

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F210147/F303999/F3043350

BARBARA BELLIEA (CLARK), Employee	CLAIMANT
NOVAR CONTROLS, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED FEBRUARY 12, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAMES E. EVANS, JR., Attorney, Springdale, Arkansas.

Respondents represented by ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 21, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 25, 2003, and a pre-hearing order was filed on December 1, 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-carrier existed among the parties at all relevant times.
3. The claimant suffered a compensable injury in the form of bilateral carpal tunnel syndrome.
4. The claimant was earning sufficient wages to entitle her to compensation at the rate of \$425.00 per week for temporary total disability benefits.

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

1. Compensability of injury to cervical spine.

2. Temporary total disability from September 4, 2003.
3. Medical for cervical spine and additional medical for carpal tunnel syndrome.
4. Attorney fee.

The claimant contends that she suffered a compensable injury to her cervical spine while employed by the respondent. In addition to medical treatment for her cervical spine injury, claimant also contends that she is entitled to additional medical treatment for her compensable carpal tunnel syndrome. Claimant also seeks temporary total disability benefits beginning September 4, 2003 and continuing through a date yet to be determined, as well as a controverted attorney fee.

The respondents contend that they have paid appropriate benefits for the claimant's compensable injury. Respondents are not aware of any unpaid benefits owed to the claimant.

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 witness and to observe his 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 November 25, 2003, and contained in a pre-hearing order filed December 1, 2003, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by the respondent.
3. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable carpal tunnel syndrome.
4. Claimant has proven by a preponderance of the evidence that she is entitled to

additional temporary total disability benefits for her carpal tunnel syndrome injury beginning September 4, 2003, and continuing through a date yet to be determined. Pursuant to A.C.A. §11-9-411 respondent is entitled to a credit for disability benefits paid to claimant.

5. Respondent has controverted claimant's entitlement to temporary total disability benefits.

FACTUAL BACKGROUND

The claimant testified that she worked for the respondent "a little over four years." Claimant's duties with the respondent included software installation, running computer wiring, building computers, and installing computers. The parties have stipulated that claimant suffered a compensable injury in the form of bilateral carpal tunnel syndrome while claimant was employed by the respondent. Respondent has paid some compensation benefits related to claimant's bilateral carpal tunnel syndrome including surgical procedures on both wrists which were performed by Dr. Benafield.

In addition to her carpal tunnel syndrome, claimant also contends that she suffered a compensable injury to her cervical spine while working for respondent. Claimant testified that on or about May 7, 2001, she was moving computers from one room to another and as she picked up a particular computer felt something pop in the back of her neck. Claimant testified that she reported this incident to Sally, her sister and supervisor. Claimant also testified that she reported the incident to Laura, the respondent's office manager. Claimant sought medical treatment from Dr. Tuttle the next day, May 8, 2001. Medication was prescribed and claimant returned to work for the respondent performing her normal job duties.

Claimant testified that in August 2001 she returned to see Dr. Tuttle after having neck pain while climbing out from under a desk after installing a printer. Claimant returned to work for respondent and next sought medical treatment from Dr. Bingham in July 2002.

An MRI scan performed in August 2002 on claimant's cervical spine revealed some disc protrusion. Claimant was evaluated by Dr. Knox who did not believe surgery was necessary, but indicated that he would reassess the claimant's situation following a new MRI scan. This second MRI scan was not performed and respondent has controverted claimant's entitlement to compensation benefits associated with her cervical spine condition. As a result, claimant filed this claim contending that she suffered a compensable injury to her cervical spine and requesting medical benefits associated with that injury.

ADJUDICATION

COMPENSABILITY OF CERVICAL SPINE.

Claimant testified that she suffered a compensable injury to her cervical spine when she felt a popping in her neck while lifting a computer on or about May 7, 2001 and again in August 2001 while climbing out from under a desk. Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

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 her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by the respondent.

As previously noted, claimant attributes her initial cervical spine injury to a popping in her neck which occurred when she lifted a computer on or about May 7, 2001. The medical evidence indicates that claimant sought medical treatment from Dr. Tuttle on May 8, 2001, with a chief complaint of neck and back pain. Dr. Tuttle's medical report indicates that claimant gave a history of her neck popping on May 7, 2001, but does not indicate that this incident occurred at work. More importantly, there are no objective medical findings establishing an injury as of May 8, 2001. Following his examination on May 8, Dr. Tuttle prescribed medication and claimant returned to work performing her regular job duties.

Claimant did not seek any additional medical treatment for her neck until August 29, 2001. Claimant attributes her need for additional treatment to increased pain caused by climbing out from under a desk. The medical report from Dr. Tuttle of August 29 indicates that claimant was complaining of pain in the right side of her neck and in her right shoulder down to the middle of her back. The medical report indicates that the pain had been present since yesterday and that it "just started hurting for no apparent reason." Dr. Tuttle's medical report also indicates that claimant had fallen on her head as a child and almost broke her neck. Dr. Tuttle's medical report does not relate claimant's neck pain to a work-related injury while lifting a computer in May or to climbing out from under a desk after installing a printer. As a result of his evaluation Dr. Tuttle prescribed claimant additional medication and she returned to work for the respondent.

Claimant continued to perform her normal job activities until approximately April 2002 when she changed her job activities due to non-work related respiratory problems.

Claimant testified that when these problems began she no longer went to work but

performed some work at home for the respondent until July or August of 2002.

After her visit with Dr. Tuttle on August 29, 2001, the next medical record is an evaluation performed on July 8, 2002 by Dr. Bingham. On that date the claimant was seen for complaints of a cough. No mention is made of any neck pain. On July 31, 2002, claimant again had contact with Dr. Bingham's office for a refill of medication. Again, no mention is made of any complaints of neck pain.

The next medical record is a note from Dr. Bingham's office dated August 9, 2002. That note reflects that Dr. Bingham's office had received a phone call from the claimant's husband indicating that claimant had bent over the day before and pulled a muscle in her back. As a result, claimant was requesting medication. Again, there is no mention of any neck pain in the report of that date.

The first medical report mentioning complaints of neck pain subsequent to Dr. Tuttle's evaluation of August 29, 2001 is Dr. Bingham's report of August 19, 2002, almost one year later. Dr. Bingham's medical report indicates that claimant was there for a follow-up evaluation for her cough. However, Dr. Bingham also noted that claimant was complaining of a burning sensation in her neck which had been present for one month. Dr. Bingham noted that claimant gave a history of having fallen as a child and injuring her neck. Dr. Bingham's medical report does not contain any history relating claimant's neck complaints to her work for respondent. As a result of claimant's neck complaints, Dr. Bingham ordered an MRI scan of claimant's cervical spine which was performed on August 26, 2002.

The first medical report relating claimant's neck condition to an injury at work in May 2001 is Dr. Bingham's medical report of March 10, 2003. This was almost two years after the alleged injury. Since March 2003 the claimant has been evaluated by Dr. Knox who did not recommend surgery, but did recommend a second MRI scan which has not been performed at this time.

I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by the respondent. Claimant did testify that she felt a popping in her neck while moving a computer at work on or about May 7, 2001 for which she sought medical treatment from Dr. Tuttle on May 8, 2001. Dr. Tuttle's medical report of that date does indicate a popping in claimant's neck on May 7, but does not indicate that this occurred at work and his medical report contains no objective findings establishing an injury on that date. After May 8, 2001, claimant returned to work for respondent performing her regular job activities. Claimant testified that she sought additional medical treatment from Dr. Tuttle on August 29, 2001, after she had additional neck pain from climbing out from under a desk at work. However, Dr. Tuttle's medical report of that date does not contain a history of a work-related injury. To the contrary, it indicates that claimant gave a history of her neck pain having begun for no apparent reason. Following that evaluation the claimant did not seek any additional medical treatment until July 2002 when she was seen for a cough by Dr. Bingham. Dr. Bingham's office notes of July 8 and July 31, 2002 make no mention of any complaints of neck pain. Dr. Bingham's office notes of August 9, 2002 indicate that claimant's husband called after claimant bent over and pulled a muscle in her back. Again, there was no mention of neck pain. On August 19, 2002, claimant did complain of burning in her neck to Dr. Bingham. However, Dr. Bingham noted that the pain had been present for one month and did not note a history of the pain having been caused by claimant's work. It was not until March 10, 2003, almost two years after May 2001 that claimant's neck complaints are attributed to a work-related injury in May 2001. Given this evidence, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her cervical spine injury is a compensable injury which is causally related to her employment with the respondent.

ADDITIONAL MEDICAL TREATMENT FOR BILATERAL CARPAL TUNNEL SYNDROME.

As previously noted, the respondent accepted claimant's bilateral carpal tunnel syndrome as a compensable injury and paid for some compensation benefits. The medical evidence indicates that claimant underwent surgery on her left wrist in November 2002 and on her right wrist in February 2003. Despite those two surgical procedures the claimant has continued to complain of significant pain in her hands and arms. At one point the claimant was evaluated by Dr. Cannon who in a report dated March 20, 2003 indicated that he saw no evidence of the claimant suffering from reflex sympathetic dystrophy. However, other treating physicians have opined that claimant does suffer from reflex sympathetic dystrophy as a result of her bilateral carpal tunnel syndrome. In medical reports dated April 9, 2003 and May 22, 2003, Dr. Benfield indicated that claimant had symptoms consistent with reflex sympathetic dystrophy. Dr. Bingham, the physician who has primarily followed claimant for pain medication, has also opined that claimant suffers from reflex sympathetic dystrophy. Finally, Dr. Tomlinson has also opined that claimant suffers from reflex sympathetic dystrophy. In a letter to the respondent dated July 14, 2003, Dr. Tomlinson indicated that claimant's reflex sympathetic dystrophy was causally related to her carpal tunnel syndrome and the surgical releases. Dr. Tomlinson indicated that claimant needed additional medical treatment in the form of physical therapy. Claimant apparently underwent one physical therapy visit before further visits were denied due to a mis-communication. In a report dated October 29, 2003, Dr. Tomlinson again noted that claimant suffered from bilateral upper extremity reflex sympathetic dystrophy. Dr. Tomlinson indicated that claimant should see Dr. Knox for her cervical complaints and also indicated that claimant should seek medical treatment from a pain specialist and therapist for her reflex sympathetic dystrophy.

Claimant did undergo additional physical therapy and in a report dated December 17, 2003, Dr. Tomlinson noted that the physical therapy had not improved claimant's

condition. He indicated that he did not believe the claimant would benefit from more physical therapy, but again reiterated that Dr. Knox should evaluate claimant for her cervical complaints. With respect to claimant's reflex sympathetic dystrophy, Dr. Tomlinson indicated that claimant should be seen by a pain specialist who might prescribe nerve blocks. This was also the opinion expressed by Dr. Bingham in her report of December 24, 2003, wherein she indicates that claimant is in need of nerve blocks for her reflex sympathetic dystrophy.

A claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for treatment of a compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291). After reviewing the evidence in this case, I find that claimant has met her burden of proving by a preponderance of the evidence that she is in need of additional medical treatment for her compensable bilateral carpal tunnel syndrome. Although claimant has undergone surgical procedures for her bilateral carpal tunnel syndrome, she has continued to have complaints of pain in her hands and arms. Three physicians have opined that claimant has reflex sympathetic dystrophy or symptoms consistent with reflex sympathetic dystrophy. Dr. Tomlinson authored a report indicating that claimant's reflex sympathetic dystrophy is causally related to her compensable carpal tunnel syndrome. Both Drs. Tomlinson and Bingham have opined that claimant is in need of additional medical treatment for her reflex sympathetic dystrophy which may include nerve blocks. Given the opinions of Drs. Tomlinson and Bingham, which I find are credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that she is in need of additional medical treatment for her compensable carpal tunnel syndrome.

Obviously, this case is complicated by my finding that claimant's cervical condition is not a compensable injury. It appears that some of the claimant's symptoms may be

related to the non-compensable cervical condition as opposed to her compensable bilateral carpal tunnel syndrome. I find that respondent is only liable for payment of additional medical treatment which is causally related to her compensable bilateral carpal tunnel syndrome. This includes not only payment of medical treatment from the treating physicians but also unpaid prescriptions and mileage as well. Respondent is liable for payment of all medical treatment including prescriptions and mileage causally related to claimant's compensable carpal tunnel syndrome.

TEMPORARY TOTAL DISABILITY BENEFITS.

Claimant's bilateral carpal tunnel syndrome is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability benefits during their healing period or until they return to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Here, the respondent paid claimant temporary total disability benefits through September 3, 2003. I find that claimant has met her burden of proving by a preponderance of the evidence that she remained within her healing period subsequent to that date and that she has not returned to work. As previously noted, claimant's treating physicians have opined that claimant is in need of additional medical treatment for reflex sympathetic dystrophy which is causally related to her compensable carpal tunnel syndrome. Therefore, claimant does remain within her healing period. In addition, claimant has not returned to work for the respondent or any other employer subsequent to September 3, 2003. For these reasons, I find that claimant is entitled to continued temporary total disability benefits beginning September 4, 2003 and continuing through a date yet to be determined.

Claimant testified at the hearing that she currently is receiving \$723.00 in long-term disability benefits and \$783.00 per month in social security benefits. Claimant testified

that she expected that her long-term disability benefits would be reduced based upon her receipt of social security disability benefits. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for these benefits. Therefore, respondent is liable for the difference between disability benefits received by claimant from third parties and her temporary total disability benefit compensation rate.

Respondent has controverted claimant's entitlement to all temporary total disability benefits; including, the benefits for which it will receive credit.

AWARD

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by the respondent. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable bilateral carpal tunnel syndrome. Respondent is liable for payment of all reasonable and necessary medical treatment, prescriptions, and mileage relating to claimant's carpal tunnel syndrome. In addition, claimant is entitled to additional temporary total disability benefits beginning September 4, 2003 and continuing through a date yet to be determined. Respondent is entitled to a credit for disability benefits received by claimant pursuant to A.C.A. §11-9-411.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE