

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300733

MELINDA S. HUDSON, EMPLOYEE

CLAIMANT

**PILGRIMS PRIDE CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED MARCH 24, 2004

Hearing before Administrative Law Judge J. Mark White on February 12, 2004, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Bart C. Craytor, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 12, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on November 24, 2003, and a Prehearing Order was entered that same day. A copy of the November 24, 2003, 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; that some medical and indemnity benefits have been paid by the respondents; and that the respondents have controverted this claim in its entirety. At the hearing, the parties further stipulated that the claimant earned an average weekly wage of \$260 at the time of her injury.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to associated medical and indemnity benefits; and attorney's fees.

The claimant contends that she sustained a compensable gradual-onset injury to her right hand and wrist; that her work consisted of rapid repetitive motion; that she is entitled to medical and indemnity benefits; and that she remains temporarily totally disabled.

Respondents contend that there are no objective findings of 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 witnesses and to observe their 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 her injury is established by medical evidence supported by objective findings.
4. The claimant has failed to prove by a preponderance of the evidence that her alleged injury is the major cause of any disability or need for treatment.
5. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual-onset injury.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to further medical treatment or diagnostic testing to determine whether she has sustained a compensable injury.
7. The respondents have controverted this claim in its entirety.

DISCUSSION

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 or her 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 is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores v. Leach, supra*; ARK. CODE ANN. § 11-9-102 (4)(D). Most gradual-onset injuries must be shown to have been caused by rapid repetitive motion. ARK. CODE ANN. § 11-9-102 (4)(A)(ii)(a). Carpal tunnel syndrome, however, is statutorily presumed to be caused by rapid repetitive motion. *Id.* Proof of rapid repetitive motion is therefore not necessary to establish the compensability of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

The claimant began working for the respondent-employer on March 18, 2002. Her job duties unquestionably involved rapid repetitive motion; the claimant and her supervisor agreed that the production line on which she worked handled 40 chickens per minute.

The claimant alleges that she has sustained a compensable gradual-onset injury to her right hand and wrist, though she acknowledges she cannot precisely identify what that injury is. She noted on a form AR-N dated June 21, 2002, that she

had woken up the morning of June 20 with swelling in her right hand, and that she then went to work but was unable to complete her shift because of the pain in her hands. She corroborated this account in her deposition, but at the hearing she offered conflicting testimony, to the effect that her problems had begun at work, not when she woke up that morning.

The first time she saw a doctor for this alleged injury was on June 21, 2002, when Dr. Richard Ridlon diagnosed tendinitis. There are no objective findings in the record concurrent with this visit to support such a diagnosis. Dr. Ridlon prescribed Celebrex and Celestone and released the claimant to return to work with no restrictions. The claimant returned to Dr. Ridlon on July 15 with swelling in her feet and ankles, apparently due to her use of Celebrex. The claimant called Dr. Ridlon's office on September 17 asking for a prescription for Ultram or Darvocet for pain in her hands.

The claimant next saw a doctor for her right hand on December 26, 2002, when Dr. Madhulika Krish diagnosed carpal tunnel syndrome. Dr. Krish noted swelling in the claimant's wrists on January 7 and 24, 2003. The claimant saw a specialist, Dr. Charles Hollingsworth, who reiterated the diagnosis of carpal tunnel syndrome when he saw the claimant on January 16, 2003. But, subsequent nerve conduction studies revealed no evidence of carpal tunnel syndrome. After the nerve

conduction studies, Dr. Hollingsworth opined instead that the claimant had “right hand pain, etiology unknown.” He speculated that the claimant might have “a repetitive stress syndrome.” The claimant then sought treatment from Dr. Chris Alkire. Like Dr. Hollingsworth, Dr. Alkire initially suspected carpal tunnel syndrome because of the claimant’s subjective complaints, but later concluded that the claimant probably does not have carpal tunnel syndrome. Dr. Alkire recommended an MRI of the cervical spine to locate the source of the claimant’s symptoms, but no MRI was ever done and the claimant did not return to Dr. Alkire.

To satisfy her burden of proof, the claimant must establish her injury by medical evidence supported by objective findings. ARK. CODE ANN. § 11-9-102(4)(D). I find that the claimant has failed to do so. The only medical evidence she offers to establish her alleged injury consists of her subjective complaints of pain and two isolated mentions of swelling in her wrist. With the diagnosis of carpal tunnel syndrome discounted by Drs. Alkire and Hollingsworth, the only alternative diagnosis is Dr. Hollingsworth’s speculative diagnosis of “repetitive stress syndrome.” The claimant cannot rely on this statement to prove a compensable injury, for Dr. Hollingsworth’s statement does not meet the statutory standard of being made within a reasonable degree of medical certainty. To be within a reasonable degree of medical certainty, a medical opinion must be more than

speculation. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). If a medical opinion is not sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, it is not stated within a reasonable degree of medical certainty. *See, Howell v. Scroll Technologies*, 343 Ark. 297, 35 S.W.3d 800 (2001). After describing the etiology as “unknown,” Dr. Hollingsworth noted, “I do not know exactly what is going on, but I think this lady probably just has a repetitive stress syndrome.” In its full context, I find this diagnosis by Dr. Hollingsworth to be little more than speculation.

The claimant’s physicians have not been able to ascertain the etiology of her complaints. For me to conclude that her complaints originated in a compensable gradual-onset injury would require speculation and conjecture, and such can never substitute for credible evidence. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1980). Given the paucity of medical evidence establishing any alleged injury, I find that the claimant has failed to prove by a preponderance of the evidence that her injury is established by medical evidence supported by objective findings.

Even if I were to find otherwise, I also find that the claimant cannot overcome her burden of proving that her alleged injury is the major cause of her disability or need for treatment. There is simply no credible evidence in the record to establish

that the claimant's alleged incapacity to earn wages – that is, her alleged disability – is due to problems with her right wrist and hand. All of her physicians consistently released her to work, and she continued to work for the respondent-employer despite her hand problems until she was terminated for excessive absenteeism.

As for any need for treatment, the record establishes that the claimant had exhibited similar symptoms in her hands and wrists in 1999, prior to the compensable injury. Dr. Hollingsworth opined on February 20, 2003, that the claimant's "anxiety and tenseness may be a great part of" her right hand and wrist symptoms. The claimant has a long history of treatment for chronic osteoarthritis in her lower extremities, and Dr. Alkire agreed that osteoarthritis could cause pain in both the lower and upper extremities. Given this evidence, I cannot conclude, without resorting to speculation and conjecture, that the claimant's alleged compensable injury is more than fifty percent of the cause of her need for treatment. I therefore find that the claimant has failed to prove by a preponderance of the evidence that her alleged injury is the major cause of any disability or need for treatment.

Because the claimant has failed to prove that her injury is established by medical evidence supported by objective findings, and because she has failed to

prove that her alleged injury is the major cause of any disability or need for treatment, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual-onset injury.

The claimant offered as an alternative contention that she is entitled to further diagnostic testing to enable her physicians to reach a definitive diagnosis and to determine whether or not she actually has a compensable injury. Worker's compensation is governed wholly by statute, and thus any award of compensation must be based solely on statute. *See, International Paper Co. v. Tidwell*, 250 Ark. 623, 466 S.W.2d 488 (1971). Moreover, the Legislature has directed the Commission to strictly construe the provisions of the Workers' Compensation Act. ARK. CODE ANN. § 11-9-704(c)(3). Strict construction is narrow construction, requiring that nothing be taken as intended that is not clearly expressed and that the plain meaning of the language be employed. *Marshall v. Madison County*, 81 Ark. App. 57, 98 S.W.3d 452 (2003).

I can find nothing in the Workers' Compensation Act granting a claimant any entitlement to diagnostic testing or further medical treatment where the claimant has failed to prove the existence of a compensable injury. Nothing in the Act requires an employer to subsidize what is essentially the claimant's discovery. Although it does not appear that the courts have considered this precise question,

the Commission has found in a similar case that a respondent may not be held liable for medical treatment where compensability has not been proven. *Johnson v. Wal-Mart Stores, Inc.*, Workers' Compensation Commission E705919 (June 8, 2000). Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to further medical treatment or diagnostic testing to determine whether she has sustained a compensable injury.

AWARD

The claimant has failed to meet her burden of proving by a preponderance of the evidence that she sustained a compensable gradual-onset injury or that she is entitled to further medical treatment or diagnostic testing. 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