

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410223

MARY KEYES	CLAIMANT
OZARK DELIGHT CANDY CO., INC.	NO. 1 RESPONDENT
AIG CLAIM SERVICE INSURANCE CARRIER	NO. 1 RESPONDENT
FAIRFIELD INS./CANNON COCHRAN INSURANCE CARRIER	NO. 2 RESPONDENT

OPINION FILED JUNE 1, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

Respondent No. 2 represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 5, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 5, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. Respondents No. 1 had coverage from October 16, 2002, to October 16, 2003.

3. Respondent No. 2 had coverage from October 16, 2000, to October 16, 2002.

4. The claimant is entitled to a weekly compensation rate of \$187.00 for temporary total disability and \$154.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to her left elbow.
2. Related medical.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she developed tennis elbow in her left elbow due to stirring candy. The claimant is seeking benefits for TTD, medical expenses and attorney's fees.

In regard to the foregoing issues Respondents No. 1 contend that the claimant is not entitled to additional benefits since this respondent was not on the coverage when the problems began.

In regard to the foregoing issues Respondent No. 2 contends that the claimant did not sustain a compensable injury and that if she did it is a result of her employment after October 16, 2002, or that the claim should be apportioned.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted two packets of documentary evidence marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. Respondents No. 1 submitted medical exhibits marked Respondents No.

1's Exhibit No. 1 and the deposition of the claimant marked Respondents No. 1's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she has been working for the respondent since 1991. The claimant explained that she reported for work at 6:00 each morning. The claimant testified that then they begin the process of making the candy from syrup and sugar, heating these products in pots which they have to manually stir. The claimant testified that the syrup and sugar are extremely thick and difficult to stir but as the syrup begins to boil it then is allowed to cool down at which time flavoring and color is added into the various pots. The claimant testified that when the flavoring and color are added she would have to stir the candy mixture with her hands and that this has to be done much faster in order to keep it from getting too thick. The claimant testified that the syrup is then poured into the pouring pots and that the larger pot has to be scraped by hand to get all the product out into the pouring pots. The claimant testified that then the candy is poured out into the molds and that the sticks to the little candy suckers have to be put into the candy as quickly as possible before it hardens. The claimant testified that after the candy is poured and the sticks are in the candy, the sheets of candy are taken to a cooler and the whole process is started all over again. The claimant testified that they do between thirty-four and forty batches of candy a day and that in each batch there are 102 suckers

per batch. The claimant estimated that she would do approximately five batches of candy suckers each hour. The claimant testified that because of the cooking process of the candy, it is difficult for them to take a break during the morning or afternoon but they do take at least thirty minutes for lunch before they go back to the kitchen. The claimant testified that on an average they worked at least a full seven hours a day agreeing that she would make approximately 510 suckers per hour and around 3570 suckers per day. The claimant agreed that the process of making the various batches of candy suckers is the same for each batch.

The claimant agreed that she has had two prior carpal tunnel releases and at that time she was doing exactly the same work she is currently doing. The claimant agreed that Dr. Moore's records would more accurately reflect when she first began to report problems in her left elbow. The claimant testified that she is having pain in her left elbow and into her hand, noting that in reality both of her elbows and hands hurt but her left one hurts worse. The claimant testified that she cannot straighten her hand and that is why she went to see Dr. Moore. The claimant indicated that she is in need of treatment for her left elbow and is interested in undergoing the surgery which Dr. Moore has recommended. The claimant testified that she has no hobbies or interest which require that she use her hands intensively.

On cross examination by Respondents No. 1, the claimant agreed that when she saw Dr. Moore on November 1, 2002, she reported to him that she had been having problems for approximately two months.

Again, the claimant testified that she would rely on what Dr. Moore has set forth in his notes because her memory is not good and she was very nervous at this hearing. The claimant was asked if her left elbow got any better after she had been seen by Dr. Moore and the claimant responded that Dr. Moore had given her a shot that had lasted for a little while but that in reality the pain never went away. The claimant testified that the pain has gotten so bad that she can barely straighten her arms because of the work that she is doing continually. The claimant agreed that in April 2003 when she was seen by Dr. Moore, her left elbow had improved but she was beginning to experience problems on the right side. The claimant testified that because her left hand had started hurting she used her right hand more. The claimant explained again that it was not like stirring water. She stated that she used a big spoon to stir the syrup which was very thick and that she had to do it fast because if you stir it slow it become too hard and it will not pour. The claimant stated, "The candy gets cold so fast." The claimant testified again as to what she was required to do in the candy making process adding that she had to raise her shoulders and arms up in order to stir the pots and that she is developing some problems in her neck and shoulders as a result of working at this elevated position. The claimant agreed that she has had previous carpal tunnel problems as well as cervical problems.

On cross examination by Respondent No. 2, the claimant agreed that for her left elbow problem she was initially seen in November 2002. The claimant testified that in her opinion it was her

activities at work which caused her elbow problems. The claimant testified that when the pain got too great and she could not straighten out her arm it frightened her and she then went to see Dr. Moore. The claimant testified that she continued to work for the respondent every day doing the same task over and over again. The claimant testified that she never had any light duty but continued to do her full job. The claimant testified that Dr. Moore has given her shots in her elbow which help for approximately two weeks but he has now indicated that she has had all the shots that are allowed and that she would need to have surgery. The claimant testified that she has continued to work up until September 24, 2004, until she had an incident at work pulling a mop bucket. The claimant testified that, "Maybe when I pulled the mop bucket because of my elbow thing like that, some sharp pain that go here that I cannot move. I cannot use the left hand." The claimant testified that she has not worked since this September 2004 event. The claimant testified that since she has not been working and doing the stirring, her arm is a little bit better in that she can straighten it more but every time she tries to straighten it it hurts. The claimant testified that she is right hand dominant and that for a while, because she was having such problems with her left elbow, her right hand had gotten worse because she leaned on it to do the stirring, at which time she then would have to use her left hand at least a little bit. The claimant testified that not only the stirring but the lifting causes her problems with her arms and hands.

The medical records set forth that the claimant was diagnosed with bilateral carpal tunnel syndrome by Dr. James Moore on October 2, 2000. Dr. Moore examined the claimant on June 29, 2001, noting that she is tender over the ulnar nerve at the left elbow and had a positive Tindal's ulnar nerve at the left elbow. The doctor prescribed Vioxx and for the claimant to avoid resting the left elbow on an armrest and to avoid elbow flexation when sleeping. On November 1, 2002, Dr. Moore notes that the claimant, for the past two months, has had some left elbow pain and tingling in her hands at night. After examination, the doctor diagnosed the claimant with left lateral tennis elbow and prescribed a splint as well as medications. Dr. Moore injected the claimant's left elbow with Depo-Medro on December 12, 2002, where he notes that her left elbow pain is not getting better. The claimant was seen by Dr. Moore on February 7, March 10, March 14, April 18 and on November 20, 2003, for treatment of her left elbow. Dr. Moore consistently diagnosed the claimant with having chronic left tennis elbow and would inject her elbow with medication periodically. On January 23, 2004, Dr. Moore notes that the claimant's left elbow is still painful and surgery was discussed but the claimant preferred to try another injections of medications. On July 22, 2004, Dr. Moore writes that he is scheduling a release of the claimant's left lateral tennis elbow noting that she would be unable to work with her left arm following her surgery. There is a note from the Orthopedic and Sports Medicine Clinic dated August 23, 2004, where it is noted that the claimant is scheduled for surgery on September 10, 2004,

setting forth that the claimant has a very tender lateral epicondyle left elbow and cannot extend her elbow fully. Dr. James Moore writes on February 14, 2005, that Dr. Moffett sent the claimant for nerve conduction studies and also an MRI. Dr. Moore writes that the claimant was off for four months and did not have much problem but returned to work the first of January and is now off again because of left arm pain and numbness in her hands. Dr. Moore writes that the claimant's nerve conduction studies done in January by Dr. Brown showed slightly abnormal in both hands but better than it was before surgery. It is noted that the claimant's elbows are painful when lifting. Upon examination, Dr. Moore writes that the claimant has slight decreased sensation in her median nerve distribution of both hands with positive Tindal's and tender lateral epicondyle in both elbows with pain into the dorsum of the wrist. Dr. Moore notes that the claimant has two problems in each arm, noting that she has recurrent bilateral carpal tunnel syndrome and bilateral lateral tennis elbow. The doctor recommended a release of both lateral tennis elbows and carpal tunnel releases. Dr. Moore writes that it appears that the claimant is unable to do the job of lifting pots of candy because it puts too much stress on her arms.

Arkansas law requires that a compensable injury be established by medical evidence supported by objective findings as defined in the Code at Subsection 16 of Ark. Code Ann. §11-9-102. This claimant has testified that performing a job for several years which required the rapid and repetitive use of the claimant's hands

and arms. Dr. James Moore writes on February 14, 2005, that the claimant's nerve conduction studies done in January 2005 were slightly abnormal in both hands and noted that her elbows are painful when lifting. The medical records do not contain objective medical evidence to establish a compensable injury with this claimant's left elbow. It is noted, however, that she has complained consistently of pain and tenderness in her left elbow for which the doctor was prepared to perform surgery to treat. However, complaints of pain and restrictive movement of a body part are subjective in nature and do not meet the criteria of establishing a compensable injury under Arkansas law. Therefore, this claim for benefits should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. Respondents No. 1 had coverage from October 16, 2002, to October 16, 2003.
3. Respondent No. 2 had coverage from October 16, 2000, to October 16, 2002.
4. The claimant is entitled to a weekly compensation rate of \$187.00 for temporary total disability and \$154.00 for permanent partial disability.
5. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury as established by objective medical findings while working for the respondent. See discussion above.

ORDER

The claimant has failed to prove a compensable injury to her left elbow as defined and required by Arkansas law. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE