

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309816

TED L. SUTTON, EMPLOYEE

CLAIMANT

**COOPER TIRE & RUBBER CO.,
SELF-INSURED EMPLOYER**

RESPONDENT

CROCKETT ADJUSTMENT, TPA

RESPONDENT

OPINION FILED MARCH 12, 2004

Hearing before Administrative Law Judge J. Mark White on February 12, 2004, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Nelson V. Shaw, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

STATEMENT OF THE CASE

On February 12, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on December 8, 2004, and a Prehearing Conference Order was entered that same day. A copy of the December 8, 2004, Prehearing Conference 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 Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including May 1, 2003; and that the claimant earned sufficient wages to entitle him to the maximum compensation rates.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable gradual-onset injury to his right hand; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees. The issue of permanent benefits is expressly reserved.

The claimant contends that he sustained a compensable injury that began to manifest itself in early May, 2003; and that he sustained carpal tunnel syndrome in his right hand.

Respondents contend that the claimant did not sustain a compensable gradual-onset injury; that the claimant will be unable to establish his injury by medical evidence supported by objective findings; that the claimant will be unable to show that his work was rapid and repetitive; that the claimant will be unable to show that his injury or work activities were the major cause of any disability or need for treatment; that any days of work missed by the claimant were not due to a compensable injury; and that respondents are entitled to an offset against any benefits paid by group health or other benefit plans.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, 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 he sustained an injury causing internal or external physical harm to the body, requiring medical services and resulting in disability; and that the existence and extent of his carpal tunnel injury is established by medical evidence supported by objective findings.
4. The claimant has proven by a preponderance of the evidence that his carpal tunnel injury is the major cause of his disability and need for treatment.
5. The claimant has proven by a preponderance of the evidence a causal connection between his work and his carpal tunnel injury.

6. The claimant has proven by a preponderance of the evidence that his carpal tunnel injury arose out of and in the course of his employment.
7. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable injury to his right hand in the form of carpal tunnel syndrome.
8. The claimant has proven by a preponderance of the evidence that the treatment he has received for his carpal tunnel syndrome has been reasonably necessary in connection with his compensable injury.
9. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the time he was off from work during his healing period.
10. The respondents are entitled to an offset for benefits paid by group health or disability insurance, per Ark. Code Ann. § 11-9-411.
11. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant has worked for the respondent-employer for nearly twenty-six years, sixteen of those as a first-stage tire builder. His duties involve the repetitive

use of his hands in cutting and hand-stitching materials, moving tires, sharpening knives, and other activities. He is right-handed.

He testified that in May, 2003, he began to notice numbness and tingling in the thumb and first and middle finger of his right hand. He noticed the pain was worse on days he worked harder. The pain reached the point that it sometimes woke him up at night. He testified that he also noticed a discoloration in his hand.

He reported the problem to his employer on or about June 14, 2003, and sought treatment from the company doctor, Dr. Craig Ditsch. Dr. Ditsch ordered a nerve conduction study, which revealed severe carpal tunnel syndrome in the right hand. Dr. Ditsch referred the claimant to an orthopaedist, Dr. Greg Smolarz. Dr. Smolarz performed surgery, a right carpal tunnel release, on August 8, 2003.

II. Adjudication

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).

It is undisputed that the claimant had carpal tunnel syndrome in his right hand, an injury causing physical harm to the body requiring medical services. Nothing in the record contradicts the diagnosis of carpal tunnel syndrome made by Dr. Smolarz, nor does the record contain any medical opinion questioning the *per se* reasonableness of his diagnosis and treatment. The diagnosis of carpal tunnel syndrome was supported by the objective findings of a nerve conduction study. Therefore, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury causing internal or external physical harm to the body, requiring medical services and resulting in disability; and that the existence and extent of his injury is established by medical evidence supported by objective

findings.

The only question in dispute, it seems, is whether the claimant's carpal tunnel syndrome is connected to the claimant's employment. The respondents contend that the claimant's work was not the "major cause" of his disability or need for treatment, and they introduced a letter from Dr. Smolarz stating that the claimant's job "was not the sole or major cause of his condition." This is a misstatement of the law. 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).

That the claimant's carpal tunnel syndrome is the major cause of his disability and need for treatment is without question. *Cf. Crudup v. Regal Ware, Inc., supra.* Given the statements of his doctors in diagnosing and treating him, I find that the claimant has proven by a preponderance of the evidence that his carpal tunnel injury is the major cause of his disability and need for treatment.

The causal connection between the claimant's carpal tunnel syndrome and

his work is a closer question, however. The claimant has introduced two letters from Dr. Smolarz addressing causation, dated August 14, 2003, and August 26, 2003. In one Dr. Smolarz writes, "Twenty-five years of working in a repetitive activity job could cause this condition." In the second he writes, "Carpal tunnel syndrome is often related to repetitive activities such as production line work." Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. ARK. CODE ANN. § 11-9-102 (16)(B); *Crudup v. Regal Ware, Inc., supra*. To be within a reasonable degree of medical certainty, a medical opinion must be more than speculation. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). Specifically, expert opinions based upon "can," "could," "may" or "possibly" are not opinions stated within a reasonable degree of medical certainty. *Frances v. Gaylord Container Corporation*, 341 Ark. 527, 20 S.W.3d 280 (2000). The statements of Dr. Smolarz introduced by the claimant are simply too speculative to be within a reasonable degree of medical certainty, particularly given the use of "could" in one of them. I give these two statements no weight.

The respondents have introduced a separate letter from Dr. Smolarz, dated January 16, 2004, in which he states, "I feel like his job did contribute to his condition but was not the sole or major cause of his condition." As noted above, major cause matters not in relation to the required causal connection, so I dismiss Dr. Smolarz'

mention of it. But Dr. Smolarz does specifically opine that the claimant's employment "did contribute" to his injury, establishing the required causal connection. Given Dr. Smolarz' uncontradicted opinion, and given the claimant's testimony that his work was repetitive and hand-intensive, I find that the claimant has proven by a preponderance of the evidence a causal connection between his work and his carpal tunnel syndrome. I further find that the claimant has proven by a preponderance of the evidence that his carpal tunnel injury arose out of and in the course of his employment.

In making this finding, I find instructive a comparison to the Supreme Court's decision in *Crudup v. Regal Ware, Inc., supra*. There, the Court upheld the Commission's denial of compensability where the claimant had failed to prove a causal connection between his carpal tunnel syndrome and his employment. The only evidence establishing a causal connection was the claimant's testimony that his work required "quick hand and wrist movements throughout the day." In this case, however, the claimant's similar testimony is supplemented by Dr. Smolarz' professional medical opinion that the claimant's employment contributed to his carpal tunnel syndrome. Dr. Smolarz' opinion is sufficient to enable the claimant to meet his burden of proof as compared to the claimant in *Crudup*.

The claimant has proven each of the elements of compensability outlined

above. Therefore, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right hand in the form of carpal tunnel syndrome.

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).

The treatment received by the claimant, including the surgery performed by Dr. Smolarz, appears reasonable under the circumstances, and there is nothing in the record to suggest or establish that the treatment received by the claimant was *per se* unreasonable or unnecessary. As noted above, the claimant has proven a causal connection between his employment and his carpal tunnel syndrome. Therefore, I find that the claimant has proven by a preponderance of the evidence that the treatment he has received for his carpal tunnel syndrome has been reasonably necessary in connection with his 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, which ever 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 testified that as a result of his injury, he was off of work from the date of his surgery, August 8, 2003, until he returned to work on September 29, 2003. Nothing in the record contradicts his testimony in this regard. I therefore find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the time he was off from work during his healing period.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right hand in the form of carpal tunnel

syndrome. 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. Nelson Shaw, 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.

HON. J. MARK WHITE
Administrative Law Judge