

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400957/E907637

CAROLYN BRAZUELL	CLAIMANT
LONG JOHN SILVERS, INC.	NO. 1 RESPONDENT
FEDERAL INSURANCE INSURANCE CARRIER	NO. 1 RESPONDENT
ACE AMERICAN INS./GALLAGHER BASSETT	NO. 2 RESPONDENT

OPINION FILED SEPTEMBER 8, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by CHADD MASON, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by DAVID HOFFMAN, Attorney, Monticello, Arkansas.

Respondent No. 2 represented by DAVID JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

This Nunc Pro Tunc ordered is issued to correct the compensation rate on page 2 of the original opinion from \$229.00 to \$129.00 for temporary total disability and permanent partial disability. This order does not change, alter or amend any other matter previously set out in the original order dated September 8, 2005.

A hearing was held on June 14, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on December 9, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. Respondents No. 1 accepted compensable injuries on April 12, 1999, to the claimant's right carpal tunnel and neck in claim number E907637.

4. Medical expenses and temporary total disability were paid for the claimant's 1999 injuries by Respondents No. 1.

5. Respondents No. 1 had coverage on April 12, 1999, until January 1, 2003.

6. Respondent No. 2 has coverage from January 1, 2003, to present.

7. Respondents No. 1 have accepted and paid a 10 percent whole body impairment for the claimant's 1999 injuries.

8. Respondent No. 2 has accepted and paid medical for the claimant's bilateral carpal tunnel problems from September 4, 2003, in claim number F400957.

9. The parties agree that in the year 1999 the claimant was entitled to a workers' compensation rate of \$256.00 for temporary total disability.

10. The parties stipulate that in the year 2003 the claimant was entitled to a TTD and PPD rate of \$129.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Were claimant's current problems with her neck and bilateral carpal tunnel a recurrence or a new injury?

2. Additional medical to include medical treatment for the claimant's neck.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she has suffered compensable injuries to her cervical spine and hands as a result of her work activities with the respondent. The claimant contends that such injury is either a new injury or "aggravation of a pre-existing injury" which was incurred at the same employment and such employment is the major cause of her need for medical treatment at this time. The claimant contends that she has been assessed by Drs. D. Luke Knox, Ryan Kapland and Jim Moore and is determined to be in need of surgery to correct her cervical spine and carpal tunnel syndrome. The claimant further contends that she is entitled to medical benefits so that she may receive such treatment and a controverted attorney's fee.

In regard to the foregoing issues Respondents No. 1 contend that they controvert this claim in its entirety for any allegation of injury since June 2002.

In regard to the foregoing issues Respondent No. 2 contends that all appropriate benefits have been paid as a result of the claimant's bilateral carpal tunnel syndrome. However, the respondents herein would reserve the right to seek subrogation

interests against the prior carrier, Federal Insurance Company, if it is ultimately determined that the prior carrier should be liable for any of the benefits alleged in the current claim. The respondents contend that the claimant's neck injury and/or problems were pre-existing in nature, and they are not liable for any benefits associated with the neck issues. The respondents contend that the claimant cannot prove she sustained a compensable neck injury while Ace American Insurance Company was on risk for the insured. In the alternative, the Respondent/Carrier, Ace American Insurance Company, would contend that Federal Insurance Company would be liable for any benefits associated with those issues, if somehow deemed compensable. If it is determined that the major cause of the claimant's bilateral carpal tunnel syndrome was a result of her work related activities during the time period in which Federal Insurance Company was on risk for the insured, Respondent/Carrier, Ace American Insurance Company, would request that the Administrative Law Judge either allocate the benefits due from each carrier, or hold the prior carrier responsible for said benefits and order the prior carrier to reimburse the current carrier for benefits paid. The respondents herein would reserve the right to raise Second Injury Fund liability at a later date, if or when the claimant's counsel pursues wage loss benefits. In that regard, the claimant previously received a permanent partial disability rating, as a result of her prior neck surgery. Furthermore, she has also previously undergone carpal tunnel release surgeries. Based upon the Timberline decision, the

respondents herein contend that the Second Injury Fund would be liable for any and all wage loss benefits. The respondents would reserve the right to amend and supplement their contentions, prior to the hearing on this matter, after additional discovery has been completed.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing questionnaire marked Commission's Exhibit No. 1. The claimant submitted three packets of medical records marked Claimant's Exhibit No. 1, Claimant's Exhibit No. 2 and Claimant's Exhibit No. 3. Respondent No. 2 submitted medical information marked Respondent No. 2's Exhibit No. 1 and they also admitted additional non medical information marked Respondent No. 2's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty-eight years old and had completed the ninth grade. The claimant testified that she began working for the respondent in January 1999 as a cashier. The claimant testified that as a cashier she also had duties of keeping up the lobby indicating that this involved carrying out the trash, picking up trays, mopping, sweeping and taking care of the people. The claimant testified that after a couple of years she was made a team leader which was pretty much the same thing as being a manager. The claimant testified that in this job she would open up the shop, raise the oil levels, carry the fifty pound boxes of oil to the vats and put it in, prep the fish, get food stuffs out of

the cooler and get everything ready. The claimant testified that this job as a team leader was much heavier work than being a cashier. The claimant testified that when she worked in the Springdale store she also unloaded trucks, carried the items in and stored them away. The claimant testified that she would also have to rotate the food stuffs putting the new items underneath and putting the older items on top.

The claimant testified that in 1999 she was unloading a truck and injured her neck. The claimant testified that her manager and assistant manager were both present and were aware of her accident. The claimant testified that she was sent to the doctor and she ended up being seen by Dr. Knox. The claimant agreed that while she was being treated by Dr. Knox for her neck, she also was diagnosed with having right carpal tunnel. The claimant testified that during this period to time her neck was very painful like she had a bad cramp in her neck all the time. The claimant explained that her right hand would go numb and occasionally she would drop things. The claimant testified that Dr. Knox had tests run and that Dr. Blankenship ultimately operated on her neck. The claimant explained that Dr. Blankenship put hardware in her neck, describing it as a plate and also a cage around the spinal column with six screws. The claimant testified that Dr. Knox operated on her right hand. The claimant testified that following these surgeries she eventually was returned to work on light duty for a period of time and gradually worked back to her regular job of team leader. The claimant testified that the duties that she returned to were just

like those she had prior to her accident which involved unloading the trucks, carrying the fifty pound boxes of oil, standing all day on her shift and moving stock around. The claimant testified that she is doing these same duties to date.

The claimant testified that when Dr. Blankenship released her and she returned to work for the respondent she continued having pain and discomfort in her neck. The claimant testified that over time these symptoms have increased and that the pain is constant and worse in her neck and she has headaches. The claimant testified that there has not been any one event which has happened which has caused her pain to increase but that it has just gradually gotten worse over time. The claimant testified that after she was released by Dr. Blankenship, she continued to be seen by Dr. Knox because of her hands. Dr. Knox has also recommended that she have the hardware taken out of her neck. Dr. Knox has continued to give her medications for her discomfort, remembering that she has taken Hydrocodone, Methadone, Oxycodone, Percocet and Darvocet. The claimant testified that all these medications have been prescribed to her since she was released by Dr. Blankenship and they have been for her neck discomfort. The claimant agreed that Dr. Van Ore is her family physician and he has been prescribing medications for her. The claimant testified that her workers' compensation insurance carrier paid for these medications for a period of time but for the last four or five times that she has gone to get her prescriptions refilled, they have not been authorized. The claimant explained that she gets these medications

once a month. The claimant testified that recently she has been sent back to Dr. Blankenship and that he has had her undergo an MRI and recommended physical therapy as well as a Decadron Dose Pack. The claimant agreed that currently she is asking that she be allowed to undergo the recommendations of Dr. Blankenship as well as pay for her pain medications.

The claimant testified that Dr. Knox has been treating her for her hands for the past six or seven years. The claimant testified that she has undergone additional tests by Dr. Capland which now indicates that she has left carpal tunnel as well as right carpal tunnel problems. The claimant again testified that she has continued to do the same duties as she has for the past several years remembering that specifically after her first carpal tunnel surgery when she returned to work she still was very sore. The claimant testified that even after her first surgery she continued to have numbness, tingling and dropping things. The claimant testified that her symptoms were better for a while following her first surgery. The claimant again testified that she cannot recall any specific event or time when she realized that her hands were getting worse, just over time with her continuing work responsibilities her problems gradually developed. The claimant testified that it has been at least a couple of years since she has noticed that her left hand was beginning to develop symptoms of cramping and feeling numb. The claimant testified that she will have to sit up at night on the side of her bed and shake her hands to try and get the feeling to come back into them. The claimant

testified that when using the tongs to serve or work with the fish she sometimes drops the tongs.

On cross examination by Respondents No. 1, Federal Insurance Carrier, the claimant testified that she remembers being seen by Dr. Runnels on or about April 11, 2000, but does not remember specifically what she said to him. The claimant, in reading from her deposition, read that when the doctor did her right hand, he said eventually the left hand would have to be done. The claimant testified that she cannot remember if she began having problems with her left wrist prior to September 2003. The claimant stated, "I can't remember. I mean, it's been going on and on forever, you know." The claimant testified that she has not lost any time off work as a result of her wrists or neck since she returned after her surgeries.

On cross examination by Respondent NO. 2, the claimant testified that it was her understanding that Dr. Blankenship had recommended removal of the plate in her neck. The claimant testified that she would agree with the medical records dated April 11, 2000, which set forth that her symptoms are now on the left. The claimant agreed that as of May 2002 she had reported to the doctor that she was having bilateral numbness in her arms and having neck pain. The claimant also agreed that she reported to the doctor on June 18, 2002, as reflected in his clinic note that she was dropping things a lot.

At the conclusion of the testimony, Respondent No. 2 stated that they would not take the deposition of David Booth as

previously discussed. Respondent No. 2, through its attorney, stated that they would rely on the medical records.

The medical records set forth that the claimant began being treated for her neck and right arm problems in May 1999. The claimant was treated conservatively with medication and physical therapy by Dr. Runnels and Dr. Knox until January 5, 2001, when Dr. Knox performed a right carpal tunnel release on the claimant. The claimant continued as to her neck problems with conservative care up until January 7, 2002, when Dr. Blankenship operated on the claimant's neck. The claimant underwent nerve conduction studies on October 27, 2003, which were positive for left carpal tunnel syndrome. On November 6, 2003, the claimant underwent nerve conduction studies on the right which indicated that she has right carpal tunnel syndrome. Dr. Luke Knox writes on November 20, 2003, that he has counseled with the claimant concerning the risk and complications of undergoing carpal tunnel releases. Dr. Knox writes on May 12, 2004, that he has seen the claimant for her complaints of headaches and difficulty with upper extremity numbness. Dr. Knox referred the claimant to neurology for further evaluation, noting further that she is on Hydrocodone and would like to get her on a non narcotic treatment for her headaches. Dr. Knox writes on April 15, 2004, that he has seen the claimant for her complaints of significant neck pain and headache. Dr. Knox writes that the claimant is awaiting approval for her left carpal tunnel release. Dr. Knox writes that the claimant underwent extensive reconstruction of her neck at C3-C4 with corpectomy at C5

with plating and cage placement at C5. The doctor notes that there appears to be significant impingement upon the disc space at the level below her fusion at C6-C7 and due to this he recommends that she have the plate removed. The doctor recommended that the claimant undergo an MRI, gave her a shot of medication and sent her to physical therapy to undergo a RF stimulator trial. On December 2, 2004, Dr. Knox writes that the claimant continues to have persistent difficulties with left carpal tunnel syndrome and he anticipates her undergoing a release in the near future. Dr. Knox recommended that the claimant follow up with Dr. Blankenship concerning her persistent cervical spine complaints, noting that there appears to be some migration of the inferior screws into the disc space at the lower level. X-rays taken of the claimant's cervical spine on December 2, 2004, confirm Dr. Knox's impression of problems with the claimant's cervical hardware.

Dr. James Blankenship writes on May 3, 2005, that he has seen the claimant as recommended by Dr. Knox. Dr. Blankenship notes that Dr. Knox did some x-rays on the claimant's neck and told her that the lower portion of her plate was overriding the C6-7 disc and he confirmed Dr. Knox's findings. Dr. Blankenship further notes that the inferior portion of her plate does now override the C6/7 disc. Dr. Blankenship further writes that there has been some subsidence of the Synmesh cage in the vertebral body and that there has also been some subsidence in angulation of the screws from her post operative films. Dr. Blankenship recommended a Decadron Dose Pack as well as Celebrex and physical therapy.

After a review of all of the evidence and testimony presented in this matter, I find that the claimant has sustained a recurrence of her neck problems as a result of the hardware in her neck shifting or adjusting causing her problems. Both Dr. Knox and Dr. Blankenship have indicated that the claimant has some problems with the hardware and screws in her cervical spine, therefore, Respondents No. 1 should be responsible for all reasonable and necessary medical treatment recommended by the claimant's treating physicians for the treatment for her cervical spine injury. I further find that the claimant's bilateral carpal tunnel problems should be apportioned equally between the respondents. The medical records set forth that during the period of time the claimant was treated for right-handed carpal tunnel, she was restricted to left-handed duty only and that by the year 2003 she had been diagnosed with left carpal tunnel problems and reoccurring right carpal tunnel problems as a result of her continued work for the respondent which had remained the same throughout her work history for them. It is noted that prior to 2003 the claimant did have complaints of left wrist problems but Dr. Runnels had indicated that this was a sprain and treated it accordingly. Therefore, Respondent No. 1 should pay for the cost of the reasonable and necessary treatment for this claimant's cervical spine as well as 50 percent of the medical treatment and benefits associated with this claimant's bilateral carpal tunnel problems. Respondent No. 2 should be responsible for one half of the treatment for the claimant's bilateral carpal tunnel problems.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. Respondents No. 1 accepted compensable injuries on April 12, 1999, to the claimant's right carpal tunnel and neck in claim number E907637.

4. Medical expenses and temporary total disability were paid for the claimant's 1999 injuries by Respondents No. 1.

5. Respondents No. 1 had coverage on April 12, 1999, until January 1, 2003.

6. Respondent No. 2 has coverage from January 1, 2003, to present.

7. Respondents No. 1 have accepted and paid a 10 percent whole body impairment for the claimant's 1999 injuries.

8. Respondent No. 2 has accepted and paid medical for the claimant's bilateral carpal tunnel problems from September 4, 2003, in claim number F400957.

9. The parties agree that in the year 1999 the claimant was entitled to a workers' compensation rate of \$256.00 for temporary total disability.

10. The parties stipulate that in the year 2003 the claimant was entitled to a TTD and PPD rate of \$129.00.

11. The claimant has proven by a preponderance of the evidence that her neck problems are a recurrence of her compensable injury of April 12, 1999.

12. Respondents No. 1 should be responsible for the payment of all reasonable and necessary medical treatment for this claimant's cervical spine problems.

13. The claimant has proven by a preponderance of the evidence that her bilateral carpal tunnel problems have developed over the years from working for the respondent. Due to the gradual onset of the claimant's bilateral carpal tunnel problems, I find that Respondents No. 1 and Respondent No. 2 should pay equally for the treatment of the claimant's bilateral carpal tunnel problems since her symptoms developed over the periods of time both carriers had coverage.

14. Respondents No. 1 and Respondent No. 2 should pay equally for the reasonable and necessary medical treatment for this claimant's bilateral carpal tunnel problems. See discussion above.

15. The respondents have controverted the claimant's entitlement to medical treatment for her neck as well as her carpal tunnel problems.

16. The claimant's attorney is entitled to the maximum statutory attorney's fee based on any benefits awarded herein as provided by Arkansas law.

ORDER

The claimant has proven by a preponderance of the evidence that she has had a recurrence of her cervical spine problems

resulting from her April 12, 1999, compensable injury. The claimant has also proven by a preponderance of the evidence that her bilateral carpal tunnel problems are a result of her work for the respondent over the many years she has worked for them.

Respondents No. 1 should pay for the cost of the treatment for the claimant's cervical spine problems as well as 50 percent of the treatment of her bilateral carpal tunnel problems.

Respondent No. 2 should pay 50 percent of the cost of the treatment of the claimant's bilateral carpal tunnel problems.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE