

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F308887 & F308888

GEORGETTA GOODMAN, EMPLOYEE	CLAIMANT
CITY OF EL DORADO, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, CARRIER	RESPONDENT

OPINION FILED AUGUST 11, 2004

Hearing before Administrative Law Judge J. Mark White on July 13, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Lewis E. Ritchey, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 13, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on May 17, 2004, and a Prehearing Order was entered that same day. A copy of the May 17, 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 24, 2000, and August 7, 2003; that on February 24, 2000, the claimant sustained a compensable injury to her right hand in the form of carpal tunnel syndrome; that respondents accepted the February 24, 2000, injury as compensable and paid benefits; and that the claimant earned sufficient wages to be entitled to the maximum compensation rates.

The parties agreed that the issues to be presented were whether the injury allegedly sustained by the claimant to her right hand on or about August 7, 2003, was a new compensable injury, a recurrence of her February 24, 2000, gradual-onset injury, or neither; whether this claim is barred by the statute of limitations; and controversy and attorney's fees.

The claimant contends that while on the job before August 7, 2003, the claimant would type 6 out of 8 hours and entered all reports; that this activity caused rapid and repetitive motions that caused her to suffer from carpal tunnel syndrome, which requires surgery; and that her injury is an aggravation of her pre-existing carpal tunnel syndrome.

Respondents contend that the claimant began treatment for carpal tunnel syndrome on or about February 24, 2000, when she sought treatment for increasing difficulty in her right hand and wrist; that the respondents paid for benefits on behalf of the claimant for this injury, with the last medical services provided on May

15, 2000; that the claimant next sought treatment on August 11, 2003, when she completed a Commission form AR-N; and that this claim for additional benefits is barred because more than a year had elapsed since the last provision of benefits and more than two years had elapsed since the original injury.

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 her 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 the existence and extent of her alleged aggravation is established by medical evidence supported by objective findings.
4. The claimant has therefore failed to prove by a preponderance of the

evidence that she sustained an aggravation of her February, 2000, carpal tunnel syndrome injury.

5. A preponderance of the evidence establishes that the statute of limitations ran on this claim no later than February 24, 2002.
6. The claimant has failed to prove by a preponderance of the evidence that her claim was timely filed.
7. This claim is therefore barred by the statute of limitations.
8. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant works as a data entry operator for the El Dorado Police Department, a position she has held since 1994. On February 24, 2002, she sought treatment from Dr. Bud Dickson for pain and numbness in her right thumb and hand. Dr. Dickson diagnosed her with carpal tunnel syndrome, and his diagnosis was confirmed by an EMG test performed February 29. The respondents accepted this carpal tunnel injury as compensable and paid benefits. But, when Dr. Dickson recommended surgery, the respondents denied the treatment and sent the claimant to Dr. Michael M. Moore for a second opinion.

Dr. Moore stated in his report that he was “reluctant” to recommend surgery, and that he would first want to have a second EMG/nerve conduction study performed by a neurologist. Inexplicably, the respondents never provided the tests Dr. Moore asked for. The respondent-employer made some modifications to the claimant’s work environment as recommended by Dr. Moore, and the claimant continued working at her usual job duties. There is no evidence that she filed a claim for compensation with the Commission at the time.

It was not until August 7, 2003, that the claimant again sought medical treatment for her hands. Dr. Greg Smart diagnosed carpal tunnel syndrome in both the right and left hands. The claimant has received no more treatment for her hands since that visit.

The claimant testified that her pain and tingling never stopped in 2000, and that it continued to grow progressively worse through 2003. She testified that she did not experience numbness and arm pain until 2003. She described her pain as being much worse now than it was in 2000, and she testified that she now has no grip strength in her right hand. Though the symptoms in her left hand are indisputably new, the parties agreed that the left hand carpal tunnel syndrome was not to be an issue herein.

II. Adjudication

The claimant contends that she sustained an aggravation of her February, 2000, compensable carpal tunnel injury. An aggravation is a new injury resulting from an independent incident; being a new injury with an independent cause, an aggravation must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). One of these requirements is that the claimant must establish the existence and extent of her injury by medical evidence supported by objective findings. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The only objective finding contained within the record herein is an EMG/nerve conduction study performed February 29, 2000, during the claimant's first bout with carpal tunnel syndrome. I can find no objective finding to establish the existence of the 2003 aggravation alleged by the claimant. Although it seems highly likely that the claimant has carpal tunnel syndrome as a result of her work, the fact remains that she has introduced no objective findings to prove the existence of an aggravation. I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged aggravation is established by medical evidence supported by objective findings. Therefore, I must conclude that the claimant has failed to prove by a preponderance of the evidence

that she has sustained an aggravation of her carpal tunnel syndrome injury.

If the claimant has not sustained an aggravation of her 2000 injury, the alternative explanation is that she sustained a recurrence of her 2000 injury. A recurrence is not a new injury, but merely another period of incapacitation resulting from a previous injury; a recurrence exists when the second complication is a natural and probable consequence of a prior injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). The respondents contend that as a recurrence, this claim is barred by the statute of limitations.

Arkansas law limits the time in which a claim for additional compensation may be filed. The relevant statute of limitations states in pertinent part:

In cases where any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation, or two (2) years from the date of injury, whichever is greater.

ARK. CODE ANN. § 11-9-702 (b)(1).

For a gradual-onset scheduled injury, the statute of limitations commences running when the injury develops or becomes apparent to the employee. *Woods v. Tony Bull Motor Co.*, Workers' Compensation Commission E901847 (Sept. 5, 2000), citing *Minnesota Mining & Manufacturing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). It is the burden of the claimant, not respondents, to prove that a claim for additional

compensation has been timely filed. *Aluminum Comp. Of America v. Rollon*, 76 Ark. App. 240, 64 S.W.3d 756 (2001). No claim can be revived by the provision of additional compensation once the statute has run. *See, Evans v. Northwest Tire Serv.*, 23 Ark. App. 11, 740 S.W.2d 151 (1987), *aff'd* 295 Ark. 246, 748 S.W.2d 134 (1988).

The parties have stipulated that the claimant sustained a compensable carpal tunnel syndrome injury on February 24, 2000. This is the date on which her doctor diagnosed her with carpal tunnel syndrome; therefore, I find that the carpal tunnel syndrome injury had developed or become apparent to the claimant no later than February 24, 2000. Two years after this date is February 24, 2002. The record contains no evidence that the claimant received any compensation for her 2000 injury after May 15, 2000, the date of her second opinion evaluation by Dr. Moore. One year after this date is May 15, 2001. I find that the statute of limitations ran on this claim no later than February 24, 2002.

The claimant has introduced no evidence to show that she filed her claim for compensation with the Commission prior to February 24, 2002. I find that the claimant has failed to prove by a preponderance of the evidence that her claim was timely filed. Therefore, I conclude that this claim is barred by the statute of limitations.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she sustained an aggravation or that her claim was timely filed. 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