

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F310917

MARY KAY PHILLIPS, Employee	CLAIMANT
VAN BUREN SCHOOL DISTRICT, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED AUGUST 10, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by J. RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On July 12, 2004, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 5, 2004, and a pre-hearing order was filed on May 6, 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 existed between the parties in April 2002.
3. Claimant developed compensable bilateral carpal tunnel syndrome as a result of her job-related activities.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$167.00 for total disability benefits and \$154.00 for permanent partial disability benefits.
5. Respondent paid temporary total disability benefits through November 13, 2003.

6. Respondents paid medical through January 2004.

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

1. Compensability of bilateral shoulder condition.
2. Medical related to bilateral shoulders and bilateral carpal tunnel syndrome.
3. Temporary total disability benefits from November 14, 2003 through a date yet to be determined.
4. Attorney fee.

At the time of the hearing the parties clarified the issues to be litigated with respect to claimant's hand injury. The respondent has accepted as compensable only claimant's carpal tunnel syndrome. Respondent has not accepted as compensable any other injury to the claimant's bilateral hands. Claimant is contending that she suffered a bilateral hand injury, not a carpal tunnel injury, at this time. Therefore, the issues to be litigated involve compensability of a bilateral shoulder condition, compensability of a bilateral hand injury, medical related to those injuries, temporary total disability benefits from November 14, 2003 through a date yet to be determined, and a controverted attorney fee.

The claimant contends she suffered compensable injuries to both her shoulders. Claimant also contends that as a result of her shoulder injury and her bilateral hand injury she is entitled to additional medical as well as additional temporary total disability benefits from November 14, 2003 through a date yet to be determined, as well as an attorney fee.

The respondents contend they have provided reasonably necessary medical evaluation and treatment for the compensable bilateral carpal tunnel syndrome and that all temporary total disability benefits to which the claimant is entitled for the bilateral carpal tunnel syndrome have been paid. Respondent denies that claimant suffered any bilateral hand injury other than carpal tunnel syndrome. Respondent also denies that claimant's bilateral shoulder condition is compensable. The respondents contend that beginning November 14, 2003 they provided appropriate work within the restrictions imposed by the

claimant's treating physicians. The claimant worked on only November 14, 2003 and has subsequently refused to perform the appropriate work made available to claimant by the respondent.

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 May 5, 2004, and contained in a pre-hearing order filed May 6, 2004, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her shoulders or to her hands while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 52-year-old woman with a seventh grade education who began working for the respondent at Van Buren High School as a cook in August 1998. Prior to working for respondent claimant worked as an upholstery seamstress for Ray Harris Furniture Company for approximately 20 years. Prior to Ray Harris Furniture Company the claimant worked as an upholstery seamstress for Kay Chair Company for five years.

When claimant began working for respondent in August 1998 she worked 30 hours per week. In addition, claimant also continued working for Ray Harris Furniture Company as an upholstery seamstress after that date. Wage records from claimant's employment with Ray Harris indicate that she continued to earn a significant amount of wages even

after she became employed by the respondent. In fact, wage records from 1998 reveal little, if any, decrease in income from Ray Harris following her employment by the respondent. Claimant testified that Ray Harris sold the company in the summer of 2001 and after that point she continued to work for the new owner for a short period of time into the fall of 2001. She also stated that Harris opened his own shop behind his house and that she worked there on two or three occasions.

Claimant testified that for her first year of employment with respondent she served food on the sandwich line and prepared food for the ala carte line. Beginning in fall 1999 the claimant was taken off the sandwich line to prepare and serve the ala carte line only. Claimant's job duties in preparing the ala carte line included cooking various food and preparing two-ounce condiment cups containing honey, barbecue sauce, mustard, and peppers, etc. These cups were prepared in advance and had small lids placed on top of them. Working on the ala carte line also required claimant to prepare cheese dip by placing grated cheese in a pan and mixing it with salsa by hand before placing it in an oven. As a cook claimant was also required to wash her own dishes.

Claimant testified that she began noticing problems with her hands in April 2002 while putting lids on condiment cups. Initially, claimant sought medical treatment from a chiropractic physician before she sought medical treatment from Dr. Teitelbaum on April 3, 2002. After seeing Dr. Teitelbaum claimant was eventually referred to Dr. Bise who diagnosed claimant as suffering from bilateral carpal tunnel syndrome and performed surgical releases of the claimant's wrists.

Despite the surgery claimant continued to have problems with her hands and eventually came under the care of Dr. Robert Benfield, an orthopaedic surgeon. Dr. Benfield diagnosed the claimant as suffering from tenosynovitis which he defined as an inflammation of the flexor tendons in the tendon sheath which extends from the distal part of the hand out to the mid portion of the finger. Dr. Benfield initially treated claimant

conservatively with anti-inflammatories, steroid injections, and activity modification. When claimant's condition did not improve Dr. Benafield performed surgery in October 2003 in the form of trigger releases of the thumb, index, and long fingers bilaterally. Despite this surgical procedure claimant continued to have the same complaints of pain in her hands. As a result, Dr. Benafield eventually referred claimant to Dr. Heinzelmann for a second opinion. Dr. Heinzelmann suspecting potential reflex sympathetic dystrophy ordered a bone scan. The bone scan was not consistent with reflex sympathetic dystrophy and claimant returned to Dr. Benafield. Thereafter, Dr. Benafield recommended that the claimant receive an evaluation from a rheumatologist. Claimant had not undergone that evaluation at the time of the hearing.

In addition to problems with her hands claimant also complained of bilateral shoulder problems to her treating physicians. As a result of those complaints claimant underwent an MRI scan of both the right and left shoulder which revealed bilateral rotator cuff tears.

As previously noted, the respondent accepted as compensable claimant's bilateral carpal tunnel syndrome and paid compensation benefits; including medical benefits through January 2004. However, respondent denies that claimant suffered any other compensable injury to her hands or to her shoulders. Claimant has filed this claim contending that she suffered compensable injuries to her hands and shoulders and seeking payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant attributes her hand and shoulder problems to her job duties with the respondent. Claimant does not attribute her injuries to a specific incident identifiable by time and place of occurrence but instead contends that her injuries are gradual onset

injuries. In order to prove a gradual onset injury, claimant has the burden of proving by a preponderance of the evidence that 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; that the injury was caused by rapid repetitive motion; that the injury was the major cause of the disability or need for treatment; and in addition she must establish a compensable injury by medical evidence supported by objective findings. *Young v. Smurfit-Stone Container*, Full Commission Opinion filed January 5, 2004 (F109999).

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 meet her burden of proving by a preponderance of the evidence that she suffered compensable injuries to either her hands or her shoulders while employed by the respondent.

The initial issue for consideration involves the injury to claimant's hands. I find that claimant has failed to meet her burden of proof for several reasons. First, I believe it is important to note that the claimant had worked as an upholstery seamstress for 25 years working 40 hours per week before she began working 30 hours per week for the respondent. Furthermore, even after the claimant began working for the respondent she still continued to perform a significant amount of work for Ray Harris and its successor. Although claimant testified that she had no problems with her hands or shoulders prior to April 2002, the evidence indicates that claimant's hand problems actually began earlier than April 2002. When claimant sought medical treatment from Dr. Teitelbaum on April 3, 2002 she gave Dr. Teitelbaum a history of her hand problems having begun some three or four months earlier. Although Ray Harris sold his company to another owner in the summer of 2001, claimant testified that she continued to work for that new owner for a short period of time into the fall of 2001. In addition, claimant also testified that after Harris sold his company that he opened his own shop behind his house and that she

worked there on two or three occasions. Claimant admitted that her hand problems developed during the period of time when she was still performing some upholstery work.

Q. So when you developed these hand problems was during the period of time that you were still doing some upholstery work?

A. Yeah, a little bit.

Thus, claimant's hand problems did not appear only after she was no longer doing upholstery work.

I also note that claimant admitted that all activities hurt her hands whether they were at work, home, or at Ray Harris'.

Q. Everything you did hurt your hands - -

A. Yeah.

Q. - - whether you did it at home or at work or at Ray Harris'?

A. Yeah.

Furthermore, despite evidence indicating that claimant gave a history of her hand pain having begun several months prior to her initial evaluation with Dr. Teitelbaum on April 3, 2002, claimant admitted that she did not report an alleged injury to the respondent until after she had seen several doctors including Dr. Bise. Claimant was not evaluated by Dr. Bise until May 28, 2002. This was some five to six months after claimant's hand pain began.

In addition, I also believe it is important to note that Dr. Benafield diagnosed claimant as suffering from tenosynovitis and performed surgery to correct that condition. However, claimant had the same complaints after Dr. Benafield's surgery. In a report dated April 6, 2004 Dr. Benafield noted that claimant's examination was unchanged and that he had no explanation as to the cause of claimant's pain. Dr. Benafield reiterated in

his deposition that he had no diagnosis to explain the claimant's complaints of pain. Dr. Benafield testified that in his opinion there was a greater likelihood than not that claimant's condition was related to the work she was doing. However, Dr. Benafield also admitted that it was difficult to state that the claimant's diagnosis was related to her work condition when there was no diagnosis. I also note that Dr. Benafield admitted that his opinion was based upon the history given to him by claimant and he admitted that he was not aware of the claimant's work as an upholstery seamstress for more than 20 years.

As previously noted, Dr. Benafield referred claimant to Dr. Heinzelmann for a second opinion. Dr. Heinzelmann ordered a bone scan to rule out arthritic changes in the claimant's hand and possible reflex sympathetic dystrophy. The bone scan report dated February 6, 2004 notes a diffuse uptake over the claimant's carpal bones bilaterally. However, the report also states that this finding is non-specific and could be related to trauma, infection, or possibly a tumor.

In order to be compensable, claimant must also prove that her job duties required rapid repetitive motion. Claimant testified that two particular job activities caused her pain. These activities were the preparation of the condiment cups and the placing of lids on those cups as well as preparation of the cheese sauce. The respondent introduced into evidence a videotape of an individual performing those job activities. I do not believe that the job activities themselves constitute rapid repetitive motion. This is particularly true when one considers that claimant performed these two job activities on a sporadic basis. Claimant did not spend all day preparing condiment cups and cheese sauce. Claimant admitted that the cheese sauce took only a few minutes to prepare and that she only prepared one or two pans of it per day. With respect to the condiment cups, claimant testified that when she did fill condiment cups she would spend approximately one hour performing that activity but admitted that she did not spend an hour each day. Testifying on behalf of respondent was Denise McGrath, manager of the kitchen at Van Buren High

School. McGrath testified that it takes approximately 10 minutes to prepare a pan of cheese sauce. McGrath testified that they normally prepare five or six pans of cheese sauce on a Friday or Monday and use approximately one pan per day. McGrath also testified that they use approximately half a tray of condiments each day.

In summary, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her hands other than the carpal tunnel syndrome while employed by the respondent. First, the evidence indicates that claimant has a 25-year history of working as an upholstery seamstress. Despite claimant's initial testimony that her hand problems did not begin until April 2002, the medical records reflect a history of the problems beginning several months earlier. Also, claimant admitted that her hand problems actually began when she was still performing some upholstery work. Despite evidence indicating that claimant's hand problems began in late 2001 or early 2002, claimant did not report an alleged work-related injury to the respondent until after she saw Dr. Bise on May 28, 2002, some five to six months later. In addition, although Dr. Benafield has performed surgery on the claimant's hands, he does not have a diagnosis which would explain claimant's continued complaints of pain. I agree with Dr. Benafield's statement that it is difficult to relate an unknown diagnosis to claimant's job activity. I also note that the results from the bone scan test indicated that in addition to trauma, claimant's complaints could be related to a possible infection or even a tumor. Finally, I find that claimant has failed to prove by a preponderance of the evidence that her job activities involved rapid repetitive motion. While claimant's job duties did require some hand intensive activity, these were for short periods of time, not a sustained period.

The final issue for consideration involves claimant's contention that she suffered a bilateral shoulder injury while employed by the respondent. As previously noted, claimant has been diagnosed as suffering from rotator cuff tears of both shoulders. Claimant

attributes her shoulder problems to performing her job activities in a manner so as to protect her hands. It was claimant's testimony that as a result of her hand problems she was forced to squeeze items with the palms of her hands because she could not grip and move items with her arms and shoulders. In addition to the activities involved in preparation of condiment cups and cheese sauce, claimant also testified that her shoulder problems were related to work as a dishwasher wherein she was required to wash all pots and pans, not just her own.

The first mention in the medical report of any complaints with claimant's upper arm or shoulders occurs in Dr. Benafield's report of July 21, 2003. This is significant because claimant was not working for respondent at that time, but instead was out for summer recess. Furthermore, with respect to the dishwashing duties, I note that claimant was not required to wash all pots and pans for respondent until November 2003, after her shoulder problems had already appeared. Up until that time, claimant was only washing her own pots and pans.

Finally, as with the claimant's hand injury, I find that claimant's job duties did not require rapid repetitive motion involving her shoulder.

Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that she suffered bilateral injuries to her shoulders while employed by respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her hands and shoulders while employed by the respondent other than the previously accepted carpal tunnel syndrome. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE