

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310826 & F302814

TINA GREGG, EMPLOYEE	CLAIMANT
SPHERION CORPORATION, EMPLOYER	RESPONDENT #1
AMERICAN HOME ASSURANCE CO., INSURANCE CARRIER	RESPONDENT #1
CS FAIRFIELD GROUP, INC., EMPLOYER	RESPONDENT #2
TRAVELERS INSURANCE CO., INSURANCE CARRIER	RESPONDENT #2

OPINION FILED MARCH 29, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Mountain Home, Baxter County, Arkansas.

The claimant was represented by MR. Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

The respondents #1 were represented by MR. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

The respondents #2 were represented by Mr. Phillip Cuffman, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 14, 2004 in Mountain Home, Arkansas. A prehearing order was entered in this case on September 19, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved

at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were submitted by the parties and are hereby accepted:

1. The employee-employer-carrier relationship existed at all relevant times between the claimant, Spherion Corporation and American Home Assurance Company until December 23, 2002.

2. The employee-employer-carrier relationship existed between the claimant, CS Fairview Group Inc. and Travelers Insurance Company at all relevant times beginning on December 23, 2002.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability of alleged injures to the hands, wrists, elbows, arms, shoulders and spine sustained from falling into boats three times on or about December 7, 2002.

2. Compensability of unspecified injuries allegedly caused by rapid and repetitive motion at work in December of 2002.

3. Wage rate.
4. Unpaid medical expenses.
5. TTD benefits.
6. Attorney's fees.
7. Notice of injury.
8. Liability between carriers.

The record consist of the transcript of the January 14, 2004 hearing with exhibits contained therein. In addition to the above identified stipulations and issues, at the start of the hearing the respondents also sought an offset against any potential liability for indemnity benefits based on the claimant's receipt of unemployment compensation benefits during the period that she has remained off work. [T.5-6]. In addition, by agreement of the parties during the course of the hearing, the compensability issue in the present claim was limited solely to alleged injuries to the claimant's elbows, and the parties have reserved the issue of compensability of any injury to any other portion of the claimant's anatomy. [T.47-48].

DISCUSSION

The claimant seeks an award of workers' compensation benefits for her bilateral ulnar nerve entrapment in the elbows which has been documented in nerve conduction testing

and diagnosed by treating physicians. The claimant asserts that the bilateral ulnar nerve entrapment arose out of her employment with one or both of the respondents as a result of three alleged falls into boats on different days and/or as a result of using a roller in a repetitive manner to roll air out of fiberglass strips used in making fiberglass boats at the Ranger Boats facility.

In order to receive benefits for a gradual onset or a cumulative trauma injury, a claimant must prove by a preponderance of the evidence (1) that she sustained an injury arising out of and in the course of her employment; (2) that the injury caused external or internal physical harm to the body; (3) that the injury is supported by objective medical finding; (4) that the injury was caused by rapid repetitive motion; and (5) that the injury was the major cause of any disability or need for treatment. Stevenson v. Frolick Footwear, 70 Ark. App. 383, 20 S.W.3d 413 (2000).

In the alternative, to prove the occurrence of a compensable injury as a result of a specific incident or incidents which are identifiable by time or place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of

and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find that the claimant has failed to establish by a preponderance of the credible evidence that her bilateral ulnar nerve entrapment condition arose out of and in the course of her employment either through the duties of repetitively rolling fiberglass or as a result of one or more falls into boats during the course of her employment. At the hearing, the claimant testified that her bilateral symptoms began approximately two days after her first fall into a boat at work. However, the contemporaneous medical reports in the record make absolutely no reference to any fall or falls at work. Two of the claimant's treating physicians were provided an opportunity to render a medical opinion on causation in this case. Both physicians indicated that they were not provided

any history of the claimant falling into a boat, and both physicians were unable to render an opinion indicating that the claimant's ulnar nerve condition is due to a gradual injury such as rolling fiberglass for boats.

In fact, the only significant evidence that I can glean which might arguably support some type of causal connection between the claimant's bilateral ulnar nerve entrapment and her work at Ranger Boats is the claimant's testimony that her hand symptoms began approximately two days after her first fall into a boat at work. In light of the numerous inconsistencies between the claimant's hearing testimony, her deposition testimony, and her doctors' contemporaneous medical records, I do not find credible the claimant's uncorroborated testimony that her symptoms began two days after a fall in a boat at work. Moreover, even if I were to find the testimony credible, which I do not, I see no evidence in the record that indicating ulnar nerve entrapment in the elbow is a type of abnormality caused by trauma. I see no evidence in the record that if ulnar nerve entrapment can be caused by trauma, that falling onto one's hands into a boat is the type of trauma which would cause an ulnar nerve entrapment. Furthermore, even if ulnar nerve entrapment can be caused by falling onto one's hands, I see

no evidence in the record indicating that the symptoms of traumatically induced ulnar nerve entrapment might reasonably be expected not to occur for approximately two days after the alleged trauma occurred. Likewise, I see no evidence in the record to establish that ulnar nerve entrapment in the elbow is the type of abnormality which is caused by repetitive motion, and if ulnar nerve entrapment in the elbow is the type of abnormality which can be caused by repetitive motion, I see no evidence in the record indicating that using a roller on fiberglass is the type of repetitive motion which can cause ulnar nerve entrapment in the elbow.

In short, on this record, I believe that it would require speculation and conjecture on my part to find that the claimant has established by a preponderance of the evidence in the record that her bilateral ulnar entrapment arose out of her rolling duties and/or any of her three falls into boats at Ranger Boats. Because I find that the claimant has failed to establish that she sustained a compensable injury, I find that the remaining hearing issues of appropriate benefits, attorneys fees, notice of injury, and liability between carriers are all moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times between the claimant, Spherion Corporation and American Home Assurance Company until December 23, 2002.

3. The employee-employer-carrier relationship existed between the claimant, CS Fairview Group Inc. and Travelers Insurance Company at all relevant times beginning on December 23, 2003.

4. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable elbow injury arising out of her employment with either respondent employer.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge