

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F404675

JUDITH JACKSON, Employee	CLAIMANT
HOLIDAY INN EXPRESS, Employer	RESPONDENT
CONTINENTAL WESTERN INSURANCE CO., Carrier	RESPONDENT

OPINION FILED OCTOBER 25, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by R. GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 29, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 21, 2004, and a pre-hearing order was filed on July 22, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury on March 26, 2004.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant's continued problems in May 2004 are causally related to her compensable injury of March 26, 2004.
2. Temporary total disability benefits from May 8, 2004 through a date yet to be determined.
3. Additional medical.

4. Attorney fee.

At the time of the hearing claimant clarified her request for temporary total disability benefits to begin May 15, 2004 and continue through a date yet to be determined. The parties also agreed to litigate claimant's correct compensation rate.

Subsequent to the hearing respondent filed a motion to introduce additional medical records which it had obtained from a physician in California. In response to the respondent's motion to introduce the additional records, claimant agreed and requested that the evidence be admitted as a joint exhibit. Accordingly, those medical records have been blue-backed and are admitted as a part of the record as Joint Exhibit Number 1.

The claimant contends that her additional problems in May of 2004 are causally related to her compensable injury of March 26, 2004. Claimant contends she is entitled to additional medical, temporary total disability, and an attorney fee.

The respondents' contentions as set forth in their pre-hearing questionnaire are as follows: "The respondents contend that the claimant's present problems are not related to an incident on March 26, 2004. The claimant did go to the emergency room on March 26 with some minor complaints of lumbar and cervical problems. The history also indicated that the claimant had been suffering from fibromyositis. The claimant had x-rays done of the lumbar spine that indicated degenerative disc disease. The claimant returned to work and continued working without difficulty or complaints through May 14, 2004. The claimant's job duties were as a night auditor and desk clerk. She would normally do work that included answering the telephone, waiting on customers, fixing coffee, and preparing the breakfast bar (muffins, donuts, and fruit). Claimant also indicated to Dr. Youmans that she did not do any type of repetitive work. Dr. Youmans noted claimant had carpal tunnel syndrome. In addition, claimant underwent a MRI in May with a history of neck pain of a two-week duration. She was found to have a small disc at C6-7. Her MRI of the lumbar area was normal. Respondents contend that none of the problems the claimant has are

due to a work injury.”

From a review of 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 made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 21, 2004, and contained in a pre-hearing order filed July 22, 2004, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that her additional physical problems in May 2004 are causally related to her March 26, 2004 compensable injury.

3. Claimant has failed to prove by a preponderance of the evidence that her carpal tunnel syndrome is causally related to either the March 26, 2004 injury or to a new injury with the respondent.

FACTUAL BACKGROUND

The claimant is a 55-year-old woman with a college education who was hired by the respondent in January 2004 as a night auditor. The respondent has three shifts with the third shift occurring between the hours of 11:00 p.m. and 7:00 a.m. While claimant primarily worked the third shift, she also on occasion worked on respondent's second shift prior to 11:00 p.m. Claimant testified that when she initially went to work for the respondent her job duties as a night auditor required her to check guests in and out of the hotel, perform a night audit, perform computer work, and run computer tapes. The respondent hotel provided its guests with a continental breakfast and as a result claimant

was also responsible in the early morning hours of preparing coffee and getting donuts ready. She was also required to set out milk and juice. Claimant testified that another employee was responsible for putting out other food items and that she had no job duties with respect to laundry.

Claimant testified that in February 2004 her job duties changed. As of that date claimant now had to put out all food on the breakfast bar, take trash to the laundry room, and help out with the laundry. She also was required to wash some dishes from the breakfast bar such as coffee pots, juice containers, et cetera. Claimant testified that she was required to fold more than one load of laundry which could take up to two and one-half hours.

The parties have stipulated that on claimant's shift which began on March 26 and continued until the morning of March 27 she suffered a compensable injury. According to claimant's testimony she had gathered trash bags and placed them in the laundry room for take out. As she walked back to the breakfast bar area there was a puddle of water from the trash which caused her to slip and fall. Claimant testified that she fell on her back, striking her neck area and hitting her hand and twisting her right leg.

Following this fall claimant sought medical treatment from the emergency room at Siloam Springs hospital. A medical report from the emergency room dated March 27, 2004 indicates that claimant was complaining of pain in her low back, upper neck, and right leg. Claimant was diagnosed with a cervical and lumbar strain, was given medication, and was taken off work until March 29. Claimant was also instructed to follow up with her family physician. Claimant testified that she was unable to seek medical treatment from her family physician, Dr. Weaver, and as a result she returned to the emergency room on March 29, 2004 for additional treatment. The emergency room report from that date indicates that claimant was seen for a re-check of her back pain. Claimant was given additional medication and was taken off work until March 30, 2004. Claimant was again

instructed to follow up with her family physician.

Subsequent to the emergency room visit on March 29, 2004 claimant did not receive medical treatment from her family physician. In early April 2004 claimant returned to work for respondent at her former job. According to claimant's testimony her symptoms continued to worsen throughout her employment.

On April 23, 2004, claimant sought medical treatment from Dr. Youmans for various medical conditions, including a cyst on her face. Claimant continued to be evaluated by Dr. Youmans on several occasions for non-work related conditions.

May 15, 2004 was claimant's last day to work for the respondent. Claimant testified that on that date she was having a significant amount of pain in her hands, wrists, and arms. As a result, she sought medical treatment from the emergency room. On May 18, 2004 claimant again returned to Dr. Youmans who referred her to Dr. Heinzemann for treatment of carpal tunnel syndrome. Claimant continued to see Dr. Youmans for other conditions including left-sided neck pain. As a result of those complaints Dr. Youmans ordered an MRI scan of the claimant's cervical spine. When that MRI scan revealed a herniated disc at the C6-7 level, Dr. Youmans referred claimant to Dr. Knox. Claimant did not see Dr. Knox but instead saw Dr. Greenberg. Dr. Greenberg has diagnosed the claimant as suffering from a herniated disc at C6-7 and a degenerative disc with a small bulge at L4-5.

Claimant has filed this claim contending that her cervical and lumbar spine conditions are causally related to her compensable injury of March 26, 2004. Claimant also contends that her carpal tunnel syndrome is causally related to the March 26, 2004 fall or to her job duties with the respondent.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that she

is entitled to compensation benefits. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W. 2d 593 (1995). Claimant also has the burden of proving by a preponderance of the evidence that the physical condition for which she seeks medical treatment is causally related to her compensable injury. *Harris Cattle Company v. Parker*, 256 Ark. 166, 506 S.W. 2d 118 (1974).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that her subsequent problems in May 2004 relating to her cervical spine, lumbar spine, or carpal tunnel syndrome are causally related to her compensable injury of March 26, 2004.

Initially, I believe it is important to note that the claimant has a history of suffering from fibromyositis for more than twenty years. According to claimant's testimony this has caused periodic flare-ups for which she has taken Valium and Flexoril.

Following the claimant's fall on March 26, 2004, she sought medical treatment from the emergency room on March 27. At that time the claimant was diagnosed as suffering from a cervical and lumbar strain. Claimant was prescribed medication, taken off work for two days, and was informed that she should receive follow-up treatment from her family physician. Claimant testified that she did not receive treatment from her family physician, but instead returned to the emergency room on March 29, 2004. At that time claimant was given additional medications and was again taken off work until March 30. Claimant was again instructed to follow up with her family physician.

After claimant's emergency room visit on March 29, 2004, she did not seek any additional medical treatment until April 23, 2004, when she saw Dr. Youmans. This treatment from Dr. Youmans is significant. Following her evaluation at the emergency room on March 29, 2004 claimant returned to work for respondent as a front desk clerk. According to claimant's testimony she continued to have pain in her back, legs, and arms

which gradually worsened following her return to work. A review of Dr. Youmans' medical report from April 23, 2004 indicates that he took a detailed history of claimant's current and prior complaints. Notably absent from Dr. Youmans' report is any mention of neck, low back, or hand or wrist complaints. This was confirmed by Dr. Youmans during his deposition testimony. Dr. Youmans testified that on April 23rd he took a detailed history of the claimant's medical condition and noted her current complaints of a cyst on her face, high blood pressure, migraine headaches, and myofibrosis. He also noted claimant's prior surgical history, allergies, and current medications. Dr. Youmans testified that he performed a physical examination of the claimant and there was no indication that claimant had suffered any type of fall and no indication of any neck or low back complaints. Dr. Youmans testified that he found nothing during his examination that would indicate that claimant was suffering from a lumbar disc herniation, cervical disc herniation, or carpal tunnel syndrome. Dr. Youmans stated if claimant had made those complaints he would have noted them in his report.

Claimant received follow-up treatment from Dr. Youmans for her non-work related problems on May 7 and again on May 14. Despite claimant's current testimony that she continued to have significant problems with her neck, low back, and arms during this period of time, Dr. Youmans' medical reports do not mention any of those complaints.

As a result of claimant's migraine headaches she was evaluated by Dr. Moon on May 11, 2004. Dr. Moon's medical report of that date indicates that he conducted a neurological exam including claimant's musculoskeletal system and there are no noted complaints of neck or back pain to Dr. Moon at that time.

As previously noted, claimant's last day to work for the respondent occurred on May 15, 2004. Claimant testified that when she arrived at work that morning she was in severe pain and following her work her pain was so severe that she went to the hospital and was diagnosed with carpal tunnel syndrome. Testifying on behalf of the respondent was Mari

Coleman, claimant's supervisor. Coleman testified that she was with claimant for approximately the last hour of her shift on May 15 and that claimant did not say anything about her hands hurting. It was not until after claimant had sought medical treatment that Coleman learned that claimant was alleging a problem with her hands.

Coleman also testified that from the time claimant returned to work until May 15 she made no complaints regarding her neck, back, or wrists. While Lou Sang, a former desk clerk for respondent, testified that claimant reported continued problems to her, Sang was no longer employed by respondent at the time claimant returned to work. In addition, Sang and claimant are friends. Accordingly, I do not find Sang's testimony persuasive.

Claimant did seek medical treatment from the emergency room for left and right wrist pain on two occasions on May 15, 2004. The emergency room records indicate "left and right wrist pain beginning several weeks ago which is worse today." The emergency room report also indicates that claimant stated "that she hasn't injured them." In addition, I also note that the attending physician reports for both of the emergency room visits on May 15 indicate that claimant gave a history of her problems having begun two weeks earlier.

Following claimant's visit to the emergency room on May 15 she was referred by Dr. Youmans to Dr. Heinzelmann on May 18, 2004. Claimant next sought treatment from the emergency room on May 21, 2004 complaining of pain in her arm and neck. The emergency room report of that date contains a history of those problems having begun the day before. In addition, the attending physician report indicates that the problems had begun approximately one week earlier with an acute worsening on Saturday. The Saturday before May 21 was May 15.

Claimant's next medical visit occurred with Dr. Youmans on May 24, 2004 at which time she was complaining of left-sided neck pain and bilateral carpal tunnel syndrome. Dr. Youmans' medical reports indicate that claimant attributed her increased pain to carrying

of heavier loads at work. Significantly, Dr. Youmans noted that claimant reported no discrete injury. Dr. Youmans' medical report makes no mention of a fall, but instead indicates that claimant attributed her problems to increased lifting as opposed to a fall in March 2004.

As a result of claimant's complaints Dr. Youmans ordered an MRI of claimant's cervical spine. The MRI report dated May 25 indicates left shoulder and neck pain of approximately two weeks duration.

The first medical report attributing her problems to the fall in March 2004 occurred in Dr. Youmans' medical report of June 1, 2004.

In summary, after reviewing all of the relevant evidence, I find that claimant has failed to prove by a preponderance of the evidence that her additional problems in May 2004 are causally related to the fall on March 26, 2004. According to the testimony of Coleman, claimant did not make any additional complaints of problems with her neck, back, or wrists after returning to work. Further, while claimant was diagnosed with a cervical and lumbar strain, she did not seek any additional medical treatment following an emergency room visit on March 29, 2004 until April 23, 2004 when she saw Dr. Youmans for various medical problems. Dr. Youmans took a detailed history of the claimant's medical condition and current complaints. Despite claimant's testimony that she was having continued problems with her neck and low back as a result of her fall, Dr. Youmans' medical report does not reflect those complaints. Dr. Youmans testified that he performed a physical examination of the claimant and there were no findings during his examination that would indicate that claimant was having neck or low back complaints or that she was suffering from a lumbar disc herniation, cervical disc herniation, or carpal tunnel. Claimant was evaluated by Dr. Youmans on two other occasions prior to May 15, 2004 and again made no complaints of neck, low back, or carpal tunnel complaints. When claimant did seek medical treatment for carpal tunnel symptoms and for additional complaints relating

to her neck and low back, she gave a history of those problems beginning at various periods in May 2004, not March 2004 at the time of her fall. In fact, the medical records indicate that claimant denied an injury when questioned by Dr. Youmans. The MRI report of May 25 reflects a two week history of left shoulder and neck pain. It was not until June 1, 2004 that claimant first attributed her problems to the fall at work in March.

With respect to claimant's bilateral carpal tunnel syndrome, I note that the initial medical reports do not reflect a history of claimant complaining of problems with her hands at the time of her treatment in the emergency room on March 27 or March 29. The medical reports do not contain a history of claimant complaining of any problems with her hands until May 15, 2004.

Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that problems involving her cervical spine, lumbar spine, or bilateral carpal tunnel syndrome are causally related to her compensable injury of March 26, 2004.

I also find that claimant has failed to prove by a preponderance of the evidence that she suffered a new injury in the form of bilateral carpal tunnel syndrome while employed by respondent. Carpal tunnel syndrome is a gradual onset injury. In order to prove a gradual onset injury, claimant must prove by a preponderance of the evidence (1) that she sustained an injury which arose out of and in the course of her employment; (2) that caused internal or external harm to the body which resulted in disability or the need for medical treatment; (3) that the injury was the major cause of the disability or need for treatment; and (4) she must establish the injury by medical evidence supported by objective findings.

In this particular case, I simply find that claimant has failed to prove that her carpal tunnel syndrome is an injury which arose out of and in the course of her employment with the respondent.

First, it is important to note that claimant developed tendinitis in her hands while employed deboning turkeys in the 1980's. This claim was settled by joint petition in 1985.

Claimant attributes her carpal tunnel syndrome to her job activities for the respondent. Claimant's job duties with respondent involving use of her hands would have included typing when checking guests in and out of the hotel, performing her computer work, preparing the breakfast bar, and folding some laundry. At the hearing claimant seemed to attribute much of her hand problems to the folding of the laundry. According to claimant's testimony it would take her approximately two and a half hours to fold laundry on her shift. As previously noted, Mari Coleman, claimant's supervisor, testified at the hearing. Coleman testified that claimant was to fold only one load of laundry during her shift. Coleman testified that a load of laundry would consist of some 12 to 16 shifts or various towels. Significantly, Coleman testified that even two loads of laundry would only take approximately 30 minutes to fold, not two and a half hours. Furthermore, claimant did not report any problems with her hands as a result of her job activities with respondent to Coleman. Coleman testified that her first knowledge of any problems with claimant's hands occurred after claimant had already sought medical treatment on May 15, 2004.

Furthermore, when claimant did seek medical treatment for left and right wrist pain from the emergency room on April 15, 2004 claimant indicated that she had not injured her wrist. Instead, the attending physicians indicated that claimant gave a history of her problems having begun only two weeks earlier.

Given the evidence presented, I find that claimant has simply failed to prove by a preponderance of the evidence that she suffered an injury in the form of bilateral carpal tunnel syndrome which arose out of and in the course of her employment with the respondent.

ORDER

_____ Claimant has failed to prove by a preponderance of the evidence that continued

problems relating to her neck, low back, hands, wrists, or arms in May 2004 are causally related to her fall on March 26, 2004. Claimant has also failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of her employment with the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE