

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302603

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| MARTHA PEREZ | CLAIMANT |
| CRYSTAL LAKE FOODS LLC | RESPONDENT |
| COMPCARE ADMINISTRATORS, INC. INSURANCE CARRIER | RESPONDENT |

OPINION FILED SEPTEMBER 10, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 12, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 20, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On January 31, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$175.00 for temporary total disability and \$154.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's bilateral carpal tunnel syndrome.

2. Related medical.

3. Temporary total disability from January 31, 2003, to a date to be determined.

4. Attorney's fees.

5. Lack of notice defense until March 6, 2003.

In regard to the foregoing issues the claimant contends that she has carpal tunnel as of December 2002 from deboning. She contends that she should receive TTD and medical as a result of this injury.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury as defined by the Arkansas Workers' Compensation Act. In addition, the respondents contend that the first notice they received of this claim was March 6, 2003, and, therefore, in the event the Commission determines that this is a compensable injury, the respondents contend they are not liable for benefits until March 6, 2003.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical records marked Claimant's Exhibit No. 1, No. 2 and a letter which is marked Claimant's Exhibit No. 3. All of these exhibits were admitted without objection.

DISCUSSION

The claimant testified by way of an interpreter.

The claimant testified that she was 36, a native of El Salvador and had gone as far as the third grade in her native country.

The claimant testified that she began working for the respondent in November 2001. The claimant agreed that she worked continuously until she took off because of her hand problems. The claimant testified that she does not remember exactly but thinks that she quit working for the respondent on February 6, 2003. The claimant testified that she had not seen a doctor by the time she quit working for the respondent. The claimant testified that she worked real fast with her hands which made her hands hurt a lot. The claimant testified that at the time she quit she was working at a belt and she had to put eighty pieces of breast meat per minute on the line. The claimant testified that before she had this particular job she was working with a knife in her right hand and with the other hand she was pulling the meat. The claimant testified that she was six months on the line working with the knife real fast but then when her hands began to hurt, that is when she was sent to the line where she put eighty pieces of breast meat on the line. The claimant testified that her problems started in November after she had been doing this job for about one month and her hands started swelling. The claimant testified that she worked for the respondent a whole year after her hands started swelling. The claimant testified that she also had pain and numbness in her

hands. The claimant indicated that she was seen by Dr. Moffitt but went back to work after she saw this doctor. The claimant testified that the respondent made her an appointment and took her to the doctor.

The claimant testified that she first saw Dr. Heinzelmann in February sometime. The claimant stated that when she saw Dr. Heinzelmann she was having a lot of pain in her hands and surgery has been recommended but because she does not have insurance or Medicaid she has not had this surgery. The claimant testified that a lady she knew recommended Dr. Heinzelmann to her.

On cross examination, the claimant testified that she has not looked for work since she quit working for the respondent. The claimant testified that her hands have gotten a little better since she quit work. The claimant testified that she does cooking for her family but that her family helps out with the house cleaning. The claimant testified that her only activity is that she will go walking. The claimant agreed that she just walked off the job for the respondent and did not report to anyone that she was quitting and she did not fill out any paper or claims for workers' compensation. The claimant agreed that she did seek treatment for her hands while she was working for the respondent. The claimant testified that in December, after she had begun work, her hands started swelling and then in January she was going to the nurse's station. The claimant testified that the nurse would put ice on her hands for a little while and then she would be sent back to work. The claimant testified that ever time she would go to the

nurse's station she would tell Wilma that she needed medical treatment and that Wilma told her that she would tell the nurse. The claimant testified that a lady by the name of Lorraina took her to see Kandy Buckner and that Lorraina, who speaks Spanish as well as English, told Ms. Buckner that the claimant's hands were real bad and Ms. Buckner said she would be back but she never returned.

Kasandra Buckner testified on behalf of the respondent. Ms. Buckner testified that she is the plant nurse and had been at that plant for sixteen years. Ms. Buckner testified that the employees of the respondent's plant are instructed to report to their supervisor or to come to the nurse's station if there is an injury. Ms. Buckner testified that ice therapy is usually used when people are complaining of problems with their hands. Ms. Buckner testified that Wilma does work the second shift at the nurse's station. This witness testified that there had been no actual written report concerning the claimant until she received notice from the Commission that the claimant had filed a claim for benefits. Ms. Buckner testified that the claimant would come in and complain about her hands some days and ice therapy would be used. This witness testified that the claimant had a job change within the plant but that the claimant never came in and requested medical treatment. Ms. Buckner testified that she never got word from Wilma or anyone else that the claimant was requesting medical treatment until she became aware of the claimant's filing of a claim through the Commission.

The claimant was seen by Dr. Gary Moffitt for complaints of bilateral pain and numbness in her hands. Dr. Moffitt notes that the claimant should limit gripping with her hands until work up is completed. Dr. Moffitt saw the claimant again on March 14, 2003, for the same complaints at which time blood tests were arranged and it was recommended that she be referred to a rheumatologist. Dr. Moffitt also indicates that she can return to work March 14, 2003. On March 7, 2003, the claimant underwent tests for rheumatoid arthritis and on April 24, 2003, she had a uranalysis. The claimant also had blood test done on April 28, 2003. Dr. Bryan Benafield writes to the claimant's attorney on July 15, 2003, and sets forth that he has taken over the claimant's case from Dr. Heinzelmann. Dr. Benafield writes that, in his opinion, he thinks her work did contribute to her carpal tunnel syndrome although it is true that people with rheumatoid arthritis are somewhat predisposed to having carpal tunnel problems, in his opinion her work as a deboner contributed more than the rheumatoid arthritis to her hand problems.

Arkansas law requires that a compensable injury must be established by medical evidence supported by objective findings. See Ark. Code Ann. §11-9-102(4)(D). The medical evidence in this particular case does not support by objective medical findings that this claimant has bilateral carpal tunnel. Dr. Benafield mentions or diagnoses this claimant with bilateral carpal tunnel based on information from Dr. Heinzelmann but there are not objective medical findings in this record on which to support his diagnosis.

The claimant, therefore, has failed to prove by a preponderance of the evidence in accordance with Arkansas law that she sustained a compensable injury in the form of bilateral carpal tunnel while working for the respondent.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On January 31, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$175.00 for temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury as defined by Arkansas law while working for the respondent.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury as defined by Arkansas law while working for the respondent. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE