

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F501085**

**LOU ANNE MITCHELL, EMPLOYEE** **CLAIMANT**

**ARMSTRONG WOOD PRODUCTS D/B/A  
ROBBINS HARDWOOD FLOORING, EMPLOYER** **RESPONDENT**

**AMERICAN INTERNATIONAL SO. INS. CO./  
SPECIALTY RISK SERVICES (TPA),  
INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED OCTOBER 12, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on July 15, 2005, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Kenneth A. Harper, Attorney at Law, Monticello, Arkansas.

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

A hearing was held on July 15, 2005, to determine the compensability of claimant's alleged bilateral carpal tunnel syndrome.

The parties stipulated to the existence of the employee-employer relationship in December of 2004. It was further stipulated that the claimant was earning \$11.90 per hour and was working forty hours per week, for an average weekly wage of \$476.00. Based on that average weekly wage, claimant's earnings were sufficient to

entitle her to weekly indemnity benefits of \$317.00 for temporary total disability and \$238.00 for permanent partial disability benefits.

Claimant contends that she sustained compensable bilateral carpal tunnel injuries and is entitled to medical benefits, both past and future, and temporary total disability benefits from December 8, 2004, through May 2, 2005, as well as attorney's fees. Claimant reserves the issue of permanency.

Respondents controvert this claim, contending that the alleged carpal tunnel syndrome did not arise out of and in the course of her employment and that the major cause of her condition was pre-existing. Respondents contend that, under Arkansas law, claimant is required to establish by a preponderance of the evidence that her employment was the major cause of the carpal tunnel syndrome. Respondents further contend that the treating physician's opinion is not stated within a reasonable degree of medical certainty.

#### **STATEMENT OF THE CASE**

Claimant is a forty-two-year-old, highschool graduate, who testified that she had attended cosmetology school, as well as some college, and had worked for respondent-employer for thirteen-to-fourteen years as both a "nester" and a "grader," although mainly as a grader.

She testified that nesting involved filling putty in the defects in wood, such as knotholes. She testified that the grading job involved picking up different size pieces

of wood that come up on a conveyor belt, inspecting both the front and the back of the wood, and marking the defects. She testified that both nesting and grading were hand-intensive, fast-paced jobs, in which she was timed and was expected to perform a certain amount in a set amount of time.

Claimant testified that she first noticed that she was having trouble with her hands in 2003. She testified that she went to the doctor then and had a carpal tunnel test but it was normal. The medical records do reflect that she had a carpal tunnel test that produced normal results in 2003; however, the medical records further reflect that she has complained of bilateral hand/wrist pain, numbness, and tingling for many years, dating back at least ten years. Claimant admitted that in 1998, when she was pregnant with her second child, she retained a lot of fluid and had swelling that produced pressure on her wrists and caused carpal-tunnel-like symptoms.

Claimant testified that she noticed decreased grip strength in 2004 and returned to the doctor. She testified, and records reflect, that she saw Dr. Pennington, her family doctor, in 2004, complaining of hand/wrist pain and numbness. Dr. Pennington's records make no mention of any work-related problems until March 16, 2005, in a letter he wrote "To Whom It May Concern," as follows:

Ms. Mitchell's chart reflects, in May of 1998, at her postpartum visit, that I still felt she had some right carpal tunnel syndrome related to her pregnancy. I advised her, at that time, if her symptoms did not resolve within 4-6 weeks, to let me know. They did resolve and I heard nothing else from her. She did start having symptoms

again in 2002 and 2003, but nerve conduction studies done in February of '03, were normal.

It is therefore, my professional opinion, that her current carpal tunnel is related to her very recent workload with repetitive movement and grasping. I do not feel that she had a long-term carpal tunnel syndrome in '98, but that this was more related to her pregnancy, which is a well recognized, self-limited, process.

Claimant testified that in December of 2004 Dr. Pennington gave her splints at first to wear at night, but that the splints did not really help her because she could not work in them. Claimant testified that she had had problems with her back and neck in 2004, and since her carpal tunnel test in 2003 was normal, Dr. Pennington thought her problems were as a result of muscle spasm from her neck, so he referred her to Dr. Frazier in Little Rock.

Claimant first saw Dr. Frazier on December 27, 2004. His notes make no mention of any work-related problems. In fact, his notes state as follows:

Lou Mitchell is a 41-year-old, right-hand dominant female who presents for evaluation of a *10 to 14-year history of bilateral hand pain and numbness. The initial onset of symptoms was around 1990. Her symptoms worsened somewhat during pregnancy in 1998.* She is now having frequent nocturnal symptoms to awaken her from sound sleep. She has worn splints for many years and these are no longer helpful. She has noted subjective loss of pinch/grip strength and dexterity in both hands. The right hand symptoms are subjectively worse than the left. She had nerve conduction and EMG studies done in February of 2003, which were reportedly normal.

...

It is my assessment that Ms. Mitchell may have bilateral carpal tunnel syndrome.

[Emphasis added.]

Claimant testified that Dr. Frazier gave her steroid injections in both wrists. She maintained that the injections did not help. He ordered EMG/nerve conduction tests to be performed by Dr. Rutherford, and ultimately diagnosed claimant on January 5, 2005, with bilateral carpal tunnel syndrome. He then performed a right carpal tunnel release on March 3, 2005.

Claimant admitted that she never notified her employer that she was having work-related problems until she filed the instant claim with the Workers' Compensation Commission. She maintains that she did not notify her employer that her hand/wrist problems were work-related because she did not know it was carpal tunnel at first; still, even once she did know, she admits that she still did not fill out the necessary workers' compensation forms because she thought there was a time limit. She testified that she filed the claim on her health insurance, Blue Cross Blue Shield and that it has paid some of her medical expenses. Further, she testified that she filed for and received some short-term disability while she was off work from December 8, 2004, through May 2, 2005, noting on the form that this was "not work-related" in order to receive the short-term disability.

Claimant testified that, at some point, when she decided to make a workers' compensation claim, she contacted the Workers' Compensation Commission, rather

than her employer, and filed a claim. It was through the Commission that her employer became aware that she was asserting a work-related injury. Further, she testified that once she decided to assert a work-related claim, she amended her short-term disability request to note that it *was*, in fact, work-related.

Claimant testified that she is familiar with the procedure for filing a workers' compensation claim because she has filed claims before at respondent-employer. She testified that she knows that Marty Reep is in charge of handling workers' compensation claims for respondent-employer and that he has done so for a number of years. She testified that she knows that there is a human resources department that handles insurance claims and short-term disability, which is separate from what Marty Reep does. She admitted that she never told Mr. Reep about her alleged work-related injury or her diagnosis of bilateral carpal tunnel syndrome or even contemplated getting the workers' compensation forms from him, even though she maintains that her injury was work-related. She admitted that she was a former vice-president of the union, when respondent-employer was unionized, and was familiar with all the proper procedures, but still never reported any of her allegations of a work-related injury to her employer.

Claimant testified that she was unable to work from December 8, 2004, through May 2, 2004, at which time she was fully released by Dr. Frazier to return to work. Although he released her without restrictions, she testified that she still feels

she needs medical treatment. She testified that three of her fingers stay numb all the time on her right hand and that her left hand is numb most of the time, as well, making it difficult to grasp things.

Claimant testified that when she returned to work for respondent-employer, she was given the option of the second or third shift. She testified that she chose the third shift, so she would be able to watch her daughter's softball games, as the games would not conflict with her work schedule. Claimant testified that she worked from May 2, 2005, through June 4 or 5, 2005, when she voluntarily quit her job with respondent-employer. Claimant admitted that she gave no notice; she simply never showed up for work again. She did not call in, and she gave no reason as to why she was leaving her employment with respondent-employer. She testified that she has not worked since that date, although she has applied for work. She contends that she is being "blackballed" by respondent-employer; she believes that "there was something said" that is keeping her from being hired by other employers, because she is capable of returning to work now, but she cannot find a job.

#### **FINDING OF FACT**

Claimant has failed to meet her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome complaints are compensable. Specifically, the claimant has failed to establish a causal connection between her employment and her injury.

## DISCUSSION

Carpal tunnel syndrome is both compensable and falls within the definition of rapid repetitive motion; and, therefore, proof of rapid and repetitive motion by a claimant is not required. *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). However, a claimant is not relieved of his burden of establishing a causal connection between the injury complained of and the employment. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

To sustain a claim for compensation for carpal tunnel syndrome, a claimant is not required to prove that the syndrome was caused by rapid and repetitive motion, but he or she must prove the following by a preponderance of the evidence:

(1) that the injury arose out of and in the course of his employment;

(2) that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death;

(3) that the injury was a major cause of the disability or need for treatment.

*See* Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); *Crudup v. Regal Ware, Inc., supra*; *Stevenson v. Frolic Footwear*, 70 Ark. App. 383, 20 S.W.3d 413 (2000); *Kildow v. Baldwin Piano, supra*. In addition to satisfying the “major cause” requirement, however, a claimant must also prove a causal connection between his or her employment and the injury. *Crudup v. Regal Ware, Inc., supra*; *Kildow v. Baldwin Piano, supra*; and

(4) finally, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, *supra*; *Kildow v. Baldwin Piano*, *supra*.

Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones*, *supra*; *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones*, *supra*; *Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical

evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, claimant admitted that she had a long history of pain and numbness in both hands before filing this workers' compensation claim. She testified, and medical records verify, that she had seen her family physician, Dr. Pennington, since the early 1990s for intermittent problems with her hands and wrists. According to the claimant, she had undergone two EMG and nerve conduction studies in the early 1990s and 2003 that were normal. Claimant testified that she did not sustain a specific injury at respondent-employer but that her symptoms worsened in December 2004.

Claimant's medical records show that she had symptoms relating to carpal tunnel syndrome for many years. She was prescribed splints for both hands, which she wore intermittently over the years. Notably, claimant did not relate her problems as work-related when she saw Dr. Pennington in December of 2004. In fact, his treating notes never even make reference to claimant's employment or her work having caused or aggravated her symptoms. Dr. Pennington's opinion letter of March 16, 2005, that her problems were work-related came only after a note in her file that

she wanted to “talk about workman’s compensation” with him. The fact that claimant applied for and received short-term disability benefits and turned her claim into Blue Cross Blue Shield, her group health carrier, also shows that her condition was not believed by her to be work-related.

In this examiner’s opinion, claimant has simply failed to meet her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome complaints are compensable. Specifically, the claimant has failed to establish a causal connection between her employment and the injury.

For all of these reasons, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge