

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F210715**

<b>VERTIS J. CURLEY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>NLR SCHOOL DISTRICT, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 1, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 27, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law, North Little Rock, Arkansas.

Respondent represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits. On September 20, 2005, a pre-hearing conference was conducted in the claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Vertis J. Curley, the claimant, and Michael Curley, coupled with medical reports, and other documents comprise the record in this claim.

**DISCUSSION**

Vertis Curley, the claimant, with a date of birth of July 30, 1958, has been employed by respondent since September 15, 1997, as a bus driver and lunch room aide. On September 9, 2002, claimant an injury within the course and scope of her employment as a bus driver in the form of bilateral carpal tunnel syndrome.

The evidence in the record reflects that the claimant was involved in a motor vehicle accident on May 23, 2002. Claimant was driving a school bus when it was rear-ended. The August 27, 2002, report of Dr. Kenneth M. Rosenzweig, a Little Rock orthopedic physician, reflects regarding the mechanism of the accident:

. . . . . On the day of injury, she was driving a bus with a low backrest that came to her mid back and it was a wobbly seat, had both hands on the steering wheel, and saw a car coming behind her that rear-ended the bus; which was empty. . . . She was able to work approximately 2 to 3 days, when she started to have an onset of pain in her neck, back, and arms associated with numbness. (JX. #3, p. 1).

The claimant's diagnosed bilateral carpal tunnel syndrome was accepted as compensable by respondent. Prior to claimant's August 27, 2002, evaluation by Dr. Rosenzweig, the evidence reflects that she had been seen by Dr. Earl Peebles and Dr. Lon Burba. After a period of conservative treatment modalities, which include physical therapy, claimant's symptoms progressed to the point that she elected to pursue surgical treatment of her carpal tunnel syndrome.

On October 2, 2002, claimant was initially seen by Dr. Michael M. Moore, a Little Rock orthopedic surgeon, pursuant to a referral of Dr. Rosenzweig. On November 18, 2002, claimant underwent right carpal tunnel release surgery by Dr. Moore. In a February 18, 2003, letter to the claimant's attorney Dr. Moore opined:

Based on the clinical history which was provided by Ms. Curley, it appears the motor vehicle accident on April 25, 2002, aggravated the symptoms related to the carpal tunnel syndrome. It is my opinion driving a bus would not be the primary cause of a carpal tunnel syndrome. If Ms. Curley's job required significant gripping, this type of activity could aggravate or precipitate symptoms associated with the carpal tunnel syndrome. These statements are made within a reasonable degree of medical certainty. (JX. #3, p. 30).

On February 19, 2003, claimant underwent left carpal tunnel release surgery under the care of Dr. Moore.

Claimant was seen by Dr. Reginald J. Rutherford on May 28, 2003, pursuant to a referral of Dr. Moore for electrodiagnostic testing to evaluate current status of the median nerve of both upper extremities. The May 28, 2003, report of Dr. Rutherford concluded:

The nerve conduction study demonstrates a significant improvement from the pre-operative study. The present study does demonstrate mild impairment of the median nerve localized to the wrist both upper extremities. In summary present study demonstrates bilateral carpal tunnel syndrome of mild degree. Right and left median nerves are equally affected. (JX. #3, p. 39).

In a May 15, 2003, report, Dr. Moore opined that the claimant would reach maximum medical improvement on June 10, 2003. On June 5, 2003, Dr. Moore assessed the claimant with 10% permanent physical impairment to each hand. (JX. #3, p. 41).

On December 5, 2003, claimant was again seen by Dr. Rutherford at the request of Dr. Moore for evaluation of her bilateral arm pain. Prior to the December 5, 2003, evaluation the claimant had undergone BTE validity testing which revealed evidence for significant submaximal effort. Arrangements were made by Dr. Rutherford for the claimant to undergo an EMG/nerve conduction study of both upper extremities and triphasic bone scan of both upper extremities. (JX. #3, p. 42-43). A December 30, 2003, Clinic note of Dr. Rutherford relative to

the claimant reflects, in pertinent part:

Ms. Curley is seen in clinical follow up. She reports vitamin B6 to be of benefit. This should be continued without change. Her bone scan has now been completed and the report received. There is evidence for minimal degenerative arthritis right wrist. There is also evidence of mild degenerative arthritis involving the shoulders and sternoclavicular joint. Study also demonstrates evidence for dental disease. Ms. Curley was reassured that there was no evidence of significant abnormality referable to her complaint of upper extremity pain. Ms. Curley may continue to work current duties without change as a bus driver. She will be seen in clinical follow up in three months to review her status referable to residual abnormality on EMG/nerve conduction study and ongoing treatment with vitamin B6. (JX. #3, p. 48).

Dr. Rutherford noted in a March 23, 2004, clinic note that with regard to the claimant's carpal tunnel syndrome the same was stable and nonchanging from a clinical perspective. Dr.

Rutherford did commence a trial of therapy with Celebrex 200 mg twice per day for the claimant. (JX. #3, p. 49).

The medical in the record reflects that the claimant was seen by Dr. Rutherford on April 20, 2004. The clinic note relative to the April 20, 2004, visit reflects, in pertinent part:

. . . . . She reports intolerance to Celebrex which she has discontinued. She was advised that the only further recommendation I had pertaining to her carpal tunnel syndrome is use of splints. It is of note in this regard that there has been significant improvement in status of the median nerve post-operatively with serial testing revealing that residual abnormality is stable and nonchanging in character. Ms. Curley once again raised the possibility of having her neck evaluated. It was again reinforced that she needed to follow up with Dr. Burba for this problem area and that if she wished work comp coverage or at least consideration for same she would need to contact her adjuster to discuss this issue. The plan at present is for clinical follow up with repeat nerve conduction study in six months time. If there is no further change in objective abnormality in Ms. Curley's case, she will be dismissed. (JX. #3, p. 51).

Claimant acknowledged that she was not satisfied with the amount of the ratings issued

by Dr. Moore. As a result of her request for a change of treating physician, on July 1, 2004, a Change of Physician Order was entered by the administrator of the Medical Cost Containment Department of the Commission, changing her treating physician from Dr. Michael M. Moore to Dr. David Rhodes.

The medical reflects that the claimant was seen by Dr. Rhodes on July 22, 2004, with bilateral hand pain. Following his examination of the claimant during the July 22, 2004, visit, Dr. Rhodes assessment was that of “bilateral upper extremity subjective pain upon carpal tunnel release”. The July 22, 2004, concludes:

I instructed the patient that we can treat here with anti-inflammatories and she can continue wither her previous work level. I’ll talk with her case manager about her condition and we’ll see her back here on an as needed basis. (JX. #3, p. 52).

A August 14, 2004, report reflects that the claimant was referred by Dr. Rhodes to Functional Testing Centers, Inc., for a functional capacity evaluation. The FCE report noted the claimant’s medications as Bextra, other Anti-inflammatory, Celebrex, Advil, Trimie. The FCE report further reflects, under the interview intake:

. . . . Mrs. Curley states that pain medication does help. She states that she takes Bextra and Advil. . .

Mrs. Curley states she is currently seeing Dr. Rhodes, who referred her for an FCE and does not have a scheduled follow-up appointment yet. Mrs. Curley states she feels she is stronger now due to physical therapy, but still has pain after using her hands all day. Mrs. Curley states when she works with her hands on a daily basis her hands swells up and have shooting pain and numbness from her arms down to her finger tips.

Mrs. Curley states on a good day her pain level is a 4/10 on a bad day 7/10 on the 0 to 10 pain scale.

Mrs. Curley states on a normal day cooking, lifting pots and pans, and lifting a mop bucket, while cleaning causes sharp pain in her shoulder down to hands bilaterally. She also states she has broken many drinking glasses when lifting them empty or full when she experiences a sharp pain and she drops them. Mrs. Curley states if she is at work, the most physical thing she does is driving the bus and opening the crank on the bus door. She states it makes her nervous to be driving the bus and be responsible for the lives of children and not be 100% healed. She states she has trouble turning sharp corners and using her hands on the steering wheel. Mrs. Curley states when the pain is intense she takes Advil and rubs her arms until the pain subsides. (JX. #3, p. 57).

Following the FCE claimant was released to return to full time work in August 2004, and returned to the employment of respondent in her capacity as a bus driver and lunch room aide. A August 23, 2004, clinic note of Dr. Rhodes reflects that the claimant's FCE showed that she met the necessary physical requirements for a bus driver position. The note further reflects that the claimant was released to full duty as a bus driver and would be seen back by Dr. Rhodes on an as need basis. (JX. #2, p. 15).

Claimant's testimony reflects that she was again seen by Dr. Rutherford following the entry of the Change of Physician Order to Dr. Rhodes. The evidence reflects that on October 26, 2004, claimant reported to Dr. Rutherford for electrodiagnostic testing to evaluate the current status of her median nerves. The clinic note of Dr. Rutherford authored in connection with the claimant's October 26, 2004, visit, reflects, in pertinent part:

Ms. Curley is seen in clinical follow up. She underwent electrodiagnostic testing reported under separate cover. This demonstrates further improvement in her carpal tunnel syndrome. She has residual abnormality which is mild. She does not require any further surgery. . . . (JX. #3, p. 69).

The testimony of the claimant reflects that in August 2004, she returned to her regular

duties as a bus driver and lunchroom aide. Claimant asserts that her contact with Dr. Rhodes consisted of him reviewing the medical reports and films by her prior treating physicians and ordering the FCE. Further, claimant maintains that Dr. Rhodes recommended that she continue taking the anti-inflammatory medication that had been prescribed by her prior treating physicians, to include Dr. Rutherford.

The claimant testified that once she begin driving the bus she continued to experience residuals relative to both hands, to include pain and cramping/spasms. Claimant's testimony reflects that she does not take prescription medication during the day while driving the bus but rather over-the-counter medicines such as Advils to address her pain. Claimant noted that while she has been furnished splints to wear on both wrists, she is unable to drive the bus while wearing them. As a consequence of the afore, claimant maintains that when not driving the bus she frequently wear the splints to address the complaint of pain in her wrists. Claimant's testimony reflects that while driving the bus the fingers on her right hand draw and become painful. Claimant noted that after driving the bus from between thirty minutes to an hour her right hand begins to draw. When the afore occurs claimant refrains from using her right hand and will massage it when possible with her left hand.

Claimant's testimony reflects that she drives the bus for two (2) hours in the morning, and that in the afternoon she drives the bus from 1:45 p.m. to 8:00 p.m. Claimant performs duties as a lunchroom aide from 10:45 a.m. assisting students during the lunch hour. Claimant maintains that she needs medical treatment in order to continue performing her job.

The testimony of the claimant reflects that she contacted Dr. Rhodes' office in an effort to schedule an appointment for further medical treatment, however was informed that the

appointment and authorization for medical treatment had to be approved by respondent.

Claimant thereafter contacted the office of the claim adjuster handling her claim, Ms. Shannon Moore, however was informed that because she was represented by an attorney she could not speak with her. Claimant then contacted her attorney. Respondent take the position that further medical treatment is not reasonable and necessary.

Claimant's testimony reflects that since she could not obtain an appointment with her authorized treating physician, Dr. Rhodes, she sought and obtained medical treatment from her family physician, Dr. Billy Evans, who prescribed medical relaxants. The credible testimony in the record reflects that routine household chores and activities at the claimant's residence have been taken on by other family members, to include the claimant's retired husband.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On September 9, 2002, the relationship of employee-employer existed between the parties.
3. On September 9, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$154.00, for temporary total/permanent partial disability.
4. On September 9, 2002, the claimant sustained an injury, in the form of bilateral carpal tunnel syndrome, arising out of and in the course of her employment.
5. The evidence preponderates that additional medical treatment relative to the

claimant's compensable bilateral carpal tunnel syndrome is reasonable and necessary in relation to her injury.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of September 9, 2002.

7. The respondent has controverted the claimant's entitlement to reasonable necessary medical treatment subsequent August 23, 2004.

### **CONCLUSIONS**

The claimant has been employed by respondent as a school bus driver since September 15, 1997. On or about May 23, 2002, claimant suffered injuries in a motor vehicle accident when the school bus that she was driving was rear-ended by an automobile. On or about September 9, 2002, claimant loss time from work relative to upper extremity complaints which was later diagnosed as bilateral carpal tunnel syndrome. The compensability of the claimant's bilateral carpal tunnel syndrome is not disputed.

The claimant ultimately underwent surgeries on both her right and left upper extremities for the diagnosed carpal tunnel syndrome and was assessed with a 10% permanent physical impairment for each extremity. Claimant later obtained a change of physician relative to her compensable injury. After one visit to her new treating physician claimant was referred for a functional capacity evaluation and later released to full duty. Claimant asserts that she continues to require medical treatment relative to her compensable injury and that respondent has refused to authorize same thereby denying her access to her authorized treating physician. Respondent takes the position that the claimant has received all appropriated medical treatment regarding her compensable injury and that further medical treatment is not reasonable and necessary.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The compensability of the claimant's bilateral carpal tunnel syndrome is not disputed. Further, there is not a dispute that on July 1, 2004, a Change of Physician Order was entered by the Administrator of the Arkansas Workers' Compensation Commission Medical Cost Containment Department, designating Dr. David Rhodes as the claimant's authorized treating physician relative to her compensable injury.

The evidence reflects that the claimant was taking prescription medicine at the time of her initial evaluation by Dr. Rhodes. Further claimant had been provided splints by her prior treating physician and directed to wear same relative to her bilateral carpal tunnel syndrome. After undergoing a functional capacity evaluation pursuant to the directions of her authorized treating physician on August 12, 2004, claimant was released to return to full time duties as a bus driver for respondent.

Claimant has undergone carpal tunnel release surgery on both of her wrist in the treatment of her compensable injury. Further claimant has been assessed with a permanent physical impairment in the amount of 10% to each upper extremity as a result of her injury and surgery. There is no evidence in the record to reflects that Dr. Rhodes directed the claimant to refrain from taking medication, muscle relaxants or anti-inflammatories, which had previously been prescribed. Further, the medical records of Dr. Rhodes reflects that the claimant was released to return on an as needed basis at the time of the last visit.

Claimant had not returned to full duties as a bus driver at the time she was last seen by

Dr. Rhodes on August 23, 2004. The credible evidence in the record reflects that while the claimant has continued to discharge her assigned employment duties, she has also continued to experience symptoms relative to her compensable bilateral carpal tunnel syndrome. Claimant has experienced pain, spasms, and weakness in the affected extremities which has made the performance of her job duties difficult. None job-related routine household chores have been taken on by claimant's husband and family members at home due to the claimant's continued residual complaints attributable to her compensable injury.

Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medical procedure or device is reasonable and necessary treatment is a question of fact to be decided by the Commission. The evidence reflects that when the claimant was initially seen by Dr. Rhodes on July 22, 2004, pursuant to the Change of Physician Order, she was instructed that she could continued to be treated with anti-inflammatories. When the claimant was seen by Dr. Rutherford on October 26, 2004, after undergoing electrodiagnostic testing, it was noted that she still had residual abnormality which was mild. While Dr. Rutherford relayed that the claimant did not require any further surgery, he did not related the anti-inflammatories were no longer warranted.

In the instant claim respondent has denied claimant access to her authorized treating physician relative to her compensable injury. It is important to note that when claimant was last seen by Dr. Rhodes she was released to return on an as needed basis. Claimant has been returned to the duties of a full time bus driver for respondent for over fourteen (14) months, since August 2004. The credible evidence in the record reflects that the claimant's symptoms attributable to

her compensable bilateral carpal tunnel syndrome have progressively worsen. Claimant has sustained a 10% permanent physical impairment to each upper extremity as a result of her injury and surgery. The evidence preponderated that further medical treatment relative to the claimant compensable bilateral carpal tunnel syndrome is reasonable and necessary in relation to the compensable injury. Respondent has controverted the claimant's entitlement to further medical treatment subsequent to August 23, 2004.

**AWARD**

Respondent is herein ordered and directed to provide all reasonable necessary and related medical, hospital, nursing and other apparatus treatment to the claimant relative to her compensable bilateral carpal tunnel syndrome, to include medical related travel. Specifically, respondent is directed to authorize and pay the cost of the claimant's medical treatment under the care of her authorized treating physician, Dr. David M. Rhodes.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**