

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304864

SONJI FOULK

CLAIMANT

VAN BUREN SCHOOL DISTRICT

RESPONDENT

RISK MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 9, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by J. RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on March 1, 2005, in Fort Smith, Arkansas.

A pre-hearing order was entered in this case on December 27, 2004. This pre-hearing 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 the pre-hearing order, with certain clerical corrections noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On all relevant dates, including March 18, 2003 and October 23, 2004 the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$185.00 for total disability and \$154.00 for permanent partial disability for the March 18, 2003 compensable right elbow injury.
3. The appropriate weekly compensation rates are \$192.00 for total

disability and \$154.00 for permanent partial disability for the October 23, 2004 compensable right elbow injury.

4. There is no dispute over the payment of medical expenses directed toward either of the admittedly compensable elbow injuries.
5. There is no dispute at present over the payment of temporary disability benefits.

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

1. Whether the claimant's diagnosed right carpal tunnel syndrome represents a compensable injury or compensable consequence.
2. The claimant's entitlement to the payment of medical expenses incurred for her right carpal tunnel syndrome.

In regard to these issues, the claimant contends:

"On or about March 18, 2003, the claimant suffered an accidental injury to the right hand, wrist, and elbow arising out of or in the course of her employment which has resulted in a diagnosis of carpal tunnel syndrome for which she is entitled to treatment or other benefits. In the alternative, the carpal tunnel syndrome arose as a compensable consequence of the original compensable injuries suffered October 19, 2003. In the alternative, the right carpal tunnel syndrome arose as the result of overuse in the work place."

In regard to these issues, the respondents contend:

"The respondents contend that the claimant's right carpal tunnel syndrome does not meet the definition of compensable injury. In this regard the respondents contend the claimant's right carpal tunnel syndrome did not arise as a result of the March 19, 2003 right elbow injury, that the right carpal tunnel syndrome is not properly characterized as a compensable consequence of the left arm injury of October 23, 2003, and that the right carpal tunnel syndrome is not due to overuse in the workplace. "

DISCUSSION

I. COMPENSABILITY OF THE CLAIMANT'S RIGHT CARPAL TUNNEL SYNDROME

The central issue in this claim is the question of whether the claimant's right carpal syndrome represents a "compensable injury" or a "compensable consequence" as those terms are used in the Act. The burden rests upon the claimant to prove the compensability of this condition.

_____ The claimant must first show that her right carpal tunnel syndrome satisfies the requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection requires the claimant to prove the actual existence of the physical injury or condition alleged to be compensable by medical evidence. The claimant must further prove that the actual existence of this physical injury or condition is based upon or supported by "objective findings," as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The medical evidence presented is clearly sufficient to meet the requirements of Ark. Code Ann. §11-9-102(4)(D). The records of Dr. Heim establish the actual existence of a physical injury or condition, involving the claimant's right wrist. These records also show that this injury or condition is in the form of carpal tunnel syndrome. Finally, Dr. Heim's records note the existence of purely objective findings noted on electromyography and nerve conduction studies to support the existence of this injury or condition.

The claimant must next prove that her medically established and objectively documented right carpal tunnel syndrome satisfies all of the definitional elements of one of the categories of "compensable injuries" contained in Ark. Code Ann. §11-9-102(4)(A). Based upon the evidence presented, I find that the claimant has proven that her right carpal tunnel syndrome satisfies all of the definitional elements for a "compensable injury," as that term is defined in Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

The definitional elements of this subdivision are:

- (1) The injury must arise out of and occur in the course of the claimant's employment;
- (2) The injury must cause internal or external physical harm to the claimant's body;
- (3) The injury need not be caused by a specific incident or be identifiable by time and place of occurrence;
- (4) The injury must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome.

In order to prove that her right carpal tunnel syndrome represents an injury that arose out of and occurred in the course of her employment, the claimant must show the existence of a causal relationship between her employment activities and her right carpal tunnel syndrome. I find that she has established by the greater weight of the credible evidence the existence of this causal relationship.

The record reveals that the claimant is right hand dominant. It further shows that she had been employed by the respondent for approximately 9 years prior to March of 2003, as a cook. She testified that for over a year prior to March of 2003, she had experienced some degree of difficulties with her right hand. She described these difficulties as a "tiredness" that developed when she was required to use her right hand in a strenuous manner to perform her employment activities. She stated that when these symptoms occurred she would rest her hand for a brief period, and her symptoms would resolve. She testified that on March 18, 2003, she was chopping meat with her right hand for a period of time and she developed the onset of significant pain in her right arm from her hand to her elbow and occasionally into her right shoulder. She immediately reported these difficulties to her supervisor and was subsequently provided with medical services, ultimately from Dr. Heim. She stated that her right arm difficulties experienced some improvement after the treatment of her right elbow, but that she continued to experience pain and difficulty grasping

or holding objects in her right hand. She stated that her pain and difficulties increased whenever her employment required her to perform a hand intensive activity, particularly one involving gripping. Neither the claimant's testimony, nor any other evidence presented, indicates that the claimant was performing any non employment activities that would involve prolonged or extensive gripping or the intensive use of her right hand. I find this testimony to be credible and accurate.

Certainly, the hand intensive activities described by the claimant, particularly forceful gripping, can reasonably produce carpal tunnel syndrome. The opinion of Dr. Heim, which is the only expert medical opinion offered on the matter of causation of the claimant's right carpal tunnel syndrome, is set out in his report of August 25, 2004. In this report, he states:

"Sonji is a 39 year old female we did a right lateral epicondylectomy, a left epicondylectomy with the OssaTron. The left arm has done very well. The right has not. As we work this up further with an EMG/nerve conduction study by Dr. Bradley Short on June 22nd, it showed an abnormal NCV with a mild to moderate carpal tunnel syndrome involving the right median nerve. This (the right carpal tunnel syndrome) may have been part of the reason she did not respond well to the right elbow (treatment). She may have had this (right carpal tunnel syndrome) in conjunction with the elbow (epicondylitis). She has a problem all along. Part of her original upper extremity injury is due to overuse. I think this could easily be causally related to her original problem and she is going to set up a carpal tunnel release on the right. She understands the risk of infection, continued pain, stiffness and neurovascular tendon damage. I think this is reasonable. Her right arm did not respond. I think this (the right carpal tunnel syndrome) is probably causal related as well as her elbows."

Dr. Heim is a highly competent orthopaedic surgeon. He has extensive expertise in the area of medicine associated with both the claimant's epicondylitis and carpal tunnel syndrome. His medical opinion is entitled to significant weight and credit. This opinion is stated with severe condition and certainty and with full knowledge of the

facts and circumstances surrounding the claimant's case. I find that his opinion is stated "within a reasonable degree of medical certainty," as required by the Act. I further find his opinion to be persuasive.

In reaching my decision, I recognize that the respondent has proposed other potential causes for the claimant's right carpal tunnel syndrome that are not related to her employment activities for the respondent. The first of these is a motor vehicle accident that occurred in September of 1985. Following this accident, the claimant was apparently seen one time at the emergency room of Sparks Regional Medical Center. The emergency room report of that date records complaints of pain in the claimant's right hip and forearm. However, there are no complaints noted that would be indicative of the presence of right carpal tunnel syndrome and such a diagnosis was not made at the time. There is no indication that the claimant sought any further medical treatment for these complaints.

The respondent has also offered a handwritten and typed medical report from Dr. Jon D. Harper (apparently the claimant's family physician) which are dated October 9, 2001. In Dr. Harper's handwritten notation, he records that the claimant is in for a check up, apparently for previous migraines and problems with sinus tachycardia. In his handwritten notation he states that the claimant has gained weight, is hungry all the time, is tired a lot, and has experienced "hand swelling." In neither his handwritten or typed report does he indicate whether this swelling involves only the right hand, the left hand, or both hands. He also records no other complaints involving the claimant's hands. Curiously, in his type written report there is no mention of complaints of difficulties in the form of swelling of the claimant's hand or hands. In fact, in his physical examination, he notes that he observed no swelling or "edema" in any of the claimant's extremities. Clearly, mere swelling would not be particularly diagnostic of the existence of carpal tunnel syndrome (especially,

in light of the absence of any other recorded complaints-such as pain, numbness, tingling, or loss of grip strength). This is shown by the fact that Dr. Harper did not diagnose carpal tunnel syndrome or even feel that the claimant's hand complaints were sufficient to merit performing a simple Phalen's or Tinel's test during his physical examination. It must also be noted that even if these reports were indicative of the presence of carpal tunnel syndrome, this would be during the same time that the claimant had been performing the hand intensive activities required by her employment position with this respondent for a period of years.

Finally, the respondent points to an accidental fall, which the claimant experienced at home in November of 2000. At that time, the claimant sought treatment from the emergency room at Crawford Memorial Hospital. The emergency room records note no complaints involving the claimant's right wrist or hand. Her complaints involved only the proximal dorsal (lower top) portion of the claimant's forearm. There is no mention of any symptoms or complaints indicative of carpal tunnel syndrome. In fact, her physical examination indicates that her hands and wrists were entirely within normal limits. There is a mention of a possible abnormality involving the claimant's right wrist. This is found only in a x-ray report of the claimant's right forearm. This report states that over penetration and slightly suboptimal positioning in the wrist area "prevents exclusion" of a possible slight widening of the joint between the navicular and lunate. This study is interpreted as being only "questionable" for a ligamentous laxity in the proximal wrist. This possibility appears to have been excluded by the treating physician, in light of the claimant's symptoms and the results of his physical examination. His only diagnosis was a contusion with a hematoma (bruising) of the claimant's right forearm.

The evidence does not show that, the potential causes of the claimant's right carpal tunnel syndrome, advanced by the respondent, would be reasonably expected

to produce such a condition. Even if these non employment related events could have possibly played some causal role in producing the claimant's right carpal tunnel syndrome, the probability of these events being the actual cause is far less than the claimant's hand intensive employment activities for this respondent. It is simply my opinion that the greater weight of the credible evidence establishes that the claimant's hand intensive employment related activities for this respondent is the most probable or likely cause of her right carpal tunnel. This is all that the Act requires to establish the existence of the required causal relationship. It is not necessary that the claimant prove the existence of the causal relationship between the employment activities and the injury to an absolute or mathematical certainty. Thus, the claimant has satisfied the statutory requirement that her right carpal tunnel syndrome must arise out of and occur in the course of her employment with this respondent.

The next requirement is that the claimant's carpal tunnel syndrome must have caused internal or external physical harm to her body. Clearly, the claimant's significant right hand symptoms and the demonstrated neurological deficits are sufficient to prove internal neurological damage of at least a temporary nature. Thus, the claimant has proven the second requirement element of Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

The third definitional requirements of this subdivision is that the injury be caused by rapid repetitive movement or be in the form of carpal tunnel syndrome. Clearly, the claimant's employment related injury has been proven to be in the form of carpal tunnel syndrome. The results of the nerve conduction velocity studies (Claimant's Exhibit No. 2) show changes sufficient to support a diagnosis of carpal tunnel syndrome under Rule 37 of the Commission. Thus, the claimant has proven the third and final definitional element of Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

Although it is not necessary that the claimant prove that her right carpal tunnel syndrome was actually caused by employment related "rapid repetitive motion," the evidence does show that the hand intensive activities being performed by the claimant at the time she experienced the onset of severe symptoms, indicative of the presence of carpal tunnel syndrome, were in fact rapid and repetitive. The employment related activities of chopping meat, which the claimant was performing on March 18, 2003, not only involved forceful prolonged gripping, but also required rapid repetitive motion of the claimant's hand and wrist, as well as repetitive impact being transmitted to this portion of her anatomy. As Dr. Heim recognized this particular activity was not only sufficient to cause the claimant's admittedly compensable right epicondylitis, but would also be clearly sufficient to produce her right carpal tunnel syndrome.

In summary, I find that the claimant has proven that her right wrist and hand difficulties satisfy all of the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). However, for injuries falling under this definition, the claimant must also prove that this compensable injury is the major cause (more than 50% of the cause) of any disability or need for medical treatment, Ark. Code Ann. §11-9-102(4)(E)(ii).

As previously noted, the claimant has proven by the greater weight of the credible evidence that her hand intensive employment activities for this respondent particularly those on March 18, 2003, were the most likely or probable cause of her development of carpal tunnel syndrome. Thus, this employment related injury would be the "major cause" and, in fact, the sole cause for her need for medical treatment for this diagnosed condition. The evidence presented is not sufficient to show any other reasonable cause for this condition. Therefore, the claimant has satisfied the statutory requirement of Ark. Code Ann. §11-9-102(4)(E)(ii).

II. BENEFITS

The only benefits sought, at the present time, for the claimant's compensable right carpal tunnel syndrome is the payment of medical expenses incurred for treatment of this condition. In order to be entitled to these expenses, the claimant must show that these expenses were incurred for "reasonably necessary medical services" for this compensable injury. Under Ark. Code Ann. §11-9-508, medical services are "reasonably necessary" when they are necessitated by or connected with her compensable injury and have a reasonable explanation of accomplishing the purpose or goal for which they were intended.

The evidence shows that the evaluation of the claimant for her hand and wrist complaints by Dr. Heim and the neurological testing he ordered (i.e. the EMG/NCV) were necessitated by or connected with the claimant's right carpal tunnel syndrome. These medical services are of a type and nature commonly recognized as being appropriate by the general medical community to accurately diagnose and treat the claimant's right wrist/hand complaints.

The evidence presented further indicates that Dr. Heim has recommended the surgical release of the claimant's right carpal tunnel syndrome. However, this recommended procedure has not been performed. In her testimony, the claimant stated that she would be agreeable to undergoing this surgical procedure. It is apparent that this treatment is also connected with and necessitated by the claimant's compensable right carpal tunnel syndrome. This type of medical service is also recognized by the general medical community as being appropriate to improve or resolve carpal tunnel syndrome.

Therefore, it is my opinion that the medical services provided and recommended to the claimant for her right carpal tunnel syndrome by and at the direction of Dr. Heim represent reasonably necessary medical services, within the

meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services (subject to the medical fee schedule established by this Commission).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including March 18, 2003 and October 23, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On or about March 18, 2003, the claimant sustained a compensable injury to her right elbow, in the form of right epicondylitis.
4. On or about March 18, 2003, the claimant was earning wages sufficient to entitle her to weekly compensation benefits of \$185.00 for total disability and \$154.00 for permanent partial disability.
5. On October 23, 2003, the claimant sustained a compensable injury to her left elbow, in the form of epicondylitis.
6. On October 23, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$192.00 for total disability and \$154.00 for permanent partial disability.
7. On or about March 18, 2003, the claimant sustained a compensable injury in the form of right carpal tunnel syndrome. The claimant has established by medical evidence, which is supported by "objective findings," the actual existence of right carpal tunnel syndrome. The claimant has proven by the greater weight of the credible evidence that her right carpal tunnel syndrome arose out of and occurred in the course of her employment with the respondents, caused internal physical harm

to her body, and satisfies the requirements for a diagnosis of carpal tunnel syndrome contained in Rule 37 of the Commission. Finally, the claimant had proven that her employment related right carpal tunnel syndrome was the major cause for her need for medical treatment for this condition.

8. The medical services rendered to the claimant and recommended to the claimant for her right carpal tunnel syndrome by and at the direction of Dr. Stephen Heim, represent "reasonably necessary medical services," for this compensable injury within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subdivision, the respondents are liable for the expense of the medical services, subject to the medical fee schedule established by this Commission.
9. The respondents have denied the occurrence of any compensable injury to the claimant in the form of right carpal tunnel syndrome and have controverted her entitlement to any benefits attributable to such a condition.
10. As no controverted benefits for the claimant's compensable right carpal tunnel syndrome have been awarded to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney, at this time.

ORDER

The respondents remain liable for all appropriate benefits attributable to the claimant's admitted compensable right and left elbow injuries. However, no benefits attributable to these injuries have been controverted by the respondents, at the present time, and all such appropriate benefits have been voluntarily paid.

The respondents shall also be liable for the expense of medical services provided and recommended to the claimant for her compensable right carpal tunnel

syndrome by and at the direction of Dr. Stephen Heim. Such liability is subject to the medical fee schedule established by this Commission.

As no controverted benefits have been awarded directly to the claimant, no controverted attorney's fee can be awarded, at this time.

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.

MICHAEL L. ELLIG
Administrative Law Judge