

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F308930

BETTY JO WRIGHT, Employee	CLAIMANT
OZARK AIRCRAFT SYSTEMS, LLC, Employer	RESPONDENT
AIG CLAIM SERVICES, Carrier	RESPONDENT

OPINION FILED MARCH 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by AARON MARTIN, Attorney, Fayetteville, Arkansas.

Respondents represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On March 3, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 22, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed between the parties at all relevant times.
3. The claimant was earning an average weekly wage of \$433.60.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of bilateral carpal tunnel syndrome.
2. Related medical.
3. Attorney fee.

The claimant contends that the injury she received to her hands, namely bilateral carpal tunnel syndrome, is a compensable workers' compensation injury. Claimant worked

for the respondent as a switchboard operator from December 2, 1998 until February 12, 2003. Claimant contends her job required rapid, repetitive use of her hands. The claimant contends that this rapid, repetitive work associated with her job is the major cause of her bilateral carpal tunnel syndrome. Finally, claimant contends she is entitled to past and future reasonable and necessary medical treatment for the treatment of her work related injuries.

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

From a review of 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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 22, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent.

FACTUAL BACKGROUND

The claimant is a very nice 41-year-old woman who graduated from high school and attended one year of business college. Prior to going to work for the respondent claimant had previously worked as a convenience store cashier, as a school cafeteria worker, as an employee at an adult daycare center, and as a line worker for Universal Electric.

Claimant was hired by the respondent to work as a switchboard operator on

December 2, 1998. Claimant testified that her primary job duties required her to answer up to six telephone lines and use a 10-key pad to direct each call to the proper party. In order to page an employee or to transfer a call it was necessary for claimant to press four numbers. Claimant testified that when she originally went to work for the respondent she would receive approximately 800 calls per day. Approximately six months before claimant last worked for respondent (February 12, 2003), the respondent obtained a direct call system which decreased the number of calls which went through the claimant's switchboard.

Claimant testified that in addition to her switchboard operator duties she was required to perform some typing which she estimated at approximately three hours per day. She also ordered and distributed office supplies, greeted customers and vendors, and operated the fax and copy machines.

Claimant testified that in the fall of 2002 she began noticing problems with her hands. Initially, this developed as coldness in parts of her hands and fingers and eventually led to her having difficulty holding objects. Claimant had been seeking medical treatment from Joan McDonald, a nurse practitioner, over the course of several years for various non-work related conditions including anxiety and depression. At some point claimant mentioned her problems with her hand to McDonald who referred claimant to Dr. Kaplan. Dr. Kaplan ordered NCV studies which revealed severe carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left. Dr. Kaplan has treated claimant conservatively with splints and physical therapy.

Claimant has filed this claim contending that her bilateral carpal tunnel syndrome is causally related to her job activities with the respondent.

ADJUDICATION

Since claimant contends that she suffered a work related gradual onset of bilateral

carpal tunnel syndrome, claimant is not required to establish that her job duties required rapid repetitive motion. *Kildow v. Baldwin Piano and Organ*, 333 Ark. 335, 969 S.W. 2d 1990 (1998). However, claimant has the burden of proving by a preponderance of the evidence that she suffered bilateral carpal tunnel syndrome which arose out of and in the course of her employment; that a work-related injury was the major cause of her disability or need for medical treatment; and that the compensable injury is established by objective medical findings. *Id.*

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with the respondent.

Claimant testified that when she originally began working for the respondent she fielded approximately 800 calls per day which required her to use a 10-key pad in order to page an employee or transfer the call. Each of these activities required claimant to input four digits. Claimant testified that as time passed the number of calls she took on a daily basis decreased due in part to an increase in the telephone technology used by the respondent. For instance, the claimant testified that respondent installed a direct call system that allowed individuals to call employees without the call having to go through the switchboard. Claimant testified that respondent's true automated telephone system did not begin until approximately six months before she left her employment with respondent on February 12, 2003. Interestingly, this was also the time when claimant testified that she first began noticing problems with her hands. The claimant testified that she did not notice any problems with her hands until the fall of 2002. This was during the time respondent had implemented its more advanced telephone system and claimant had suffered a "tremendous" decrease in the number of calls per day.

Thus, I believe it is important to note that claimant's symptoms did not begin when

she was fielding the greatest number of calls. Instead, according to claimant's testimony, her hand problems did not begin until about the same time that respondent obtained telephone equipment which in claimant's words caused a tremendous decrease in her number of calls.

Despite claimant's testimony that she began developing problems with her hands in the fall of 2002, the medical evidence does not reflect a history of any hand complaints until April 17, 2003. This was more than two months after claimant had last worked for the respondent on February 12, 2003.

The medical evidence indicates that claimant has been evaluated and treated by various physicians and Joan McDonald, a nurse practitioner, over the course of several years for various non-work related conditions including attention deficit disorder, anxiety, depression, and obsessive compulsive symptoms. In fact, the medical records indicate that claimant was seeking medical treatment from these physicians in the fall of 2002 when claimant contends that her hand pain initially began. The medical records reflect multiple visits and phone calls to treating physicians and Joan McDonald between the fall of 2002 and April 17, 2003 with no mention of hand complaints until April 17. Again, April 17, 2003 was more than two months after claimant had last worked for the respondent.

Furthermore, claimant did not report an alleged work-related injury to respondent until two to three days after she learned that she had carpal tunnel syndrome and Dr. Kaplan suggested it could be work related.

In summary, claimant testified that she did not notice any problems with her hands until the fall of 2002. At that time respondent had switched over to a direct telephone line system which had resulted in a tremendous decrease in the number of calls claimant was answering on a daily basis. Between the fall of 2002 and April 17, 2003, the medical records reflect that claimant had multiple visits and phone calls with medical providers with no mention of any hand complaints. Hand complaints are not mentioned in a medical

report until April 17, 2003, more than two months after claimant last worked for the respondent. Given this evidence, I find that claimant has simply failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with the respondent.

In reaching this decision, I am aware that Dr. Kaplan has opined that he believes that claimant's bilateral carpal tunnel syndrome is probably causally related to her employment with respondent. However, based upon the evidence previously discussed, I find under the circumstances in this case that Dr. Kaplan's opinion is entitled to little weight.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE