

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F307153**

**HAZEL PARKER, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORPORATION, EMPLOYER  
SELF-INSURED**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 22, 2004**

Hearing before Administrative Law Judge Dail Stiles on February 20, 2004, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Billy J. Hubbell, Attorney at Law, Crossett, Arkansas.

Respondents represented by Mr. J. Matthew Mauldin, Attorney at law, Little Rock, Arkansas.

A hearing was held on February 20, 2004, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed in 2002. It was stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$306.00 for temporary total disability and \$230.00 for permanent partial disability benefits. It was further stipulated that the claimant filed her workers' compensation claim in this matter on July 7, 2003.

The claimant contends that she experienced a gradual onset injury manifesting itself as bilateral carpal tunnel syndrome and fibromyalgia in December of 2002. The claimant contends she is entitled to temporary total disability benefits from December 4, 2002 through a date yet to be determined, as well as attendant medical benefits and attorney's fees.

The respondents controvert the claim in its entirety. The respondents first assert that the statute of limitations has run on this claim, because claimant knew of her condition more than two years before she filed her claim on July 7,

2003. The respondents contend that the claimant will not be able to demonstrate a causal connection between her physical complaints of carpal tunnel syndrome and fibromyalgia and her work activity in the year 2002. The respondents contend that there are no objective findings in the medical evidence to support a claim of compensability. The respondents contend that the claimant does not show that her work activity is the “major cause” of her disability or need for treatment. Lastly, the respondents contend that relative to the fibromyalgia claim, claimant cannot demonstrate that her work activity was rapid and repetitive in nature.

### **STATEMENT OF THE CASE**

The claimant testified that she had worked for the respondent employer for 22 years, and in 2002 and years previous, worked as a utility employee. The claimant explained that she spent the first hour to hour and a half on a work shift cleaning up with a broom and air hose, and then she filled in for other employees as they took breaks and sometimes would fill in for employees who were gone for extended periods of time, which would include vacations and sick leave.

The claimant testified that her job consisted of pulling pieces of plywood veneer off a table, in addition to cleaning the floor. The claimant stated that that job consisted of bending, lifting, pulling, pushing and sometimes climbing. The claimant stated that she pulled plywood veneer sheets that measured anywhere from eight feet long to 54 inches wide and smaller. She said the thickness of the sheets would range from one-tenth of an inch to three-sixteenths of an inch. The claimant said she pulled the plywood veneer every day.

The claimant was asked how fast the work activity occurred or how often a piece of veneer came off the table and she answered:

A. It's consistent, very fast. Fast. All I can tell you is fast. It's consistent. You're not – you miss a sheet, it's going to pile up. So, you got to constantly be pulling.

The claimant testified that each day out of an eight hour shift, she felt she would be pulling wood from the table for at least six hours.

The claimant stated that she started experiencing problems with her hands and arms in the latter part of 2001. The claimant said she first went to a doctor with complaints about numbness and pain in her fingers, arms and elbows in April of 2002.

The claimant said her regular family doctor was Dr. Robert Salb, and that Dr. Salb first referred her to a rheumatologist, Dr. Tamer Alsebai.

The claimant testified that Dr. Salb suspected she had arthritis, but that Dr. Alsebai diagnosed her as having fibromyalgia. The claimant said she saw a series of rheumatologists, including Dr. Nilofer Ahsan in Monore, Louisiana, Dr. Tamer Alsebai, in Pine Bluff, and Dr. Robert Jones, a rheumatologist in Little Rock.

The claimant recollected at hearing that she was first diagnosed with carpal tunnel syndrome in June of 2002. She said initially she was prescribed Vioxx for her carpal tunnel syndrome and was given what she thought to be a cortizone shot in her wrist.

The claimant was referred to Dr. Charles Clark, an orthopedist in Pine Bluff. The claimant then saw Dr. C. Dwayne Daniels, an orthopedist, who performed bilateral carpal tunnel syndrome release on the claimant. The first surgery on the left was performed on December 6, 2002, and the second surgery on the right was performed on January 24, 2003.

The claimant testified that she drew \$350.00 a week on a weekly indemnity policy she had through Georgia-Pacific for six months, from January 2003 to some time in June 2003.

The claimant was asked to describe the symptoms of fibromyalgia, and she said that she had a lot of stiffening and pain throughout her body; her body ached all over, and that she had “just a lot of pain. Don’t sleep at nighttime.” The claimant testified that she had also been diagnosed with connective tissue disease and lupus.

The claimant admitted on cross-examination that she began experiencing some pain and difficulties in her fingers, hands and wrists, and sometimes in her elbows, as early as the late 1990's. The claimant stated that she thought that her condition was arthritis and did not know until April or May of 2002 that she had carpal tunnel syndrome. The claimant also testified on cross-examination that the general pain throughout her body was causing her to miss some work as far back as the 1980's. Again, the claimant testified that she thought all of those pains were associated with arthritis.

The claimant also testified on cross-examination that she did not relate the problems she was having in the late 1990's and going forward to work activity. The claimant said it was only after being diagnosed with carpal tunnel syndrome and fibromyalgia, that she felt it was work related.

The claimant was asked to describe the symptoms of lupus, with which she was diagnosed in 2002, and the claimant said she had swelling throughout her body, including her hands, because of fluid buildup. The claimant also confirmed on cross-examination that she had been diagnosed with myofascial pain syndrome.

The claimant testified that since her carpal tunnel surgeries in December of 2002 and January of 2003, she feels her overall condition from a health standpoint has deteriorated. The claimant stated that she has experienced aches, swelling and spasms throughout her entire body and that she has migraine

headaches as well. The claimant testified that she takes several medications, including medication for hypertension and Prednisone, a steroid, for lupus.

The claimant stated that she no longer experiences numbness and tingling in her hands.

The claimant also testified that in addition to the weekly indemnity or short term disability benefits she drew for a six month period between January and June of 2003, that she drew those same benefits from August of 2001 until some time in February of 2002.

### **FINDINGS OF FACT**

1. The claimant does not meet her burden of showing by a preponderance of the evidence that her bilateral carpal tunnel syndrome is work related. Specifically, the claimant does not show that her claimed gradual injury, which ultimately manifested itself as carpal tunnel syndrome, is the “major cause” of her current disability or need for treatment.

2. The claimant does not meet her burden of demonstrating by a preponderance of the evidence that her claim for benefits because of a diagnosis of fibromyalgia is causally connected to any work activity she was performing for respondent in 2002.

3. The statute of limitations has not run on this claim.

### **DISCUSSION**

#### **Statute of Limitations**

The respondent urges at hearing and in its post-hearing brief that this claim should be barred because the statute of limitations has run. The respondent urges that the claimant knew of her condition more than two years before she filed her claim for workers’ compensation benefits, and that she had missed time and lost wages as a result of her difficulties with carpal tunnel syndrome and fibromyalgia.

Ark. Code Ann. §11-9-702, entitled Filing of Claims, is controlling and states in pertinent part:

(a) TIME FOR FILING.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If, during the two-year period following the filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.

The Appellate Courts have found that the statute of limitations does not begin to run until the true extent of the injury manifests itself and causes an incapacity to earn the wages which the employee was receiving at the time of the accident. See Arkansas La. Gas Co. v. Grooms, 10 Ark. App. 92, 661 S.W.2d 433 (1983); Hall's Cleaners v. Wortham, 38 Ark. App. 86, 829 S.W.2d 424 (1992). The statute of limitations does not begin to run until both elements of the rule are met. See Hall's, supra.

In the instant case, I am persuaded by the claimant's testimony and a review of the medical evidence that the claimant did not realize the full extent or the nature of her injury until some time in 2002. The claimant admitted on cross-examination that she had had difficulty with her hands, as well as other problems, going back into the 1990's. The claimant's testimony was that she felt it was an arthritic condition, and that it was only in 2002 that she realized, after having been diagnosed, that she had bilateral carpal tunnel syndrome, as well as fibromyalgia and/or myofascial pain syndrome. It was also in 2002 the claimant was diagnosed with lupus.

### Carpal Tunnel Syndrome

I am persuaded from the claimant's testimony regarding the physical requirements of her job and the diagnosis of bilateral carpal tunnel syndrome, that the claimant's bilateral carpal tunnel syndrome was at least significantly contributed to by her job activities. See Wal-Mart Stores, Inc. v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001). However, in a claim for gradual onset injury, the claimant must show that the injury is the "major cause" of the claimant's complained-of disability or current need for treatment. Ark. Code Ann. §11-9-102(4)(E)(ii), entitled Burden of Proof, reads in pertinent part:

For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. [Emphasis mine.]

In this case, the major cause requirement for the claimant's claim to be compensable simply was never addressed. While I stated earlier that I felt that her work was a significant contributor, because of the claimant's myriad physical difficulties including lupus, hypertension and fibromyalgia and/or myofascial pain syndrome, I cannot, without medical assistance, independently determine that the claimant's carpal tunnel syndrome is the "major cause" of her current disability or need for treatment.

### Fibromyalgia

In order for a worker's disability to be compensable, there must be a causal connection between the accident and a risk which is reasonably incident to the employment. There must be affirmative proof of a distinctive employment risk as the cause of the injury; the connection with the employment cannot be supplied

by speculation. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

In this case, the claimant was diagnosed by one physician in 2002 with fibromyalgia. Subsequent to that diagnosis, diagnoses were made of lupus instead of fibromyalgia and myofascial pain syndrome instead of fibromyalgia. It is unclear to this examiner whether the claimant actually has fibromyalgia at all. Conceding that she does have fibromyalgia, there is absolutely nothing in the record that connects a diagnosis of fibromyalgia with any work activity the claimant was performing in 2002 or at any other time. Her contention that her fibromyalgia is work related is just that; it does not rise above a contention. For me to find that her diagnosis of fibromyalgia is in any way work related, would require speculation and conjecture on my part. It is well-settled that speculation and conjecture, no matter how plausible, will not take the place of proof. Dena Construction v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge