

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101839

JAMES ELMORE, EMPLOYEE	CLAIMANT
COOPER ENGINEERED PRODUCTS, SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED SEPTEMBER 16, 2004

Hearing before Administrative Law Judge J. Mark White on July 29, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Ms. Sheila F. Campbell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael J. Dennis, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On July 29, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on April 5, 2004, and a Prehearing Order was entered that same day. A copy of the April 5, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed at all relevant times, including February 1, 2001; that on February 1, 2001, the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome; that respondents accepted the February 1, 2001, carpal tunnel injury as compensable and paid benefits; and that the claimant's average weekly wage was \$492.40, entitling him to a compensation rate of \$328 for total disability.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury in the form of bilateral cubital tunnel syndrome; and controversy and attorney's fees.

The claimant contends that his cubital tunnel syndrome arose out of and in the course of his employment; that he sustained a compensable injury in the form of cubital tunnel syndrome; and that he is entitled to payment of medical and travel expenses and attorney's fees.

Respondents contend that the claimant's cubital tunnel syndrome is neither caused by nor related to his employment with the respondent-employer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, or that any work-related injury is the major cause of his disability or need for treatment.
4. The claimant has failed to prove by a preponderance of the evidence that his injury is established by medical evidence supported by objective findings.
5. Therefore, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable gradual-onset injury in the form of cubital tunnel syndrome.
6. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked for the respondent-employer from March 8, 2000, until September 13, 2002, when his employment was terminated. His job title was press operator; he was responsible for operating a press that made rubber parts for automobiles. Operation of the press required him to fill the machine with rubber, remove the finished parts (84 parts per cycle), and cut excess rubber from the parts. The claimant was paid on the basis of how many parts he successfully produced per shift; he testified that he would produce 900 parts in a typical shift.

Early in 2001 the claimant began to develop bilateral wrist pain. He reported the injury and was sent to the company doctor, Dr. D'Orsay D. Bryant. Dr. Bryant first saw the claimant on July 31, 2001. He noted "significant tenderness at the distal radius and ulna in the mid carpus, pain radiating up the dorsal aspect of the forearm." Dr. Bryant diagnosed tendinitis and prescribed medication, wrist braces and cock-up splints. The claimant returned to Dr. Bryant on August 13 reporting that he was "very much improved." But the pain returned, and the claimant again saw Dr. Bryant on October 18. Dr. Bryant recorded the claimant's symptoms as, "increased numbness, tingling, and pain in both hands, as well as both forearms." An EMG/nerve conduction study performed October 23, 2001 revealed:

1. Very, very mild carpal tunnel syndrome, bilateral upper extremities.
2. No evidence of polyneuropathy.
3. Mild right deQuervain tenosynovitis.

It should be noted that polyneuropathy is defined by *Dorland's Illustrated Medical Dictionary*, 26th Edition, as "a disease which involves several nerves."

Dr. Bryant treated the claimant conservatively with some initial success. But the claimant returned on April 23, 2002, with renewed complaints of "severe hand and wrist pain," as well as "pain radiating up the upper extremity." A second nerve conduction study, performed April 25, revealed:

1. Mild carpal tunnel syndrome bilateral upper extremities, slightly worse on the left with about the same dysfunction electrically on the right.
2. No evidence of polyneuropathy.

Conservative treatment failed to relieve the claimant's symptoms, and in May Dr. Bryant performed surgery – a carpal tunnel release, first on the right and later on the left. The claimant was off from work due to the surgery from May until the end of August. He underwent extensive physical therapy, and on July 31, Dr. Bryant released him with no permanent impairment.

The claimant returned to Dr. Bryant on September 11, 2002. Dr. Bryant recorded in his notes:

The patient stated that he was doing well until he went back to full duty work. He stated that he has experienced occasional swelling and pain in his job as a press operator. He was doing well in a light duty capacity. However, he stated that his supervisor put him back on the "same press" and he had increase [sic] swelling and pain. He stated that he had to go home yesterday because he couldn't tolerate it.

The claimant's employment was terminated on September 13. He returned to Dr. Bryant on October 3 to ask for an impairment rating, but Dr. Bryant made no note of whether the claimant was still having wrist or arm pain at that time.

At some point thereafter, the claimant requested a change of physician from the respondents. He saw Dr. Marcia Hixson on November 20, 2003, more than a year after his last visit with Dr. Bryant. Dr. Hixson recorded the following history:

Mr. Elmore states that since 2002 he has continued to have pain, numbness and tingling in his hands with loss of grip strength. He is awakened from sleep with aching and numbness in his hands and forearms with pain radiating to the shoulders. He has tried wearing splints and taking medication but these have not been effective.

A nerve conduction study performed by Dr. Reginald Rutherford that same day revealed bilateral cubital tunnel syndrome. After a bone scan proved negative, Dr. Hixson recommended on December 16 that the claimant undergo a cubital tunnel release. The respondents controverted the proposed surgery.

II. Adjudication

To prove the compensability of a gradual-onset injury, a claimant must establish by a preponderance of the evidence that the injury arose out of and in the course of his employment; that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and that the injury was the major cause of the disability or need for treatment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001); ARK. CODE ANN. § 11-9-102 (4)(A)(ii). Objective medical evidence supported by objective findings is required to establish the existence and extent of the alleged injury. *Wal-Mart Stores v. Leach*, *supra*; ARK. CODE ANN. § 11-9-102 (4)(D). Other than carpal tunnel syndrome, gradual-onset injuries must be shown to have been caused by rapid repetitive motion. ARK. CODE ANN. § 11-9-102 (4)(A)(ii)(a).

The difficulty for the claimant herein is that neither of the nerve conduction studies performed while he was working for the respondent-employer revealed any evidence of cubital tunnel syndrome. In fact, more than a year passed from the time the claimant was terminated from his employment until cubital tunnel syndrome was diagnosed. Nothing in the medical records prior to the claimant's termination makes any mention of cubital tunnel syndrome, and the first two nerve conduction studies specifically ruled out polyneuropathy. In addition, the claimant

acknowledged in his testimony that after his surgery, he worked for the respondent-employer for only two or three weeks.

It is certainly plausible that the claimant's cubital tunnel syndrome began or was aggravated by his employment. It is plausible that his consistent complaints of wrist pain radiating into the forearm and above, all the way back to his first visit with Dr. Bryant, were caused by cubital tunnel syndrome. Unfortunately, I can make these causal connections only be speculation and conjecture. Such can never substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

There is insufficient evidence in the record to establish whether the claimant's long-running symptoms are due to cubital tunnel syndrome, his carpal tunnel syndrome, or both. There is likewise insufficient evidence in the record to establish whether the claimant's cubital tunnel syndrome arose during his employment or at some time thereafter. Given this lack of evidence, I must find that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, or that any work-related injury is the major cause of his disability or need for treatment.

To prove compensability, it is not enough for the claimant to supply objective findings of injury; he must also show a causal connection between those objective

findings and his alleged injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). The only objective finding of a cubital tunnel syndrome injury is the nerve conduction study performed by Dr. Rutherford on November 20, 2003, more than a year after the claimant's carpal tunnel surgery, more than a year after his last visit with Dr. Bryant, and more than a year after his termination by the respondent-employer. Given this tenuous causal link, I must find that the claimant has failed to prove by a preponderance of the evidence that his injury is established by medical evidence supported by objective findings.

The claimant has failed to establish every element of a compensable gradual-onset injury. Therefore, I must find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable gradual-onset injury in the form of cubital tunnel syndrome.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable gradual-onset injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge