

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109519 & F207327

JOHNNIE M. STALLINGS, EMPLOYEE	CLAIMANT
H & L POULTRY, EMPLOYER	RESPONDENT
THE INSURANCE LINK, CARRIER	RESPONDENT NO. 1
AIG CLAIM SERVICES, INC., CARRIER	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on June 6, 2003, at Drew County, Monticello, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents No. 1 represented by the HONORABLE LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE R. SCOTT MORGAN, Attorney at Law, Pine Bluff, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury (carpal tunnel syndrome) as defined by Ark. Code Ann. §11-9-102, and the liability of the appropriate carrier. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship with Respondent No. 1, Insurance Link, on August 8, 2001 at which time the claimant sustained compensable injuries (left knee, elbow and back) in a fall at work. The claimant's compensation rate is \$208.00/\$156.00. Medical expenses and temporary total disability benefits (until November 30, 2001) were paid. Dr. Pruitt assessed no permanent impairment.

The parties further stipulated to an employer-employee-carrier relationship with respondent No. 2, AIG, on June 14, 2002 at which time the claimant sustained compensable injuries (right shoulder, neck) in a second fall at work.

The claimant contends that she developed bilateral carpal tunnel syndrome (CTS) as a compensable consequence of the fall on August 14, 2001. She seeks payment of continuing medical treatment with Dr. Pruitt and attorney's fees from Respondent No. 1, Insurance Link.

Respondent No. 1, Insurance Link, contends the claimant cannot establish that her injury occurred during the course of her employment and there is no causal connection between the compensable injury and the development of CTS several months later. Alternatively, in the event of any award, the respondents seek a credit of \$929.14 for an overpayment of temporary total disability benefits. Respondent No. 1, Insurance Link joined respondent No. 2, AIG as a party to this claim.

Respondent No. 2, AIG, contends CTS had been diagnosed prior to the compensable injury on June 14, 2002 and if the claim is compensable, Respondent No. 1 is liable.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing. She wore a brace on her left arm. The claimant is right hand dominant.

The claimant age 53, (D.O.B. January 30, 1950), began work for the respondent-employer in June, 2001. Her job duties required her to cut chicken with a knife, pull out parts and place the meat in a tub. She handled thirty-six birds per minute along with a co-worker, using both hands to pull the birds apart, (Tr. p. 8-10). Her job duties made her hands sore and she developed knots on her thumbs. However, there is no mention of any hand injuries or these particular symptoms in her medical records. There is no indication that she complained of her job duties causing any symptoms.

On August 8, 2001, during a shift change, the claimant clocked out, took off her smock and washed her hands. The floor was slippery with food particles and she fell in the break room on her left side on the concrete floor. She injured her hand, left knee, left elbow, and hips. However, there is no mention of a hand injury in her medical records.

The claimant was seen by general practitioner, Dr. Pennington on referral by the plant nurse and by orthopedic surgeons, Dr. Lytle and Dr. Pruitt. Her condition improved with conservative care and she returned to work on December 5, 2001 at regular duty. The claimant experienced numbness and tingling in her left arm and hand with decreased grip strength. She returned to Dr. Pruitt and an EMG/NCV study in March, 2002 revealed bilateral CTS. Dr. Pruitt's recommended surgical release had to be postponed due to the claimant's shoulder injury.

The claimant was injured a second time on June 14, 2002 when she slipped on meat and fell while changing lines. She landed on her hands and knees. She missed work from June 14 to November 25, 2002. Dr. Pruitt performed surgery on her right shoulder on September 6, 2002. He performed a second procedure on January 28, 2003 and the claimant missed two more weeks of work. Dr. Pruitt released her on April 21, 2003, and she is still employed with the respondent-employer. After the second injury, the claimant testified her left arm began to twitch and jerk and the numbness extended to her upper arm. The claimant would like to return to Dr. Pruitt for a carpal tunnel release.

MEDICAL EVIDENCE

The respondents have submitted an exhibit packet with records dating back to 1975, the vast majority of which are irrelevant to the issue of CTS. I found only two references to extremity problems, including a 1975 right hand injury and a 1998 record of popping in her left elbow.

_____After the first injury, with respondent No. 1, Insurance Link, the claimant saw Dr. Pennington for complaints of left elbow and left knee pain. He recorded swelling in her elbow but x-rays of the knee and elbow were negative except for arthritic changes. The claimant was diagnosed with a sprained knee and contused elbow. There is no mention of any hand symptoms or injuries.

On the second visit to Dr. Pennington, the claimant also complained of bilateral shoulder pain and low back pain. She was diagnosed with tendinitis in her shoulders from overuse and a contused, strained lumbar spine.

On the fourth visit to Dr. Pennington, the claimant also complained of pain in her left buttock. Because the claimant remained symptomatic, Dr. Pennington recommended an MRI of the

back and knee and referred her to orthopedic surgeon, Dr. Lytle.

Dr. Lytle diagnosed contusions and sprain of the spine with contusion and osteoarthritis of the knee and elbow. He released her to return to work September 24, 2001 at light duty, resuming full duties after two weeks. Again, there is no mention of hand symptoms or injuries.

The claimant saw Dr. Tad Pruitt in October 2001. The only medical records provided to him were the claimant's x-rays. The claimant reported left knee, low back, left hip and left elbow pain after a fall at work on August 8, 2001. She also complained of decreased grip strength in her left hand with occasional numbness and tingling in the area of swelling and pain (medial flexor mass) which did not involve her fingers. Dr. Pruitt noted a negative Tinel's sign in his physical examination of the claimant. Dr. Pruitt treated the claimant conservatively with medication, injections and physical therapy. She was released on November 30, 2001 with no impairment rating.

The claimant returned to Dr. Pennington on December 18, 2001 complaining of pain and swelling in her left hand. She was diagnosed with degenerative arthritis based on x-rays and rheumatology tests.

The claimant saw Dr. Pruitt on March 20, 2002 with left knee pain, numbness and tingling in her left forearm and low back pain aggravated by prolonged standing at work. Dr. Pruitt's examination revealed full range of motion at the left elbow with no instability; negative cubital Tinel's sign; and decreased sensation in the forearm. Dr. Pruitt recommended an EMG/NCV study of the left upper extremity.

In his report of April 3, 2002, Dr. Pruitt reviewed the diagnostic testing which revealed bilateral carpal tunnel syndrome. He commented, "the findings from the EMG is most likely not consistent with her injury and is something that has been going on for a period of time." He

prescribed wrist splints.

The claimant returned to Dr. Pruitt on May 24, 2002 with complaints of numbness and tingling in her left hand. Both the Tinel's and Phalen's tests were positive during the physical exam. Dr. Pruitt injected her wrist with cortisone and continued her medication (Celebrex).

The claimant's left hand remained symptomatic (with positive Tinel's sign, radiation into the fingers and forearm, positive carpal compression and positive Phalen's test), and in a report dated July 5, 20092, Dr. Pruitt recommended surgery. Before the operation was scheduled, the claimant was injured in the second accident at work on July 14, 2002 with respondent No. 2, AIG. The claimant gave a history of falling and striking the right side of her jaw and right shoulder before landing on her hands and knees. Three days after the fall, she developed neck and shoulder pain. Dr. Pruitt prescribed medication and physical therapy. Surgery for a rotator cuff tear was performed on September 6, 2002. A second procedure was performed on January 28, 2003 for adhesive capsulitis.

The claimant continued to see Dr. Pruitt on numerous visits through April 2003 with no further complaints regarding her CTS. During this time, however, she continued to take medication for various symptoms and injuries and worked light duty because of her shoulder.

The claimant also saw Dr. Ken Purvis on June 13, 2002 complaining of chronic pain in her hands. He opined,

At this point I feel this is a discomfort the patient is experiencing from the normal course of this sort of work. At this point she cannot relate a definite incident or clear evidence of injury. I discussed with this patient these findings and at this point would recommend that this not be considered a Workers' Compensation injury.

FINDINGS AND CONCLUSIONS

As this case arose after July 1, 1993, this claim is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

The elements of proof for the development of gradual carpal tunnel syndrome require the claimant to prove by a preponderance of the evidence of record that:

- 1) the injury arose out of and in the course of her employment.
- 2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability.
- 3) the injury was the major cause (more than 50%) of the disability or need for treatment, Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000)
- 4) the injury is established by objective medical findings, Freeman v. Con-Agra Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

For a compensable consequence, the claimant must prove by a preponderance of the evidence of record that there is a causal connection between the primary, compensable injury and any additional injuries or disability. The employer or carrier remains liable for any natural consequence that flows from the injury. Wackenhut Corporation v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001), Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998), Bearden Lumber Company v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983), Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). Objective medical evidence is not required to establish a causal connection between the work-related accident and the condition for which the claimant seeks

medical treatment, Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

Excluded from the definition of a compensable injury are any injuries sustained at a time when employment services were not being performed. The test for determining whether an employee was acting within the course of employment at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests, directly or indirectly. Bell v. Tri-Lakes Services, 76 Ark. App. 42, 61 S.W.3d 867 (2001), Olsten Kimberly Quality Care v. Petty, 328 Ark. 381, 944 S.W.2d 524 (1997).

The evidence of record shows that the claimant was not performing employment services at the time of her fall on August 8, 2001. The respondents did not voluntarily accept CTS as a compensable injury even though they did accept knee, elbow and back injuries in the fall in the break room after the claimant finished work.

Although the claimant does have a rapid and repetitive job, it is her contention that she gradually developed CTS as a compensable consequence of the first, specific, traumatic injury on August 8, 2001. Both Dr. Pruitt and Dr. Purvis have opined that her symptoms are not related to the compensable injury. Bilateral CTS is not a natural consequence flowing from an injury to the left elbow. Therefore, I find the claimant has not met her burden of proving a causal connection by a preponderance of the evidence of record.

Assuming arguendo the claim is compensable, I find respondent No. 1, Insurance Link, would be the responsible carrier and would be entitled to a credit for overpayment.

The claimant testified her symptoms were worse after the second injury, however, I see no basis for holding respondent No. 2, AIG liable. The second specific, traumatic injury did not

contribute to the causation of CTS. The diagnosis and recommendation for surgery were made prior to the second injury. The insurer on the risk at the time of the original compensable injury remains liable. Burks, Inc. v. Blanchard, 259 Ark. 76, 531 S.W.2d 465 (1976).

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed with respondent No. 1, Insurance Link on August 8, 2001 at which time the claimant sustained injuries to her left knee, left elbow and back which were accepted as compensable. All appropriate benefits were paid, and there was an overpayment of \$929.14.
2. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed with respondent No. 2, AIG, on June 14, 2002 at which time the claimant sustained injuries to her right neck and shoulder which were accepted as compensable. All appropriate benefits are in the process of being paid.
3. The claimant has failed to prove by a preponderance of the evidence of record that there is a causal connection between her compensable left elbow injury on August 8, 2001 and the development of bilateral CTS diagnosed by EMG/NCV tests in March 2002.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge