

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410388

PATSY INGRAM, EMPLOYEE	CLAIMANT
HERMANN COMPANIES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CANNON-COCHRAN MGMT. SERVICES, TPA	RESPONDENT

OPINION FILED JUNE 6, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 18, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, 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 workers' compensation benefits.

On February 15, 2005, a pre-hearing conference was conducted in this 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 parties stipulated that the weekly compensation benefits rates are \$319.00/\$239.00, for temporary total/permanent partial disability. The testimony of Ms. Patsy Ingram, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Patsy Ingram, the claimant, with a date of birth of January 6, 1950, has been employed by respondent, Anchor Packaging, in Marmaduke, Arkansas since 1989. Claimant asserts that at the time she began working for respondent she was in good health.

The testimony in the record reflects that the Marmaduke plant of respondent manufactures rolls of plastic food wrap. Claimant discharged her job duties from the pack line, a box line for re-packed rolls, packing the finished product.

Claimant acknowledged that in 1995 she started having pain in both hands. Claimant explained that she experienced some numbness and tingling along with pain in her arms, which she described as minor. Claimant maintains, however, that she did talk with Mr. Mike Reeves, in Human Resource and Safety Manager, about her symptoms. Claimant asserts that while respondent did not refer her to a physician in conjunction with the reporting, she was nevertheless seen by one on her own, Dr. Bonner, her primary care physician.

The testimony of claimant reflects that she was referred by Dr. Bonner to a neurologist, Dr. Milosavljevic, who she saw on two (2) occasions. While the testimony of the claimant reflects that she took medication, Ibuprofen, relative to her complaints and medical treatment, she denies that recommendations were made regarding surgery. Claimant acknowledges that she returned to work under light duty restrictions for a week or two. Claimant maintains that she was instructed by her physician to refrain from doing the pack table, which entailed using a tape dispenser to tape boxes.

Claimant's testimony reflects that when she return to work, she continued on the pack

table for several months, until 1996, at which time she went to the machine and continued there until 2002. Claimant asserts that she was switched over to the machine to make it easier on her hands, at the recommendation of her supervisor. At the time of the change over claimant was no longer seeing the doctor.

The testimony in the record reflects that the time claimant was switched over to the machine she worked as a machine operator. In describing her duties as a machine operator, the testimony of the claimant reflects:

I just - I'd take the rolls that they made in the plant - the big rolls - and we'd put them on a machine, and I'd make the perforated rolls - the smaller rolls that they use like in hotels and schools. (T. 11-12).

Claimant's testimony reflects that her job as a machine operator was less hand intensive than the packing table job:

You're not constantly twisting and moving your hands and your fingers constantly like you do on a pack table. (T. 12).

Claimant testified that from 1996 until 2002, the pain, numbness, and tingling symptoms went away; that she was not taking any medication relative to same during that period; and she did not sleep in splints on her wrists at night, nor was she seeking any medical treatment. In short, the testimony of the claimant reflects that during the afore period she was asymptomatic.

Claimant testified that around the end of 2003 she returned to duties at the pack table, to basically the same job duties she performed at that location from 1989 until 1995. Claimant's testimony reflects that in terms of the hand-intensive nature of the job at the pack table, the same had not changed at the time she returned to it in 2003.

The testimony of the claimant reflects that when she returned to the pack table in late

2003, she did not work exclusively at that station. Claimant testified that she work twenty to thirty hours a week at the pack table and the balance of the time she worked as a machine operator.

In describing the pack table, claimant estimated it to be two-and-a-half feet wide, and eight feet long. Claimant's testimony reflects that job activities at the pack table entailed breaking the boxes apart, which came in two bundles, side-by-side and flat. Each bundle contained 700 boxes. After separating the boxes, claimant would stack and label them. Claimant noted that the labels were self-adhesive, and she affixed them to the box with her hand. After placing the label on the box, claimant then constructed the box by folding the perforations of the flat sheet into a box, which entailed at least three (3) hand movements. Claimant used both hands in folding to construct the box. Claimant is right hand dominate.

The testimony of the claimant reflect that size of the boxes from eight inches to thirty-seven inches long and six inches wide. Once the box is made, claimant then placed a roll of plastic wrap in it; close the lid; and tape it. In describing the manner in which she closed the lid, claimant testified:

You take the flap and you put it inside the box, and then - I have two different tape dispensers. I have one with a small roll and then you have what we call tape gun. (T. 19).

Claimant acknowledge that the tape gun is the same one that she was warned by the doctor in 1996 to refrain from using. Claimant estimated that she put out about one hundred boxes an hour when she worked on the pack table.

Claimant's testimony reflects that within six (6) months of return to the pack table in November 2003, she began to notice problems with her hands, in May 2004. Claimant noted the

onset of symptoms[numbness, tingling and later pain] in both hands, which continued to worsen. Claimant reported her complaints to her supervisor, Mr. Keith DeFries, who filled out an incident report. As a consequence of the afore, claimant was referred by respondent for medical treatment.

Claimant was referred by respondent to Dr. Michael Lack relative to her upper extremity complaints. After relaying a history of her complaints to Dr. Lack pursuant to his directions diagnostic studies were performed on the claimant. The bills of Dr. Lack and Dr. Braden, who performed the nerve conduction studies, were paid by respondent. Claimant was later referred by Dr. Lack to an orthopedic surgeon, Dr. Woloszyn.

Claimant's testimony reflect that surgery was recommended and scheduled by Dr. Woloszyn relative to her upper extremities. The first surgery was scheduled in September 2004, however it was cancelled or postponed due to claimant low potassium level, and it was rescheduled for November 2004. Claimant testified that to he knowledge respondent authorized the September 2004, scheduled surgery. Claimant testified that she was under the impression that the claim has been accepted as compensable by respondent. Further, the testimony of the claimant reflects that up until to point that surgery was scheduled she had not missed any time from work due to her complaints.

On November 5, 2004, claimant underwent carpal tunnel surgery on her right upper extremity under the care of Dr. Woloszyn. Claimant was off work for four (4) weeks following the first surgery. Claimant returned to work on December 5, 2004, having obtained a good result. Claimant returned to the same job duties following her surgery as she had performed previously.

The testimony of the claimant reflects that she continues to have problems/symptoms in

her left hand. Claimant testified that she is going to have the surgery on the left hand, however to date it has not been scheduled. The testimony of the claimant reflects that after she returned to work following the right carpal tunnel release surgery she learned that respondent was controverting her claim. Further, claimant's testimony reflects that while the medical bills incurred in her treatment with Dr. Lack and Dr. Braden have been paid, those relative to her surgery, to include Dr. Woloszyn, have not.

Claimant's testimony reflects that she received a telephone call from Ms. Cynthia Mitchell with CCMSI, the third-party administrator of respondent-employer, and was told that the claim was being denied as a workers' compensation injury. Claimant testified that the unpaid bills were turned over to her health insurance carrier, First Source, however were not being paid.

Claimant asserts that at the time she filed her claim for workers' compensation benefits the reason she indicated on the document that her complaints had been an on-going problem for several years was because it had started in 1995/96, however she asserts that she was symptom free from 1996 until 2003. Claimant denies seeing Dr. Bonner between 1996 and 2003 for complaints relative to her upper extremities, or carpal tunnel syndrome. Claimant acknowledged that she was informed in 1996, that it was a "possibility" that her complaints were carpal tunnel syndrome.

Regarding a claim filed with the prior TPA, Broadspire, for respondent-employer, claimant's testimony reflects that Mr. Reese Hines, the safety and human resource manager, made those arrangements. Specifically, claimant's testimony reflects that Mr. Hines responded that he would take care of things when she told him about her symptoms. Claimant denies that she was doing anything to produce symptoms in her wrists in 2001, or that she turned in anything

at that time. Claimant's testimony reflects that as far as she knows, the claim with Broadspire was denied.

Claimant denies that she ever received any indemnity benefits, temporary total disability, from respondent relative to the time she was off work following her surgery. The testimony of the claimant reflects that medical bills incurred relative to her 1995/96 upper extremity complaints were turned in on her health insurance.

The testimony of the claimant reflects that she discussed turning in the 1995/96 medical bills on workers' compensation with supervisory personnel at the time, however was told that the only way they would turn it in to workers' compensation is that if she had to have surgery. Further, claimant denies any knowledge of the typed portion of Form N, dated July 16, 2004, regarding on-going symptoms since 1996. (RX. #1).

The medical in the record reflects that claimant was seen on June 12, 1996, by Dr. Vladan Milosavljevic, a Jonesboro neurologist, pursuant to a referral by Dr. Jimmy D. Bonner, the claimant's primary care physician, for complaints relative to her upper extremities. Following his initial evaluation/examination, Dr. Milosavljevic indicated that the claimant's arm symptoms may be caused by carpal tunnel syndrome. (RX. #1, p. 1-2). On or about June 27, 1996, claimant underwent EMG/NCV studies under the directions of Dr. Milosavljevic. The test results, as reflected in the June 27, 1996, report was, " an abnormal EMG/NCV study that showed bilateral (right more than left) sensory-motor and mostly demyelinating moderate median neuropathy at the wrists". (RX. #1, p. 3).

There is no evidence in the record to reflect that the claimant sought or obtained medical treatment relative to upper extremity complaints following the June 27, 1996, visit to Dr.

Milosavljevic, until she was seen by Dr. Michael Lack on July 23, 2004. The July 23, 2004, office note of Dr. Lack reflects that claimant attributed her hand/wrist complaints to her work. The office note of Dr. Lack further reflects, relative to the nexus between the claimant's complaints and her work activities:

DOCTOR'S REPORT: Pt has worked Anchor Packaging for 15 years. She run a perforating machine and packs. Pt has stiffness and numbness in the morning when she gets up. She runs warm water on them to get them to wake up. She has had problems off and on for a while. She saw a Doctor in 1993 and was told that she had CTS. She was told to get splints and was given medication and got better. Over the past few months she has gotten worse. Pt has numbness and tingling in both hands in the 1st, 2nd, and 3rd fingers. Right is worse than the left. Pt is having trouble holding things. (CX. #1, p.1-2).

Dr. Lack's July 23, 2004, office notes reflects that he planned to get the claimant's medical records from Dr. Bonner. The office note further reflects that claimant was directed to wear splints at night and to refrain work activities involving repetitive tight gripping with hand or wrist movement. (CX. #1, p. 2).

Claimant was later referred by Dr. Lack to Dr. Terence P. Braden, D.O., for EMG/NCV bilateral wrist studies, which disclosed, "bilateral median nerve compromise at the wrist in the carpal tunnel, right is severe, left is moderate severe". (CX. #1, p. 10). Thereafter, claimant was referred by Dr. Lack to Dr. John T. Woloszyn, a Jonesboro orthopedic surgeon, for further treatment.

The September 7, 2004, office note of Dr. John T. Woloszyn relative to his evaluation of the claimant, reflects, in pertinent part:

Ms. Ingram is a pleasant 54 yowf referred by Dr. Lack. She works at Anchor Packaging. She c/o b/l hand pain and numbness. NCV studies showed severe R carpal tunnel syndrome and moderately

severe on the L. She has b/l symptoms which are indicative of carpal tunnel syndrome and positive testing with a need for surgical decompression. (CX. #1, p. 17).

The report further reflects that clinic note and billing were provided to the workers' compensation carrier. Claimant underwent the right carpal tunnel release surgery on November 4, 2004, and was seen in follow-up by Dr. Woloszyn on November 18, 2004, and December 3, 2004. (CX. #1, p. 21-22).

The record reflects a Form AR-N with the claimant's signature. Other than the claimant's signature all of the information contained on Form AR-N is typed, to include the date next to claimant's signature. The document reflects the date of the accident as July 16, 2004, and that the employer was notified on the same date. Claimant disputes the duration of the complaint as "on-going" for several years off and on. (RX. #1, p.4).

Finally, the record reflects a December 14, 2004, correspondence from Broadspire, the former third party administrator for respondent-employer, to the claimant. The correspondence reflects, in pertinent part:

On 12/09/2004, we received an Employer's First Report of Injury from your employer relative to a claim for compensation benefits for yourself. After a thorough investigation of the claim, we were able to determine that the Statute of Limitations has expired. Our decision is based on the facts of the injury and the provisions set forth in the Workers' Compensation Act of Arkansas.

Therefore, any bills you have incurred for treatment of this condition should be turned over to your group health carrier if any or to your employer's new workers' compensation claims administrator. (RX. #1, p. 5).

The December 14, 2004, correspondence reflects that a copy of same was provided to Mr. Michael Reese, at Respondent-employer, as well as the Arkansas Workers' Compensation

Commission.

After a thorough consideration of all to the evidence in this record, to include the testimony of the claimant, 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. At all times pertinent to this claim, the employee-employer relationship existed between the parties.
3. On July 17, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$319.00/\$229.00, for temporary total/permanent partial disability.
4. On or about July 17, 2004, the claimant sustained either a new injury or aggravation of her pre-existing condition arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period November 4, 2004, and continuing through December 4, 2004.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 17, 2004.
7. The respondent has controverted this claim in its entirety.

CONCLUSIONS

Claimant has been employed by respondent, a self-insured employer, since December 11, 1989. For several years following her initial employment claimant performed duties on the pack table until she developed symptoms in her hands and wrists which required medical treatment in 1995. Claimant was moved from the pack table by her supervisor to the position of a machine

operator. In late 2003, claimant was again assigned to duties on the pack table along with those as a machine operator. In July 2004, claimant again sought medical treatment for bi-lateral complaints of pain, tingling, numbness relative to her hands/wrists.

Respondent paid some the cost of claimant's medical treatment following the filing of her July 2004 claim for benefits relative to her bilateral hand/wrist complaints. Claimant asserts that respondent is liable for both medical and indemnity benefits growing out of her bilateral carpal tunnel syndrome. Respondent takes the position that the claimant has had carpal tunnel syndrome since 1996, that she did not file a claim until 2004, and that the statute of limitation has expired.

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

The evidence in the record reflects that respondent-employer is a manufacturer of plastic food wrap. Respondent is a self-insured employer relative to its workers' compensation obligations. Respondent utilizes the services of a third party service company to administer its workers' compensation program. There is evidence in the record to reflect that prior to 2004, the third party service company or administrator was Broadspire. The third party administrator of respondent-employer's workers' compensation claims in 2004 is Cannon-Cochran Management Services.

Ark. Code Ann. §11-9-401 (b), Employer's liability for compensation, provides:

The primary obligation to pay compensation is upon the employer, and the procurement of a policy of insurance by an employer to cover the obligation in respect to this chapter

shall not relieve the employer of the obligation.

Ark. Code Ann. §11-9-404, Security for compensation, provides, in pertinent part:

(a) Every employer shall secure the payment of compensation under this chapter:

(1)

(2) By furnishing satisfactory proof to the Workers' Compensation Commission of the employer's financial ability to pay compensation and receiving an authorization from the commission to pay compensation directly.

Ark. Code Ann. §11-9-405, Substitution of carrier for employer, provides, in pertinent part:

(a) In any case where the employer is *not* a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter with respect to that liability may be facilitated, the Workers' Compensation Commission shall by regulation provide for the discharge by the carrier, for the employer, of the obligations and duties of the employer with respect to such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter:

(b) For such purpose:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier.

(2) Jurisdiction over the employer by the commission or by any court under this chapter shall be jurisdiction over the carrier; and

(3) Any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

The credible evidence in the record reflects that claimant performed hand-intensive job duties in her employment with respondent at the pack table from the date of her employment until 1996. There is not a dispute regarding the rapid and repetitiveness of the claimant's job duties at the pack table. Further, the evidence discloses that when the claimant's bilateral hand/wrist complaints reached the point that she felt she needed medical treatment, she reported same to supervisory personnel of respondent. Claimant pursued medical treatment from her

primary care physician, Dr. Bonner, when the same was not forthcoming from respondent.

Claimant's bilateral hand/wrist complaints were diagnosed as bilateral carpal tunnel syndrome following diagnostic studies [EMG/NCV study] by Dr. Milosavljevic, a Jonesboro neurologist. While the claimant was furnished medication, Naprosyn, for symptomatic relief by her treating physicians there is no evidence in the record to reflect that surgery was recommended at the time. Claimant was seen by Dr. Milosavljevic on two occasions.

The credible testimony of the claimant reflects that when she broached the subject to supervisory personnel of respondent of filing a workers' compensation claim regarding the medical treatment for her bilateral carpal tunnel syndrome, she was informed that the same would be filed if she had to have surgery. Claimant continued to perform duties on the pack table following her treatment by Dr. Milosavljevic in 1996, until she was transferred by her supervisor to the job of machine operator.

There is no evidence in the record, medical or otherwise, to reflect that claimant sought or obtained medical treatment relative to wrist or hands between her last visit to Dr. Milosavljevic in 1996 and November 2003. During the afore period claimant discharged employment duties as a machine operator for respondent.

In November 2003, the evidence reflects that there was a downsize in personnel at respondent. As a consequence of the afore, claimant was returned to duties at the pack table along with her machine operator duties. Claimant logged between twenty and thirty hours per week at the pack table. The hand-intensive nature of the duties discharged by the claimant at the pack table, to include use of a tape dispenser, is undisputed and detailed above. Over the course of several months discharging job duties at the pack table claimant begin to experience

symptoms of numbness, tingling, and pain in both wrists and hands, which progressively worsen. On or about July 16, 2004, claimant reported the complaints and need for medical treatment to supervisory personnel of respondent.

New injury/ Aggravation

The evidence in the record preponderated that as a result of discharging employment duties at the pack table between 1989 and 1996, claimant sustained bilateral carpal tunnel syndrome, which was diagnosed through EMG/NCV studies on June 27, 1996. Claimant was provided prescription medication, Naprosyn, and assigned restricted duties for two week.

Claimant was moved from job duties at the pack table and assigned duties as a machine operator, a job which did not entail rapid repetitive hand movements. Claimant did not seek or require further medical treatment relative to her hands or wrists following her change in job duties. The credible evidence reflects that claimant did not experience numbness, pain, or tingling in her bilateral upper extremities during the period that she discharged duties exclusively as a machine operator.

In November 2003, claimant was again assigned job duties on the pack table. The evidence disclosed the claimant gradually developed symptoms of pain, numbness, and tingling in bilateral upper extremities, which progressively worsen until she reported the need for medical treatment to supervisory personnel on July 16, 2004. A Form AR-N was completed by respondent and signed by the claimant. Thereafter, claimant was directed to respondent's designated, Dr. Michael Lack. The history provided the claimant by Dr. Lack is consistent with her testimony before the Commission. There is no evidence of the claimant seeking or obtaining medical treatment relative to her upper extremities between June 27, 1996, and July 2004.

Pursuant to a referral by Dr. Lack to Dr. Terence Braden, claimant underwent diagnostic studies (EMG/NCV) which disclosed bilateral carpal tunnel syndrome, severe on the right and moderate severe on the left. Claimant was later referred by Dr. Lack to Dr. John T. Woloszyn, an orthopedic surgeon, who performed a surgical release on the right on November 4, 2004.

In order to prove compensability of her claim, claimant must prove that the injury arose out of and in the course of employment, caused internal or external harm to the body which required medical services, produce objective medical evidence, and that the injury is the major cause of the disability or need for medical treatment. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

In the instant claim, there is not a dispute regarding the duties discharged by the claimant at the pack table of respondent from November 2003 through July 16, 2004. Further, the evidence in the record does not reflect that claimant sought or required medical treatment relative to her upper extremities from the time she was assigned the job as a machine operator in late 1996 through November 2003. After discharging the job duties at the pack table of respondent subsequent to November 2003, claimant gradually experiences symptoms of pain, numbness, and tingling in her upper extremities such that the same required medical treatment in July 2004.

Although previously diagnosed with bilateral carpal tunnel syndrome in 1996, growing out of and in the course of her employment with respondent, the evidence preponderates that following medication and a change in job duties, claimant was asymptomatic relative to same from 1996 through November 2003. The evidence reflects that claimant experienced a resolution of any swelling, numbness, tingling or pain in her upper extremities, brought on by the bilateral carpal tunnel syndrome subsequent to her change in job duties in 1996.

An aggravation is a new injury resulting for an independent incident. *Farmland Insurance Company v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). In *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998), the Arkansas Court of Appeals, held:

The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. *Guidry v. J & R Eads Construction Co.*, 11 Ark. App. 219, 669 S.W.2d 483 (1984).

In the instant claim, the claimant's prior diagnosed bilateral carpal tunnel syndrome had resolved subsequent to her change in job duties in 1996. In November 2003, claimant was assigned to job duties on the pack table of respondent which gradually resulted in an onset of symptoms of numbness, pain, tingling in her upper extremities, requiring medical treatment, was diagnosed by objective medical finding as bilateral carpal tunnel syndrome, and for which she underwent surgery. The claimant has sustained her burden of proof by a preponderance of the evidence that she suffered a new injury in the form of bilateral carpal tunnel syndrome, arising out of and in the course of her employment beginning November 2003, and culminating in the need for medical treatment in July 2004. Respondent has controverted this claim in its entirety.

In the alternative, the evidence preponderates that the claimant suffered an aggravation of her pre-existing asymptomatic bilateral carpal tunnel syndrome over the period November 2003 through July 2004, growing out of her employment on the pack table during the afore period, bought on by her employment job duties. Respondent has controverted the claimant's

entitlement to workers' compensation benefits as a result of the afore in its entirety.

The evidence further preponderates that medical treatment rendered to the claimant under the care of Dr. Michael Lack, as well as referrals therefrom to include Dr. John T. Woloszyn, was reasonable, necessary, and related to the claimant's compensable injury and for which respondent is liable. The evidence preponderates that claimant was off work and within her healing period following the November 4, 2004, right carpal tunnel release surgery from the date of the surgery until December 4, 2004, and correspondingly entitled to the payment of temporary total disability benefits. Respondent has controverted the payment of all workers compensation benefits in this claim, to include temporary total disability benefits.

Statute of Limitation

_____ Respondent is a self-insured employer. The evidence reflects that claimant relayed her complaints relative to her upper extremities to appropriate supervisory personnel at the time she begin to experiences symptoms in 1996; however was not referred to a physician by respondent. Claimant sought and obtained medical treatment relative to her upper extremity complaints from her primary care physician, Dr. Jimmy D. Bonner, who later referred her to a Jonesboro neurologist, Dr. Vladen P. Milosavljevic. Dr. Milosavljevic diagnosed the claimant's complaints as bilateral carpal tunnel syndrome.

The credible evidence reflects that claimant relayed her diagnosis to appropriate supervisory personnel of respondent and requested to file a workers' compensation claim. Claimant was informed by respondent that a claim would be filed if she had to have surgery. Since surgery was not recommended or performed, a claim was not filed. There is evidence that claimant was provided light duty by respondent for a period of time and that she was eventually

moved from the pack table to the position of machine operator in 1996. As noted above, claimant successfully discharged her assigned job duties without complaints relative to her upper extremities or a need for medical treatment until she was again assigned to the pack table in late 2003.

Respondent employer was aware of the claimant's diagnosed bilateral carpal tunnel syndrome in 1996, however declined to file a claim for the medical treatment with its third party administrator. Respondent employer, through its supervisory personnel, informed the claimant that if she had to have surgery a claim would be filed. There is no evidence that claimant required medical treatment relative to her upper extremities between 1997 and 2003.

The fact that respondent-employer completed report of injury in July 2004 relative to the claimant's upper extremity complaints is corroborative of the claimant's testimony regarding the filing of the claim when surgery was needed. Nonetheless, the credible evidence in the record reflects that the claimant's current need for medical treatment relative to her upper extremity complaints grow out of her employment duties/activities at the pack table of respondent beginning November 2003 through July 2004. Claimant reported the complaints relative to her upper extremities to respondent in July 2004.

The evidence preponderates that the claimant suffered either a new injury or an aggravation of her pre-existing condition while discharging duties at the pack table of respondent between November 2003 and July 2004. The claimant filed her present claim for workers' compensation benefits relative to July 2004 bilateral carpal tunnel syndrome well within the time period set forth in Ark Code Ann. §11-9-702, such that the same does not serve a bar to her claim for workers' compensation benefits.

AWARD

Respondent is hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$319.00, for the period November 5, 2004, through December 4, 2004, as a result of her bilateral carpal tunnel syndrome of July 2004. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the July 2004, bilateral carpal tunnel syndrome.

Maximum attorney fees are herein awarded to the claimant's attorney, the Honorable John Barttelt, on the controverted indemnity benefits herein awarded.

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.

Andrew L. Blood, Administrative Law Judge