

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113952

LINDA PARKER

CLAIMANT

BUDGET TEXT

RESPONDENT

NATIONAL FIRE IC OF HARTFORD,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 6, 2004

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

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondent represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 4 , 2004, in Springdale , Arkansas. A pre-hearing order was entered in this claim on August 2, 2004. Prior to the commencement of the hearing, the Order was amended to reflect that the appropriate compensation rates were \$160.00 for total disability and \$154.00 for permanent partial disability. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. On November 9, 2001, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$160.00 for total disability and \$154.00 for permanent partial disability.
3. On November 9, 2001, the claimant sustained a compensable injury to her right thumb.
4. All medical expenses for the actual injury to the thumb have been paid.
5. All temporary total disability benefits for the thumb have been paid through June 8, 2004.

6. The respondents continued weekly payment at the total disability rate through July 27, 2004, and seek a credit for these benefits against the claimant's permanent physical impairment of 4% to the hand.
7. Respondents concede a permanent physical impairment of 4% to the hand.

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's difficulties with her arm and shoulder including RSD, represent a compensable consequence or complication of the claimant's compensable thumb injury.
2. The claimant's entitlement to additional medical services and additional temporary total disability benefits from June 9, 2004 through a date yet to be determined.
3. Attorney's fees.

In regard to these issues, the claimant contends:

"Claimant sustained a compensable upper extremity injury that has developed into reflex sympathetic dystrophy. RSD, arising out of and in the course of employment with the respondent on or about 11/9/2001. The claimant's correct compensation rate is \$160/\$120, based upon an average weekly wage of \$240. The claimant has undergone two surgical interventions and remains in her healing period. She is in need of a chronic pain program as prescribed by her primary treating physician, Ann Christopher, M.D. The respondent has controverted the claimant's entitlement to that chronic pain program. The respondent has scheduled an IME which was continuing when her TTD checks were late and no advance mileage check was paid, resulting in her inability to pay for gasoline to attend the IME. This case has not been controverted in its entirety and the claimant is entitled to the maximum attorney fee. All other benefits are reserved under the Act."

In regard to these issues, the respondent contend:

- (a) Respondent haven not controverted this claim.
- (b) Claimant continues to receive temporary total disability benefits while undergoing additional medical testing to determine the nature and extent of her injury.

Claimant reached MMI with regard to her thumb injury and any other claimed injury stemming from her thumb condition no later than June 8, 2004. My client has paid TTD benefits through October 5, 2004, so it asks for a credit against permanent benefits in the amount of TTD benefits paid from June 9 through October 5.

### DISCUSSION

\_\_\_\_\_ The first issue indicted in the pre-hearing order is the question of whether the claimant's difficulties with her right arm and shoulder, including those diagnosed as being attributable to RSD (reflex sympathetic dystrophy) or CRPS (complex regional pain syndrome), represent a compensable consequence or complication of the claimant's compensable thumb injury. The burden rests upon the claimant to prove this fact. Not only must the claimant prove the existence of a causal relationship between her compensable thumb injury and her subsequent difficulties with her right arm and right shoulder, she must also prove that these difficulties meet all of the statutory requirements for compensability found in the Act.

The claimant's admittedly compensable right thumb injury took the form of a partial dislocation of the metacarpophalangeal joint with a rupture of the radial collateral ligament. The claimant was provided with appropriate treatment for this compensable injury, first by Dr. Gary Moffitt and ultimately by Dr. R. Bryan Benafield (an orthopaedic surgeon). Dr. Benafield ultimately performed two corrective surgeries on the claimant's injured thumb.

Over the course of and subsequent to her treatment by Dr. Benafield, the claimant's subjective symptoms (primarily in the form of pain) have progressed from her thumb to other parts of her right hand and wrist. These complaints then progressed to her right forearm and then up to her right shoulder. She subsequently developed difficulties involving her neck and upper back and then into her left arm from the shoulder of the elbow, and eventually her entire right lower extremity.

In order for any of these complaints to represent a "compensable consequence" of the claimant's admittedly compensable right thumb injury, the requirements of A.C.A. §11-9-102 (4) (B) must be met. This subsection requires that the actual existence of the physical injury or

condition, which is alleged to be compensable, must be proven by medical evidence and supported by “objective findings.”

The medical evidence presented “establishes” the actual existence of reflex sympathetic dystrophy (RSD) or complex regional pain syndrome (CRPS) that has involved the claimant’s right upper extremity. The medical evidence further contains numerous “objective findings” to support the existence of this diagnosed condition.

The possibility that the claimant was experiencing RSD or CRPS, involving the right upper extremity, was first recognized by Dr. Benafield. During his visit on August 16, 2002, he personally observed that the claimant’s right hand was colder than her left and felt somewhat clammy. Both of these findings would be supportive of a diagnosis of RSD or CRPS. A triple phase bone scan, was subsequently requested by Dr. Benafield. This study showed no abnormal blood flow in the right upper extremity. However, the results of this test do not totally eliminate the possibility of RSD or CRPS.

The claimant was subsequently directed by the respondent to Dr. Marc A. Valley, a chronic pain specialist. He too, diagnosed RSD or CRPS involving the claimant’s right upper extremity. During his initial visit on September 18, 2002, Dr. Valley personally observed a blue discoloration in the area of the claimant’s right thumb, that her right thumb or hand was cold to the touch, and that her skin in this area exhibited hyperhydrosis. On December 12, 2002, Dr. Valley also administered a stellate ganglion block. This procedure is not only intended to be therapeutic, but is also diagnostic for the existence of RSD or CRPS. In his notes of that date, Dr. Valley noted an increase in skin temperature and a color change, in the claimant’s right hand and arm, immediately following the block.

A diagnosis of RSD or CRPS was also made by Dr. Ann Christopher. Dr. Christopher is also a chronic pain management specialist to whom the claimant was sent by the respondent’s case manager. At the time of her initial visit with the claimant, Dr. Christopher also observed a discoloration of the claimant’s right hand and forearm, and that her right hand was colder than her

left, with her right forearm being five to ten degrees colder than her left forearm. Dr. Christopher, or her nurse practitioner physician's assistant, continued to note these abnormalities, involving the claimant's right upper extremity, for some time thereafter.

The claimant was next evaluated, at the respondent's request, by Dr. Reginald Rutherford (a neurologist) on June 24, 2003. Dr. Rutherford noted that, at that time, he observed no objective evidence of ongoing RSD or CRPS. Specifically, he observed no discoloration, no temperature variance between the claimant's right and left upper extremity, and no skin changes (such as hyperhydrosis). It was his opinion that the claimant's continuing right upper extremity difficulties, at that time, were psychosomatic.

The claimant was also seen, at the respondent's request, by Dr. Kenneth Chekofsky, an orthopedic surgeon. This evaluation took place on July 15, 2003. At the time of his evaluation, Dr. Chekofsky also observed no objective findings of the continued presence of either RSD or CRPS. He also expressed the opinion that the claimant had reached maximum medical improvement from the actual physical injury to her thumb and assessed a permanent physical impairment rating of 10% to the thumb or 4% to the hand.

On June 8, 2004, the claimant was examined (again at the respondent's request) by a physician at Arkansas Specialties Care Centers. The report of this evaluation is unsigned and the identity of the author is not absolutely clear.. Although, the claimant's medical index indicates that it was Dr. David Collins, the medical record indicates that it is more likely Dr. William Ackerman, a specialist in RSD or CRPS. Regardless, the evaluating physician observed no objective evidence of the continued existence of RSD or CRPS, at the time of this evaluation.

Curiously, shortly after the evaluation by Dr. Rutherford, the records of Dr. Christopher also cease to note the continuation of objective findings indicative of the continuation of RSD or CRPS involving the claimant's right upper extremity. The discoloration, hyperhydrosis, temperature differential, and other pseudo motor symptoms have all disappeared by August 29, 2003. However,

Dr. Christopher purports to observe the reappearance of some of these symptoms in October 2004.

At the hearing, on October 4, 2004, the claimant exhibited no such symptoms. There was no bluish or purple discoloration of the claimant's right upper extremity and no observable hyperhydrosis. Although the claimant held her right upper extremity in a somewhat guarded position, there was also no visible signs of atrophy of any of the muscles in her right upper extremity. A review of the medical records also shows a total absence of atrophy involving the claimant's right upper extremity. Nerve conduction studies, previously performed on the claimant's right upper extremity in August 2004, were also negative for any neurological deficit.

After consideration of all of the evidence, it is my opinion that the greater weight of the credible medical evidence, "establishes" the actual existence of RSD or CRPS, involving the claimant's right upper extremity for at least a period of time following the claimant's compensable right thumb injury. This medical evidence further shows that the actual existence of this physical condition is amply supported by "objective findings." However, the greater weight of the medical evidence also shows that this condition had significantly improved and may have even resolved by June 24, 2003, and that the claimant's continued difficulties with her right upper extremity after that date are more likely psychosomatic in origin. Regardless, in regard to the RSD or CRPS, involving her right upper extremity, the claimant has satisfied the statutory requirement for compensability contained in A.C.A. § 11-9-102 (4) (B).

The claimant must next prove that her RSD or CRPS, involving her right upper extremity, is causally related to her admittedly compensable right thumb injury. Clearly, this condition appeared within a reasonable time following the claimant's initial compensable right thumb injury and subsequent surgeries. The claimant's initial right thumb injury and resulting surgeries could reasonably and logically produce RSD or CRPS (these terms are used interchangeably by the medical profession and the term CRPS appears to have replaced RSD as the common term for this pain

syndrome). There is also no evidence of any other reasonable cause for the appearance of this condition.

It must further be noted that all of the physicians, who have diagnosed the existence of this condition, and the potential existence of this condition (Dr. Benafield), have attributed this syndromes to the physical trauma produced by the claimant's initial compensable right thumb injury and the two surgical intervention it required. I find these opinions to be persuasive.

Therefore, the claimant has proven, by the greater weight of the credible evidence, the existence of a causal relationship between her initial compensable right thumb injury with the two surgical procedures it required and her development of RSD or CRPS of her right upper extremity. Thus, the RSD or CRPS of her right upper extremity would represent a compensable consequence or complication of her initial compensable right thumb injury. The claimant would be entitled to appropriate benefits under the Act for this compensable consequence.

The medical evidence also shows that Dr. David Collins has also diagnosed the claimant as suffering from a soft tissue injury to the musculature of her right shoulder. Dr. Collins, an orthopedic surgeon, evaluated the claimant on August 11, 2004. On that date, he observed abnormalities shown on x-ray studies of the claimant's right shoulder joint, and subacromial crepitation on his physical examination. Clearly, these findings would be "objective", within the meaning of A.C.A. § 11-9-102 (16) (A) (ii). Thus, this condition would also satisfy the statutory requirements of A.C.A. § 11-9-102 (4) (B).

Dr. Collins attributes this soft tissue injury to direct trauma to the shoulder joint in the employment related accident of November 9, 2001. However, this conclusion is not supported by the greater weight of the evidence presented. Dr. Collins recorded a history that the claimant was struck by falling boxes directly in the area of her anterior right shoulder, that these blows resulted in echymosis (bruising) to this area, and that the claimant was knocked down, resulting in an extension and hyper extension of her right shoulder. No such history of any direct trauma to the claimant's shoulder joint is recorded by any of the claimant's other treating physicians during her

two and a half year course of treatment. The initial medical records not only fail to record a history of trauma directly to the claimant's shoulder but also but makes no mention of any bruising or echymosis observed in the area of the right shoulder. In fact, there is no mention, whatsoever, of even any symptoms involving the claimant's right shoulder, until Dr. Christopher's report of January 6, 2003.

One would also reasonably expect that if the claimant had sustained, as Dr. Collins indicates, a relatively minor musculoligamentous injury to her right shoulder on November 9, 2001, it would have resolved within the two and a half years prior to Dr. Collins' evaluation. It is also important to note that Dr. Collins repeatedly states that the claimant's subjective complaints were not compatible or consistent with either the observed defect or the condition he had diagnosed.

I find that the claimant has failed to prove by the greater weight of the credible evidence that she sustained a musculoligamentous injury directly to her right shoulder joint (as diagnosed by Dr. Collins) in the employment related incident of November 9, 2001. Thus, this diagnosed injury or condition does not meet the statutory requirements of A.C.A. § 11-90102 (4) (A0 (i) and would not constitute a "compensable injury" within the meaning of the Act. The claimant would not be entitled to any benefits under the Act for this diagnosed injury.

The medical evidence further "establishes" the actual existence of a physical injury or condition involving the musculature of the claimant's neck and upper back. This injury or condition has been diagnosed by Dr. Christopher and Dr. Ackerman as being in the form of myofascial pain syndrome.

The medical record further contains various "objective findings" to support the existence of this diagnosed injury or condition. Dr. Christopher and some of her various personnel, including her physical therapist, have recorded the visual observation of muscle spasms and hypertonicity or rigidity of the muscles in this area.. During his evaluation, Dr. Ackerman observed that the claimant experienced an involuntary increase in her heart rate upon palpitation (applying pressure) of trigger points in this area.

I find this medical evidence sufficient to “establish” the actual existence of the diagnosed physical injury or condition, involving the claimant’s neck and upper back. I further find that the record shows sufficient “objective findings” to substantiate the existence of this physical injury or condition. Thus, in regard to this physical injury or condition, the claimant has satisfied the statutory requirements for compensability set out in A.C.A. § 11-9-102 (4) (B).

However, the claimant must still prove the existence of a causal relationship between this diagnosed injury or condition and the employment related accident of November 9, 2001. Clearly, none of the medical evidence shows that the claimant experienced any trauma directly to this portion of her anatomy in an employment related incident. These difficulties would not reasonably be associated with either the injury to her thumb or her compensable RSD/CRPS, involving her right upper extremity. RSD/CRPS is generally recognized as only effecting the extremities. It is also a neurologic condition involving the sympathetic nervous system and in turn, to a certain extent, the circulatory system, whereas, the claimant’s back difficulties represent a muscular problem.

However, Dr. Christopher opines that the claimant’s cervical and thoracic myofacial pain syndrome is causally related to her compensable RSD/CRPS. She indicates that the claimant right upper extremity RSD/CRPS has resulted in changes in how the claimant moves and holds her right upper extremity (biomechanical dysfunction) and that this, in turn, has increased the stress on the musculature of the claimant’s cervical and thoracic spines so as to result in myofacial pain syndrome involving these muscles. Dr. Christopher’s opinion in this regard is stated clearly and without any equivocality or ambiguity. Although not stated with the conviction of Dr. Christopher, Dr. Ackerman also states that the claimant’s myofacial pain syndrome could conceivably be related to her employment injury.

The medical record shows that the first report of any myofacial symptoms involving the claimant’s neck or upper back area does not appear until Dr. Christopher’s second examination on January 27, 2003. During this physical examination, Dr. Christopher noted extreme myofacial tenderness throughout the right upper quadrant of the claimant’s neck and back with several distinct

myofacial trigger points. She also recorded a history that these symptoms have appeared since the claimant's last visit on January 6, 2003. Dr. Christopher's initial evaluation, on January 6, 2003, expressly noted no complaints involving the claimant's neck or upper back and her physical examination of the claimant revealed no abnormal findings in this area. No complaints or symptoms involving the claimant's neck or upper back were noted in any of the reports by the claimant's previous physicians (Dr. Valley, Dr. Benafield, or Dr. Moffitt). The claimant's development of this myofacial pain syndrome first appeared, not long after her RSD/CRPS progressed to include her right shoulder. Thus, this condition manifested itself within a reasonable period of time after the claimant began experiencing the biomechanical dysfunction of her right upper extremity, which Dr. Christopher attributes as the cause of the claimant's development of myofacial pain syndrome. The existence of such a causal relationship appears reasonable, and the evidence presented does not indicate any other reasonable cause for the claimant's development of this syndrome.

After consideration of all of the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that the medically established and objectively supported myofacial pain syndrome, involving the musculature of her neck and back, is causally related to her compensable RSD/CRPS, which in turn, was a compensable consequence of her admittedly compensable right thumb injury and/or the two surgical procedures that it required. In essence, the claimant's myofacial pain syndrome involving her neck and upper back, represents a compensable consequence of a compensable consequence. The claimant would be entitled to appropriate benefits for this condition as set out in the Act.

I recognize that the Prehearing Order does not specifically set out that compensability of the claimant's neck and upper back myofacial pain syndrome is to be an issue. However, the Prehearing Order does specifically note that compensability for the claimant's difficulties with her right shoulder are to be addressed at the present time. Although it does not involve the right shoulder joint, itself, the claimant's myofacial pain syndrome involves what could be considered as the claimant's right shoulder. In fact, this is a primary area of involvement. I have concluded that it was the intent of

all of the parties concerned that this matter be addressed. I would also note that it appears both parties have presented all available evidence in regard to this issue and neither party appears to be prejudiced by its resolution at this time.

The only remaining difficulties involve the claimant's left upper extremity (from her shoulder to her elbow) and her right lower extremity. Again, the Prehearing Order does not expressly identify compensability of the claimant's complaints of these portions of her body as an issue to be resolved at the present time. However, the Prehearing Order does specifically indicate that compensability of the claimant's RSD or CRPS was to be litigated and resolved at the present time. Again, it appears that it was the intent of both parties to litigate compensability of all difficulties that have been diagnosed as RSD or CRPS, regardless of the area of the claimant's body involved. It further appears that both parties have presented all of the relevant evidence in regard to this matter. Therefore, the issue of the compensability of the claimant's difficulties with her left upper extremity, right lower extremity, which have been diagnosed as being attributable to RSD/CRPS, will be discussed and resolved in this opinion.

It appears that the claimant's difficulties with her left upper extremity have been diagnosed as being attributable to RSD/CRPS, based solely upon the claimant's subjective symptoms. These subjective symptoms, involving her left upper extremity mirrored her subjective complaints with her right upper extremity. However, unlike her right upper extremity, there is absolutely no evidence of any "objective findings," involving her left upper extremity to support this diagnosis. There is no evidence that any discoloration, cooling, hyperhydrosis, etc.. have ever been observed in the claimant's left upper extremity.

Thus, the actual existence of this condition, in the claimant's left upper extremity, is not supported by "objective findings," as required by A.C.A. §11-9-102 (4) (B). As previously noted, RSD/CRPS is not generally known to spread throughout the body or from one extremity to another. Therefore, the objective findings that support the diagnosis of RSD/CRPS in the claimant's right

upper extremity cannot be used to support the diagnosis of such a condition in either the claimant's left upper extremity or right lower extremity.

As the claimant has failed to prove that the actual existence of RSD/CRPS in her left upper extremity is supported by "objective findings," she has failed to prove that her difficulties with her left upper extremity (diagnosed as RSD/CRPS) would represent a "compensable injury" within the meaning of the Act.

Dr. Christopher's diagnosis of RSD/CRPS involving the claimant's right lower extremity also appears to be based upon the claimant's subjective complaints. The only "objective finding" noted in regard to the claimant's right lower extremity, is made by Dr. Christopher, in a report of August 13, 2004. At that time, Dr. Christopher observed some edema or swelling involving the claimant's right foot. This finding is not particularly indicative of the presence of RSD/CRPS. There is no mention of the observation of any discoloration, temperature difference, hyperhydrosis, or any other abnormalities particularly associated with RSD/CRPS.

In summary, I find that the claimant failed to prove the difficulties with her right lower extremity, which has been diagnosed as being in the form of RSD/CRPS, does not satisfy the requirement for compensability contained in A.C.A. § 11-9-102 (4) (D).. Thus, this condition would not be considered compensable and would not form the basis for an award of benefits under the Act for these difficulties.

The next matter to be addressed is the claimant's entitlement to additional benefits under the Act for her compensable injury and its compensable consequences. These are expressly limited to her entitlement to additional medical services and her entitlement to additional temporary total disability benefits. Once again, the burden rests upon the claimant to prove her entitlement to the benefits she requests.

In regard to the admittedly compensable injury to the claimant's left thumb, the greater weight of the credible evidence shows that the claimant has reached maximum medical improvement for this initial compensable injury. The underlying physical damage caused by this

compensable injury had long since stabilized by June 9, 2004, and nothing further in the way of time or medical treatment offered a reasonable expectation of improvement. This was essentially the consensus of all of the orthopedic surgeons who have either treated or evaluated the claimant. None of the orthopedic specialists, who have either treated or evaluated the claimant, have opined that any further medical treatment for the actual physical injury to the metacarpophalangeal joint of the right thumb would be reasonably necessary. In fact, no physician has recommended further treatment to this area.

As no additional medical services for the actual compensable injury to her right thumb has been recommended, none can be awarded. As the claimant has failed to prove that she continued within her healing period from the effects of the actual compensable injury to her right thumb, after June 9, 2004, she has failed to prove she would be entitled to temporary total disability benefits for this particular compensable injury after that date.

As previously noted, the claimant has failed to prove that she sustained a compensable injury to her right shoulder joint, in the employment related incident of November 9, 2001. Thus, any objectively demonstrated physical damage or defect involving this joint would not be the result of any compensable injury sustained in the employment related accident of November 9, 2001. Any medical treatment required to resolve or improve this physical damage or defect would not represent "reasonably necessary medical services." Any disability caused by this physical damage or defect would not support an award of "disability" benefits under the Act.

The claimant has also failed to prove that any difficulties which she has experienced with her left upper extremity and right lower extremity (diagnosed by Dr. Christopher as RSD/CRPS involving these extremities) represent either a compensable injury sustained in the employment related incident of November 9, 2001 or represent a compensable consequence of any compensable injury sustained in this incident. Thus, these difficulties would also not form the basis for an award of any benefits under the Act, including both medical services and disability.

The evidence (particularly the medical evidence) is in dispute concerning the question of whether the claimant has reached the end of her healing period from the effects of her compensable RSD/CRPS of her right upper extremity (i.e. whether she has achieved the maximum benefit of time and medical treatment, so that nothing further in the form of medical treatment offers a reasonable expectation of improvement). Dr. Christopher is clearly of the opinion that the claimant continues to experience RSD/CRPS of her right upper extremity and that further medical treatment for this condition would be beneficial, specifically an inpatient multi-disciplinary chronic pain program, continued oral medication, and stellate blocks. On the other hand, Dr. Rutherford, Dr. Chekofsky, and Dr. Ackerman all concur that the claimant was no longer experiencing RSD or CRPS of her right upper extremity, by at least June 8, 2004 and that no further medical treatment for this condition would be reasonably necessary.

Clearly, the opinions of Dr. Rutherford, Dr. Chevkosky, and particularly, Dr. Ackerman are more in accord with the greater weight of the credible evidence presented. As previously noted, shortly after Dr. Rutherford and Dr. Chekofsky gave their opinions, in June and July of 2003, Dr. Christopher noted a resolution of the objective findings indicative of ongoing RSD/CRPS, which she had previously observed in the claimant's right upper extremity. As previously noted, none of these abnormalities were apparent during the hearing. Obviously, the resolution or stabilization of the claimant's RSD/CRPS in her right upper extremity would reasonably be expected after almost two years of active medical treatment for these difficulties, primarily by Dr. Christopher.

It should also be noted that the claimant's continued severe complaints of pain and other subjective symptoms involving her right upper extremity are inconsistent with the greater weight of the credible evidence presented. Although Dr. Christopher notes almost continued severe subjective complaints, particularly pain involving the claimant's right upper extremity and various other portions of her anatomy, at each of her physical examinations she states that the claimant appeared in no acute distress. The evaluation of Dr. Ackerman also showed evidence of exaggerated symptoms, with complaints of severe pain upon any touching and movement of her

right thumb, but she exhibited no change in her pulse or heart rate during this testing. Finally, the claimant's complaints of severe pain and inability to use her right upper extremity are clearly inconsistent with the fact that she has never exhibited any atrophy of this extremity, from disuse or otherwise.

After consideration of all of the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that has continued within her healing period from the effects of her compensable RSD/CRPS after June 8, 2004. She has further failed to prove by the greater weight of the credible evidence that any further medical services are reasonably necessary for this compensable consequence. This specifically includes the multi-disciplinary inpatient chronic pain program and stellate blocks recommended by Dr. Christopher.

It is my further finding that the claimant's healing period from the effects of this compensable consequence had ended on June 8, 2004. Thus, this condition would not support an award of continuing temporary total disability benefits, after that date.

The only remaining "compensable" condition is the myofascial pain syndrome that has been previously found in this opinion to represent a compensable consequence of a compensable consequence of the claimant's compensable right thumb injury. The medical reports and records of Dr. Christopher indicate that, in her opinion, the claimant has not received the maximum benefit of time and medical treatment in regard to this particular condition. Her opinion, in this regard, is supported by the opinion of Dr. Ackerman. In his report of June 8, 2004, he recommends further conservative care for this condition, in the form of medication, home exercises, and some physical therapy.

After consideration of all of the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that she continues within her healing period from the effects of her compensable myofascial pain syndrome, involving her neck and upper back. The greater weight of the credible evidence further shows that continued conservative care, as outlined by Dr. Ackerman, is medically appropriate and offers a reasonable expectation of

improvement (if not total resolution) of this condition. However, I do not find that the inpatient multi-disciplinary chronic pain program that has been continuously recommended by Dr. Christopher for all of the claimant's ongoing complaints would be "reasonably necessary" for the compensable myofascial pain syndrome involving the claimant's neck and upper back. Such treatment is not commonly recognized or employed by the medical community, in this area, for the treatment of myofascial pain. It is also my opinion that this condition would not require any stellate blocks or the implantation of any neurostimulators, morphine pumps, etc., as mentioned by Dr. Christopher. Such extensive and evasive medical treatment is clearly not commonly employed or recognized as being appropriate by the general medical community, in this area, for the treatment of myofascial pain syndrome.

I find, that the claimant has proven by the greater weight of the credible evidence that she is entitled to additional conservative treatment for her compensable myofascial pain syndrome, by and at the direction of Dr. Christopher, the respondent's choice to be the claimant's primary treating physician. However, this does not give Dr. Christopher carte blanc authority to treat any of the claimant's other non-compensable complaints or her resolved RSD/CRPS of her right upper extremity. Nor, does this represent authorization for Dr. Christopher to treat the claimant conservatively for this compensable consequence for the next two years. With appropriate care, this condition would be reasonably expected to resolve within several months.

As the claimant has proven that she has continued within her healing period from the effects of her compensable myofascial pain syndrome, it becomes necessary to determine if this condition has also caused her to be rendered totally disabled from performing all forms of regular gainful employment, since June 8, 2004. This is the second necessary requirement for the claimant's entitlement to additional temporary total disability benefits now seeks.

The various medical reports and records of Dr. Christopher would indicate that, in her opinion, the claimant has been rendered totally disabled from performing all forms of regular gainful employment, since the date of her compensable injury on November 9, 2001. In fact, various

records by personnel apparently associated with Dr. Christopher's operation, have opined that the claimant has been permanently totally disabled from ever again performing any type of regular gainful employment.

While physicians are certainly qualified to voice expert medical opinions of the physical limitations and capabilities of their patients, any decision on "disability" or inability to perform gainful employment ultimately rests on this Commission. It is this Commission that has expertise and knowledge concerning an individual's employability and the available employment opportunities in a particular area.

In this case, the evidence shows that the claimant is 47 years old and has an 11<sup>th</sup> grade education. At the hearing, she appeared to be of at least average intelligence. Her prior work history seems rather sparse, having worked less than one year (including her several month employment with this respondent) from the early 1990's to the present.

The claimant testified that the pain in various portions of her body prevented her from performing any type of employment. She further testified that every day, she would sit at home and do genealogy research on the Internet. It also appears that she can perform essentially all the normal activities of daily life (i.e. personal hygiene, dressing herself, feeding herself, etc..). While she testified that she had a great desire to return to work, because she was lonely, she also testified that her difficulties caused her to be reluctant to be around people.

In assessing her limitations and restrictions, concerning possible employment positions, the claimant and Dr. Christopher have both taken into consideration the effects of all of the claimant's various complaints, even those not related to any compensable injury or compensable consequence. These restrictions or limitations appear to be based solely upon the claimant's description of the magnitude and severity of her subjective symptoms. Clearly, any restrictions or limitations imposed by non-compensable conditions would not be properly considered in determining the claimant's current temporary disability status. The magnitude of the claimant's subjective restrictions and

limitations is also inconsistent with and far exceeds those expected from the claimant's objectively documented physical injuries.

However, the claimant's compensable myofascial syndrome would clearly prevent her from engaging in any employment activities requiring significant or repetitive lifting repetitive bending or twisting of her neck, or maintain her neck in the same posture for extended periods. It would also likely preclude the repetitive use of her arms, particularly at or above the shoulder level. These restrictions and limitations would clearly prevent the claimant from returning to the position she held with the respondent at the time her compensable injury. It would also appear to prevent the claimant from performing the only other position she has held since the early 1990's. The claimant's education and lack of experience would preclude her from most sedentary positions. Her need for ongoing treatment would also present a stumbling block to her procuring employment in the open job market. There is no evidence that the respondent has offered the claimant any limited or light duty position that would comply with her current restrictions produced by her compensable myofascial pain syndrome.

After consideration of all of the evidence presented, it is my opinion that the claimant has proven, by the greater weight of the credible evidence, that she has been rendered temporarily totally disabled from gainful employment, as the result of the effects of her compensable injury and its compensable consequences, specifically her compensable myofascial pain syndrome. Thus, she would be entitled to continued temporary total disability benefits from June 9, 2004 through a date yet to be determined. However, as indicated by the medical evidence presented, the disabling effects of this compensable consequence should reasonably be expected to resolve with appropriate medical treatment.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

- I. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On November 9, 2001, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On November 9, 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$160.00 for total disability and \$154.00 for permanent partial disability.
4. On November 9, 2001, the claimant sustained a compensable injury to her right thumb.
5. The claimant's subsequently experienced compensable consequences or complications of this admittedly compensable injury, in the form of RSD/CRPS of her right upper extremity and myofascial pain syndrome involving her neck and upper back.
6. The claimant has failed to prove by the greater weight of the credible evidence that she sustained an actual physical injury to her right shoulder in the employment related incident of November 9, 2001, or that any objectively documented defects involving her right shoulder joint are a compensable consequence of the compensable injury sustained in this incident. Thus, the claimant would not be entitled to any workers' compensation benefits for any physical injury or defect actually involving her right shoulder joint (i.e. the injury or defects noted by Dr. David Collins).
7. The claimant has failed to prove by the greater weight of the credible evidence that her difficulties with her left upper extremity and right lower extremity represent a "compensable injury" sustained in the employment related incident of November 9, 2001, or represent a "compensable consequence" of any compensable injury sustained in that incident. Thus, the claimant would not be entitled to any workers' compensation benefits for her left upper extremity and right lower extremity difficulties.

8. All medical expenses incurred, as the result of the actual physical injury to the claimant's right thumb, have been paid and there is no dispute over these benefits.
9. The medical services provided to the claimant by and at the direction of Dr. Ann Christopher for the compensable RSD/CRPS of her right upper extremity through June 24, 2003, represent reasonably necessary medical services for the claimant's compensable RSD/CRPS. However, any medical services rendered or recommended by Dr. Christopher, purportedly for this condition after June 24, 2003, does not represent reasonably necessary medical services. The respondent is liable for the expense of these services, subject to the Commission's Medical Fee Schedule.
10. All medical services provided to the claimant by and at the direction of Dr. Ann Christopher for the claimant's compensable myofascial pain syndrome represent reasonably necessary medical services within the meaning of the Act. The respondent is liable for the expense of these services, subject to the Medical Fee Schedule established by this Commission.
11. The medical services provided to the claimant by and at the direction of Dr. Christopher for the claimant's difficulties with her left upper extremity and right lower extremity are not necessitated by or connected with a compensable injury. Thus, these services do not represent reasonably necessary medical services within the meaning of the Act, and the respondent is not liable for the expense of such services.
12. The claimant has proven her entitlement to continued temporary total disability benefits for her compensable myofascial pain syndrome from June 9, 2004 through a date yet to be determined. Specifically, she has proven she has continued within her healing period from the effects of this compensable consequence and has been rendered totally disabled as a result of this compensable consequence.

13. The respondent has controverted the claimant's entitlement to the payment of any medical expenses, unpaid as of the date of the hearing and has controverted her entitlement to any temporary total disability benefits after June 8, 2004.
14. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the additional temporary total disability benefits herein awarded.

### ORDER

The respondent shall pay to the claimant additional temporary total disability benefits for the period beginning June 9, 2004 and continuing through a date yet to be determined.

The respondent is entitled to a credit for any such benefits previously paid.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on these controverted temporary total disability benefits. One-half of this fee shall be the obligation of the respondent in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondent from the benefits herein awarded to the claimant.

The respondent is liable for continued reasonably necessary medical services for the claimant's compensable myofascial pain syndrome, as outlined in this opinion. This liability is subject to the Medical Fee Schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge