

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F312425

**ODELL WATSON,
EMPLOYEE**

CLAIMANT

**QUALITY BEARING SERVICE,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INS. CO.,
INSURANCE CARRIER**

RESPONDENT

**PULASKI COUNTY OFFICE OF
CHILD SUPPORT ENFORCEMENT**

INTERVENOR

OPINION FILED NOVEMBER 15, 2004

Hearing conducted September 1, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Lewis E. Ritchey, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's assertion that he sustained compensable carpal tunnel syndrome to his left upper extremity and should be awarded benefits.

Specifically, the claimant contended that in October, 2003, he sustained compensable carpal tunnel syndrome of his left upper extremity and should be awarded benefits, including reasonably necessary medical and related expenses for his care on October 10, October 15, and December 15, 2003, as well as temporary total disability benefits from October 15, 2003, until a date to be determined. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant is not entitled to the benefits requested. Specifically, they contended that the claimant's condition was not caused by rapid repetitive motion at his employment; that his condition is not the major cause of any disability or need for treatment he may have experienced; and that his symptoms are related to cervical pathology which is not work related. Alternatively, they contended that benefits are barred for this claim until notice was given April 26, 2004, pursuant to Ark. Code Ann. §11-9- 701. They also contended that the claimant has received long term and short term disability benefits from a group carrier for which the respondents are entitled to credit.

The parties are further advised that on July 20, 2004, the Commission received a Notice of Workers' Compensation Withholding for Child Support from the Pulaski County Office of Child Support Enforcement alleging an amount past due of \$272.50 in the case of Tracy L. Reddick v. Odell Watson, E-2002-3979.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant sustained a compensable injury to
3. The preponderance of the evidence fails to show that the claimant suffered compensable carpal tunnel syndrome arising out of and in the course of his employment.

DISCUSSION

The claimant testified that he was employed as a production line worker by the respondent employer from 1997 until October 13, 2003, when he began to experience sharp pains in his arm and chest. He testified that this occurred as he was pushing pallets but that during the lunch break the pain stopped for a few minutes so he went back to work. He stated that by the time he was ready to leave work he noticed the pain was hitting even harder and when he went home and the pain got worse and worse, he and his wife decided to seek medical care at the Heart Hospital Emergency Room. There, he was told that he had pulled a muscle and did not have heart problems. He testified that he went to work Monday, October 13, and told the plant manager that he went to the hospital over the weekend and was diagnosed with a pulled muscle, rather than heart trouble, and that the job sent him home because there was no light duty and he was having problems completing his work.

He then consulted his physician, Dr. Mariam Morse, whose medical records indicated that the claimant had cervical radiculopathy and disc disorder for which she took him off his regular job duties. The record shows that the claimant filed for short term disability benefits based upon his condition. An MRI of his cervical spine on October 31, 2003, showed multilevel disc and facet degeneration from C2-3 through C6-7, worse at C4-5 and C5-6.

Dr. Morse continued to treat the claimant and on March 16, 2004, wrote that she suspected left carpal tunnel syndrome and recommended an EMG. A nerve conduction study report dated April 4, 2004, was read by Dr. Julia M. McCoy as showing, "Mild left carpal tunnel syndrome. Left ulnar neuropathy at the elbow. Findings consistent with a left C-7 radiculopathy." The claimant contends that his carpal tunnel syndrome arose out of and in the course of his employment and that he should be awarded benefits as stated above.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

It is the claimant's burden to show that carpal tunnel syndrome arose out of and in the course of his employment as a result of rapid repetitive motion and that the condition is the major cause of any disability or need for treatment he may have experienced. Ark. Code Ann. §11-9-102. Kildow v. Baldwin Piano & Organ, 58 Ark. App. 194 (1997).

Here, the nerve conduction study showing mild carpal tunnel syndrome among the claimant's problems is sufficient to establish the existence of the ailment by medical evidence, supported by objective findings. As to the issue of causation by rapid repetitive motion at work, on cross-examination, the claimant testified that he was expected to do about forty pallets per eight hour shift or about one every twelve minutes. The pallets contain ball bearing assemblies and the claimant is expected to put end caps on, put the locking plates on, drop in three bolts, wrap them, and place them

so that the forklift can pick them up, now properly covered with end caps. The bolts are to be tightened elsewhere.

After some discussion of his work activity at the hearing, it appeared that the work was steady but not what would necessarily be considered rapid and repetitive. Nevertheless, if it is assumed to be rapid and repetitive, the causal connection is relative slight especially when the claimant's low level of carpal tunnel syndrome was not discovered for several months. It was also his testimony that his symptoms were primarily related to pushing pallets rather than the other activity involved at work. Additionally, during his cross-examination, the claimant's testimony indicated that the symptoms of carpal tunnel syndrome seem to develop until after he had left the employment and, then, have gotten worse in spite of ceasing the activity that he considers to be the cause. Tr. at 40. Moreover, the claimant's other pathology, including his significant cervical problems, appears to be the major cause for any disability and need for treatment that he has experienced, rather than the mild carpal tunnel syndrome that is reflected in the nerve conduction studies. Thus, when the entire record is reviewed, it appears that the preponderance of the evidence fails to meet the statutory requirements concerning major cause and proof of compensable gradual onset carpal tunnel syndrome as the result of rapid repetitive motion at work.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge