

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F205928**

**DOUGLAS EUGENE WHIPKEY,  
EMPLOYEE**

**CLAIMANT**

**XPRESS BOATS,  
EMPLOYER**

**RESPONDENT**

**CONTINENTAL CASUALTY CO.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED NOVEMBER 21, 2003**

Hearing conducted November 20, 2003, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. Charles R. Padgham, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for an MRI scan of his shoulders and cervical spine, either in connection with his admittedly compensable bilateral carpal tunnel syndrome or in connection with an alleged compensable injury to his neck.

Specifically, he contended that treatment for his carpal tunnel syndrome should include an MRI scan of his neck and shoulders, as recommended by his treating physicians which were selected by the respondents. Alternatively, he contended that the MRI was appropriate for a neck injury, which was either a compensable consequence of his compensable injuries or a separate compensable injury suffered October 15, 2002, following his compensable carpal tunnel syndrome. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the MRI scan is not reasonably necessary in connection with the claimant's bilateral carpal tunnel syndrome and that the claimant did not suffer a compensable injury to his neck and has not previously claimed to have experienced a neck injury.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant sustained compensable bilateral carpal tunnel syndrome on or about May 8, 2002; his average weekly wage was \$360.00; and the claim has been accepted as compensable by the respondents.

3. The preponderance of the evidence fails to show that a compensable neck injury has been established by medical evidence, supported by objective findings, as required by the Act.

4. The preponderance of the evidence fails to show that an MRI scan is reasonably necessary in connection with the claimant's compensable injuries.

#### **DISCUSSION**

In July, 2001, the claimant went to work as a welder for the respondent employer in its boat manufacturing facility. Prior to this employment, he had no carpal tunnel syndrome problems. About a year before this employment, while working in security at the Majestic Hotel, he was diagnosed with Type 2 diabetes. He testified that this diagnosis came about as a result of symptoms

such as frequent urination, dry mouth, and constant thirst. However, he did not recall prior symptoms in his neck, arms, or shoulders.

A month or two after he began his work for Xpress Boats, he began to experience hand and wrist symptoms, which gradually worsened and on April 19, 2002, electromyographic examination of both upper extremities indicated bilateral carpal tunnel syndrome but showed no electrical evidence of a superimposed cervical radiculopathy or other lesion of the lower motor neuron in the upper extremities at this time. The respondents accepted the claimant's bilateral carpal tunnel syndrome as compensable and Dr. Jeffrey W. Herrold performed surgeries, a right carpal tunnel release on May 23, 2002, and a left carpal tunnel release on July 18, 2002. Thereafter, the claimant returned to limited duty work, around the end of September, 2002, and was limited to jobs such as watching machinery stamp out parts for boats, as well as occasionally stacking parts, although lifting no more than ten pounds. He continued to have symptoms in his fingers and hands, sometimes up his arms into his shoulders, and he continued seeing Dr. Herrold, and also received occupational therapy.

On or about October 15, 2002, he felt something pull and pop in his left arm up to his neck, when he began to increase the amount he was lifting at work. He saw Dr. Herrold the next day and was given medication but was not referred to an orthopedic or neurological specialist. Dr. Herrold's note shows that the claimant complained of a pop in his hand which extended up his forearm into his shoulder and that he had reported a click in his shoulder which was better now. However, Dr. Herrold wrote that when he examined the claimant there was no tenderness in his shoulder although it was stiff with some limited motion anteriorly, and that he did not discern a click to his examination.

Thereafter, the medical record reflects the claimant's continuing subjective symptoms, but fails to provide objective findings to support a conclusion that the claimant had a neck injury. On April 2, 2003, Dr. Herrold wrote about the claimant's continuing problems and stated that his nerve conduction studies "demonstrated median nerve compression at the wrist but his neck was normal. There has been no history of neck injury." He went on to state, "This hand problem is difficult to explain. It involves at least five or six nerves. To explain all of this numbness this would likely have to be occurring in the patient's axilla or neck or perhaps even at a higher level."

In short, the record fails to provide a sufficient basis to hold that a compensable neck injury has been established by medical evidence, supported by objective findings, as required by Ark. Code Ann. §11-9-102(4)(D). Since the preponderance of the evidence fails to show that a compensable neck injury occurred, the claimant is not entitled to medical care, including an MRI scan, for such a condition.

As to the compensable bilateral carpal tunnel syndrome, Ark. Code Ann. §11-9-508 requires the employer promptly to provide such medical and related services as may be "reasonably necessary in connection with" a compensable injury. The claimant has the burden of proving that requested medical services are reasonably necessary in connection with a compensable injury.

Here, the claimant's physicians find that his symptoms are somewhat inconsistent with his continuing carpal tunnel syndrome and may possibly be related to pathology in his neck or shoulder. For example, as noted above, on April 2, 2003, Dr. Herrold wrote that even though nerve conduction studies showed the claimant's neck to be normal and there was no history of a neck injury, the claimant's numbness would likely have to be occurring in his axilla or neck, or perhaps even at a

higher level. Dr. Herrold also suggested a consultation with another physician who might wish to do further studies.

When Dr. Reginald J. Rutherford examined the claimant and had him undergo additional electrodiagnostic studies, he wrote that the studies demonstrated bilateral carpal tunnel syndrome of moderate degree, right median nerve being most affected, but that electromyographic examination is normal both upper extremities there being no evidence for radiculopathy or plexopathy. Nevertheless, he wrote in a letter dated June 10, 2002, "It was not possible from current electrodiagnostic testing to explain why Mr. Whipkey's pain has not improved and why he has altered sensation in present distribution. On this basis, it is recommended that he undergo an MRI study of the cervical spine to insure that there is no evidence of spinal cord compression from cervical disk herniation or spondylitic change contributory to present complaints."

Hand specialist Dr. Michael Moore also saw the claimant June 10, 2003, and wrote that the claimant's clinical history and physical examination were not consistent with a recurrent or persistent bilateral carpal tunnel syndrome, but then noted that Dr. Rutherford felt that some of the claimant's symptoms could be related to cervical disc disease and had recommended an MRI, and that Dr. Moore deferred to Dr. Rutherford's opinion regarding those matters. Dr. Moore also stated that as to the carpal tunnel syndrome the claimant did not require any further evaluation or treatment and had a 20% impairment to each hand.

Thus, although the medical record does not show that the claimant suffered a neck injury, Dr. Herrold suggested that further tests for neck or shoulder problems might be in order and Dr. Rutherford has recommended an MRI scan to determine if symptoms unrelated to the claimant's continuing carpal tunnel syndrome possibly arise from pathology in his cervical spine. However,

it is not the responsibility of the respondents to provide medical services for symptoms unrelated to the claimant's compensable carpal tunnel syndrome.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge