

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201405

MARIA PINA	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 3, 2003

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

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

Respondents represented by MATTHEW MAULDIN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 22, 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 12, 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 or about January 30, 2002, or January 31, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$209.00 for temporary total disability and \$157.00 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. Attorney's fees to include any paid.
4. Defense of statute of limitations.

In regard to the foregoing issues the claimant contends that she sustained a gradual onset injury, specifically bilateral carpal tunnel syndrome, which arose out of the course and in the scope of her employment. The claimant asserts that she is entitled to medical treatment for said condition and, specifically, is entitled to reasonable related medical bills and any reasonable related medical bills incurred in the future. The claimant is also entitled to temporary total disability and permanent partial disability. This claim has been controverted in its entirety and the claimant's attorney is entitled to a full controverted attorney fee on all benefits found due.

In regard to the foregoing issues the respondents contend that they controvert this claim in its entirety. Respondents contend that claimant filed a claim against Wal-Mart Stores, Inc. on or about April 23, 2002; that claimant filed a claim against Sam's Travel on or about November 6, 2002; and respondents contend that claimant's claim(s) is barred by the Statute of Limitations. Alternatively, respondents contend that claimant cannot prove an injury causing internal or external physical harm to the body and

arising out of and in the course of employment, which is the major cause of the disability or need for treatment, and established by medical evidence supported by objective findings. Respondents respectfully reserve the right to supplement this pre-hearing questionnaire at a later date.

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. The respondents submitted medical documentation marked Respondents' Exhibit No. 1 and additional medical marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she started working for the respondent on February 8, 1999, in the Sam's travel department. The claimant testified that she sorted the mail which would take her approximately an hour, she took messages for orders off a message machine and would type up address labels which would take her two to two and one half hours, she would lay out all the coupons to go in each envelope and then stuff the envelopes with the information, remembering that she would stuff between three to five hundred envelopes at a time. The claimant testified that she also would fold tee shirts which were a part of the respondents' promotional packages and that she would usually fold one hundred shirts at a time which would take her about one half hour. The claimant testified that she then would have to peel off labels and put them

on the envelopes for mailing. The claimant testified that besides these duties, she also took care of the numerous brochures which were received by the respondent remembering that she would sort as well as store these brochures. The claimant explained that she worked in a department that dealt with promotional travel packages for the Wal-Mart associates and the numbers of calls or requests she would receive each day would depend on the different packages being offered through the travel agency. The claimant testified that she worked at this job from the time she was hired until August 2000. The claimant remembers that around October 1999 she reported to Sara Herlevic that her hands were starting to get numb and at that time they switched her from hand writing the labels to using a computer. The claimant testified that she did not request medical treatment nor did she receive medical treatment at this time. The claimant testified that the numbness and tingling was primarily in her fingers and hands but that it began to progress up into her arm.

The claimant testified that she was transferred to accounts payable doing invoice processing for the respondent. The claimant explained that she would sit at a computer for eight hours a day keying in numbers. The claimant agreed that this required the constant use of her right hand and that with her left hand she would be turning the pages. The claimant testified that this computer keying work caused her symptoms to increase and that the numbness and tingling turned into a burning sensation and again was going up into her arm. The claimant testified that her right was worse than her left. The claimant testified that she reported these problems

to the respondent and she was sent to see Dr. Moffitt in January 2002. The claimant testified that Dr. Moffitt ordered a nerve conduction test. The claimant testified that the respondent denied her request for further medical treatment so she went to her own doctor, Dr. Emerson, and Dr. Emerson referred her to Dr. Dickinson. The claimant testified that Dr. Dickinson ordered a nerve conduction test and as a result of these tests, surgery has been recommended. The claimant testified that the symptoms which she was experiencing in 1999 were nothing to compare in severity to the problems she was having when she was seen by the doctor in January 2002.

The claimant testified that she was involved in a motor vehicle accident at the end of February 2000 in which she injured her back, neck and shoulders. The claimant testified that she had another vehicle accident a couple of months later which re-injured these problems. The claimant was asked if she injured her hands or wrists in either one of these accidents and the claimant responded, "not that I know of." The claimant agreed that she was in a third automobile accident in June 2001 and again the claimant testified that this accident did not involve or injury her hands or arms. The claimant testified that she has had non-work related back surgery and was on leave as a result of this surgery for a period of time. The claimant testified that since she was off more than 90 days, her accounting position was filled but as of June 9, 2003, she is back working for the respondent as a cashier at a super center. The claimant testified that she is not sure how long she will be able to do this scanning job because the work is aggravating her right arm.

On cross examination, the claimant agreed that following her first motor vehicle accident on February 25, 2000, while she was being treated by Dr. Huskins, she reported experiencing numbness in her hands. The claimant explained that she told him that she had numbness in her hands but had this before the accident. The claimant agreed that in her deposition she testified that she first became aware of her problem as being work related about October 2001 but was aware of and was experiencing numbness as much as one year prior to October 2001. When questioned further, the claimant agreed that she initially was aware that she had some numbness in her hands when she was working for Sam's Travel but did not relate this to her work.

The claimant was seen by Dr. Emerson on January 26, 2001, for her annual pap, pelvic and breast examination. Upon examination, Dr. Emerson notes that the claimant was positive for Tendil's and Phalen's bilaterally with decreased sensation on the ulnar and radial aspects of digitals 1-4 and along with other assessments assessed the claimant with having carpal tunnel syndrome and wrist splints bilaterally were recommended. Dr. Gary Moffitt writes on January 31, 2002, that he has seen the claimant for her complaints of pain, numbness and weakness in both hands that has been bothering her for the past few weeks. Dr. Moffitt opines that the claimant has carpal tunnel syndrome and recommended a nerve conduction test. Dr. Moffitt further recommended that the claimant continue working but to limit her gripping with both hands and he recommended no more than two hours of data entry. Dr. Darrell Stewart writes on

February 5, 2002, that he has seen the claimant for her morbid obesity noting that she has been obese for at least nineteen years and has been unsuccessful with medication and exercise in losing weight. Dr. Stewart notes that as a result of her obesity she has stress urinary incontinence, dysmenorrhea and symptoms of sleep apnea. Dr. Stewart recommended a gastric bypass in order to bring her obesity under control. Dr. Kim Emerson writes on March 11, 2002, that she has seen the claimant for her complaints of back pain and, upon examination, it is noted that the claimant continues to have wrist pain and numbness in her hands bilaterally with pain radiating up into the elbows bilaterally which has been going on for two years but has continued to worsen. Dr. Emerson again assesses the claimant with having carpal tunnel syndrome as well as other physical problems and for the carpal tunnel syndrome she was referred to Dr. Dickinson. Dr. Dickinson writes on April 10, 2002, that he has seen the claimant for her bilateral carpal tunnel complaints and he ordered an EMG and nerve conduction test.

The record contains a series of letters from Dr. Dickinson as well as Dr. Moffitt concerning the major cause of the claimant's carpal tunnel syndrome. Not surprising, Dr. Gary Moffitt writes that the claimant's bilateral carpal tunnel was pre-existing and that her repetitive work for the respondent had nothing to do with her developing this problem. Dr. Dickinson writes on September 18, 2002, that the claimant does have bilateral carpal tunnel syndrome as confirmed by EMG and nerve conduction tests. Dr. Dickinson notes that she does a lot of repetitive motion as key punch and writes

that, "I feel that her occupation is contributory to her carpal tunnel syndromes." Dr. Dickinson does write that it is difficult to say that it is the major cause because people could have carpal tunnel and do not do repetitive motion. The doctor writes that, "however, it frequently has been associated with persons doing this type of activity and, therefore, is certainly a cause. There is no way of knowing whether or not it is "the major cause"." In a letter dated September 26, 2002, in response to the respondents' attorney's questions, Dr. Dickinson writes that hypothyroidism certainly can be a contributing factor for carpal tunnel. Dr. Dickinson notes that obesity is probably not as serious a factor in developing carpal tunnel syndrome. Dr. Dickinson notes that the medical records concerning the claimant's motor vehicle accident indicate that she had problems with her neck and he saw nothing that would indicate any evidence of carpal tunnel syndrome. Dr. Dickinson agrees that the claimant does have several risk factors pointing to her developing carpal tunnel primarily hypothyroidism, obesity and repetitive motion work. The doctor notes that it is difficult to single out which one of these is the major cause. Dr. Dickinson notes that the claimant does have an occupation which can contribute to carpal tunnel syndrome as well as long standing health situations which are also contributing factors. Dr. Dickinson does note that he does not have a history of any other trauma available to him that would support carpal tunnel syndrome.

The claimant filled out an associate statement for workers' compensation benefits on January 30, 2000, for her complaints of

right and left-hand problems. The claimant filed an AR-C with Arkansas Workers' Compensation Commission on or about April 23, 2002, as acknowledged by a letter from the Commission dated April 22, 2002.

The respondents have raised the issue that this claim is barred by the statute of limitations. In Ham v. Alumacraft Boat Co., Claim No. E708498, FC Opinion December 17, 1998, the Commission stated that "Act 796 only changed the law with respect to specific incident injuries and the strict construction doctrine requires the finding that the law remains unchanged with respect to gradual onset injuries." That is, the Statute of Limitations does not commence to run until the true extent of the limitations manifest and causes an incapacity of earning wages which persists long enough to entitle the claimant to benefits under Ark. Code Ann. §11-9-501 (Repl. 1996). The Arkansas Supreme Court, in the case of Minnesota Mining and Manf. V. Baker, 337 Ark. 94, 989 S.W. 2d 151 (1999), stated that for purposes of commencing the Statute of Limitations under 11-9-702(a)(1), an "injury" is not to be construed as "compensable" until (1) the injury develops or becomes apparent and (2) the claimant suffers a loss in earnings on account of the injury. Accordingly, the statute of limitations does not begin to run until both elements of this rule are met.

It is apparent from the record that this claimant became aware that she was having some numbness in her hands in 1999 and mentioned same to her supervisor. The claimant has also testified that at this time she did not relate this to her work and no treatment was

received for her problem. The claimant did not seek treatment for her carpal tunnel problems until January 2002 although her problems had been mentioned in a medical report from Dr. Emerson when she was in being seen for female problems in January 2001. The claimant, in my opinion, did not meet both elements of the statute of limitations rule until she was seen by Dr. Moffitt on January 31, 2002, where he diagnoses her with carpal tunnel syndrome and recommends that she be tested further with nerve conduction studies. The claimant's carpal tunnel syndromes were established by medical findings by a nerve conduction test as mentioned by Dr. Dickinson. Dr. Dickinson attributes the claimant's work, her thyroid problems and, to a lesser degree, her obesity as contributing or possibly contributing to her developing carpal tunnel syndrome. Dr. Dickinson stated that it would be difficult to state with certainty which of these factors contributed to her developing this problem but noted that the type work that the claimant did was the kind of work which could develop carpal tunnel syndrome. Based on the entire record, I find that the claimant has proven by a preponderance of the evidence that her carpal tunnel syndrome developed as a result of her work for the respondent. The claimant has described hand intensive repetitive work both when she was with Sam's Travel, a segment of the Wal-Mart group, and then her work in accounting when she was posting invoices. The medical records have indicated that the claimant has been obese and with a thyroid problem for over nineteen years and it was not until she began her work for the respondent that she developed carpal tunnel syndrome, therefore, I find that a

preponderance of the evidence would indicate that her work was a major contributing factor to her developing carpal tunnel syndrome and the respondents should be responsible for the payment of her medical treatment for her compensable injury.

FINDINGS & CONCLUSIONS

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

2. On or about January 30, 2002, or January 31, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$209.00 for temporary total disability and \$157.00 for permanent partial disability.

4. The respondents have failed to prove by a preponderance of the evidence that this claimant's claim for benefits is barred by the statute of limitations. See discussion above. Also see Ridley v. City of Fayetteville, Claim Number E809002, Full Commission Opinion July 2, 1999.

5. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury in the form of bilateral carpal tunnel syndrome while working for the respondent. See discussion above.

6. The respondents should pay for this claimant's medical treatment for her bilateral carpal tunnel syndrome from January 20, 2002.

7. The respondents have controverted this claim in its entirety.

8. Since, to date, this is a medical only claim no attorney's fee will be awarded, however, should indemnity payments become due as a result of this claimant's compensable injury, the maximum statutory attorney's fee will be allowed.

ORDER

The respondents have failed to prove by a preponderance of the evidence that this claim is barred by the statute of limitations.

The claimant has proven by a preponderance of the evidence that she sustained bilateral carpal tunnel syndrome while working for the respondent, therefore, the respondents should pay for all medical treatment for this claimant's carpal tunnel syndrome subsequent to January 20, 2002.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE