

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404887

CHERYL LOUDERMILK

CLAIMANT

WAL MART ASSOCIATES
SELF INSURED

RESPONDENT

CLAIMS MANAGEMENT,
TPA

RESPONDENT

OPINION FILED JUNE 9, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by DALE BROWN and CURTIS NEBBEN, Attorneys,
Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 4, 2005, in Springdale, Arkansas. A pre-hearing order was entered in this case on February 15, 2005. 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. Immediately prior to the commencement of the hearing, the parties announced that they had reached an agreement on the appropriate weekly compensation rates and that the second issue should be changed to reflect that the claimant was seeking temporary total disability benefits from January 15, 2004 through a date yet to be determined. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit No. 1.

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

1. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$313.00 for total

disability and \$235.00_ for permanent partial disability.

3. The claim is controverted in its entirety.

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 sustained compensable injuries to her wrists that were not caused by a "specific incident."
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from January 15, 2004 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant was injured on September 1, 2003, (approximate date). She injured both of her wrists as a result of rapid and continuous motion on a ten key and computer for almost ten years during her employment at Wal Mart."

In regard to these issues, the respondents contend:

Respondents contend that the claimant did not sustain an injury arising out of and in the course of her employment."

DISCUSSION

I. COMPENSABILITY

_____The central issue in this claim is couched in terms of whether the claimant sustained "compensable injuries" to her "wrists." However, the evidence presented shows that the claimant's difficulties are essentially limited to her hands. For the purpose of the resolution of this issue, the terms wrists and hands will be considered synonymous or as a single anatomical unit.

The burden rests upon the claimant to prove the "compensable injuries" that she alleges. In order to meet this burden, she must establish that her wrist/hand difficulties satisfy all of the statutory elements for "compensable injuries" that are required by the Act. As the claimant does not contend that her alleged compensable

injuries were the result of a specific incident, the applicable elements of compensability are found in Ark. Code Ann. §11-9-102(4)(A)(ii)(a), §11-9-102(4)(D), and §11-9-102(4)(E)(ii).

Under Ark. Code Ann. §11-9-102(4)(D), the claimant must "establish" by medical evidence the actual existence of the physical injury or condition alleged to be compensable. She must further show that the actual existence of this physical injury or condition is supported by "objective findings," as that term is defined by Ark. Code Ann. §11-9-102(16)(A).

In the present claim, it is sufficient to "establish" the actual existence of two physical conditions involving the claimant's wrists/hands. These two conditions are right carpal tunnel syndrome and bilateral rheumatoid arthritis. The actual existence of both of these conditions is confirmed or supported by "objective findings," as that term is defined in the Act. The claimant's right carpal tunnel syndrome is confirmed or supported by abnormalities noted on nerve conduction studies. The bilateral rheumatoid arthritis is confirmed or supported by positive blood studies, x-rays, and visual observations on physical examination (Heberden's nodules of the fingers and prominence of the finger joints).

However, the greater weight of the medical evidence does not "establish" the actual existence of left carpal tunnel syndrome. There is absolutely no "objectively findings" to support the existence of such a condition. Nerve conduction studies performed on the claimant's left upper extremity were within normal limits. There is even a paucity of subjective findings to support the presence of such a condition. No observation has been made of any atrophy of the claimant's left hand that would be consistent with carpal tunnel syndrome. Phelan and Tinel's tests performed on the left upper extremity have repeatedly been negative.

The claimant must next prove that these medically established and objectively

supported physical injuries or conditions satisfy the definitional requirements for a "compensable injury," as set out in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are:

- (1) The physical injury or condition must arise out of and occur in the course of the claimant's employment;
- (2) The physical injury or condition must cause internal or external physical harm to the claimant's body;
- (3) The physical injury or condition must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome.

In addition the claimant must prove that the medically established and objectively supported physical injuries or conditions satisfy the requirements of Ark. Code Ann. §11-9-102(4)(E)(ii). This requirement is that the "resultant condition" is only compensable if the greater weight of the credible evidence shows that the employment related aspect or contribution to the "resultant" condition is the "major cause" of the "resultant condition" becoming disabling or requiring medial treatment.

In her testimony, the claimant describes these symptoms or difficulties as beginning with occasional numbness/tingling in her hands that occurred off and on. She states that these symptoms then became constant. Finally, she stated that, at the time of the hearing, she had now developed shooting pain in both of her hands. In her testimony, she describes no real difference in these symptoms between her right and left hands. The claimant testified that she reported her complaints to her supervisor while she was still employed by the respondents. However, she made no formal complaint of a compensable injury or medical treatment until after her termination by the respondent for failing a random drug screen. Her testimony further shows that her difficulties had not only failed to improve, but actually continued to worsen after her employment with this respondent ceased.

The reports and records of Dr. Moffitt record the claimant's symptoms as constant hurting/stinging of both of her hands, numbness at night in both her hands, occasional swelling of both her hands, and weakness of both her hands. The records of the Sequoyah Memorial Hospital Clinic record the claimant's symptoms as a sensation of coldness/poor circulation in both her hands, numbness in the left fifth finger, and occasional stiffness/numbness after using her hands/fingers at a keyboard or crocheting. The records of this facility note that the claimant specifically denied any pain in her hands. Subsequent reports from this facility record complaints of numbness and pain in both wrists and in all of the claimant's fingertips, as well as tingling in her fingers at night.

The reports of Dr. Michael Karathanos, record complaints of numbness, tingling, and loss of strength affecting both of the claimant's upper extremities. However, on physical examination Dr. Karathanos notes normal strength in both upper extremities.

As a whole, the medical evidence shows that the claimant's subjective complaints far exceed the objective findings. The nerve conduction studies on the claimant's hands and wrists, while positive on the right were well within normal limits on the left. Thus, the results of these tests would conflict with the essentially identical symptoms and complaints involving both of the claimant's hands. With the exception of a "slightly" positive bilateral Tinel's sign, noted by Dr. Karathanos on September 28, 2004, repeated bilateral Tinel's and Phelan's tests have always been negative. No atrophy or other objective indications of carpal tunnel syndrome have been noted on either of the claimant's hands. While the objectively supported presence of right carpal tunnel syndrome might explain some of the claimant's right hand complaints, it would not explain identical complaints in her left hand.

The claimant has tested mildly positive for rheumatoid arthritis on two separate blood screens. She has also displayed minimal bilateral arthritic changes in her hands on plain x-rays. Finally, she has exhibited prominence of her finger joints and Heberden's nodules of her fingers. However, repeated physical examinations have failed to show any objective evidence of significant ongoing arthritic processes, such as swelling and redness or inflammation of the joints of her hands. She has further repeatedly displayed full range of motion of the various affected joints. It must also be noted that although Dr. Moffitt recorded the claimant exhibiting poor bilateral grip strength in her hands on May 19, 2004, Dr. Karanthanos noted normal grip strength and normal strength in both of her upper extremities during his physical examination of September 28, 2004.

In his reports and records, Dr. Moffitt essentially opines that the claimant's bilateral hand symptoms and difficulties are "of unknown etiology." However, he indicates that the claimant's rheumatoid arthritis is the more likely or at least "major cause" of the claimant's bilateral hand symptoms. He further indicates that the claimant's rheumatoid arthritis may even be the possible cause of her right carpal tunnel syndrome.

The reports and records of the Sequoyah Memorial Hospital Clinic also shed little light on the actual cause of the claimant's various subjective symptoms and complaints. These records merely indicate that the claimant is experiencing bilateral hand paresthesia, but give no particular cause for this generalized symptom wise based diagnosis. While the records of this facility do contain a diagnosis of right carpal tunnel syndrome, this appears based on the reported results of the nerve conduction study and the claimant's complaints of tingling and numbness in her right hand. Again, this diagnosis would not explain her bilateral hand symptoms.

Finally, the records of Dr. Karantanos are rather contradictory concerning his opinion of the exact etiology or cause of the claimant's multiple symptoms. In his report of September 28, 2004, he states that it is his "impression":

"Probable carpal tunnel syndrome by nerve conduction study (on the right) and clinical symptomology. I do not detect any clinical evidence of carpal tunnel syndrome but it is conceivable, that she might be suffering from it."

It must be noted that both Dr. Karanthanos and the Sequoyah Memorial Hospital Clinic have recommended referrals of the claimant to both rheumatologists and "hand specialists" in an obvious attempt to more accurately ascertain the etiology or cause of the claimant's multiple extensive subjective bilateral hand complaints. However, if these evaluations have taken place, neither party saw fit to introduce any reports and records generated as a result thereof.

After consideration of all the evidence presented, I find that the claimant has failed to prove that she sustained a "compensable injury" to her left hand that was in the form of carpal tunnel syndrome. Specifically, the claimant has failed to prove by medical evidence, which is supported by "objective findings," the actual existence of carpal tunnel syndrome involving her left wrist and hand. Thus, she has failed to meet the requirement for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove that the objectively documented right carpal tunnel syndrome represents a "compensable injury," within the meaning of the Act. In reaching this decision, I recognize that the record reveals that the claimant's employment activities for this respondent required intensive use of her right hand. I also recognize that such hand intensive activities can result in producing carpal tunnel syndrome. However, I further recognize that other non employment related factors can also cause such a condition. These factors would include non employment

related hand intensive activities, such as crocheting, and the presence of systemic conditions, such as rheumatoid arthritis. The record reveals that the claimant engaged in such non employment related hand intensive activities and suffers from such a systemic condition. More importantly, I am not convinced by the evidence presented that the symptoms and difficulties which the claimant is experiencing with her right hand are in fact due to carpal tunnel syndrome. The medical reports and records of Dr. Moffitt, which I find to be credible, indicate that the etiology of these alleged symptoms is more likely the claimant's rheumatoid arthritis. This opinion of Dr. Moffitt is supported by the fact that the claimant is experiencing almost identical symptoms involving her left hand, which electrodiagnostic testing and even subjective clinical tests such as Phelan's and Tinel's fail to show the presence of carpal tunnel syndrome. It is further important to note that the claimant's symptoms in both her hands, including her right hand, have actually progressed since the claimant ceased performing her hand intensive activities for this respondent. This, too, would be more in accord with these symptoms being attributable to the natural progression of the claimant's systemic rheumatoid arthritis. From the evidence presented, it appears that the claimant's electroneurologically diagnosed right carpal tunnel syndrome is simply an incidental finding and is unrelated to her bilateral hand complaints. The claimant has simply failed to prove 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 respondent and was the major cause of any need for medical treatment, which she has experienced, or any disability, which she has sustained.

The claimant has failed to prove by the greater weight of the credible evidence that her bilateral rheumatoid arthritis, involving her hands, represents a "compensable injury" within the meaning of the Act. Clearly, this is a systemic

condition and has developed unrelated to her employment activities. I recognize that such a pre-existing systemic condition can still be compensable, if such a condition is aggravated or accelerated by the employment. However, in the present case, there is no evidence that the claimant's employment activities for this respondent in any way aggravated or accelerated her rheumatoid arthritis in her hands. In actuality, the fact that this condition has progressively worsened after the claimant ceased her employment activities for this respondent, would show otherwise.

The greater weight of the evidence presented casts some doubt on the actual existence of any difficulties involving the claimant's hands and casts considerable doubt on the existence of symptoms and difficulties of the type and magnitude described by the claimant. The record shows that the claimant did not formally report any difficulties with her hands or inability to perform her assigned employment tasks until after she was terminated by the respondent. The claimant did not seek any medical treatment for any difficulties with her hands until after her termination. All of the medical evidence presented indicates that the magnitude and extent of the claimant's symptoms far exceed those that would be reasonably expected of an individual with the claimant's objective findings for both right carpal tunnel syndrome and rheumatoid arthritis.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$313.00 for total disability and

\$235.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained "compensable injuries" to her wrists/ hands, as term is defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Specifically, she has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between her employment related activities for this respondent, over time, and her bilateral wrist/ hand difficulties.
5. The respondents have denied the occurrence of any compensable injuries to the claimant's wrists/hands and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge