

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F312908

CATHERINE WATTS, EMPLOYEE	CLAIMANT
STANT MANUFACTURING, INC., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 23, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on August 27, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

A hearing was held on August 27, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer-carrier relationship on November 7, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$297.00 for temporary total disability and \$222.00 for permanent partial disability benefits.

Claimant contends that she suffered a job-related injury to her right wrist, while working for respondent employer on November 7, 2003. She contends her injuries are compensable and seeks benefits, as a result.

Respondents controvert this claim, contending that claimant did not sustain a compensable injury in the course and scope of her employment. Respondents contend that there is no causal connection between the claimant's work and her alleged injury.

Respondents assert that there are no objective medical findings to establish that claimant's work-related activities are the major cause of her alleged need for medical treatment. Respondents assert that claimant's job did not involve rapid, repetitive activity such to cause carpal tunnel syndrome, de Quervain's syndrome, or any other such type injury, and that the medical documentation does not support that as being a cause of her problems. Respondents further contend that they received no notice of an alleged work-related injury until the claimant filed her Form C on December 3, 2003; and respondents should not, therefore, be liable for benefits prior to that date, in the event this claim is found to be compensable.

STATEMENT OF THE CASE

At the time of alleged injury, claimant was employed as a machine operator in the plastics department for respondent employer and testified that she sometimes worked in the lab, as well. Claimant testified that on November 7, 2003, she was picking up some boxes and her wrist "pulled and burned real bad." She testified that it had been giving her problems and that she had asked Diane Smith, her team leader, for wrist protection about two weeks prior, although she never received it. Ms. Smith was not called to testify.

Claimant further testified that she left work early on November 7, 2003, because of a problem she was having with her daughter. She admitted that she neither reported the injury nor left work due to problems she was having with her hands or wrists. She testified, however, that after she got home, she was still hurting, so she went to the emergency room. Claimant admitted that she did not report a work-related injury at the emergency room.

According to the emergency room records, she was found to have a stressed wrist and was recommended to light duty for five days. However, claimant testified that she was not allowed to go back to work until December. Claimant admitted that she did not file a workers' compensation claim until December. Claimant admitted that her medical expenses were paid by her private health insurance and that she filled out the paperwork to be off on Family Medical Leave Act (FMLA), not workers' compensation. Claimant admitted, however, that she had seen posters at work showing what to do if she was injured on the job; still, she testified that she did not know she needed to tell John Howard, her supervisor, of any alleged work-related injury.

John Howard testified that although he was off work on the alleged date of injury, when he returned to work and found claimant on light duty, he asked Diane Smith, the team leader, if claimant had been injured at work. Ms. Smith stated that claimant told her it was an old injury. Notwithstanding, Mr. Howard testified that he specifically asked claimant, himself, if she had hurt herself at work and she said "no" and that it was an "old injury that flares up from time to time."

Kelly Massey, the human resources manager for respondent employer, testified that claimant did not contact respondent employer before going to the emergency room on November 7, 2003. He testified that on November 10, 2003, his office received a Jefferson Regional Medical Center Emergency Room release stating that on November 7th, claimant was seen by Dr. Bell and a physician's statement that said that claimant could return to work on the 8th with light duty restrictions. Mr. Massey testified that prior to this, he had no knowledge that claimant had gone to the emergency room.

He testified that on November 17, 2003, claimant came into his office and requested FMLA papers and returned them on the 18th. He testified that he did not inquire on that date whether her problems were work-related. He further testified that on the 18th, she brought in the Certification of Health Care Provider, and as he was reading through it, he noticed that the form stated that she had injured her right forearm and wrist at work lifting a fifty-pound box. He testified that respondent employer has no fifty-pound boxes in the plastics department, but that they have a twenty-five pound limit. Notwithstanding, he testified that he asked claimant at that point why it said that it was work-related when she had not reported it. He testified that she told him she had previous hand problems and might have aggravated her previous problems but that she did not want to file a report.

He then testified that he asked her again with Cloyd Michael present, who is respondent employer's HS&E coordinator, if she wanted to report it, and she said, "no," she would just put it on her insurance. He testified that he told her to contact Mr. Michael if she changed her mind. Claimant denies that this conversation took place between she, Mr. Massey, and Mr. Michael. Mr. Massey testified that all employees are aware of the policy for reporting work-related injuries, as that is covered in new-employee orientation. However, claimant denies that she was ever trained or that she received any orientation.

Mr. Massey further testified that after receiving some off-work and some light duty work slips, respondent employer did offer claimant light duty work sorting parts around the end of November -- a job that can be done one-handed; however, he testified that claimant said she did not feel like sorting parts, so she would just stay at home. He testified that she was released to return to work and came back on

December 5, 2003. However, she was terminated after her attendance points were reviewed and she produced no documentation to support excused absences.

Dr. Charles Clark of South Arkansas Orthopaedic Center issued a report dated February 23, 2004, in which no mention is made whatsoever of any alleged work-related injury. Dr. Clark notes as follows:

Initially, her complaints were consistent with carpal tunnel syndrome, but the NCVs were negative. Now, her complaint is basically with numbness over the back of the thumb, tenderness over the radial styloid, and tenderness now with the lateral epicondyle. It extends further up the arm now.

IMPRESSION: Findings are basically consistent with lateral epicondylitis, De Quervain's syndrome, and dorsal tendonitis at the wrist. Basically, this is either due to overuse or she is a latent fibromyalgic. The injection did not help at all, so I think we are probably dealing with a latent fibromyalgic.

Dr. Clark's noted plan was to refer claimant to a rheumatologist for appropriate management. Claimant admitted during cross-examination that she has arthritis in her right hand; however, she testified that she had no problems at all prior to this alleged injury. Both claimant's supervisor, Mr. Howard, and Mr. Massey, the human resources manager, testified that claimant's work involved no rapid or repetitive activity.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the evidence that her wrist complaints are compensable. Specifically, the claimant has failed to establish a causal connection between her employment and her injury, within a reasonable degree of medical certainty.

DISCUSSION

There is a requirement in all workers' compensation cases that the claimant must demonstrate a causal connection between the injuries complained of and the work activity. *See Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Moreover, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(i). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

The claimant herein simply does not establish by a preponderance of the credible evidence that there is a causal connection between her wrist problems and any work activity in which she was engaged with respondent employer, within a reasonable degree of medical certainty. Each witness who testified, other than the claimant, testified that he specifically asked claimant if her alleged injury was work-related and she told him it was not. The only person whom claimant contends has

knowledge that she was seeking wrist protection prior to the alleged date of injury was Diane Smith, and she was inexplicably not called to testify. In this examiner's opinion, claimant has simply not met her burden of proof.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge