

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F310808**

<b>JANA J. STEPHENS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>NORTHRIDGE REHABILITATION AND HEALTHCARE CENTER, EMPLOYER</b>	<b>RESPONDENT</b>
<b>CANNON COCHRAN MANAGEMENT SERVICES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 17, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on October 20, 2004 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE BEN E. RICE, Attorney at Law, Jacksonville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, and attorney's fees.

At issue is the compensability of this claim for bilateral carpal tunnel syndrome (CTS) as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on October 7, 2003 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$400.00/\$300.00, in the event this claim is found to be compensable. Some medical expenses have been paid by Blue Cross Blue Shield Health Advantage. The claimant has applied for Social Security Disability benefits.

A companion case to this claim is Jana Stephens v. Southwest Homes/Cannon Cochran Management, F211438. Judge Blood filed an Order on April 16, 2003 dismissing this claim for a July 20, 2002 injury.

The claimant contends she developed bilateral CTS as a result of her job duties. She seeks payment of medical expenses, temporary total disability benefits from October 8, 2003 to March 17, 2004 and attorney's fees.

Respondents contend the claimant's CTS preceded her employment. She filed a claim for a July 20, 2002 carpal tunnel injury against Southwest Homes (Claim #F211438). Respondents also contend the left wrist is unrelated to the October 7, 2003 incident and there is no objective medical evidence of a right hand injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing. Her health history includes a broken collarbone, problems with her memory, and mental illness.

The claimant, age 52 (D.O.B. December 13, 1951), has a high school education with one year of junior college and one year of nurse's training. She has been an LPN for twelve years during which time she has worked for several different employers. She began work for the respondent-employer in May 2002. Prior to that time, she had been off work one year after terminating her employment at Southwest Homes, but on cross-examination, she stated she worked five months at Smart Start Learning Center. She also stated she was demoted at Southwest and left because she didn't want to push a medicine cart. However, when asked about her job duties at Northridge, the first one she described was pushing a medicine cart.

On October 7, 2003, the claimant's arms and hands were injured when she tried to help an elderly gentleman keep from falling in a bathroom (Tr. p. 10-11, 15). She feels she developed CTS by holding her arms around the man's chest for a few minutes while awaiting help. She reported the incident and was directed to Concentra on October 8. She was x-rayed and told to follow up with her family physician if the pain persisted. The claimant stated she was diagnosed with a thoracic sprain, but her back and shoulder pain abated, (Tr. p. 15).

She then saw Dr. Les Anderson who referred her to Dr. Joe Crow who performed bilateral carpal tunnel releases (October 20, 2003/November 26, 2003). He referred her to Dr. Annette Meador for treatment of reflex sympathetic dystrophy (RSD), in December 2003 and January, 2004.

In January, 2004 Dr. Anderson's associate, Dr. Ewing diagnosed the claimant with a broken collarbone and referred her again to Dr. Crow, who she saw on March 17, 2004. Dr. Crow assessed 0% for the bilateral CTS and assessed maximum medical improvement in March 2004.

On cross-examination, the claimant testified she filed a claim against Southwest Homes in 2001 and 2002 for a left hand injury due to writing, lifting and carrying. The claimant testified she had been symptomatic since 2000, but wore splints and was able to work (Tr. p. 21). The incident on October 7, 2003, made the pain worse.

The claimant also stated she suffered a nervous breakdown in June, 2004 (Tr. p. 24-25) and tried to commit suicide. She was hospitalized for a month. She believes her mental condition is also related to the accident at work.

The claimant testified that Dr. Crow released her for light duty on August 13, but she remains symptomatic and she feels her condition is worse now than before the surgery.

### **MEDICAL EVIDENCE**

The claimant saw general practitioner, Dr. Anderson on September 11, 2003 with complaints of numbness in her left arm for three weeks. She denied any injury. He diagnosed left cervical radiculopathy and ordered an EMG/NCV study on September 24, 2003 which was positive for left CTS. This diagnosis pre-dates the incident at work on October 7, 2003.

The claimant saw orthopedic surgeon, Dr. Joe Crow on October 9, 2003, two days after the incident at work. She complained of symptoms in both hands with right hand symptoms beginning three weeks earlier. Because the claimant was a cigarette smoker and had a purplish discoloration of her hands, Dr. Crow also diagnosed Raynaud's syndrome and cautioned her that smoking would adversely affect her healing from surgery, and the Raynaud's syndrome might require additional

treatment. Nevertheless, the claimant chose to have a release done on her left hand on October 20, 2003.

Dr. Crow's Report of 10-30-03:

I have advised her that as long as she smoked she would continue to have the discoloration and possibly some of her numbness would remain. She tells me she has slowed down.

On November 26, 2003, Dr. Crow performed a right hand release, but her symptoms persisted. No EMG/NCV study was performed on the right hand prior to surgery.

Dr. Crow's Report of 12-11-03:

She has healed well from a clinical standpoint and her numbness is decreased. She is; however, still smoking and has a burning discomfort in both hands, on the right side up to her elbow and on the left to her mid-brachium.

The claimant was then treated with therapy and stellate ganglion blocks by Dr. Annette Meador for "probable reflex sympathetic dystrophy" of both upper extremities. Some of the claimant's symptoms objectively abated despite her continuing complaints. Dr. Meador recommended psychiatric evaluation in her report of January 2, 2004 noting evidence of somatization disorder.

Dr. Crow's Report of 1-8-04:

Her hands are red, have very altered temperature and she talks about cold and sensitivity.

I have tried to explain that this is related to her smoking, or at least made worse by it and represents some sort of Raynaud's Phenomenon.

The claimant returned to her general practitioner, Dr. Anderson on February 12, 2004 for pain medication for a fractured right clavicle, (Tr. p. 23, 25-26).

**FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove

Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

---

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements.

Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980), Wal-Mart, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The existence of a causal connection between the accident and the disability is a question of fact to be determined by the Commission. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

The medical evidence of record indicates the claimant was diagnosed with left CTS on September 24, 2003 based on an EMG/NCV study several days prior to the incident at work on October 7, 2003. Therefore, I find the claimant has failed to prove that her left CTS arose out of and in the course of her employment, causing internal physical harm.

The medical evidence also shows a history of right hand pain predating the incident at work by three weeks. Again, I find the claimant has failed to prove her right CTS arose out of and in the course of her employment, causing internal harm.

Accordingly, I find the claimant has failed to meet her burden of proof by a preponderance of the credible evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 7, 2003, at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$400.00/\$300.00, in the event this claim is found to be compensable. Some medical expenses have been paid by Blue Cross Blue Shield Health Advantage.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

#### AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

---

ELIZABETH W. HOGAN  
Administrative Law Judge