Dr. Prychodko declared the claimant to be at MMI as of February 14, 2003, the last date on which the claimant treated with him. However, I note that Dr. Bindra declared the claimant “asymptomatic” and released her from care on January 31, 2003. The visit with Dr. Prychodko was a mere formality – a final visit with a primary care physician at the end of treatment by a specialist – as the claimant’s need for treatment had already ended. I therefore find that the claimant’s healing period ended on January 31, 2003. The claimant has thus proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from June 14, 2002, through January 31, 2003.

III. Permanent Disability

The claimant has been assigned competing impairment ratings by two doctors for her permanent partial disability. Dr. Prychodko determined that the claimant sustained a 28% impairment to each upper extremity, while Dr. Michael Moore determined that the claimant sustained a 20% impairment to each upper extremity. Both doctors agree that the claimant is entitled to 20% for each upper extremity due to her carpal tunnel syndrome, and both doctors reached that number with the same table of the *AMA Guides*.

The sole discrepancy between the ratings is that Dr. Prychodko assigned the claimant an additional 10% impairment for mild ulnar nerve entrapment at the elbow, which with the 20% carpal tunnel syndrome rating produced a combined rating of 28%. Dr. Moore, on the other hand, concluded, "Ms. Murphy's clinical history, physical examination, and the nerve conduction and EMG study did *not* reveal any evidence of cubital tunnel syndrome" (emphasis in original). *Dorland's Illustrated Medical Dictionary*, 26th ed., defines cubital tunnel syndrome as, "a complex of symptoms resulting from injury or compression of the ulnar nerve at the elbow."

Prior to the impairment rating assigned by Dr. Prychodko, none of the claimant's doctors had definitively diagnosed her with ulnar nerve compression at

the elbow, though several noted the *possibility* of such a problem. A nerve conduction study performed August 1, 2002, by Dr. William Vogenitz revealed, “likely mild ulnar neuropathy bilateral upper extremities. The most likely site of entrapment is the cubital tunnel.” But a nerve conduction study performed October 16, 2003, by Dr. Moore revealed no such findings.

There is insufficient evidence in the record to enable me to differentiate the probative value of the competing nerve conduction studies, or of the competing opinions of Drs. Prychodko and Moore. Given this stalemate, I must find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to an additional 10% impairment rating for mild ulnar nerve entrapment at the elbow. I therefore find that the claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits of 20% to each upper extremity.

AWARD

The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from June 14, 2002, through January 31, 2003; and that she is entitled to permanent partial disability benefits of 20% to each upper extremity. The respondents are hereby directed and ordered to

pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Gregory B. Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to ARK. CODE ANN. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ARK. CODE ANN. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge