

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F312909**

<b>CHARLES F. SELLERS, JR., EMPLOYEE</b>	<b>CLAIMANT</b>
<b>EL DORADO CHEMICAL CO., EMPLOYER</b>	<b>RESPONDENT</b>
<b>PACIFIC EMPLOYERS INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 15, 2004**

Hearing before Administrative Law Judge C. Michael White on August 24, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On August 24, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on June 8, 2004, and a Prehearing Order was entered that same day. A copy of the June 8, 2004, 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 employer/employee/carrier relationship existed on October 20, 2003; and that the claimant was earning sufficient wages to

entitle him to the maximum compensation rate.

The parties agreed that the issues to be presented were whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Law; whether the claimant is entitled to temporary total disability compensation for the period extending from October 30, 2003, through February 13, 2004; and whether the claimant is entitled to reasonably necessary medical treatment. The claimant elected at the hearing to reserve the issue of permanent impairment.

The claimant contends that he sustained carpal tunnel syndrome that is compensable under the Arkansas Workers' Compensation Law; that he is entitled to temporary total disability compensation for the period extending from October 30, 2003, through February 13, 2004; and that the medical treatment he has had to date associated with the carpal tunnel has been reasonable, necessary, and related to the compensable injury.

Respondents contend that the claimant cannot sustain his burden of proving the elements necessary to establish the compensability of his condition; and that the claimant cannot prove that his employment involved repetitive activity.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

As noted above, this hearing was presided over by Administrative Law Judge C. Michael White, who subsequently left his employment with the Commission. The case was then transferred to this Administrative Law Judge to issue an opinion based solely on the record of the hearing. It should be noted that the original exhibits submitted at the hearing have been lost; a copy provided by the claimant's attorney, to which the respondents did not object, has been substituted in the Commission file and enclosed in a blue back.

After reviewing this written record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to review the witness testimony as transcribed in the record, 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 proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services, and

that the existence and extent of his injury is established by medical evidence supported by objective findings.

4. The claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and that his injury was the major cause of his need for treatment.
5. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable injury in the form of carpal tunnel syndrome.
6. The claimant has proven by a preponderance of the evidence that the medical treatment he received for his carpal tunnel syndrome was reasonably necessary in connection with the compensable injury.
7. The claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from October 30, 2003, through February 13, 2004.
8. The respondents have controverted this claim in its entirety.

## DISCUSSION

### I. History

The claimant worked for the respondent-employer as a maintenance mechanic for twelve years, working, by his account, anywhere from 40 to 100 hours per week. From 1999 until 2002 he worked in the machine shop, where he frequently used vibratory equipment requiring repetitive hand motions – grinders, impact wrenches, lathes, welders, and milling machines. The claimant testified that during his tenure at the machine shop he used lathes and milling machines most every day, and grinders and impact wrenches every week. At some point in 2002 he transferred to prill plant maintenance where he worked as a lubricator, using a grease gun and other tools to keep equipment lubricated. The claimant testified that even though his position was lubricator, he was frequently called to perform heavy maintenance work in the machine shop and elsewhere as he had done from 1999 through 2002.

On October 20, 2003, the claimant reported progressively worsening numbness in his right hand and fingers. He testified that these problems began in June or July of 2003. He saw Dr. Keith Davis, the son of the company doctor, on October 21, and Dr. Davis referred the claimant to Dr. Shailesh Vora for a nerve conduction study. Dr. Vora opined that the study revealed right carpal tunnel syndrome and right motor sensory distal neuropathy. Dr. Vora recommended that

the claimant avoid repetitive movement of his right hand. The claimant testified that the employer instructed him not to return to work for they had no job available within that restriction. The respondents now allege that the claimant's job at that time did not require repetitive hand movements, raising the question of why the claimant was instructed by the employer not to return to work when his only restriction was "avoid repetitive movement of right hand."

In any event, the claimant returned to the company doctor, Dr. Richard Davis, on November 6. Dr. Davis' handwritten notes read:

Nerve conduction studies consistent with carpal tunnel syndrome. This can be caused by medical reasons such as hypothyroidism, inflammatory arthritis, vitamin deficiencies. Blood work will be obtained to exclude these. Repetitive movement of fingers and prolonged recurrent exposure to vibration can cause this & should be avoided. A prescription will be given for carpal tunnel splints & Prednisone.

Oddly, in Dr. Davis' written report to the employer of November 18, he repeated this precise same language – except he omitted the fourth sentence, regarding "repetitive movement" and "vibration." There is nothing in the record to explain why Dr. Davis omitted this opinion from his letter to the employer. The blood work mentioned by Dr. Davis was performed, but there is nothing in the record to explain whether the results ruled out the "medical reasons" he outlined, nor is there any evidence to show that the claimant suffered from any of these.

The claimant returned to Dr. Davis on November 17 after injuring his shoulder in a fall from a deer stand. This injury appears to be unrelated to the claim at hand. On November 21, the respondent's safety manager, Randall Whitmore, instructed the respondent-carrier to deny the claimant's claim. Whitmore claimed in his testimony that the carrier made the actual decision and he made only a recommendation, but his testimony is contradicted by the language and tone of his letter – it is plainly imperative in tone, not suggestive.

Though his claim was denied, the claimant continued to treat with Dr. Davis, who eventually referred him to Dr. Greg Massanelli. Dr. Massanelli performed surgery on January 9, 2004, a right carpal tunnel release. The claimant testified, and the medical records corroborate, that his condition improved significantly after the surgery. Dr. Massanelli released him to return to work as of February 9, and the claimant in fact returned to work on February 14. The claimant's employment was terminated in May 2004.

## **II. Adjudication**

### **A. Compensability**

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 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 a 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).

Given the medical records herein, including the reports of the claimant's nerve conduction studies, I find that the claimant has proven by a preponderance of the evidence that his injury caused internal physical harm to the body requiring medical services, and that the existence and extent of his injury is established by medical evidence supported by objective findings.

The remaining question is what connection, if any, the claimant's injury had

to his work. There is no requirement that a claimant show his work to be the major cause of his disability or need for treatment; rather, the claimant is required to show that his *injury* was the major cause of his disability or need for treatment. *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998); ARK. CODE ANN. § 11-9-102(4)(E)(ii). Nonetheless, the claimant must still prove a causal connection between his employment and the injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

The claimant testified that from 1999 until 2002 he worked on a daily basis with handheld vibrating tools that required frequent repetitive hand motions. The claimant's supervisor from that time, Wayne Husbands, agreed that the claimant's work exposed him to vibration and repetitive hand motions. Though the claimant's later work as a lubricator was not as hand-intensive, the fact remains that the claimant testified he continued to use handheld vibrating tools such as grinders and impact wrenches on a frequent basis. Several co-workers testified that the claimant's work required the use of repetitive hand movements and vibratory tools. While it is true that the claimant did perform minor maintenance work on his son's motorcycles, I do not find it plausible that a few hours spent each week working with ordinary hand tools could have as great or greater causal effect on the claimant's carpal tunnel syndrome as his hand-intensive work for the respondent-

employer. I find that the claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and that his injury was the major cause of his need for treatment. Therefore, I conclude that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of carpal tunnel syndrome.

### **B. Benefits**

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

There is no medical evidence questioning any of the treatment recommendations made by the claimant's doctors, and the claimant testified that he received significant relief from his surgery. It is well established that success of a treatment is a relevant factor to be considered in determining whether a treatment was reasonably necessary. *Winslow v. D&B Mechanical Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). I find that the claimant has proven by a preponderance of the evidence that the medical treatment he received for his carpal tunnel syndrome,

including surgery, was reasonably necessary in connection with the compensable injury.

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Injuries to the wrist generally, and carpal tunnel syndrome specifically, are considered scheduled injuries. See, e.g., *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002); *Woods v. Tony Bull Motor Co.*, Workers' Compensation Commission E901847 (Sept. 5, 2000). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant was instructed by his employer not to return to work after October 30, 2003. He returned to work at the completion of his treatment, on February 14, 2004. I find that the claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from October 30, 2003, through February 13, 2004.

## AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of carpal tunnel syndrome, that the medical treatment he received for his carpal tunnel syndrome was reasonably necessary in connection with the compensable injury, and that he was entitled to temporary total disability benefits from October 30, 2003, through February 13, 2004. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge