

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F402646**

<b>MARGUERITE TAGGART, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>INTERNATIONAL PAPER COMPANY, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>SEDGWICK CLAIMS MANAGEMENT, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 18, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on August 20, 2004, at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

**ISSUES**

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

At issue is whether or not the claimant sustained a compensable injury (bilateral carpal tunnel syndrome) 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 preponderates in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship during December 2003 - February 2004 at which time the claimant was earning an average weekly wage of \$585.79. This claim has been controverted in its entirety. Some benefits have been paid by Blue Cross Blue Shield and International Paper's sick and accident policy.

The claimant contends she developed bilateral carpal tunnel syndrome (CTS) as a result of her job duties. She seeks payment of medical expenses associated with Dr. Nguyen's treatment and temporary total disability benefits from February 22, 2004 to June 2, 2004.

The respondents contend the claimant did not sustain a compensable injury.

The following were submitted without objection and comprise the evidence of record: the

parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and her foreman, Kenneth May.

The claimant, age 43 (D.O.B. September 19, 1961) has a high school education and sporadic work history since 1999 as a cook, waitress, cashier, manager and fork lift driver. She was a homemaker before she began work for the respondent-employer on September 30, 2002. From 1987-1991 the claimant was in prison. She took some training as a welder and received a cosmetologist license in 1987, working three months as a hairdresser. She is right hand dominant.

The claimant contends she developed symptoms in the fall (August/September) of 2003 which gradually worsened, as a result of her job duties as a Process Specialist II. She described her job duties (Tr. p. 24-34, 39-40), as feeding scrap paper through a shredder, pulling on paper, measuring cores with a tape measure, taping down the paper, cutting the paper with a knife, and pushing buttons which are indeed, hand intensive and repetitive tasks. But she also described periods of time (10-15 minutes) during each cycle while she waited for the machine to wind the paper. Ken May testified the time was less. They generally finished only 4-5 spools per hour. There is some doubt as to the rapid nature of the job. Nevertheless, with objective evidence establishing the diagnosis of CTS, the claimant is not required to prove "rapid and repetitive job duties in order to prevail. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

During the week of February 9, 2002 the claimant broke the winder on her machine while trying to load a roll of paper because of numbness in her fingers. She notified her supervisor, Ken May, and maintenance had to be called to fix the machine. When Mr. May testified however, he denied any knowledge about this incident. He stated this would have been memorable since a broken winder would have stopped production.

On February 22, 2004 the claimant was sent to the occupational health office by her supervisor, Steve Taylor, due to her complaints of symptoms. Mr. Taylor was not presented to refute this testimony and the respondents have not pled lack of notice as a defense to this claim. Therefore I accept the claimant's testimony that she reported the injury.

On February 26, 2004 the claimant came under the care of Dr. Larry Nguyen. He prescribed medication and a splint and took her off work. On March 7, 2004 Dr. Sundeep Lal performed an EMG-NCV study which was positive for bilateral CTS, worse on the right. Surgery was performed on her right hand on March 29, 2004. Dr. Nguyen then prescribed physical therapy. She returned to work for the respondent-employer on June 2, 2004.

Kenneth May, the claimant's foreman has worked for the respondent-employer since 1987. He reviewed the claimant's job duties (Tr. p. 48-53). He testified the cores the claimant is required to lift weigh 3-7 pounds. There is sporadic use of a tape measure and there is a labor union mandated crew helping with the slabbing process, so it would be unusual for the claimant to do this task. He stated she would be performing the other tasks as described 30 times in an 8 hour shift, only if production was running smoothly at maximum capacity. And part of her time would be spent waiting on the machinery to finish or cleaning up around her station. She is not actually operating the winder on a continuous basis.

A job analysis prepared in 1989 of the Process Specialist II's job duties show the claimant's hands and arms are used a great deal of the time (51%-100%) reaching, pushing, pulling, handling, fingering, lifting and carrying (30-50+ lbs.).

### **MEDICAL EVIDENCE**

Records show the claimant consulted Dr. Nguyen on February 26, 2004 for bilateral hand numbness and tingling. She reported the trouble began three months earlier (December 2003) and appeared to be worsening. An EMG-NCV study done on March 7, 2004 by Dr. Lal confirmed bilateral CTS, worse on the right. Dr. Nguyen performed surgery on her right hand on March 29, 2004. Physical therapy followed. Dr. Nguyen anticipated a 6-8 week recovery period and disability benefits were paid until June 1, 2004. A formal release could not be located in the exhibits.

Dr. Nguyen was aware the claimant loaded machinery and her symptoms made it difficult for her to lift and perform "repetitive" activities at work (see his report of February 26, 2004). He completed the claimant's short-term disability report on March 22, 2004.

Dr. Nguyen also opined in a report dated March 30, 2004, that the claimant's condition was causally related to her employment. The report makes no mention of "major cause" but it seems fairly obvious that her injury is the only reason for her medical treatment and disability. There is no evidence of other injuries or medical conditions which could have contributed to her symptoms.

The patient has severe bilateral carpal tunnel syndrome, worse on the right than on the left. As defined by Arkansas State Law this may probably be caused or aggravated by a chronic repetitive type work activities similar to this patient's machinery loading manual activities, so I think within a reasonable degree of medical certainty this is probably related to her work functions. (Emphasis added)

Dr. Nguyen's use of the word "probably" has been held to be sufficient to satisfy the requirement that the medical opinion was stated within a reasonable degree of medical certainty. Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001). While I realize the Court has held the use of the word "may" to be inadequate, Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000), I think the overall meaning of the doctor's report supports a causal connection.

### **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).

The evidence of record shows the claimant had no problems with her hands before she began working for the respondent-employer in September 2002. After a year of hand and arm intensive

work, as verified by the employer's assessment of her job duties, she developed numbness and tingling in her hands. An EMG-NCV study confirmed bilateral CTS, requiring surgery and necessitating time off from work. Her treating surgeon has opined that her condition was caused or aggravated by her employment. This is sufficient evidence that the claimant has met her burden of proof.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during 2003 and 2004 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$390.00.
2. The claimant has proven by a preponderance of the evidence of record that she sustained a gradual injury arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment.
3. The claimant has proven by a preponderance of the evidence of record that she is entitled to temporary total disability benefits from February 26, 2004 to June 1, 2004, as she was in a healing period and not working based on Dr. Nguyen's medical records. This award is subject to an offset for benefits paid from the employer's group accident policy.

4. The respondents are directed to pay all reasonable and necessary medical expenses within thirty days of receipt. This award is subject to an offset for expenses paid by Blue Cross Blue Shield. Blue Cross Blue Shield will be notified of these proceedings and given an opportunity to file a lien.
5. The respondents are directed to pay court reporting fees and expenses to Ms. Linda Parker pursuant to Commission Rule 20.

**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.

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ELIZABETH W. HOGAN  
Administrative Law Judge