

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F206159

RON L. STANDRIDGE, Employee

CLAIMANT

TYSON FOODS, INC., Self-Insured Employer

RESPONDENT

OPINION FILED DECEMBER 10, 2003

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

Claimant represented by C. BURT NEWELL, Attorney, Hot Springs, Arkansas.

Respondents represented by MELISA G. YOPP, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

On November 17, 2003, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 20, 2003, and a pre-hearing order was filed on August 21, 2003. 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 existed between the parties at all relevant times.
3. The claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.
4. The claimant was earning sufficient wages to entitle him to compensation at the rate of \$154.00 per week for total disability and permanent partial disability benefits.
5. Respondent has paid permanent partial disability benefits based upon 5% to each upper extremity.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional temporary total disability from June 26, 2003 through a date yet to be determined.
2. Claimant's entitlement to additional medical from Dr. Kelly.
3. Compensability of cervical spine condition.
4. Attorney fee.

Subsequent to the pre-hearing conference and prior to the hearing the respondent also raised as an issue claimant's failure to give notice of an alleged injury to his cervical spine as well as the statute of limitations.

The claimant contends he suffered a compensable injury to his cervical spine in addition to his bilateral carpal tunnel syndrome. Claimant contends he is entitled to temporary total disability benefits from June 26, 2003 through a date yet to be determined and additional medical treatment as well as an attorney fee.

The respondent contends that claimant did not suffer a compensable injury to his cervical spine. The remainder of the respondent's contentions are set forth in its pre-hearing questionnaire attached as Exhibit #1.

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 witnesses and to observe their 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 August 20, 2003, and contained in a pre-hearing order filed August 21, 2003, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he

suffered a compensable injury to his cervical spine while employed by respondent.

3. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits or additional medical treatment for his compensable bilateral carpal tunnel syndrome.

### FACTUAL BACKGROUND

\_\_\_\_\_The claimant is a 48-year-old man who began working for the respondent in September 1996. Claimant testified that when he began working he was assigned to the respondent's debone line where he worked for approximately one and a half to two years. After that period of time claimant was transferred to the respondent's "main line". Claimant testified that when he began his employment on the debone line he was required to manually dump 70-pound tubs of chicken throughout the course of his work shift. Claimant testified that the number and frequency of tubs dumped depended on how many lines were running. At the hearing claimant testified that he would dump "Maybe a box every couple of minutes, ...." At his deposition claimant testified that he might dump one or two tubs of chicken per minute depending on how many lines were running. Claimant testified that he performed this job of dumping 70-pound tubs of chicken for the first two to three months of his employment. After that claimant also performed other jobs on the deboning line including trimming which required him to cut the bone out of chicken with scissors and operating the debone machines.

Shortly after claimant began working for respondent in early 1997 he began noticing numbness in both of his hands and sought treatment from the respondent's plant nurse. Claimant was encouraged to soak his hands in Epsom salt and to apply hot and cold packs. Claimant apparently sought treatment from the nurse on several occasions but did not seek any treatment from a medical physician until he saw Dr. Ridlon in May of 2002. Following Dr. Ridlon's initial evaluation claimant was evaluated by Dr. Thomas Frazier, an

orthopaedic surgeon in Little Rock. Dr. Frazier ordered EMG/NCV studies which revealed bilateral carpal tunnel syndrome. After injections and splinting were ineffective in treating claimant's condition, Dr. Frazier recommended surgical releases. As a result, claimant underwent a carpal tunnel release on his right wrist on August 30, 2002, and on his left wrist on September 27, 2002. Dr. Frazier's medical reports of October 9, 2002 and October 28, 2002 indicate that numbness in both of claimant's hands had resolved.

At the time of his visit to Dr. Frazier on December 3, 2002, claimant was complaining of pain in the palm of his left hand. Significantly, claimant testified that he had not had any pain in his hand prior to his carpal tunnel releases. Dr. Frazier at the time of that visit stated that claimant had reached maximum medical improvement and assigned claimant a permanent physical impairment rating in an amount equal to 5% to each hand. He also noted that claimant could perform activity as tolerated and released claimant to return as needed.

Claimant next returned to Dr. Frazier on March 31, 2003, complaining of pain in his left wrist and forearm. Dr. Frazier reviewed EMG/NCV studies which revealed mild carpal tunnel syndrome and stated that these findings were consistent with post-operative changes. Dr. Frazier recommended exercise and noted that claimant might not be able to perform some job activities in the future. Dr. Frazier again released claimant to return as needed.

In July 2003 claimant sought medical treatment from Dr. James Kelly, a board certified physician in hand and microsurgery. Based on claimant's complaints Dr. Kelly ordered an MRI scan of the claimant's cervical spine which revealed disc herniations at the C3-4 and C5-6 levels. As a result, Dr. Kelly is of the opinion that claimant's hand complaints are related to a cervical spine condition for which he has recommended a neurosurgical evaluation.

The respondent accepted as compensable claimant's bilateral carpal tunnel

syndrome injuries and paid compensation benefits. Claimant now contends that he suffered a compensable injury to his cervical spine while employed by the respondent. He seeks payment of additional temporary total disability benefits, additional medical benefits from Dr. Kelly, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his cervical spine as a result of his job activities with the respondent. Claimant does not contend that he suffered a specific injury, but rather contends that he suffered a gradual onset injury while working for respondent.

In order to prove a compensable gradual onset neck injury, claimant must prove by a preponderance of the evidence that he sustained an injury (1) which arose out of and in the course of his employment, (2) which caused internal or external physical harm to the body requiring medical services or resulting in disability, (3) which was caused by rapid repetitive motion, and (4) which was the major cause of his disability or need for medical treatment. *Hapney v. Rheem Manufacturing Co.*, 342 Ark. 11, 26 S.W. 3d 777 (2000); *Parker v. Atlantic Research Corporation*, Full Commission Opinion filed September 17, 2003 (E906933).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable gradual onset injury to his cervical spine while employed by the respondent.

Initially, it should be noted that claimant primarily relates his cervical spine injury to his job activities of dumping 70-pound tubs of chicken on the deboning line in late 1996 and early 1997. While working on the deboning line claimant also performed other job activities such as trimming bones out of the meat with scissors and operating the deboning

machines. Initially, I note it is unclear from claimant's testimony exactly how much of each of these job activities he was performing. At the hearing claimant testified that he dumped the 70-pound tubs of chicken for two to three months. However, at his deposition he testified that he performed this job for one to two months. In addition, during his deposition testimony claimant testified that he did not know what job he was performing when he began to have problems.

Furthermore, in order to prove a compensable injury claimant must prove by a preponderance of the evidence that he was engaged in rapid repetitive motion. I find insufficient evidence that claimant's job activities involved rapid repetitive motion to his neck. As previously noted, claimant testified at the hearing that the rate at which the 70-pound tubs of chicken was dumped depended on the number of lines running. However, claimant estimated that he dumped a tub of chicken approximately every two minutes. At his deposition, claimant testified that he might have dumped one to two tubs of chicken each minute. I do not find under either of those scenarios that claimant's job duties required rapid repetitive motion involving the use of his cervical spine.

At his deposition Dr. Kelly testified that the mere fact that claimant was engaged in repetitive motion involving the use of his arms did not automatically mean that he would suffer a repetitive motion injury to his neck. Dr. Kelly testified that an injury to the neck would be determined by the position of claimant's head and neck while performing job activities. Claimant did not testify with any specificity as to the motion or position of his neck during his work of dumping tubs of chicken or while trimming or running the debone machine.

I also believe it is important to note that according to claimant's testimony he did not have any pain in his left hand until after the surgical releases in 2002.

Finally, I note that the testimony of Dr. Kelly regarding causation is ambiguous at best. Essentially, Dr. Kelly testified that it was impossible to determine whether the

claimant's neck condition was the result of ordinary degenerative changes or to his job activities. Dr. Kelly did state that he could lean toward saying that claimant's cervical spine condition was related to his job if the claimant's neck had been totally asymptomatic, he was performing a repetitive job, and he had no other cause or family history of neck conditions. With respect to Dr. Kelly's opinion, I note that the repetitive job claimant was alleging he performed which caused his cervical injury occurred almost seven years prior to his treatment with Dr. Kelly. Claimant has not attributed his cervical spine condition to his job activities while working on the respondent's "main line". Instead, claimant attributes his cervical spine injury to his job activities on the respondent's deboning line; specifically, the dumping of 70-pound tubs of chicken which he performed for one to three months at the time of his initial employment in September 1996. Furthermore, there is no indication that claimant's job involved the repetitive use of his neck. Given these facts, I find that Dr. Kelly's opinion regarding causation is ambiguous at best and in fact, my reading of Dr. Kelly's deposition in its entirety reveals that he simply does not know the cause of claimant's cervical spine condition.

For the foregoing reasons, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable gradual onset neck injury while employed by respondent. Claimant attributes his cervical spine injury to job activities he performed in late 1996. There is no indication that these job activities involved rapid repetitive motion of his cervical spine. Dr. Kelly testified that the mere fact that claimant used his hands and arms in a repetitive activity would not in and of itself prove that the activity caused claimant's cervical spine condition. According to claimant's own testimony, he lifted the tubs of chicken at the rate of either one every two minutes or at the rate of one to two per minute depending upon the number of lines running. I do not find that this activity constitutes rapid repetitive motion. Accordingly, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he

suffered a compensable injury.

In addition to compensability of his cervical spine condition, claimant also seeks additional temporary total disability benefits and additional medical treatment from Dr. Kelly. It appears from a review of the evidence that both of these benefits are related to claimant's cervical spine condition, not to his compensable bilateral carpal tunnel syndrome. Claimant's primary treating physician for his bilateral carpal tunnel syndrome, Dr. Frazier, has opined that claimant had reached maximum medical improvement with respect to his bilateral carpal tunnel syndrome. Furthermore, Dr. Kelly does not recommend any additional medical treatment for claimant's bilateral carpal tunnel syndrome but instead has recommended additional medical treatment in the form of an evaluation by a neurosurgeon for claimant's cervical spine condition. Accordingly, based upon the evidence presented, I find that the healing period for claimant's bilateral carpal tunnel syndrome had ended. Therefore, claimant would not be entitled to additional temporary total disability benefits. Furthermore, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his bilateral carpal tunnel syndrome. As previously noted, claimant has been released by Dr. Frazier and Dr. Kelly has opined that claimant's need for additional medical treatment is related to his cervical spine condition, not his bilateral carpal tunnel syndrome. Accordingly, claimant is not entitled to additional medical treatment for his bilateral carpal tunnel syndrome from Dr. Kelly.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his cervical spine while employed by the respondent. Having failed to prove a compensable injury to his cervical spine, claimant is not entitled to additional temporary total disability benefits or additional medical treatment for that

condition. Claimant has failed to prove by a preponderance of the evidence that he is in need of additional medical treatment or that he is entitled to additional temporary total disability benefits as a result of his bilateral carpal tunnel syndrome. Claimant's claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE