

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO F109331

BECKY STALNAKER, EMPLOYEE

CLAIMANT

**PULASKI COUNTY SPECIAL
SCHOOL DISTRICT, SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 11, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EMILY PAUL, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF CASE

_____A hearing was conducted in the above-styled claim to determine claimant's entitlement to additional workers' compensation benefits.

On January 20, 2004, a prehearing conference was conducted in this claim from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission's Exhibit No. 1.

The testimony of Becky Stalnaker, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Becky Stalnaker, the claimant, with a date of birth of April 26, 1971, has been employed by respondent since March 9, 1994. Prior to February 2001, claimant performed the job duties of a bus driver for three to four hours during an eight hour day and as a secretary the remainder of the eight hour day. In February 2001, claimant was diagnosed with bilateral carpal tunnel syndrome. The claim was accepted as compensable by respondent.

Claimant's testimony reflects, regarding the onset of her symptoms:

Well, actually I went - - I didn't know until I see Dr. Schultz in 2001. I mean, I started having problems with my hands hurting and I wasn't for sure exactly what, you know, what it was. You know, I never really heard of carpal tunnel so I didn't know. (T. 8)

A review of the medical in the record reflects that claimant was seen by Dr. Chuck Cardona, on January 11, 2001, at the Cabot Medical Clinic and thereafter referred to a neurologist based upon his findings. (RX 1, p4). On May 31, 2001, Dr. Charles Schultz assessed the claimant's bilateral hand complaints as bilateral carpal tunnel syndrome. (RX 1, p20-23).

On June 11, 2001, claimant completed a Form N reflecting an injury to both hands and noting that she had been diagnosed with carpal tunnel syndrome. (RX 1, p24). Nonetheless, the evidence in the record reflects that claimant received treatment under the care of Dr. Charles Schultz as late as June 26, 2001. The June 26, 2001, report of Dr. Schultz, relative to the claimant, concludes:

The patient has failed outpatient conservative therapy with regard to her carpal tunnel syndrome. She is tired wrist splints and steroid injections without success. After a long discussion about treatment options with the patient, she states that she would like to try surgery on her right wrist to

see if it will improve her symptoms. I am currently in agreement with this treatment plan. (RX 1, p 2 7)

On July 31, 2001, claimant was initially evaluated by Dr. Earl Peeples, a Little Rock orthopedic physician, relative to her complaints of bilateral carpal tunnel syndrome. The July 31, 2001, report of Dr. Peeples, reflects, in pertinent part:

OBJECTIVE:

The patient has positive compression test right and left. Her Tinel's test is strongly positive on the right and moderately positive on the left. Hyperflexion test is positive mildly on both sides. The patient has good neurovascular status. There is good finger range of motion. There are no wounds or problems with the integument. (RX 1, p29)

On August 10, 2001, claimant underwent right carpal tunnel release under the care of Dr. Peeples at OrthoArkansas. The testimony of the claimant reflects that the surgical procedure performed on her right wrist was a success. On September 26, 2001, claimant underwent left carpal tunnel release, median nerve decompression, under the care of Dr. Peeples. Claimant did not receive a favor result from the September 26, 2001, procedure.

Claimant's testimony reflects that once she arrived home following the surgery and within two days, she noted swelling and pain in the left wrist. Claimant's complaints were relayed to Dr. Peeples. Dr. Peeples prescribed physical therapy for the claimant, which was had in Sherwood. After a follow-up evaluation additional physical therapy was prescribed by Dr. Peeples and had at OrthoArkansas. In an effort to address claimant's continuing complaints relative to her left wrist, Dr. Peeples had additional diagnostic studies perform and had the claimant undergo MMPI, which discloses a normal profile. (RX. 1, p29-84)

Claimant's testimony reflects that after she failed to recognize any improvement in her

left wrist despite the treatment efforts of Dr. Peeples, she talked with the claim adjuster handling the claim about the possibility of treatment with another physician. The testimony in the record reflects that once claimant underwent her first surgery on August 10, 2001, she ceased her bus driving job duties with respondent. As a consequence of the afore, respondent initiated the payment of temporary partial disability benefits to the claimant.

Claimant testified that Ms. Shannon Moore, the claims adjuster for the third party administrator of respondent-employer, suggested that Dr. Michael Moore was an appropriate physician to provide further treatment for her. As a consequence of the recommendation of Ms. Moore, claimant wrote the Arkansas Workers' Compensation Commission and requested a change of treating physician to Dr. Michael Moore from Dr. Earl Peeples, relative to her bilateral carpal tunnel injury. The evidence reflects that a change of physician order was entered by the Medical Cost Containment Division of the Commission authorizing Dr. Michael Moore as the claimant's authorized treating physician.

On May 22, 2002, claimant was evaluated by Dr. Michael Moore at the Arkansas Hand Center at Sherwood, relative to her left wrist. Dr. Moore authored a report of the same date which reflects:

In my opinion Ms Stalnaker's clinical history and physical examination are consistent with chronic left hand pain. Her physical examination did not strongly suggest a recurrent or persistent left carpal tunnel syndrome. In addition, there was not significant evidence of reflex sympathetic dystrophy. It is interesting to note that Ms. Stalnaker did report excellent relief of her symptoms following right carpal tunnel surgery. In addition, her physical examination is somewhat confusing due to the fact she reports diminished sensation in

all fingers of her left hand, including the ulnar
nervated right and small fingers.

Due to the fact that Ms. Stalnaker's symptoms have persisted, it was my opinion further evaluation was indicated. I would recommend blood studies be performed to rule out inflammatory disease. She will be seen in our Therapy Unit to undergo a BTE validity test. Finally, she will be evaluated by Dr. Reginald Rutherford to include a nerve conduction and EMG study of her left hand. I would appreciate his opinion regarding her pan complaints. I would certainly see Ms. Stalnaker in the future if Dr. Rutherford feels my participation in her care is indicated. If his evaluation and the nerve conduction and EMG study are unremarkable, it is likely Ms. Stalnaker will require any further evaluation or treatment. These statements are made within a reasonable degree of medical certainty.. (RX. 1, p87)

On May 31, 2002, claimant was evaluated by Dr. Reginald Rutherford pursuant to the referral of Dr. Michael Moore.

Following his physical examination of the claimant, Dr. Rutherford authored a report of the same date which reflects:

Ms. Stalnaker's clinical examination is considered within normal limits. She has nonspecific changes on sensory examination which fail to conform to peripheral nerve or dermatomal pattern. She underwent electrodiagnostic testing on the date seen which does demonstrate evidence for left median neuropathy localized to the wrists of mild degree. This may be contributory to some of her current complaints but is considered an improbable explanation for all of Ms. Stalnaker's complaints. The degree of abnormality is mild and thus unless there is significant variation from her prior electrodiagnostic study, I would not consider revision surgery to be of probable benefits in Ms.

Stalnaker's case. To fully evaluate the potential significance of her current electrodiagnostic findings, this requires comparison with her preoperative study. In conjunction with this arrangements will be made for an MRI study of the left wrist to specifically look at the left median nerve and carpal tunnel ligament. Ms. Stalnaker will be seen in follow up upon completion of the MRI by which juncture it is anticipated that her EMG study will have been obtained for comparative purposes. Treatment recommendations are deferred until Ms. Stalnaker is seen in follow up. (RX. 1, p93)

Claimant did in fact undergo the EMG during the May 31, 2002, visit to Dr. Rutherford. (RX, 1, p94-97)

Claimant was seen in follow-up by Dr. Rutherford on June 12, 2002. The clinic note of Dr. Rutherford, relative to the afore visit reflects, in pertinent part:

Ms. Stalnaker is seen in clinical follow up. Her prior electrodiagnostic study has been received and reviewed. There has been improvement in the post-operative referral to pre-operative study. Her MRI scan demonstrates segment of the transvers carpal ligament with Abnormality noted of the median nerve. The report is as follows. "The median nerve is abnormal in configuration at the level of the carpal bones where there appears to be a longitudinal split tear diving the median into two halves." The median nerve at this level is thickened and demonstrates increased T2 signal intensity. This may be partly related to post-operative changes but inflammation of the nerve is certainly as consideration. The changes noted on the MRI prompts a trial of therapy with Tegretol for neuropathic pain. . . . Based upon the findings noted on current diagnostic testing, it is considered improbable that Ms. Stalnaker could safely return to her prior employment as a school bus driver at this juncture. It is also considered possible that this will

prove along term restriction. . . (RX 1, p98)

The evidence discloses that claimant was seen in follow-up by Dr. Rutherford following the June 12, 2002, visit. Claimant's testimony reflects that the symptoms in her left wrist did not resolve or improve with the treatment measures instituted by Dr. Rutherford, which included medication. Claimant noted that medication prescribed by Dr. Rutherford in the treatment of her left wrist complaint included Neurontin, an Amitriptyline and Celebrex. (RX 1, p100-104). A August 30, 2002, clinic note of Dr. Rutherford reflects, regarding the claimant:

. . . Her bone scan demonstrates mild arthritic change both hands right more than left. There is no evidence of RSD. Ms. Stalnaker will add Celebrex 200 mg twice per day to current treatment with Neurontin and Amitriptyline, The latter have been prescribed for neuropathic pain, Ms. Stalnaker's prior investigations revealing persisting abnormality of the median nerve. Ms. Stalnaker will be seen in follow up in three weeks to review her response tot he addition of Celebrex. (RX 1, p104)

Claimant was seen by Dr. Rutherford again on September 20, 2002, during which time her medication treatment regiment was continued. The September 20, 2002, clinic note further reflects:

. . . She does report that with typing she has developed some pain and numbness of her fingers. This is not surprising in view of the abnormalities noted fro her median nerve. On this basis, Ms. Stalnaker will be treated with a carpal tunnel splint to use on an as needed basis particularly when typing. She will be seen in follow up in tree months time with repeat nerve conduction study at that time. (RX. 1,p107)

The claimant was seen earlier that the three months outlining the September 20, 2002,

clinic note. Indeed, the claimant was seen by Dr. Rutherford on November 14, 2002, in a visit prompted by moderate pain diffusely involving the claimant's left arm as well as the neck. As a result of the November 14, 2002, visit, Tylenol #3 was added to the claimant's treatment regiment. Because of the complaints relative to her neck, Dr. Rutherford arrange for a MRI of the claimant's cervical spine during the November 14, 2002, visit. While the claimant was seen in follow up visits by Dr. Rutherford in November and December 2002, she did not report any improvement in her left arm symptoms. Claimant also underwent an additional nerve conduction study on November 18, 2002, at the time she underwent the MRI for cervical spine. (RX 1, p114-118). A December 16, 2002, clinic note of Dr. Rutherford reflects:

Ms. Stalnaker is seen in clinical follow up. She reports no substantive changes since last seen. Pain is improved at this juncture. Current treatment will comprise continued use of Celebrex, Neurontin and Amitriptyline as well as continued use of her inferential simulator. Clinical follow up will be scheduled for three months from present. (RX 1, p119)

The medicals in the record reflects that the claimant was seen in follow up by Dr. Rutherford on February 4, 2003, a visit prompted by report of increased pain not controlled with her current medication. (RX 1, p120). Claimant's testimony reflects that during the time of her follow up visits with Dr. Rutherford she requested to be seen by Dr. Moore because of her continued complaints relative to her left wrist. Claimant credibly testified that she was not allowed to scheduled an appointment with Dr. Moore by his office because she was deemed a patient of Dr. Rutherford. Claimant noted that the only treatment available to her under the care of Dr. Rutherford consisted of medication and diagnostic studies.

On March 13, 2003, claimant was seen by Dr. Rutherford, earlier than scheduled, at the request of the claims adjuster, Ms. Shannon Moore. The March 13, 2003, clinic note reflects, in pertinent part:

. . . Ms. Stalnaker reports significant increase in pain accompanied by swelling and diminished use of the left hand which she attributes to typing in the work place. On examination there is reduced use of her left hand with normal reflexes and sensation. There is no significant swelling evident to my eye. I have reviewed a letter from Ms. Moore requesting whether or not Ms. Stalnaker is at maximum medical improvement. Ms. Stalnaker underwent left carpal tunnel release with residual symptoms two years ago. From a pragmatic standpoint, MMI is probably present at this juncture. Current triphasic bone scan and EMG/Nerve Conduction Study are required to ascertain whether or not present complaints represent a progression in prior objective abnormalities. If nothing further is disclosed, Ms. Stalnaker will be declared at MMI. This was reviewed with Ms. Stalnaker who is in agreement with his approach. She will be seen in follow up upon completion of the above diagnostic testing. For present she may continue with her current work duties without additional restriction. (RX 1, p123)

An April 2, 2003, clinic note of Dr. Rutherford, relative to the claimant noted that the claimant's bone scan was unchanged from previous:

. . . Current electrodiagnostic testing reveals normalization of left median nerve function. At this juncture Ms. Stalnaker is considered fully recovered from her prior carpal tunnel surgery. Test results were reviewed with her. From my perspective she may discontinue further use of Amitriptyline, Neurontin and Celebrex. She may resume full work duties including driving a bus. There is no recommended permanent partial impairment rating.

In reviewing current test results and the above recommendations and opinions with Ms. Stalnaker it became apparent that she was not satisfied with present test results advising that she would seek out another opinion. Further follow up with myself is not scheduled. (RX 1, p124)

Claimant's testimony reflects that following the April 2, 2003, discharge by Dr. Rutherford, she contacted the claim adjuster, Ms. Shannon Moore, and requested a return to Dr. Moore for medical treatment relative to her continued left wrist complaints. Claimant credibly testified that Dr. Michael Moore's office refused to schedule an appointment for her following the April 2, 2003, visit of Dr. Rutherford. Claimant testified:

I talked with Shannon about going to see Dr. Moore again and she told me no that Dr. Rutherford Said that I was fine and that was the end. (T. 20)

Claimant's testimony reflects that when she informed Ms. Moore, that she was going to seek other treatment, Ms. Moore responded, "I'm really tired of entertaining you, Ms. Stalnaker." (T.35)

The testimony of the claimant reflects that after she was denied access to her authorized treating physician by respondent following the April 2, 2003, visit to Dr. Rutherford, she sought medical treatment on her own. The testimony of the claimant reflects that the claim adjuster was dismissive in her attitude toward the claimant's request for additional medical treatment.

On May 19, 2003, claimant underwent the EMG /nerve conduction study under the care of Dr. Charles Schultz, the neurologist who initially diagnosed her bilateral carpal tunnel syndrome. Dr. Schultz's May 19, 2003, report reflects that the EMG /nerve conduction study showed evidence of moderate left median neuropathy at the wrist. The report further reflects

that the claimant had very little change from an electrophysiology standpoint from her previous EMG/ nerve conduction study performed on February 2, 2001. Dr. Schultz's May 19, 2003, report further reflects:

The MRI of the patient's left wrist to better characterize her pain and paresthesias in this area was reviewed and shows a small interosseous ganglion involving the lunate and triquetrum. An orthopedic consultation to evaluate the significance of this should be considered. (CX. 1, p29)

On April 2, 2003, Dr. Rutherford performed a nerve conduction study and EMG which reflects:

The nerve conduction study and needle examination are normal. Previously documented left carpal tunnel syndrome has resolved. Study of the left ulnar nerve is normal as is electromyographic examination left upper extremity. Present study does not provide an objective explanation for Ms. Stalaker's current complaints. (CX 1, p123-127)

On May 19, 2003, Dr. Schultz performed EMG/ nerve conduction study relative to the claimant which reflects:

Impression: Abnormal EMG/NCS of the left upper extremity. There is evidence of a moderate left median neuropathy at the wrist (CST). There is no electrophysiological evidence of a left ulnar neuropathy at the elbow, or a left cervical radiculopathy. (CX 1, p26)

Pursuant to the his May 19, 2003, diagnostic study, the claimant was referred to Dr. Ethan J. Schock, a North Little Rock orthopedic physician, by Dr. Schultz. On June 16, 2003, claimant was evaluated by Dr. Schock. After reviewing diagnostic studies and conducting a physical examination of the claimant Dr. Schock's impression of the claimant's complaint was

that of recurring carpal tunnel syndrome, compression of the left median nerves two years out from possible left carpal tunnel release. The June 19, 2003, report of Dr. Schock further reflects, in pertinent part:

. . . We discussed this at length and I specifically counseled her on the increased risk of surgical problems due to the revision nature of any carpal tunnel release. I do agree that her physical examination findings are consistent with her EMG findings and she likely has carpal tunnel syndrome. This seems to be a significant problem for her and is not improved with continued conservative management including anti-inflammatories, injection and bracing. I think that before embarking on this revision procedure, I would need to review her previous MRI as well as specifically review her recent MRI with the radiologist.

2. Additionally, I would like to review her previous operative notes as well as those notes from the second opinion obtained around the time of her surgery. After she obtains this, she will drop them by the office and I will review them with plans of discussing this further on another visit. (CX 1, p32)

After obtaining the results of the May 19, 2003, EMG/ nerve conduction studies as well as the recommendation of Dr. Schock, the same was provided to the claim adjuster, Ms. Shannon Moore, by the claimant. Claimant's testimony reflects that with the reports of Dr. Schock she requested an independent evaluation of Ms. Moore. Claimant was seen by Dr. David Rhodes, pursuant to arrangement scheduled by the claim adjuster, Ms. Moore.

The record reflects that on July 31, 2003, claimant was evaluated by Dr. David M. Rhodes, an orthopedic physician. Following his examination of the claimant, Dr. Rhodes

assessed the claimant's complaint as chronic left carpal tunnel syndrome caused by flexor tenosynovitis. The July 31, 2003, report of Dr. Rhodes reflects:

PLAN:

1. We'll schedule left volar wrist flexor tenosynovectomy. Risk of surgery have been explained to patient in detail which include damage to arteries, nerves, tendons, infections and anesthetic complications. Patient understands risks and has agreed to surgery.

2. She may return to work full duty as a secretary until surgery but after surgery she would be no use of left upper extremity.
(CX. 1, p33)

Claimant's testimony reflects that following her July 31, 2003, evaluation by Dr. Rhodes, she was not again seen by a physician until the October 22, 2003, visit to Dr. Rutherford.

Although Dr. Moore authored a report of August 14, 2003, and correspondence of September 25, 2003, claimant was not seen by him on either date. (CX 1, p34-36)

On October 22, 2003, claimant underwent a EMG/nerve conduction study by Dr. Rutherford. The October 22, 2003, report of Dr. Rutherford reflects, in pertinent part:

Right median nerve function is normal. There is borderline abnormality left median nerve. Palmar latency studies are well within normal range. There is mild prolongation of the right radial to right median sensory latencies for the thumb. There is mild prolongation of the left median sensory latencies for index and long finger but comparison of fourth digit studies for median and ulnar sensory latencies is at the upper limit of normal. Median nerve function is well preserved based upon amplitude of the compound motor action potentials and sensory nerve action potentials there being no evidence to suggest axon loss. Based upon present

test results, conservative management is recommended. In my opinion, revision surgery is unlikely to have any significant influence upon Ms. Stalnaker's complaints and is not recommended. Ms. Stalnaker requested that an impairment rating be formulated based upon present test results. Right median nerve is normal there being not impairment for right median nerve function. There is mild abnormality left median nerve which would allow for an impairment rating of 10% to the left upper extremity. This is based upon 4th Edition, AMA Guidelines as embodied within the text of "Guides to the Evaluation of Permanent Impairment", table 16, page 57 of the text. (CX 1, p39)

Respondents initiated the payment of indemnity benefits to correspond with the impairment rating assessed by Dr. Rutherford shortly after the October 22, 2003, evaluation. The testimony of the claimant reflects that she continues to experience residuals of her left carpal tunnel syndrome:

Still the same problems. I have numbness, tingling. It wakes me up at night, just like I have carpal tunnel. It bother me when I do a lot of typing or driving. In fact, a lot of time I type with only my right hand. (T. 37)

Claimant desire to undergo the revisions surgery relative to her left wrist as recommended by Dr. Schock and Dr. Rhodes.

Claimant received temporary partial disability benefits following her August 10, 2001, right carpal tunnel release surgery, when she was no longer able to drive the bus. Claimant performed full time secretarial duties, which resulted in a reduction in earnings, after the restrictions imposed upon her prohibited her from driving the bus. Accordingly, respondents paid temporary partial disability benefits to the claimant.

Following the April 2, 2003, determination of maximum medical improvement by Dr. Rutherford respondent ceased payment of temporary partial disability benefits to the claimant. Claimant at the beginning of the school year in August 2003, received a job as a bookkeeper/secretary/register. The credible testimony in the record reflects that claimant earned approximately \$20,000.00 discharging employment duties prior to August 10, 2001, as a bus driver/secretary. With the new position of bookkeeper/register claimant earned \$18, 000.00. Claimant denies that she has reached maximum medical improvement, noting that she desire to have the surgery as recommended by Dr. Rhodes and Dr. Schock relative to her left wrist. Further, claimant asserts that respondents are liable for the treatment received under the care of Dr. Schock, and Dr. Schultz subsequent to April 2, 2003.

Respondents maintain that the claimant has reached maximum medical improvement and is not entitled to temporary partial disability benefits. Further, respondent deny liability for the cost of claimant's treatment under the care of Dr. Schock and Dr. Schultz. Respondents take the position that the claimant has received all appropriate medical treatment to which he is entitled as a result of her February 2001, compensable injury.

After a through consideration of all of the evidence in this record, to include the testimony of the witnesses, a review of the medical reports, and application of the appropriate statutory provision and case law, I make the following:

FINDINGS

- _____1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. In February 2001, the relationship of employee-employer-carrier existed between

the parties.

3. In February 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$253.00/\$190.00 for temporary total/permanent partial disability benefits.

4. In February 2001, the claimant sustained an injuries in the form of bi-lateral carpal tunnel syndrome arising out of and in the course of her employment.

5. The claimant was temporarily partially disabled for the period beginning April 2, 2003, and continuing through the end of her healing period, a date yet to be determined.

6. As of April 2, 2003, respondents denied claimant access of medical treatment relative to her compensable injury, and controverted medical benefits therefrom, as well as claimant's entitlement to any indemnity benefits, to include temporary partial, temporary total or permanent partial disability.

7. Medical treatment rendered to the clamant under the care of Dr. Charles Schultz after April 2, 2003, as well as referrals therefrom was reasonable necessary and related to claimant's compensable injury.

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 2001.

9. The respondent has controverted this claim in its entirety subsequent to April 2, 2003.

CONCLUSIONS

The compensability of the claimant's February 2001, bilateral carpal tunnel syndrome is not disputed. Claimant asserts entitlement to additional workers' compensation benefits as a

result of the compensable injury, to include temporary partial disability benefits, medical benefits, and controverted attorney fees. Respondent denies that claimant is entitled to additional workers' compensation benefits. The present claim is one governed by the provision of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to effective date of the afore provision.

The evidence clearly reflects that claimant's bilateral carpal tunnel syndrome was initially diagnosed by Dr. Charles Schultz in February 2001. On June 11, 2002, claimant filed a Form N with respondent seeking workers' compensation benefits based upon the diagnose bilateral carpal tunnel syndrome.

The claimant's treating physician relative to the bilateral carpal tunnel syndrome subsequent to her filing of the claim for workers' compensation benefits was Dr. Earl Peeples. Claimant underwent successful release of the carpal tunnel on the right, on August 10, 2001, and achieve an excellent result from the procedure.

On September 26, 2001, claimant underwent a left carpal tunnel release under the care of Dr. Peeples. As a result of the left carpal tunnel release, claimant continued to experience symptoms of pain, numbness, and swelling in the left wrist. While claimant underwent a battery of diagnostic studies, physical therapy and medication under the care of Dr. Peeples in an effort to address her continuing symptoms, the same did not abate. Ultimately, the claimant requested and received a change of treatment physician from Dr. Peeples to Dr. Michael M. Moore, a Little Rock orthopedic physician.

While the Commission entered the Order designating Dr. Moore as claimant's authorized treating physician relative to the February 2001, compensable injury, claimant was seen by Dr.

Moore on only one occasion, initially. Thereafter, claimant was referred by Dr. Moore to Dr. Rutherford who performed additional diagnostic studies and instituted a treatment plan consisting of medications to address the claimant's complaints. Claimant underwent a battery of diagnostic studies under Dr. Rutherford's care and treatment including an MRI, EMG's/NCV's, and triphasic bone scan. Nevertheless, the evidence preponderates that the claimant continued to experience symptoms and complaints attributable to the left carpal tunnel release.

On April 2, 2003, Dr. Rutherford declared the claimant at maximum medical improvements with no residual impairment relative to her compensable injury. The evidence clearly reflects that at the time claimant was released from the care of Dr. Rutherford on April 2, 2003, she continued to experience residuals of her compensable injury in her left upper extremity. Not only was the claimant released with no permanent impairment by Dr. Rutherford during the April 2, 2003, visit, he also opined that she could resume her employment duties to include driving a bus without restrictions.

The credible evidence in the record reflects that the claimant attempted to scheduled an appointment with her authorized treating physician, Dr. Michael Moore, following the April 2, 2003, release of Dr. Rutherford. Claimant's efforts at obtaining sanction medical treatment from Dr. Moore included a request from the office of Dr. Moore directly and from the third party administrator claim adjuster, Ms. Shannon Moore, who was dismissive of her request. Claimant was left without access to medical treatment relative to her compensable injury after April 2, 2003. In addition to an absence of access to medical treatment, respondent terminated temporary partial disability benefits which had been paid to the claimant since August 10, 2001. Subsequent to April 2, 2003, respondent refused to pay further workers' compensation to or on

behalf of the claimant relative to her February 2001, compensable bilateral carpal tunnel syndrome.

On May 19, 2003, claimant underwent a EMG/ nerve conduction study under the care of Dr. Charles Schultz. The May 19, 2003, results reflected abnormal findings relative the claimant's left wrist, in contrast to the April 2, 2003, diagnostic studies of Dr. Rutherford.

Respondent terminated claimant's medical benefits relative to her compensable injury as of April 2, 2003. While Dr. Rutherford opined that he did not find objective evidence to substantiate the claimant's complaint. The Arkansas Court of Appeals noted in Chamber Doors, Inc., vs Graham, 59 Ark. App. 224,956 SW. 2d 196 (199 7), that objective medical findings are not required to find that the claimant's healing period continues. In the instant claim, the evidence preponderates that claimant continued to experience symptoms and complaints attributable to her compensable injury and continued to require medical treatment relative to same.

Ark. Code Ann. §11-9-508 mandates that respondent provide reasonable necessary medical treatment relative to the compensable injury. Claimant sought access to sanctioned medical treatment after the April 2, 2003, release by Dr. Rutherford. As a consequence of the afore, claimant sought and obtained medical treatment on her own under the care of Dr. Schultz and later Dr. Schock. At this junction it is noted that the claimant had been released without any permanent impairment by Dr. Rutherford as of April 2, 2003. The opinion of Dr. Rutherford was shared by Dr. Moore relative to the claimant.

Once claimant, on her own, obtained medical treatment under the care of Dr. Charles Schultz, a neurologist, and Dr. Ethan Schock, an orthopedic physician, which disclosed objective

findings relative to her compensable injury, respondent acquiesced to “independent evaluation” under the care of Dr. David Rhodes, an orthopedic physician. Dr. Rhodes evaluated the claimant, reviewed the pertinent diagnostic studies, and was of the same opinion relative to the claimant’s left carpal tunnel complaint as was Dr. Schock and Dr. Schultz. Both Dr. Schock and Dr. Rhodes have recommended revision of the claimant’s left carpal tunnel surgery.

It was only after claimant had secured medical treatment under the care of Dr. Schultz for her compensable injury, that the respondent arrange an evaluation by Dr. Rhodes, a physician of its selection. The fact that Dr. Rhodes concurred with Dr. Schock in terms of treatment relative to the claimant’s left carpal tunnel spurred respondents to return the claimant to Dr. Rutherford. Claimant was seen by Dr. Rutherford on October 22, 2003, after Dr. Moore had reviewed the pertinent diagnostic studies of Dr. Schultz, Dr. Rhodes, and Dr. Rutherford as well as the recommendations of Dr. Schock and Dr. Rhodes.

While six months earlier, April 2, 2003, opining that the claimant had no permanent impairment, when confronted with the diagnostic studies of May 19, 2003, from Dr. Charles Schultz, and after having performed additional diagnostic studies on October 22, 2003, Dr. Rutherford concluded that there was objective findings to warrant permanent impairment relative to the claimant’s left wrist.

The claimant did not receive any indemnity benefits from respondents from April 2, 2003 through October 22, 2003. Respondent initiate the payment of indemnity benefits following the October 23, 2003, evaluation by Dr. Rutherford.

The evidence preponderates that the claimant continues to experience residuals relative to her February 2001, compensable injury, with respect to her left wrist. The evidence further

reflects that medical treatment is available and has been recommended relative to the claimant's compensable left carpal tunnel syndrome to improve the condition. In this regard, the medical reflects that Dr. Schock and Dr. Rhodes recommended surgical revision relative to the claimant's left carpal tunnel. The evidence further that on December 4, 2003, claimant was again seen by Dr. Michael Moore and received treatment in the form of injections and physical therapy. Claimant was later seen on two occasion by Dr. Moore in 2004 for treatment relative to her left carpal tunnel syndrome.

The healing period is that period for healing of an injury which continue until the claimant is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become more stable and nothing further in the way of treatment would improve the condition, the healing period has ended. Conversely, if the underlying condition has not become stable and if further treatment measures are available to improve the condition, then the healing period has not ended. In the instant claim, the evidence preponderates that the claimant's healing period has not ended relative to her February 2001, left carpal tunnel injury. Respondent controverted the payment of all benefits to the claimant subsequent to April 2003.

The evidence further reflects that treatment rendered to the claimant under the care of Dr. Charles Schultz and Dr. Ethan Schock subsequent to April 2, 2003, was reasonable, necessary, and related to the claimant's compensable injury. As of April 2, 2003, the evidence preponderates that the claimant's access to medical treatment relative to her February 2001, compensable injury was controverted by respondents. Respondent is liable for the cost of the claimant' medical treatment subsequent to April 2, 2003, under the care of Dr. Charles Schultz

and Dr. Ethan Schock. Respondents have controverted claimant's entitlement to medical benefits subsequent to April 2, 2003.

Claimant has expressed a desire to undergo the surgical procedure as recommended by Dr. David Rhodes and Ethan Schock. The evidence reflects that claimant has seen neither of the afore physician since July 2003. Medical in the record does reflect that claimant has been seen by Dr. Michael Moore on several occasions since the October 22, 2003, visit to Dr. Rutherford. Dr. Moore has opined that while surgery may become necessary in the future the same is not warranted at the present time. Dr. Moore remains the claimant's authorized treating physician relative to the February 2001, bilateral carpal tunnel syndrome and is responsible for directing the claimant's medical treatment relative to same, to include any surgery he may deem appropriate.

AWARD

Respondent is hereby ordered and directed to pay to the claimant temporary partial disability benefits at the rate commencing April 2, 2003, and continuing through the end of the claimant's healing period, a date yet to be determined. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of February 2001.

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable Emily Paul, on the controverted portion of this Award, pursuant to Ark. Code Ann. §11-9-715, and, in accordance with *Holiday Inn-West v. Coleman*, 31 Ark. App. 224, 792 S.W. 2d 345 (1990).

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809,
until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge