

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407843

KAY JARRELL, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, CARRIER	RESPONDENT

OPINION FILED JUNE 9, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 14, 2005, at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on June 19, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$453.00/\$340.00, in the event this claim is found to be compensable. A companion case to this claim is Jarrell v. Stant Manufacturing, Inc., (F002116), Administrative Law Judge opinion August 27, 2003, Full Commission opinion March 10, 2004 and Court of Appeals opinion February 16, 2005.

The claimant contends she injured her right hand in a specific incident at work on June 19, 2004. She seeks payment of medical expenses, temporary total disability benefits from June 20,

2004 to November 7, 2004 and attorney's fees.

The respondents contend the claimant's medical problems are unrelated to her employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript along with the deposition of Dr. John Lytle (taken January 11, 2005), incorporated by reference. Claimant's objection to testimony elicited through a recorded statement was sustained and the document proffered as it was not included in the respondents' exhibit packet. The prehearing notice requires identification of any documentation the parties are relying on including rebuttal evidence and the statute requires all evidence to be submitted to the Commission prior to the hearing, Ark. Code Ann. §11-9-705. It is disingenuous to say that the paper will not be offered into evidence when the contents of that same document is being offered into evidence orally through testimony. Obviously, the respondents intended to rely on that document for cross-examination and if it had been identified in the exhibit packet, the claimant may have exercised other options (cross-examination of the person who took the statement, calling other witnesses to buttress or refute information; a change in contentions or even consideration of settlement or dismissal of the claim). Without full disclosure, the whole purpose of the prehearing conference is defeated.

The claimant, age 54 (D.O.B. August 2, 1950) was the only witness to testify at the hearing. Her work history includes jobs as a beautician (licensed since 1973/last worked for a salon seven to eight years ago) and factory work at Stant (inspecting radiator caps for two years). She worked for the respondent-employer from September 2001 to August 2004. Presently she works for a telephone service operated by her family. Her health history includes her prior workers' compensation injury with Stant. She smokes one-half pack of cigarettes per day and is right hand dominate.

The claimant explained her job with the respondent-employer which required the use of both hands, loading equipment, using a knife and pushing buggies. The tasks she described were hand intensive and repetitive. The claimant began noticing problems with her right hand which worsened until she developed swelling, numbness and tingling. On June 19, 2004 she reported her symptoms

to her foreman and was treated at the plant's first aid department. The plant nurse made her an appointment with Dr. Wilkin and Dr. Lytle. The claimant stated the respondents did not pay for a bill from Quest Lab which was associated with Dr. Wilkin's treatment. Also, the respondents have not paid for the EMG/NCV study ordered by Dr. Lytle.

The claimant continued working at light duty from June 19 to August 11. The respondents then controverted the claim and the claimant was advised by Janice Elliott that no light duty was available. The claimant returned to her regular job duties on November 8, 2004.

The claimant was diagnosed with acute tenosynovitis secondary to overuse with carpal tunnel syndrome. Surgery was performed by Dr. Lytle on September 1, 2004.

MEDICAL EVIDENCE

Dr. Lytle, the company physician, began treating the claimant on July 13, 2004 for pain and swelling in her right hand beginning June 19, 2004. The claimant had been on light duty for a couple of weeks and noted some improvement. She described nocturnal parathesia, the severity of which was related to the amount of work activity that day. The claimant also complained of her hand cramping and aching while at work.

Dr. Lytle noted swelling in the right hand which he diagnosed as acute tenosynovitis. Based on the tingling sensation and a positive Tinel's and Phalen's test, Dr. Lytle also diagnosed CTS.

I have spoken with Penny the nurse at IP regarding her work status. They question if this is work aggravated and it certainly is. At this point, I would have restricted duties at work with no repetitive use of the hand.

She cannot take anti-inflammatory medicine...

She should do stretching and ROM exercises with her hand. The carpal tunnel will have to be addressed in due time if these symptoms persist or progress.

Dr. Lytle's Report of 8-10-04:

Since I last saw her, she was instructed to be seen by Dr. Tim Wilkins by WC from IP. He found no specific abnormalities and returned her to work. I had specifically left her with work restrictions with no repetitive use of the hand.

Dr. Lytle recommended an EMG/NCV study but the results were not included in the exhibit packet.

The bill for the test conducted August 19, 2004 by Dr. Silas is part of the exhibit packet. Dr. Lytle is shown as the referring physician. Dr. Lytle performed surgery but that report is not in the exhibit packet either. His report of September 13, 2004 indicates the surgery was successful in relieving the claimant's symptoms of pain, swelling and tenderness.

She spent a great deal of time describing to me her job situation working in the winding room in the extruder department, how she has to slide the paper and pull the paper.

There is no question in my opinion that this is a stressful job and has caused the tendonitis and soreness in her hand and aggravated her carpal tunnel symptoms.

Dr. Lytle's Report of October 14, 2004:

The symptoms of tendinitis are completely resolved...

...she can RTW full, active duty on 11-8-04. She is to work on her strengthening in the interim...

Dr. Lytle assessed 0% impairment in a letter dated December 8, 2004.

In his deposition, Dr. Lytle testified the claimant complained of pain and swelling in her right hand beginning June 19, 2004. She attributed her symptoms to her job tasks on the winding machine. Dr. Lytle recommended light duty from July to November.

Dr. Lytle testified that cigarette smoking is a risk factor for the development of CTS and the condition could be aggravated by hand intensive tasks such as the ones performed by a beautician. Dr. Lytle stated the main reason the claimant came to see him was because of tenosynovitis.

Dr. Lytle opined the claimant's tendonitis (swollen fingers, inflamed tendons in the hand) was work-related. However, he was unsure if her CTS was caused by or aggravated by her work. The treatment for tenosynovitis was icing and stretching with rest (restricted duties to avoid repetitive use of her hand). The treatment for CTS was surgery.

Dr. Lytle opined the tenosynovitis resolved as of September. The claimant's CTS surgery was performed on September 1, 2004 and the claimant went through recovery and rehabilitation until November 8, 2004.

Dr. Lytle also opined that the claimant's job was "relatively" repetitive but not rapid "as per

the definition of rapid.” The basis for this opinion was not explained.

An IP Incident Investigation Report refers to the “repetitious actions” of the claimant’s job and an “Individual Record” mentions arthritis in the right arm from a June 28, 2002 fracture. No medical records were offered on this injury.

Dr. Tim Wilkin, an osteopath, authored a report dated August 4, 2004, addressed to IP. The adjuster, Polly Sweet, denied payment of the lab tests ordered by Dr. Wilkin because the tests were unrelated to the injury and because, “Dr. Wilkin(s) (sic) said the reason she came to his office was for personal health related problems.” However, Dr. Wilkin actually toured the IP plant and spoke with a supervisor. He was obviously under the impression he was being considered as a company doctor.

Dr. Wilkin diagnosed tendonitis of the right hand and hypertension. He opined that the tendonitis was not work-related and he recommended the claimant return to work at full duty. Dr. Wilkin described a Phalen and Tinel’s test as negative. Dr. Wilkin ordered a blood test and prescribed medication for hypertension.

Dr. Wilkin’s Report of 8-4-04:

...Patient gives a history of pain and swelling in her right hand when performing her tasks at work.

Patient is employed to install paper cores onto a winding machine, along with some other tasks.

Her tasks include lifting the paper cores which are approximately twenty-four to thirty-six inches long and weigh approximately four to twelve pounds, depending on size, to waist level lying them flat on a paper lining machine. Occasionally she has to transfer the cores the length of the machine which is about 10 feet wide. This is accomplished by tossing the core across the machine.

On my examination of her work duties on site at International Paper and talking to the supervisor on the scene, the patient has to do this task approximately five or six times per hour. No more than about forty times in a shift. Shifts are anywhere from eight to ten hours.

...I do not feel this (tendonitis) is a work related injury and her return to work should be on her regular schedule. I would recommend that she uses her soft wrist support during her job tasks. She is to continue to use ice and the aspirin and Maalox mixture as needed for pain and inflammation.

...Laboratory studies including a complete blood count, comprehensive metabolic panel and a lipid profile will be obtained in the office.

The lab's bill for \$190.99 appears in the exhibit packet. Since the respondents chose Dr. Wilkin, it was their obligation to inform him if pre-authorization for testing was necessary. I do not expect the claimant to question the doctor's recommendations.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Although the issue was framed as compensability, it is obvious from the medical records that International Paper initially accepted the claim as compensable and sent the claimant to Dr. Lytle and Dr. Wilkin, made light duty available and paid some medical expenses. None of this was disclosed in the respondent's prehearing questionnaire. It is unclear when the claim was formally controverted,

and when that decision was conveyed to the claimant and her doctor.

The evidence of record shows the claimant was diagnosed with carpal tunnel syndrome objectively verified during surgery and confirmed by the success of the operation in alleviating her symptoms. The claimant was also diagnosed with tenosynovitis objectively verified by the swelling in the right hand which resolved with light duty and conservative treatment. Based on the claimant's testimony, her symptoms began while performing her job duties. Dr. Lytle, the company doctor, opined that the claimant's symptoms stemmed from overuse and felt her job duties were the source of this overuse. Her injury was therefore the major cause of her need for treatment and disability. Once carpal tunnel is diagnosed, it is unnecessary to offer proof of rapid and repetitive movements. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998) but see Stevenson v. Frolic Footwear, 70 Ark. App. 383, 20 S.W.3d 413 (2000).

Although Dr. Lytle repeatedly used the term "aggravation" when discussing the claimant's CTS, I'm satisfied there is a causal connection between her job duties and her injury and there is no evidence of a preexisting condition. While the claimant may have been "at risk" from smoking or working as a beautician, the claimant had not required medical treatment or missed time from work until her condition developed while working for the respondent-employer. At the time the condition manifested, the claimant had not worked as a beautician for seven or eight years but she had worked for the respondent-employer for three years.

A compensable injury is one arising out of and in the course of employment, Ark. Code Ann. §11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between her employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

The Court has held that if:

[a] claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the [C]ommission's refusal to make an award. Clark v. Ottenheimer Bros., 229 Ark. 383, 314 S.W.2d 497. But if the disability does not manifest itself until many months after

the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the [C]ommission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172.

Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

Accordingly, I find the claimant sustained injuries to the right hand arising out of and in the course of her employment which caused internal harm verified by objective medical evidence necessitating medical treatment and causing disability.

Both Dr. Lytle and Dr. Wilkin were chosen by International Paper as I interpret the evidence. Assuming arguendo, that the claim was not compensable, the carrier would still be liable for payment of their expenses as International Paper directed the claimant's medical treatment. Brittain v. Southern Hospitalities, 54 Ark. App. 318, 925 S.W.2d 810 (1996).

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on June 19, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$453.00/\$340.00, in the event this claim is found to be compensable.
2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The respondents are directed to pay all medical expenses within thirty days of receipt pursuant to Rule 30.
4. The respondents are directed to pay temporary total disability benefits from June 20, 2004 to November 7, 2004 based on Dr. Lytle's treatment as the claimant remained in her healing period and had not returned to work.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

6. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge