

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F301686 & F404780

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| KAREN HATCHER , EMPLOYEE | CLAIMANT |
| COLUMBIA FORREST PRODUCTS , SELF-INSURED EMPLOYER | RESPONDENT NO. 1 |
| GALLAGHER BASSETT , TPA | RESPONDENT NO. 1 |
| STAFFMARK , EMPLOYER | RESPONDENT NO. 2 |
| ATLANTIC MUTUAL INSURANCE CO. , INSURANCE CARRIER | RESPONDENT NO. 2 |

OPINION FILED DECEMBER 6, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 17, 2004, at Jonesboro, Crittenden County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claims to determine the claimant's entitlement to workers' compensation benefits.

On July 24, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Ms. Karen Hatcher, the claimant, and Douglas Heath, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

Karen Ann Hatcher, the claimant, with a date of birth of September 13, 1959, has an eleventh grade education. On July 12, 2002, the claimant commenced her employment with Staffmark, a temporary employment agency, herein designated respondent No. 2, and remained in the employment of same through October 25, 2002. Throughout her employment with respondent No. 2 the claimant was assigned to perform job duties at Columbia Forrest Products, respondent No. 1.

On October 28, 2002, the claimant was hired as a full time employee for respondent No. 1. The claimant continued performing the job duties in her capacity as an employee of respondent No. 1 as she had in the employment of respondent No. 2. The claimant's hourly wage rate increased by approximately \$1.00 at the time she became an employee of respondent No. 1.

The claimant asserts that at the time she began performing assigned duties at Columbia Forrest Products on July 12, 2002, the general state of her health was good. The claimant acknowledged that while an employee of Vinco in 1997 she encountered some problems with her right hand for which she sought medical treatment at the emergency room.

In the discharge of her employment duties with Vinco the claimant used a screw gun, and developed problems of numbness and pain in her right wrist. The claimant's medical treatment by the emergency room physician relative to her 1997 right wrist complaints consisted of steroid injections and being provided a brace for her right wrist. The claimant also changed jobs in her employment with Vinco such that she quit using the screw gun. The cost of the medical treatment relative to the claimant's right wrist complaints in 1997 was paid for by her employer, Vinco.

Claimant did not required further medical treatment, other than the emergency room visit. Claimant continued in the employment of Vinco for a year and a half following the diagnosed carpal tunnel syndrome.

In 1999 the claimant secured employment with Delta Wood and remained in the employment of same for a year and a half. In describing her job duties with Delta Wood, in which she brush sanded boards, claimant testified:

Short boards and you just, there was a brush and you just put the boards under the brush and smoothed it. (T. 21)

Claimant testified she handled each board that was sanded during an eight hour period, that her job was hand intensive, and could be fast paced, however denies that she had any pain in her right hand while working at Delta Wood. Further, the claimant denies that leaving her employment with Delta Wood had anything to do with an injury or a workers' compensation claim. The claimant maintains that aside from her brief period of treatment received in 1997 relative to her right wrist, she did not again experience complaints or symptoms in her right wrist until approximately one month following her employment by respondent No. 2. as she was performing her assigned job duties at respondent No. 1.

Claimant performed two different jobs while working at respondent No. 1. The claimant's testimony reflects that when she began performing job duties at respondent No. 1 she was put on pre-lay:

It was thin sheets of veneer that we put the tops, the back and the fronts together.

* * *

We inspected veneer and if there was any rips or tears we take them and we had to flip over big sheets, you know like 1,300 I think is

what we was supposed to do a night. (T. 9)

Claimant estimated that the sheets of veneer were between eight and ten feet long. Further, the claimant's testimony reflects, in describing her job duties in pre-lay, that the forklift would bring band stacks of veneer and put them on a pallet; that after breaking the bands the process of inspecting and putting the veneer together would take place; that putting the veneer together entailed taking one sheet and flipping it and getting another sheet and inspecting it and putting the two together. The claimant noted that the inspected sheets of veneer were removed from one pallet and put on another pallet. Additionally, the testimony of the claimant reflects that the purpose of the inspection was to determine if there was any moisture, rips, or tears in the sheets of veneer. Claimant noted that while the process involved the use of both hands she did not use one more than the other in the process. Claimant testified that each pallet would have two to three hundred sheets of veneer on it and that she was responsible for an entire pallet.

The testimony of the claimant reflects that while flipping the sheets of veneer was a hand intensive job it was the handling of the pallets, which she described as being very heavy, which produced the pain and symptoms in her right wrist within a month of discharging duties at respondent No. 1. In describing the role of the pallets the claimant's testimony reflects:

We put pallets on the roller, on the little thing that had rollers on them, there's veneers on there. We'd put a pallet on top of the veneer to keep it from, the fans from blowing the veneer off. (T. 12)

The testimony reflects that the placement of the pallet on top of the veneer occurred with every load, which during the course of an eight hour shift could range from twelve to twenty times.

The testimony of Douglas Allen Heath, the line one department head and hardwood department head at respondent No. 1, described the veneer job that the claimant performed:

The job itself required taking veneer from one pallet and stacking it onto another pallet, veneer being anywhere from four by six – four by six foot up to 10 foot and also five – we also have a five wide. But they are thin sheets of veneer and they probably weigh maybe a pound or so. They are 3/16th of an inch thick. They take and stack from one pallet to another in preparation to take down to one of our lines. At the time – the job description at the time was actually prep and they were prepping wood for line 2. And they would put a stack of veneer to an order size, a stack of faces and a stack of backs in an overlay assembly line. (T. 56-57)

Regarding the pallets, Mr. Heath testified:

When they would break open a fresh load of hardwood not all of them had it but there would – even the partials, even if it wasn't broken open there would be a crate, a crate top, which is slats of probably one by four boards the length of the, whatever size veneer it was that are nailed together with cross sections and they would lift those off and set them off to the side. At the time Karen was working there we were actually using a three-quarter inch platform which is a piece of plywood without a face and a back on it, with two by four runners down to the bottom of it, actually screwed to the bottom of it. And they would stack on top of those so anytime that they began to load they would, two people are required to move these. So, they moved them together. And they would set them down on a buggy which had wheels on it and take the veneer from the pallet and put it onto the load that they were making. (T. 57-58)

The claimant's testimony reflects that in August 2002, approximately a month after she had been doing the pre-lay job she experienced an onset of pain and numbness in her right hand. Claimant added that she continued to discharge her employment duties and her symptoms grew worse, she worked around it. Claimant asserts that during the day while she was lifting the pallets her right wrist would hurt and that it eventually got to the point that she experienced pain and symptoms at times when she was not working but at home at night.

In October 2002, the claimant became a full-time employee of respondent No. 1 and was also assigned new job duties which entailed mudding and working on the conveyor line. In the afore the

claimant was required to repair any sheets or panels of veneer that came down the conveyor line with the application of material with a putty knife to any cracks. The claimant's testimony reflects, with respect to the tasks of the job:

Yes. I mean it would come down, we had to move pretty fast. And I would work the stacker with my right hand and guide forward with my left. I'd mud with my right – (T. 15)

The claimant's testimony reflects that she used a putty knife to press the mud into the cracks on the sheets of veneer requiring repairs. Further the claimant noted that the majority of the sheets had more than one crack which required the application of the material to each crack. Additionally, while not every sheet required repairs, the claimant's testimony reflects that the majority of them had to be repaired. As previously noted, the repair was done utilizing her right hand. The claimant testified that she used her left hand to guide the sheets of veneer down the conveyor line:

I'd guide the boards, most of the time they would jump off the line or they would just, they wouldn't stack right in the stack or, and we had a lot of thin boards we had to just fight with, totally fight with. (T. 16)

The claimant's testimony reflects, with respect to the ultimate disposition of the boards on the conveyor line:

The line, it would go into the stacker of the machine that would keep the boards all pressed neatly together to stack them nicely. And then after it would get so many or the load then you shoot it out. (T. 17)

The testimony of Mr. Heath reflects that in October 2002:

Yes, we had made a decision to go from – we took the third shift down on the line that she was prepping wood for and at that time moved her onto a full-time position onto line 1, patch line, and hired her full time.

* * *

Motorized yes, motorized conveyor. It's got belts on it. It runs down an assembly line and the patchers, some of them worked both (phonetic), some of them didn't. Would take putty out of a bucket and they would patch defects in the wood, the hardwood overlay and knothole splits, etcetera. And they would take and hold the putty out of their hand or out of the bucket and apply the wood to the defects in the hardwood on the boards coming down the assembly line.

* * *

Well, Karen worked in the back and we probably run 30%, maybe 40% that don't require putty on the back, they are a reject back and we don't putty those. And that varies from night to night. We've also got other products that we don't putty at all. But 30% didn't require any putty, so probably 70% of the panels run down the line would require some putty. (T. 59-60)

With respect to the claimant's use of her left hand while patching, Mr. Heath testified:

They will, Karen worked by the stacker and operated the stacker on the patch line and she was alluding to guiding the panels in. Sometimes the panels, if they're warped or if the belts are not aligned correctly will ride off to the side and they will have to move them over a little bit so that they go into the stacker themselves. It doesn't require a lot of, they're not moving them very far. Just to keep them off the rails –

* * *

It depends on whether the wood is warped or not but I would say probably – most of the time they would guide them. I think it was almost a habit for them to just kind of push them over whether they needed it or not. (T. 60-61)

The testimony of the claimant reflects that once symptoms to her right hand began in August 2002 they continued and progressively worsened even after she was assigned duties on the patch line. In January 2003 the claimant reported her injury to supervisory personnel of respondent No. 1. The evidence reflects the claimant completed the Form N on January 3, 2003 and listed the date of her injury as August 12, 2002, approximately one month after her July 12, 2002, employment by

respondent No. 2 and assignment to job duties at respondent No. 1. After reporting the August 12, 2002 injury to respondent No. 1 on January 3, 2003, and completing the Form N, claimant was not sent to a doctor for medical treatment. The testimony of the claimant reflects that regarding the decision of respondents relative to her right wrist claim:

That it was preexisting and I talked to the workmen's comp guy on the phone and he said that he didn't think that workmen's comp would – it was preexisting is what he said. (T. 19)

The claimant noted that her complaints continued to progressively worsen after the January 3, 2003, reporting.

Claimant testified that in February 2003 she began to experience complaints of pain in her left hand which she attributed to her employment activities. With respect to the onset of symptoms in her left hand the claimant's testimony reflects:

Just every once and awhile it would go to sleep on me through the night. It started up slow. (T. 18)

The claimant testified that as she continued to perform her job duties for respondent No. 1, symptoms with respect to her left hand grew progressively worse. The claimant testified:

When I come back to work June 15th [2003] that night my hand give me fits. My left hand give me fits. (T. 18)

The testimony of the claimant reflects that between June 15, 2003 and September 8, 2003, the day she completed a Form N relative to her left wrist complaint, she had been seen by her family physician, Dr. Julie Dow, and had requested a brace for her left wrist. Claimant testified that she had gone to Dr. Dow with sinus complaints at the time she made the request relative to a brace for her left wrist. The claimant acknowledged that she did not report her left wrist complaint to respondent prior to July 2003. On September 8, 2003, the claimant filed a Form N relative to her left wrist

complaint. The claimant continued in the employment of respondent No. 1 until September 13, 2003, at which time her employment was terminated.

Regarding the termination of her employment by respondent No. 1, the claimant acknowledged that she was aware of the point system in place wherein an accumulation of twelve points could result in termination of employment. The testimony of the claimant reflects that on January 10, 2003, she received four points for no-show, no-call. Additionally, the claimant acknowledged that on July 11, 2003, it is possible that she picked up some more points for absenteeism. On August 21, 2003, the claimant acknowledges that she was told that she was up to over eight points and that if she got the twelve points her employment would be terminated. As of September 8, 2003, when she filed a claim relative to her left wrist injury she received additional points because she had failed to report the injury in accordance with the policy of respondent No. 1 requiring that injuries are to be reported immediately.

A written statement was prepared by respondent No. 1 relative to the claimant's reporting of the left wrist injury in September 2003. The claimant acknowledged signing the document on September 9, 2003. (R. No. 1, Exhibit No. 3) The evidence reflects that claimant delayed reporting the left wrist complaint as a work related injury because of her desire to obtain a gain share check provided by respondent No. 1. Claimant testified:

I didn't know if that would affect it or not but I had, there were a few people that said it would so I just kept my mouth shut until we got our gain share checks. There were some pretty big gain share checks. (T. 54)

The claimant testified that the checks were distributed every five or six weeks. Claimant acknowledged that respondent No. 1 stressed safety in the workplace and that she was afraid that if

she filed a claim for injury relative to her left wrist it would cause everyone not to get the gain share checks.

The claimant's testimony reflects that in September 2003 while she had not asked to go to the doctor for her hands after completing the Form N on September 8, 2003, her supervisors were aware of the condition of her hands:

No. I didn't ask them. I mean they was my supervisors. They knew what they could do and what they couldn't. You know, I figured they would say, well, Karen, we need to send you to a doctor. I just took it on myself and went to the doctor. (T. 46-47)

The testimony of Mr. Heath reflects that in January 2003, the claimant reported experiencing problems with her right hand:

She told me that her hand was bothering her at night while she was sleeping. It was going to sleep and was hurting. As she had told me that she had had carpal tunnel from a previous employer and I said, well, it sounds like a preexisting condition and so I sent her down to the HR manager. (T. 61)

Mr. Heath testified that claimant never reported a left hand problem to him, noting that by the time of the afore the claimant had changed over to another supervisor.

Mr. Heath further testified that the gain share program had nothing to do with reporting work-related injuries:

No. The gain share is, we have a four-part gain share that is based on productivity, shop rate, a family of measures related to quality and safety. Safety plays a part of it. If we have an accident we lose that safety part of it. (T. 61-62)

Further, Mr. Heath denies that respondent No. 1 discouraged employees from reporting work-related injuries:

No, in fact we coach them strongly on reporting injuries. The reason

for the gain share is to promote safe work practices as opposed to, you don't want to hide them. And that's why our policy is about being penalized if they don't report it. (T. 62)

Mr. Heath acknowledged that the problem with the policy is that with an injury like carpal tunnel one can maintain safe practices and still suffer an injury.

After claimant's employment with respondent No. 1 was terminated on September 13, 2003, she filed for unemployment benefits. The claimant noted that because she had been fired she would be disqualified from receiving any benefits for a period of six weeks. Claimant testified that while her hands remain symptomatic she could not afford to be without a source of income for six (6) weeks following the termination of her employment with respondent on September 13, 2003. The claimant was referred to Wolverine Manufacturing by the Employment Security Division, and secured employment with same on October 28, 2003.

The testimony of the claimant reflects that she remained in the employment of Wolverine from October 28, 2003 through January 16, 2004, a point in time that her hands played out and she was unable to continue working. In describing her job duties in the employment of Wolverine, claimant testified:

I put little pieces of leather in mill die and put marks on the leather for the stitcher to sew. (T. 33)

The claimant worked from a work station while employed by Wolverine. Claimant acknowledged that she had a quota of 1200 a day in her employment with Wolverine. In terms of the impact of her job duties with Wolverine on her symptomatic hands, the claimant testified that she had problems lifting the heavy die.

Claimant testified she was ultimately referred by her family physician, Dr. Julie Dow, to Dr.

John Ball, a Jonesboro orthopedic physician, for treatment relative to her hands. After undergoing diagnostic studies, claimant underwent bilateral carpal tunnel syndrome on March 2, 2004. Claimant was seen in followup by Dr. Ball on March 29, 2004, and released to return to work. (CX1, p. 30-31)

The testimony of the claimant reflects that when released to return to work by Dr. Ball on March 29, 2004, she continued to experience symptoms in her upper extremity to include a loss of grip strength, pain and weakness. The claimant in fact returned to the employment of Wolverine following her March 29, 2004 release, however, had to abandon the employment after a week. Claimant explained that she was unable to lift the heavy die following her return to Wolverine due to the weakness in her hands. The claimant acknowledged that since she last attempted to discharge employment duties at Wolverine her hands have improved.

A review of the medical in the record reflects that when seen by her family physician, Dr. Julie Dow, on July 1, 2003, at the Harrisburg Family Medical Center among the complaints registered by the claimant were right arm and wrist pain. The report further reflects:

HPI: States was told in Er several years ago that had CTS and given steroids shot and wrist splints, for a while the wrist splints worked well but lately even they don't help. Pain wakes her in middle of night and has to dangle hand down to get tingling to go away. It doesn't work for a week pain improves. When bad bB [both] hands hurt but usually is R that really bothers her, radiating up into shoulder. Has noticed has to use L to help with some heavy lifting. Occ drops some heavy items ie from freezer. Was lifting wrong last week and hurt back. (CX1, p. 1)

Dr. Dow's impression of the claimant's complaints following the July 1, 2003, visit was that of carpal tunnel syndrome. The report further reflects a treatment plan which included using splints and a discussion of options including surgery and recovery time. The claimant was also started on

medication. (RX1, p. 2) Claimant was again seen by Dr. Dow on August 11, 2003, when she complained relative to her sinus and dizziness. Although noting that the claimant had not secured splints relative to her wrists, the August 11, 2003, report of Dr. Dow does reflect an improvement in the claimant's carpal tunnel syndrome. (CX1, p. 4-5)

The claimant was again seen by Dr. Dow on November 18, 2003, when she complained relative to carpal tunnel syndrome. During the November 18, 2003, visit the claimant noted that her left hand was always numb and she has some decreased grip strength. Although the previous visit of August 11, 2003, Dr. Dow had noted an improvement in the claimant's carpal tunnel syndrome, the impression reflected during the November 18, 2003, visit was carpal tunnel syndrome unchanged. The claimant was again seen by Dr. Dow on January 13, 2004, at which time she related that her hands were worse. The January 13, 2004, report of Dr. Dow reflects an impression of carpal tunnel syndrome deteriorated. (CX1, p. 8-9) On January 30, 2004, claimant underwent nerve conduction studies on both upper extremities pursuant to the direction of Dr. Dow. The January 30, 2004, report of Dr. Dow noted the results of the diagnostic studies, which included very severe carpal tunnel syndrome of the left upper extremity, and severe carpal tunnel syndrome of the right upper extremity. (CX1, p. 16) Following the diagnostic studies the claimant was referred by Dr. Dow to Dr. John F. Ball, a Jonesboro orthopedic physician, for treatment relative to the diagnosed bilateral carpal tunnel syndrome.

On February 20, 2004, the claimant was initially seen and evaluated by Dr. Ball pursuant to the above referenced referral of Dr. Dow. The February 20, 2004, report relative to the claimant's initial evaluation reflects:

Ms. Hatcher is a 44 yof seen in consultation today for Dr. Julie Dow

with complaints involving both hands and forearms. She's noted some symptoms for about 3 yrs in the R hand and wrist and at the end of June last year, began to have symptoms as well on the L side. She describes several jobs over the years involving repetitive upper extremity stress. States her hands go numb and hurt up to her elbow. Feels that all of her fingers are numb. She has not worked since January. She saw Dr. Dow who then referred her for NCV testing. The testing was felt to show severe carpal tunnel syndrome of the L upper extremity and severe carpal tunnel syndrome of the R upper extremity. (CX1, p. 18)

At the conclusion of February 20, 2004, evaluation Dr. Ball recommended proceeding with bilateral carpal tunnel release. On March 2, 2004, the claimant was admitted to St. Bernard Medical Center under the care of Dr. Ball and underwent surgery for severe bilateral carpal tunnel syndrome. (CX1, p. 20-29) The claimant was seen in followup on March 29, 2004, by Dr. Ball. The clinic note relative to the March 29, 2004 visit reflects, in pertinent part:

Clinically, she feels her sensation is good but she still can't do such things as open jars. That would not be unusual at this point. Strength is the last thing to come back from these sort of conditions. Offered to get her into therapy but she has concerns about being able to afford that and wants to do this on her own for now. She should continue the splints. She is given a release that she is able to return to gainful employment at this time and we'll plan recheck in one month. (CX1, p. 30)

As previously noted, following her March 29, 2004, release by Dr. Ball, claimant returned to the employment of Wolverine where she attempted to discharge employment duties for a period of one week before having to abandon same. Claimant noted that she was unable to lift the heavy dies during the course of her employment. The claimant asserts entitlement to workers' compensation benefits in the form of medical and indemnity benefits. Respondents deny the compensability of the claimant's injuries.

Respondent No. 2, Staffmark, takes the position that the claimant had carpal tunnel syndrome

prior to her employment with same on July 12, 2002. Further, respondent No. 2 contends that throughout her employment with same the claimant did not report a work-related injury nor did she miss time from work relative to same. The claimant's employment with respondent No. 2 ceased on or about October 25, 2002. Respondent No. 2 further maintains that the claimant had no objective findings of injury until after her employment with same had ceased. Respondent No. 2 concludes that the claimant's condition is not related to her employment with same.

Respondent No. 1, Columbia Forrest Products, contends that the claimant's right arm problems are not related to her employment with same. With respect to the claimant's left arm complaint, respondent No. 1 maintains that notice of any compensable left arm injury was not received until after the claimant's employment with same was terminated. Finally, respondent No. 1 contends that the claimant's left arm problems are not related to her employment.

After a thorough consideration of all the evidence in the record, to include the testimony of the witnesses, a review of the medical, and application of the appropriate statutory provision and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. From July 12, 2002, through October 25, 2002, the relationship of employee-employer-carrier existed among the claimant and respondents No. 2.
3. During her employment with respondent No. 2 the claimant earned an hourly wage rate in excess of \$7.00 for a 40 hour week.
4. On or about August 12, 2002, the claimant sustained an injury to her right wrist arising out of and in the course of her employment.

5. Commencing October 28, 2002, and at all times pertinent thereto the employee-employer relationship existed between the claimant and respondent No. 1.

6. During her employment with respondent No. 1 the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$254.00/\$190.00 for temporary total/permanent partial disability.

7. On or about June 15, 2003, the claimant sustained an injury to her left wrist arising out of and in the course of her employment.

8. The claimant was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004 through March 29, 2004, and continuing through the end of her healing period, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004.

9. The respondents No. 1 and 2 shall pay all reasonable hospital and medical expenses arising out of the injuries of August 12, 2002, and June 15, 2003.

10. The respondents have controverted these claims in their entirety.

CONCLUSIONS

The claimant asserts entitlement to workers' compensation benefits relative to bilateral carpal tunnel syndrome for which she has undergone surgery and suffered temporary total disability. The claimant was an employee of two different employers during the course of her claims. Both respondents have denied the occurrence of a compensable injury while the claimant was within their employment. These claims are governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The evidence in the record reflects that in 1997 while employment by Vinco the claimant suffered complaints relative to her right wrist for which she sought medical treatment at a local emergency room. The claimant's treatment relative to her right wrist complaint included steroid injection and the use of a splint or brace for her right wrist. The emergency room physician diagnosed the claimant's complaint as carpal tunnel syndrome in the right wrist. The claimant utilized a screw gun in the discharge of her employment duties with Vinco. There is no evidence to reflect that the claimant was off work as a result of her right wrist complaint in 1997. Further, the evidence reflects that after obtaining the emergency medical treatment relative to her right wrist along with assignment of different job duties which did not entail the use of the screw gun, the claimant did not suffer further medical complaints relative to her right wrist for which she received medical treatment. The claimant continued in the employment of Vinco following the 1997 treatment for her right wrist for an additional year or year and a half.

The evidence further reflects that after leaving the employment of Vinco the claimant secured employment with Delta Wood. The claimant's job duties in her employment with Delta Wood entailed handling small pieces of wood that were sanded to a smooth surface. The claimant remained in the employment of Delta Wood for a period of one to one and a half years. There is no evidence to reflect that the claimant sought or obtained medical treatment relative to her right wrist during her employment with Delta Wood.

The credible evidence in the record reflects that the claimant did not experience complaints relative to her right wrist following her emergency room visit in 1997 until approximately August 12, 2002. Claimant commenced her employment with respondent No. 2, Staffmark, a temporary employment agency, on July 12, 2002, and was assigned to job duties at the Columbia Forrest

Products facility, respondent No. 1. The credible testimony of the claimant reflects that within a month of her employment with respondent No. 2, while discharging assigned job duties at the facility of respondent No. 1, she experienced an onset of symptoms in her right upper extremity similar to the 1997 diagnosed carpal tunnel syndrome. The specifics and mechanics of the claimant's job duties during the period of July 12, 2002, through August 12, 2002, are not disputed. Once the claimant's right upper extremity symptoms commenced in August 2002 they progressively worsened. On or about October 25, 2002, the claimant's employment with respondent No. 2 ceased. Thereafter on October 28, 2002, claimant became employed by respondent No. 1.

The evidence clearly reflects that at the time the claimant became an employee of respondent No. 1 on or about October 28, 2002, she experienced symptoms and complaints relative to her right wrist and hand growing out of her employment duties. The claimant was assigned a different job which entailed discharging employment duties on a conveyor line. The mechanics of the claimant's new job duties which included repairing sheets of veneer by applying a putty substance with a putty knife to the cracks in the sheets and guiding the sheets along the conveyor line, are not disputed. Claimant continued to experience complaints relative to her right upper extremity as she discharged employment duties as an employee of respondent No. 1 subsequent to October 28, 2002.

On January 3, 2003, the claimant filed a claim for workers' compensation benefits relative to the right upper extremity complaints. The claimant's right upper extremity symptoms included pain, numbness, and weakness. The compensability of the claimant's right wrist complaint was denied by both respondents.

As claimant continued to discharge her employment duties for respondent No. 1 she gradually developed symptoms in her left upper extremity. The claimant noted that when she was

away from work the symptoms would abate somewhat. By June 2003 the claimant's left upper extremity complaints had reached a point of pain, numbness, and weakness. The medical reflects the claimant sought treatment under the care of her family physician, Dr. Julie Dow, on July 1, 2003. At the time of the visit to Dr. Dow the claimant was experiencing symptoms and complaints relative to both upper extremities.

The claimant continued to discharge employment duties for respondent through September 13, 2003, at which time her employment was terminated due to the compilation of 12 points pursuant to the policy of respondent No. 1. On September 8, 2003, the claimant filed a Form N for workers' compensation benefits relative to her left upper extremity complaint. Prior to the filing of the September 2003 claim the claimant had not reported her left upper extremity injury to respondent No. 1, although she had been experiencing symptoms since approximately June 2003. The claimant's delay in reporting the injury was a product of her desire to receive a shared gain check offered as an incentive by respondent No. 1 to its employees. Ironically, the claimant's points level exceeded the prohibited number as a result of the September 8, 2003, reporting of the injury in that the failure to report a suspected injury following its occurrence resulted in the claimant being penalized an additional three points.

At the time the claimant's employment with respondent No. 1 was terminated on September 13, 2003, she was continuing to discharge employment duties, and had not been taken off work by her treating physician Dr. Julie Dow, for treatment relative to her bilateral carpal tunnel syndrome. Claimant filed for unemployment benefits following her September 13, 2003, firing, however, was disqualified for a period of six weeks due to the circumstances under which she became unemployed. On or about October 28, 2003, the claimant secured employment with Wolverine, and continued in

the employment of same through January 16, 2004, when she was unable to continue performing job duties due to residuals of her bilateral carpal tunnel syndrome.

On January 13, 2004, the claimant was seen by her family physician with chief complaints relative to her carpal tunnel syndrome. She underwent nerve conduction studies on January 30, 2004, which yielded findings of severe carpal tunnel in the right and left upper extremities. Thereafter the claimant was referred by Dr. Dow to Dr. John Ball, a Jonesboro orthopedic physician, and underwent surgery for bilateral carpal tunnel release on March 2, 2004. The evidence in the instant claims preponderates that the claimant suffered carpal tunnel syndrome to her right upper extremity and to her left upper extremity, and underwent surgery relative to same. To prevail on a carpal tunnel claim the claimant must prove by a preponderance of the evidence that:

- (1) She suffered an injury causing internal or external harm to the body which arose out of and in the course of her employment and which required medical services or resulted in disability or death. Ark. Code Ann. §11-9-102(4)(A)(ii) and §11-9-102(4)(E)(ii).
- (2) That the injury was the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4)(A)(ii)(a) and §11-9-102(4)(E)(ii);
- (3) The compensable injury must be established by medical evidence supported by objective findings as defined in subsection (16) of this Section. Ark. Code Ann. §11-9-102(4)(B)
- (4) Medical opinion affixing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B).

If the employee fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the alleged injury, the employee fails to establish the

compensability of the claim and the claim must be denied.

In the instant claim, while there is information that the claimant received treatment in 1997 in the form of steroid injections and a brace for right wrist complaints which was diagnosed as carpal tunnel syndrome the evidence further reflects that she did not experience continuing complaints subsequent to the emergency room visit of 1997. As an employee of respondent No. 2 assigned to job duties at respondent No. 1, the claimant performed rapid repetitive tasks throughout her employment with respondent No. 2, from July 12, 2002 through October 25, 2002. On August 12, 2002, the claimant experienced symptoms in her right upper extremity to include pain, weakness, numbness. The evidence reflects that the symptoms in the claimant's right upper extremity continued after August 12, 2002, and progressively worsened. Claimant filed a claim for workers' compensation benefits relative to her right wrist complaint on January 3, 2003. The compensability of the claim was denied by respondent No. 2.

At the time the claimant filed her January 3, 2003, claim for workers' compensation benefits relative to her right wrist she was an employee of respondent No. 1. The claimant continued discharging her employment duties for respondent No. 1 and later developed left upper extremity symptoms similar to the right upper extremity complaints. At the time the claimant sought and obtained medical treatment relative to her upper extremity complaints, July 1, 2003, the history of was one of complaints both the right and left upper extremities. The claimant did not file a claim for workers' compensation benefits relative to her left upper extremity until September 8, 2003.

The evidence in the record preponderates that the claimant engaged in rapid repetitive job activities in the employment of respondent No. 1 and respondent No. 2. Further, the claimant experienced symptoms relative to her right wrist complaint approximately one month following her

employment by respondent No. 2 as she was discharging assigned job duties. The claimant's right upper extremity complaints never abated even after she ceased employment with respondent No. 2 and became an employee of respondent No. 1. The claimant's right upper extremity complaints continued without relief until she underwent surgery under the care of Dr. John F. Ball on March 2, 2004. Diagnostic studies performed at the direction of Dr. Dow, to include nerve conduction studies reflect detect of evidence of injury. Respondent No. 2 is liable for the payment of workers' compensation benefits to and on behalf of the claimant relative to the claimant's right carpal tunnel syndrome. Respondent No. 2 has controverted the claimant's entitlement to workers' compensation benefits relative to her right carpal tunnel syndrome.

The record clearly reflects that respondent No. 2 was aware of the claimant's claim for workers' compensation benefits relative to her right upper extremity prior to the time the claimant accrued workers' compensation benefits as a result of the injury with respect to medical or indemnity benefits. The claimant filed her claim for workers' compensation benefits relative to her right upper extremity on January 3, 2003. The claimant continued to discharge employment duties following the January 3, 2003 filing. At the time claimant sought medical treatment relative to her right carpal tunnel syndrome, July 1, 2003, respondent No. 2 was aware of the claim for benefits asserted by the claimant. Respondents No. 2 are responsible for a proportionate share of the claimant's treatment under the care of Dr. Julie Dow, as well as referrals therefrom, relative to the claimant's right upper extremity as of July 1, 2003.

On January 16, 2004, the claimant was rendered temporarily totally disabled relative to her bilateral carpal tunnel syndrome, and remained so until March 29, 2004, and thereafter. The claimant is entitled to the payment of temporary total disability benefits at the appropriate

compensation benefit rate for the period January 16, 2004, through March 29, 2004, relative to her right carpal tunnel syndrome and surgical release growing out of her August 12, 2002, injury suffered in the employment of respondent No. 2. Respondents No. 2 have controverted the claimant's entitlement to workers' compensation benefits relative to the August 12, 2002, compensable right carpal tunnel syndrome injury.

As claimant discharged employment duties for respondent No. 1 on a conveyor line repairing veneer commencing October 28, 2002, she was required to utilize her left hand to guide the sheets on the conveyor belt and to assure a smooth transition to the stacker. There is no evidence in the record to reflect the claimant experienced left upper extremity complaints prior to her employment with respondent No. 1 on October 28, 2002. The credible evidence reflects that as the claimant continued to discharge her employment duties with respondent No. 1 she gradually experienced an onset of symptoms and complaints in her left upper extremity to include pain, weakness, and numbness. The credible evidence reflects these symptoms in the claimant's left upper extremity culminated in June 2003 and resulted in the claimant seeking medical treatment on July 1, 2003, under the care of her family physician.

The claimant did not report her left upper extremity complaints to supervisory personnel of respondent No. 1 until or about September 8, 2003. The evidence in the record reflects that the claimant was aware that her left upper extremity complaints were related to her employment activity on the conveyor line while performing the job duties for respondent No. 1. Respondent No. 1 was aware of the claimant's claim for workers' compensation benefits relative to her left upper extremity complaint as of September 8, 2003. Respondent No. 1 denied the compensability of the claim. It is undisputed that respondent No. 1 had notice of the claimant's claimed injury as of September 8,

2003, with respect to her left upper extremity. Indeed, the delayed reporting of the claimed symptoms dating back to as early as June 2003, served as a basis for the termination of the claimant's employment with respondent No. 1.

The evidence preponderates that the claimant has sustained her burden of proof that she suffered an injury to her left upper extremity, in the form of severe carpal tunnel syndrome, which arose out of and in the course of her employment with respondent No. 1, and required medical services and resulted in disability, that the injury is the major cause of the claimant's disability and treatment to her left upper extremity; that the injury caused internal or external harm to the claimant's left upper extremity and that the injury has been established by medical evidence supported by objective findings. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

Respondent No. 1 is liable for the cost of the claimant's medical treatment under the care of Dr. Julie Dow, as well as referrals therefrom, relative to the claimant's left upper extremity complaints subsequent to September 8, 2003.

The evidence reflects that the claimant did not lose time from work as a result of the June 15, 2003, left carpal tunnel syndrome sustained in the employment of respondent No. 1 until January 16, 2004, when she was rendered totally incapacitated from engaging in gainful employment as a result of same and so, save for following March 29, 2004, when she attempted to return to work before having to abandon same. Respondent No. 1 has controverted the claimant's entitlement to temporary total disability benefits as well as medical benefits growing out of the June 15, 2003, compensable injury to the claimant's left upper extremity.

At this juncture it should be noted that the claimant suffered a scheduled injury in her

employment with respondent No. 2 on August 12, 2002, relative to her right wrist. The claimant filed a claim relative to the right carpal tunnel syndrome on January 3, 2003. While the claimant obtained medical treatment relative to her right upper extremity complaint under the care of Dr. Julie Dow on July 1, 2003, she did not lose time from work as a result of same until January 16, 2004. At the time the claimant received treatment under the care of Dr. Dow on July 1, 2003, respondent No. 2 had controverted the claim for benefits. In Wheeler Construction Company v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001) the Arkansas Court of Appeals held that an employee who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work regardless of whether he has demonstrated that he is actually incapacitated from earning wages. In the instant claim the claimant did return to the employment of Wolverine following her March 29, 2004, release from Dr. Ball and was able to work for a period of one week. There is no evidence in this record to reflect that claimant had reached the end of her healing period as of the March 29, 2004, date. The claimant attributes her inability to continue performing work in the employment of Wolverine to the fact that she was still recovering from the carpal tunnel release surgery and was unable to lift the die required in the job.

The claimant's June 15, 2003, left upper extremity complaint or carpal tunnel syndrome suffered in the employment of respondent No. 1 is also a scheduled injury and covered by the appellate court's ruling in Wheeler Construction Company v. Armstrong. The evidence preponderates that the claimant suffered an injury to her left upper extremity which caused internal or external harm to the body and the same arose out of the course of her employment with respondent No. 1; that the same required medical services and resulted in disability. Further, the

evidence preponderates that the major cause of the claimant's disability or need for treatment was the June 2003 left carpal tunnel syndrome injury which was established by medical evidence supported by objective findings, as reflected in the nerve conduction studies.

Finally, while respondent No. 2 asserts that the claimant suffered carpal tunnel syndrome relative to her right upper extremity in 1997 prior to her employment by respondent No. 2 or respondent No. 1 the record is devoid of any evidence of treatment received by the claimant relative to her right upper extremity subsequent to her 1997 emergency room visit. Additionally, the claimant had been employed by another employer for a period of one to one and a half years prior to her employment by respondent No. 2. There is no evidence to reflect that the claimant sought or obtained medical treatment relative to her right upper extremity between 1999 while employed by Delta Wood, and July 12, 2002, when she was employed by respondent No. 2. With a diagnosis of right carpal tunnel syndrome in 1997 and a resolution or abatement of symptoms following the emergency room medical treatment in 1997 for the complaints, the claimant's August 12, 2002, right carpal tunnel syndrome could easily be characterized as an aggravation or a new injury resulting from an independent incident. Maverick Transportation v. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2002). Accordingly, in the instant claim, the claimant has established by a preponderance of the evidence that she suffered right carpal tunnel syndrome in the employment of respondent No. 2 as of August 12, 2002.

AWARD

Respondent No. 2 is hereby ordered and directed to pay to the claimant temporary total disability benefits at the appropriate compensation benefit rate for the period commencing January 16, 2004 through March 29, 2004, and continuing through the end of her healing period relative to

her right carpal tunnel syndrome of August 12, 2002, exclusive of the one week she worked subsequent to March 29, 2004. Said sums accrued shall be paid in a lump without discount.

Respondent No. 2 is further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's August 12, 2002, right carpal tunnel syndrome injury.

Respondent No. 2 is further ordered and directed to pay the maximum attorney's fee to the claimant's attorney, the Honorable John Barttelt, on this award, pursuant to Arkansas Code Annotated §11-9-715.

Respondent No. 1 is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal tunnel syndrome injury suffered in the employment of same for a period beginning January 16, 2004, and continuing through the end of the claimant's healing period, exclusive of the week worked by the claimant subsequent to March 29, 2004. Said sums accrued shall be paid in a lump without discount.

Respondent No. 1. is further ordered to pay all reasonably related medical, hospital, nursing, and other apparatus expenses growing out of the claimant's June 15, 2003, left carpal tunnel syndrome subsequent to September 8, 2003.

Respondent No. 1 is further ordered and directed to pay maximum attorney's fees to the claimant's attorney, the Honorable John Barttelt, on the controverted indemnity benefits pursuant to Arkansas Code Annotated §11-9-715.

These awards shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge