

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302102

STACEY COLLINS, EMPLOYEE	CLAIMANT
W N C CLOUD MERGER SUB, INC, EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY CO OF CT, INSURANCE CARRIER	RESPONDENT

**OPINION FILED APRIL 12, 2005**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Harrison, Boone County, Arkansas.

The claimant was represented by HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

The respondents were represented by HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on February 8, 2005 in Harrison, Arkansas. A prehearing order was entered in this case on December 3, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The employee/employer/carrier relationship existed among the parties on November 22, 2002.
2. The claim has not been accepted as compensable.
3. The claimant was hired on November 7, 2002. The claimant alleges that she began having symptoms of carpal tunnel syndrome 15 days later, on November 22, 2002.
4. When the claimant was hired, she was hired to work 40 hours per week at a pay rate of \$8.75 per hour.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following at the start of the hearing:

1. Compensability of carpal tunnel syndrome, trigger thumb release, submuscular ulnar nerve transposition.
2. Claimant's rights to receive Temporary Total Disability and medical.
3. Average weekly wage (\$8.75/hr versus \$9.30/hr and five days per week versus six).

The record consists of the February 8, 2005 hearing transcript, and the exhibits contained therein, as well as the post-hearing briefs filed by Ms. Brooks and by Mr. Davis which I have "blue-backed" for identification purposes.

#### **DISCUSSION**

Ms. Collins became employed at Wabash on November 7, 2002 as a saw operator in the production of hardwood strips used to construct flatbed trailers for trucks. She originally worked in the newer, more automated plant (Plant 2), and later transferred to the older, less automated facility (Plant 1). Ms. Collins developed problems using her right arm. She was off work for a period of approximately five weeks in 2003 before returning to work on approximately June 5, 2003. She then continued to work until February 21, 2004, and ultimately underwent surgery for right arm carpal tunnel syndrome, right arm cubital tunnel syndrome, and trigger thumb, performed by Dr. Todd Oliver, an orthopedic specialist, on March 15, 2004. Ms. Collins contends that each of these three conditions occurred by gradual onset as a result of her job duties at Wabash as a saw operator, and she seeks an award of medical benefits and temporary total disability associated with each of these three medical conditions.

A claimant seeking benefits for an allegedly work related carpal tunnel syndrome injury must prove by a preponderance of the evidence that (1) the carpal tunnel syndrome arose out of and in the course of employment; (2) the injury caused internal or external physical harm to the body that required medical treatment or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. In addition, the compensable injury must be established by medical evidence supported by objective findings. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). To prove the compensability of her gradual onset, cubital tunnel syndrome, and her trigger thumb, the claimant must also establish by a preponderance of the evidence that these injuries are caused by rapid repetitive motion. The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Id.

### **1. Cubital Tunnel Syndrome**

In the present case, I find that the claimant has failed to prove by a preponderance of the evidence that her ulnar nerve compression/cubital tunnel syndrome injury at issue arose out of and in the course of her employment with Wabash as a saw operator. The claimant testified that when she first went to work at Wabash, she began to experience back and neck pain. T 20. Ms. Collins testified that when she first saw Dr. Chitsey on November 22, 2002, she had been experiencing problems in her right arm for three to four days. However, I find more credible the notations in Dr. Chitsey's November 22, 2002 office report, the November 23, 2002 nurse's note written by nurse Sherry Sanders, Ms. Sanders' testimony regarding that nurse's note, and the October 29, 2002 Emergency Room Report from the North Arkansas Regional Medical Center. The October 29, 2002 Emergency Room Report indicates that Ms. Collins' low back pain actually started prior to that date while she was moving a dryer by herself. With regard to her right arm symptoms, Dr. Chitsey's November 22, 2002 office note, and nurse Sanders' nurses note and her testimony all three indicate that Ms. Sanders was also experiencing right arm symptoms shortly before she started work for Wabash.

Electrodiagnostic testing performed on November 25, 2002 indicated a tardy ulnar palsy across her right elbow.

Because the preponderance of the credible evidence establishes that Ms. Collins' ulnar nerve injury at issue pre-existed her employment with Wabash, I find that she has failed to establish by a preponderance of the evidence that she sustained an ulnar nerve injury at work which necessitated the ulnar nerve transposition surgery that Dr. Oliver performed on March 15, 2004.

## **2. Carpal Tunnel Syndrome**

Although the claimant's contentions in the prehearing order filed December 3, 2004 assert that she began to experience symptoms of carpal tunnel syndrome on November 22, 2002, Dr. Oliver's deposition testimony, and the contemporaneous medical reports and electrodiagnostic study from November of 2002 persuade me as a preponderance of the evidence that Ms. Collins was only experiencing symptoms of ulnar nerve compression, not medial nerve compression (carpal tunnel syndrome) on November 22, 2002, and that her right arm carpal tunnel syndrome in the wrist began to develop after she had worked a longer period as a saw operator for Wabash. After considering the timing of the claimant's onset of right arm carpal tunnel syndrome in

relation to her employment as a saw operator with Wabash, the nature and extent of her hand intensive job duties described in her testimony, the lack of evidence presented through Dr. Oliver or otherwise regarding any risk factors personal to Ms. Collins putting her at risk for development of carpal tunnel syndrome, and the comments of the various physicians in the record, I find that Ms. Collins has established by a preponderance of the evidence that her right arm carpal tunnel syndrome injury arose out of her employment duties as a saw operator for Wabash. In reaching this conclusion, I note, as has the respondent's attorney, that Dr. Oliver in his deposition apparently lacked the legal sophistication to state an opinion on causation within a reasonable degree of medical certainty, in light of his use of the terms "possibility" and "could" which do not express an opinion within a reasonable degree of medical certainty in the State of Arkansas. See generally Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). I also note that Dr. Ledbetter on February 21, 2003 expressed his opinion that Ms. Collins had not worked long enough at her job at Wabash to have developed an onset of symptoms from repetitive motion. On the other hand, Dr. Runnels, a Northwest Arkansas neurosurgeon, opined on March

7, 2003 that Ms. Collins' work at Wabash caused an overuse syndrome. I accord greater weight to the opinion of Dr. Runnels than I do to the opinion of Dr. Ledbetter or the comments of Dr. Oliver on the causation issue. Furthermore, there appears to be no dispute that Ms. Collins' medial nerve compression in the wrist, i.e. carpal tunnel syndrome, was the major cause of the medical treatment which she required for that condition, culminating in surgery for carpal tunnel surgery on March 15, 2004. Finally, I find that Ms. Collins' right carpal tunnel syndrome is established by medical evidence supported by objective findings, as Dr. Oliver specifically indicated in his March 15, 2004 surgical report that Ms. Collins' right carpal tunnel syndrome was confirmed by nerve conduction velocity studies.

### **3. Trigger Thumb**

I find that the claimant has established by a preponderance of the evidence that her trigger thumb injury likewise arose out of her repetitive job duties of gripping and releasing wood strips throughout the course of her work day. The trigger thumb injury is established by medical evidence supported by objective findings, including Dr. Runnels' March 7, 2003 observation of popping and

subluxation in the claimant's thumb as she moved it back and forth. As with Ms. Collins' carpal tunnel syndrome and cubital tunnel syndrome, I note, as did the respondent's attorney, that Dr. Oliver failed to state an opinion within a reasonable degree of medical certainty regarding whether the claimant's work did or did not cause a trigger thumb injury. Nevertheless, I note as discussed more fully below, that Ms. Collins engaged in rapid and repetitive gripping and releasing of the hands and fingers (including the right thumb), and the record fails to contain evidence of any particular risk factor putting Ms. Collins at risk of a trigger thumb injury. There appears to be no dispute that the condition did not develop until some months after Ms. Collins began her new job duties at Wabash, and there appears to be no dispute that the trigger thumb injury is the major cause of the need for medical treatment associated with that injury, again culminating in surgery for that injury on March 15, 2004.

I also find that the preponderance of the evidence establishes that the claimant engaged in rapid repetitive motion of the thumb to engage in gripping and then releasing her grip on the boards manipulated as a saw operator. In this regard, the evidence establishes that the claimant's

quota was 3,000 feet of board per hour in Plant 2 using boards measuring from 10 to 18 feet in length. Therefore, in Plant 2 the claimant would manipulate between 2.7 and 5 boards per minute. According to her testimony, which I find credible, she was constantly using her wrist and her thumb to pick-up the wood, grip the wood, put it on the saw, make the cuts (as many as 4 to 12 cuts per board) and then place the cut boards further down the line. In Plant 1, she performed essentially the same repetitive functions with a quota of between 1,000 to 1,200 feet per hour manipulating boards between 6 feet and 8 feet in length, thereby processing between 2.1 boards per minute and 3.3 boards per minute. Considering her repetitive gripping and releasing functions together, I find that the job duties of the wrist and the thumb required to process between 2.1 boards per minute and 5 boards per minute (that is, 1 board every 12 to 30 seconds) requires repetitive tasks which must be performed in a quick manner in order to manipulate sufficient boards to meet the required quota. I therefore find that the claimant has established by a preponderance of the evidence that her thumb injury was caused by rapid repetitive motion.

#### **4. Temporary Total Disability**

For a scheduled injury, a claimant is entitled to temporary total disability benefits until her healing period ends or until she returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2002). The healing period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. Id.

Because I find that the claimant has failed to establish that she sustained a compensable ulnar nerve entrapment injury, I find that the claimant is not entitled to temporary disability compensation for that injury. Because I find that Ms. Collins sustained a compensable carpal tunnel syndrome and a compensable trigger thumb injury, as per an agreement of the parties, I find that she is entitled to temporary total disability during the period

that she remained within the healing period for these injuries and was also off work. The attorneys have agreed to determine later precisely the periods during which Ms. Collins was off work. With regard to her healing period for these injuries, I find that she reached the end of the healing period for each injury on May 27, 2004. (R. 4. P. 23).

#### **5. Medical Treatment**

Dr. Oliver's deposition testimony has provided me essentially no useful guidance in determining when Ms. Collins' carpal tunnel syndrome developed or when her trigger thumb developed. Dr. Runnels' March 7, 2003 letter to Dr. Arnold documents the existence of the trigger thumb as of that date, and the unsigned electrodiagnostic testing report dated March 6, 2003, from Neurological Associates contained an impression of right carpal tunnel syndrome based on moderate changes of chronic denervation in the right abductor pollicis brevis. The claimant has therefore established by a preponderance of the evidence that treatment for her right upper extremity symptoms beginning on February 21, 2003 is causally related to, and reasonably necessary for, her work related carpal tunnel syndrome and her work related trigger thumb, but I find that the claimant

has failed to establish that any treatment she received before February 21, 2003 was causally related to either her carpal tunnel syndrome or her trigger thumb. I find that all of the treatment that the claimant received for her right arm from February 21, 2003 through May 27, 2004 was reasonably necessary for her work related injuries, except of course for her right ulnar nerve submuscular transposition surgery.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee/employer/carrier relationship existed among the parties on November 22, 2002.
2. The claim has not been accepted as compensable.
3. The claimant was hired on November 7, 2002. The claimant alleges that she began having symptoms of carpal tunnel syndrome 15 days later, on November 22, 2002.
4. When the claimant was hired, she was hired to work 40 hours per week at a pay rate of \$8.75 per hour.
5. The claimant has failed to establish by a preponderance of the evidence that she sustained a compensable ulnar nerve compression injury. Specifically, the preponderance of the evidence establishes that Ms. Collins' ulnar nerve compression injury at issue pre-existed her employment with the respondents.

6. The claimant has established by a preponderance of the evidence that she sustained a compensable right carpal tunnel syndrome injury.

7. The claimant has established by a preponderance of the evidence that she sustained a compensable right trigger thumb injury.

8. The claimant is entitled to temporary total disability for her carpal tunnel syndrome injury and for her trigger thumb injury, but not for her ulnar nerve compression injury.

9. The healing period for the claimant's carpal tunnel syndrome injury and for her trigger thumb injury ended on May 27, 2004.

10. The respondents are liable for the treatment that Ms. Collins received for her right arm from February 21, 2003 through May 27, 2004, except for her right ulnar nerve submuscular transposition surgery performed on March 15, 2004.

**AWARD**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to a 25% attorney's fee on any indemnity benefits to which the claimant is

entitled as a result of the findings herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge