

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F406661**

<b>CALLIE M. RICHARD, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>SOUTHWEST ARK. DEV. COUNCIL, EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 22, 2005**

Hearing before Administrative Law Judge J. Mark White on January 13, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Nelson V. Shaw, Attorney at Law, Texarkana, Texas.

Respondents represented by Ms. Betty Demory, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On January 13, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on September 27, 2004, and a Prehearing Order was entered that same day. A copy of the September 27, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including December 1, 2003; and that the respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to her right hand; whether the medical treatment received by the claimant has been reasonably necessary in connection with a compensable injury; whether additional medical treatment is reasonably necessary in connection with a compensable injury; whether the claimant is entitled to temporary total disability benefits; and controversion and attorney's fees. It should be noted that the claimant initially contended she sustained a gradual-onset injury, but her testimony at the hearing included an account of an alleged specific-incident injury. The parties agreed at the hearing to adjust the issues accordingly.

The claimant contends that she suffered a compensable injury to her right hand; and that the injury culminated in her inability to use her right hand in early December 2003.

Respondents contend that the claimant did not sustain an injury arising out of and in the course and scope of her employment; and that the claimant cannot meet her burden of proof that her right-hand and right-thumb complaints are related to her employment activities at the respondent-employer.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained an injury caused by a specific incident identifiable by time and place of occurrence.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right hand.
5. The respondents have controverted this claim in its entirety.

## DISCUSSION

### I. History

The claimant worked for the respondent-employer as a CNA, working from 35 to 37 hours per week. She described her job duties as doing household chores for patients; she said she would “give baths, fix their hair, fix food, wash, mop, sweep, iron, take them shopping, take out the trash.” She testified that in December 2003 she was mopping in a patient’s home when the mop “accidentally hit the base of the wall at the floor and it jabbed my [right] hand and when it jabbed it, it was like, you know, when you hit your elbow. It shocked it like.” She testified that her hand “started getting sore and I noted that something was wrong with it, like a bump.” After three days her hand was “swollen and sore” with “a bone sticking out,” at which point she showed the hand to her supervisor.

The claimant admitted on cross-examination that she said nothing of the alleged mop incident in her deposition. When asked why she did not mention this incident in her prior testimony, she replied, “I just didn’t.” She also admitted that she did not inform her doctors of this incident, nor did she mention the incident on the paperwork reporting the injury to her employer.

The claimant first sought treatment from a Dr. Steven, whose records were not admitted into evidence. She then saw Dr. Sherri Diamond on January 5, 2004.

Dr. Diamond noted “a swollen proximal thumb with exquisite tenderness.” She diagnosed “nodular synovitis / cystitis of right thumb.”

The claimant evidently received no more medical treatment until April 1, 2004, when she returned to Dr. Diamond. Dr. Diamond repeated the nodular synovitis diagnosis, but then raised the possibility of DeQuervain’s disease, a condition she opined could result from the claimant’s work. However, subsequent x-rays revealed no abnormalities, and by April 5 Dr. Diamond had ruled out DeQuervain’s disease.

The claimant continued to treat with Dr. Diamond through the summer until she was referred to Dr. Jeffrey DeHaan. Based on his exam and on nerve conduction studies performed that day, Dr. DeHaan diagnosed “trigger thumb” and “possible carpal tunnel syndrome.” He performed surgery on September 10, a right carpal tunnel release and trigger thumb release.

## **II. Adjudication**

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that

the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* To prove compensability, a claimant is not required to identify the precise time and date of the injury; rather, the claimant must show only that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). However, in weighing the credibility of the evidence the Commission may consider a claimant's inability to identify a specific date. *Id.*

The claimant testified at the hearing that her injury began with an incident while mopping, with her pain gradually developing over the following days. However, the claimant admitted that she omitted any mention of this alleged incident in her deposition. The medical records contain nothing to corroborate the claimant's account of a specific incident, and Dr. Diamond's notes specifically deny

any history of trauma, injury, or repetitive motion. The claimant herself was unable to precisely identify the date of this alleged incident, other than it was “about the first or the second week” of December 2003. Given these inconsistencies between the claimant’s testimony, her prior testimony, and the medical evidence, I find that the claimant was not a credible witness. There is nothing in the record to support her account of this alleged specific incident other than her own testimony. I find that the claimant has failed to prove by a preponderance of the evidence that she sustained an injury caused by a specific incident identifiable by time and place of occurrence.

Even if I were to consider this injury as a gradual-onset injury, I would still find that the claimant has failed to prove by a preponderance of the evidence that her injury arose out of and in the course of her employment. The claimant’s diagnosis was trigger thumb and carpal tunnel syndrome, and there is little evidence in the record establishing any causal connection between these conditions and her employment, other than a handful of speculative statements by her doctors. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. ARK. CODE ANN. § 11-9-102 (16)(B); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Moreover, as to the diagnosis of trigger thumb, most gradual-onset injuries other than carpal tunnel syndrome must be shown to have been caused by rapid repetitive motion. ARK. CODE ANN. § 11-9-

102 (4)(A)(ii)(a). There is simply no evidence in the record to show that the claimant's work consisted of rapid repetitive motion.

The claimant has failed to establish all of the elements of a compensable injury. I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right hand.

**AWARD**

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge