

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F302417**

**SHARON D. NOWDEN,  
EMPLOYEE**

**CLAIMANT**

**NORTHRIDGE REHABILITATION &  
HEALTHCARE CENTER,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**CANNON COCHRAN  
MANAGEMENT SERVICES, INC.,  
BENEFITS ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED JULY 9, 2004**

Hearing conducted April 21, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. George S. Ivory, Jr., Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's allegation that she suffered compensable tendinitis and a ganglion cyst in her left arm as a result of an incident during her employment at the nursing home operated by the respondent employer.

Specifically, the claimant contended that on March 3, 2003, she sustained compensable injuries, a ganglion cyst and tendinitis in her left upper extremity, as a result of assisting a patient, and should be awarded benefits, including reasonably necessary medical and related expenses; temporary total disability benefits from March 10, 2003, through April 6, 2003; and benefits based upon an impairment rating of 10% to her left wrist as a result of her tendinitis. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant did not sustain a compensable injury at work; that she had a pre-existing ganglion cyst which was neither caused nor aggravated by her employment; that tendinitis cannot be established as a compensable injury based upon medical evidence supported by objective findings; that her tendinitis did not develop until July, 2003, and is not related to the event of March 3, 2003; that, if her tendinitis is a gradual onset condition, it was not caused by rapid repetitive motion at work; that the rating for the claimant's tendinitis is not based on objective and measurable physical findings, as required by the Act; and, further, that no wage loss can be awarded for a scheduled injury.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including March 3, 2003, and the claimant's average weekly wage on that date was \$263.00.
3. The preponderance of the evidence shows that on March 3, 2003, the claimant sustained compensable injuries to her left upper extremity, a ganglion cyst and tendinitis, which have been established by medical evidence supported by objective findings, and which arose out of and in the course of her employment, for which she received reasonably necessary medical and related expenses, which are the responsibility of the respondents.

4. As a result of her scheduled injuries, claimant is entitled to temporary total disability benefits from March 10, 2003, through April 6, 2003, when she continued in her healing period and was not earning wages, pursuant to Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146 (2001).

5. The preponderance of the evidence fails to show that the claimant's permanent anatomical impairment rating for her tendinitis is based on objective and measurable physical findings, as required by Ark. Code Ann. §11-9-704(c).

6. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

### **DISCUSSION**

The claimant, 42 years of age at the time of the hearing, was employed as a certified nursing assistant by the respondent employer at its nursing home facility in North Little Rock. Her duties included giving patient care, such as personal assistance with bathing, getting in and out of bed, and eating. She testified that she injured her left wrist and arm there on March 3, 2003, while turning a patient to change her diaper, when the patient rolled back on her and she felt two pops in her upper extremity, as well as pain. She stated that a few moments later she began to notice swelling and that she told her supervisor about the incident. She testified that, because the incident occurred at about 6:00 a.m. and the office personnel were not yet on the premises, the incident report was filled out and slipped under the office door. She also stated that later in the day she called and discussed her condition and they told her to come back up there and when she did and filled out some forms, they referred her to the company doctor.

Accordingly, the next day, March 4, the claimant was examined by Dr. Michelle Ibsen who noted the claimant's subjective symptoms as well as a one centimeter rubbery tender nodule and diagnosed her condition as wrist sprain and ganglion cyst, for which she prescribed a wrist splint, medication, and physical therapy. She also recommended that the claimant limit her activity to lifting no greater than ten pounds with the affected hand. The physical therapist's note of the same date indicated that the claimant presented with assessed condition of sprain, wrist left and commented, "Subjective report is inconsistent with objective findings." The therapist also noted that the claimant refused to come to physical therapy because she was going out of town until March 10, 2003. It was also his opinion that the claimant "...demonstrated an insincere effort throughout this evaluation." On cross-examination, the claimant testified that she did not go to physical therapy because of a trip out of town for a church function.

The claimant testified that she did not return to work March 4; that her condition was worse after receiving a shot from Dr. Ibsen; and that she went to the St. Vincent emergency room on about March 10. A March 10 note from Dr. Robert Casper of the St. Vincent Family Clinic on South University Avenue indicates that he saw the claimant that day for complaints of pain and swelling in her left wrist. He noted "mild edema" at the left wrist and also a ganglion. He stated that range of motion was somewhat limited, but questionable. He diagnosed her condition as sprain, left wrist, recommended medication, and stated, "We will immobilize it for the next three or four days." He also recommended warm soaks alternating with cold and that the claimant follow up with PCP in one week. The claimant testified that the emergency room doctor gave her a sling.

Dr. Ibsen also saw the claimant on March 10 and wrote that the patient failed to follow up with physical therapy appointments "after failing all three of the initial validity tests given by the

therapist.” While Dr. Ibsen again noted the ganglion cyst, she did not find swelling or other objective signs of injury and stated that the claimant had full range of motion. She indicated that the claimant’s status was “regular activity release from care today” and that she had been “advised to see PCP regarding a non-work related condition.” Her diagnoses on the Form AR-3 were wrist sprain-left and ganglion cyst-left.

The claimant testified that the employer would not allow her to return to work, in spite of the opinion of Dr. Ibsen, and so she went to her family doctor whom she saw March 20, 2003. Her physician, Dr. Karmen Hopkins, wrote that the claimant’s condition had improved and that she was not having any problems whatsoever except for some soreness over the ganglion cyst when she does heavy housework and that the claimant requested a full release to return to work. She stated that the claimant was released by the company doctor but was still having problems and went to the ER, was given a few more days off work, but now needs a new release. The record does not contain the emergency room record taking the claimant off work. Dr. Hopkins also wrote that the claimant’s wrist was entirely non-tender except for trace tenderness over 1 cm. ganglion cyst near the proximal second metacarpal head. She stated that the claimant had full range of motion without discomfort and without resistance. She described her condition as S/P strain, left wrist by history and ganglion cyst, dorsal left wrist, reportedly post injury; currently minimally symptomatic.

Dr. Hopkins saw the claimant May 15, 2003, and noted that she wanted a specialist. On June 3, 2003, hand specialist, Dr. Marsha Hixson wrote that she examined the claimant that day and that she complained of pain, swelling, and weakness in the left upper extremity running from her shoulder to the hand. However, Dr. Hixson’s examination did not reveal obvious areas of swelling or muscle atrophy. Dr. Hixson stated that the claimant sustained an injury to her left upper extremity

which may represent a subacute carpal tunnel syndrome. She recommended additional diagnostic studies and medication. A physician's status report dated June 23, 2003, indicated that the claimant had a traumatic ganglion cyst left wrist; that she should wear a splint on her left hand; and that she had a follow-up appointment July 29, 2003.

On September 3, 2003, Dr. Hixson wrote that the claimant was having pain in the left thumb mainly at the base that radiated into the forearm and into the MP joint, associated mainly with gripping and pinching. She stated that the claimant still has occasional swelling with shooting pain into the dorsum of the hand and digits. Dr. Hixson's examination this time indicated that there was some crepitus in the tendon sheath of the first dorsal compartment with minimal swelling. She stated that the claimant had de Quervain's tendinitis of the left thumb extensors as well as an occult ganglion cyst of the left wrist. On October 23, 2003, Dr. Hixson wrote that the claimant was much better following an injection of the first dorsal extensor compartment of the left wrist and that the thumb and forearm are a little sore but her motion is better and the swelling has decreased. She stated that it was her opinion that the problems for which she was treating the claimant, including tendinitis of the thumb and the cyst in the left wrist, were caused by the lifting accident at work.

Finally, on December 18, 2003, Dr. Hixson wrote that the claimant had a 0% anatomic impairment from the ganglion cyst and a 10% anatomic impairment of the left wrist from the de Quervain's tendinitis and that it was possible that she will require surgery in the future but that the symptoms were presently under reasonably good control.

The respondents have denied the claimant's request for benefits for the reasons stated above. For example, as to the cyst, they have contended that it was not the result of a compensable injury at work but represented a pre-existing cyst which was neither caused nor aggravated by the

employment. Although the claimant apparently exaggerated her condition and was not fully cooperative with the therapist for the company physician, if not the company physician herself, the medical record shows that the claimant was diagnosed initially with a cyst and fails to show a prior diagnosis of a cyst. The observation that the claimant had a cyst is consistent throughout the medical record including that generated by Dr. Hixson who attributed it to her employment. Thus, it would be necessary to engage in speculation and conjecture in order to fail to find that the cyst was either caused or aggravated by the incident at work described by the claimant.

As to the contention that the claimant's tendinitis has not been established by medical evidence supported by objective findings, reference should be made to pages 11 and 12 of the claimant's first exhibit which show that claimant's counsel wrote to Dr. Hixson asking about objective findings for tendinitis of the right thumb and explaining that the information was needed to determine if tendinitis was a compensable injury. In response, Dr. Hixson made a handwritten note referring to her letter of September 3, 2003, and also stating that findings are minimal swelling and crepitance. Again, the notes of this specialist tend to attribute this condition to the incident at work. Similarly, on March 10, Dr. Casper had also noted mild edema.

However, there is the additional requirement that permanent anatomical impairment be based upon objective and measurable physical findings. See, Ark. Code Ann. §11-9-704(c). The initial symptoms of swelling and crepitus are not relied upon by Dr. Hixson in assigning her impairment rating and the record otherwise fails to show that there were objective and measurable physical findings to support Dr. Hixson's opinion in that regard. Consequently, the claimant's anatomical impairment rating is not compensable.

Additionally, in Wheeler Construction Co. v. Armstrong, the court held that a claimant with a scheduled injury is entitled to temporary total disability benefits during the healing period so long as he has not returned to work, regardless of whether he is actually incapacitated to earn wages. The record indicates that the claimant did continue in the healing period and did not work from March 10 through April 6, 2003, so that she is entitled to such benefits.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge