

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101702

SHIRLEY ROTHENBERGER,
EMPLOYEE

CLAIMANT

CONAGRA FROZEN FOODS CO.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 20, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Batesville, Independence County, Arkansas.

The claimant was represented by HONORABLE JERRY JAMES, Attorney at Law, Conway, Arkansas.

The respondent was represented by HONORABLE BILL WALMSLEY, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on March 23, 2005 in Batesville, Arkansas. A prehearing order was entered in this case on December 13, 2004. A copy of the prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. Existence of employment relationship from January 20, 1999 to March 29, 1999.
2. Claimant earned \$7.15 per hour.

3. Respondent has controverted the claim.
4. The claimant alleges a gradual onset scheduled injury (carpal tunnel syndrome) sustained at work between 1/20/99 and 3/29/99.
5. Claimant's average weekly wage was \$286 yielding compensation rates of \$191 per week for TTD and \$154 per week for PPD.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

Claimant:

1. Compensability, and if found compensable, the nature and extent of benefits (TTD and medical expenses) to which claimant is entitled.
Permanent benefits are reserved.
2. Attorney's fees.

Respondent:

1. Whether the claimant sustained a compensable injury between 1/20/99 and 3/29/99?
2. Whether the alleged injury is established by medical evidence supported by objective findings?
3. If compensable, what benefits, if any, is the claimant entitled to receive?

The record consists of the three volume March 23, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Compensability Of Alleged Gradual Onset Upper Extremity Injuries

Arkansas Code Annotated § 11-9-102 (4) (A) (Suppl. 2003)

defines "compensable injury" in relevant part as follows:

- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence; if the injury is:
 - (a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Id. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); Ark. Code Ann. § 11-9-102(16). For a gradual onset injury caused by rapid repetitive motion, including carpal tunnel syndrome, the resulting condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

In the present case, the claimant's testimony, which is corroborated by the medical reports and incident reports, indicate that the claimant very quickly developed bilateral hand symptoms performing bilateral hand intensive duties in the Cut Up department at ConAgra in March of 1999. She timely reported her problem, determined that she could not continue the work, and underwent evaluation, testing, and treatment provided by Dr. Baker, Dr. Davidson, Dr. Safman, and Dr. Allen.

I find that the claimant has proven by a preponderance of the evidence each of the elements necessary to prove the compensability of her right wrist carpal tunnel syndrome injury. First, I find that the claimant proved by a preponderance of the evidence that her carpal tunnel

syndrome injury arose out of her employment duties at ConAgra between January 20, 1999 and March 29, 1999. In reaching this conclusion, I am persuaded by (1) the claimant's lack of any medical treatment in the record or of any prior indication of carpal tunnel syndrome symptoms in the record prior to her going to work at ConAgra; (2) the hand-intensive nature of the chicken packing duties and the chicken hanging duties which Ms. Rothenberger was performing in Cut Up when her symptoms began in March of 1999; (3) the close temporal relationship between her symptom onset and her new hand intensive duties in Cut Up; (4) the fact that she developed symptoms in each hand while performing the bilateral hand intensive duties in Cut Up; and (5) the fact that her carpal tunnel syndrome symptoms dissipated within four months after she left work at ConAgra.

As Mr. Walmsley has noted, the more difficult issue is whether the carpal tunnel syndrome diagnosis is established by medical evidence supported by objective findings. I find that right carpal tunnel syndrome injury is supported by objective findings but the left carpal tunnel syndrome is not. In this regard, I note that EMG and nerve conduction studies do not come within the voluntary control of the patient. Dr. Safman conducted electro-diagnostic studies on

the claimant on May 14, 1999. The left median distal motor latency and the left median sensory latencies Dr. Safman reported as "well within normal limits." The right median distal motor latency and the right median sensory latencies Dr. Safman reported as "within normal limits", although the data indicated the right side conductions were all slower than the left conductions. Under these circumstances, Dr. Safman indicated that the data did "not rule out an extremely mild very subclinical carpal tunnel syndrome or a carpal tunnel syndrome which has been treated." Dr. Allen interpreted the EMG and nerve conductions as essentially unremarkable, but also indicated that "[t]here is some slowing which is suggestive of carpal tunnel syndrome."

The Commission has previously recognized that electro-diagnostic test results can be classified as within "normal" limits, but still be indicative of an abnormality under some circumstances. In Martha Marion v. Good Old Days Foods, Inc., Full Workers' Compensation Commission, Opinion filed November 4, 1998 (E612281), a patient underwent comparative electro-diagnostic testing of the left median nerve and the left ulnar nerve. Although the latency of the left median nerve was within "normal limits", the Full Commission nevertheless found the left median nerve diagnostic test

results to be an objective finding of carpal tunnel syndrome in the median nerve where the data showed a prolonged latency in the left median nerve as compared to the left ulnar nerve.

In the present case, as discussed, Dr. Safman's data indicated a prolonged latency in the right median nerve as compared to the left median nerve. These differences appear to be consistent with Dr. Baker's March 29, 1999 clinical conclusions of bilateral carpal tunnel syndrome symptoms worse on the right, and the reports of numbness on the right but not the left reported by Dr. Baker and by Davidson. These clinical symptoms and Dr. Safman's data are also consistent with Dr. Allen's June 8, 1999 interpretation of the data as showing "some slowing" which he interpret as "suggestive" of carpal tunnel syndrome. Coincidentally, Dr. Safman's May 14, 1999 interpretation of his own data, as not ruling out a carpal tunnel syndrome which has been treated, is likewise consistent with the clinical reports which indicate significant right carpal tunnel syndrome symptoms initially, which appear to me to have resolved by approximately four months after Ms. Rothenberger left work at ConAgra in March of 1999. In light of the Commission's reasoning in Marion, and in light of the reported clinical

symptoms of numbness on the right as compared to the left in the present case, I find that the prolonged latency on the right as compared to the left in Dr. Safman's data is an objective medical finding supporting the existence of the claimant's diagnosed right carpal tunnel syndrome.

I further find that the work-related carpal tunnel injury is the major cause, and in fact the sole cause, of the need for treatment which Ms. Rothenberger received between March 29, 1999 and June 8, 1999 for her carpal tunnel syndrome diagnosis.

In reaching my conclusion that the claimant proved that she has established the compensability of a right side carpal tunnel syndrome, but has failed to support the existence of a left wrist or hand injury with objective medical findings, I have reviewed the notations of "swelling" in the medical reports in the record. The claimant's attorney argues that the March 24, 1999 report of swelling was based on a nurse's observation of the claimant's hands since the claimant testified that she recalled presenting to the doctor's office that day and showing her hands to a nurse in the doctor's absence. However, taken in their entirety, the handwritten comments dated March 24, 1999 appear more likely to be a history

provided by the claimant (as with the other documentations of "swelling" in the record) than clinical observations by a nurse. The claimant has failed to persuade me by a preponderance of the evidence that any notation of "swelling" in any medical report in the record was based on clinical observation rather than history.

2. Reasonably Necessary Medical Treatment

The employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

I find that the diagnostic and conservative treatment in the record provided by Dr. Baker, Dr. Davidson, Dr. Safman and Dr. Allen between March 29, 1999 and June 8, 1999 was appropriate for diagnosis and reasonably necessary for treatment of the claimant's carpal tunnel syndrome injury. In this regard, I note that with time off from work and

conservative treatment, Dr. Allen was able to avoid the surgery he mentioned as a possibility if the claimant's symptoms got worse. Fortunately, Dr. Allen's last reference to carpal tunnel syndrome was on June 8, 1999, and Dr. Allen did not again mention carpal tunnel syndrome symptoms after that date. Therefore, the clinical reports after June 8, 1999, appear to substantiate the claimant's deposition testimony that her carpal tunnel symptoms resolved in approximately four months.

Since Dr. Allen's treatment after June 8, 1999 was for medical conditions other than her compensable carpal tunnel syndrome, I find that the claimant has failed to prove by a preponderance of the evidence that the respondent is liable for any additional medical treatment in the record after June 8, 1999.

3. Temporary Total Disability

The claimant's work related injury at issue is a right wrist injury, therefore the claimant's injury is considered a scheduled injury. See Ark. Code Ann. §11-9-521(a). For a scheduled injury, a claimant is entitled to temporary total disability benefits until her healing period ends or until she returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d

822 (2002). The healing period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. Id.

In the present case, the claimant did not return to work during 1999 after terminating with ConAgra on March 29, 1999. I find that a preponderance of the evidence also establishes that she remained within the healing period for her right carpal tunnel syndrome injury through June 8, 1999, when Dr. Allen discussed with her the results of her recent electro-diagnostic testing and her options. Her deposition testimony indicates that the carpal tunnel syndrome resolved shortly thereafter, and no medical report after June 8, 1999 indicates otherwise. The preponderance of the credible evidence therefore establishes that the claimant's compensable right carpal tunnel syndrome injury

did not require any additional medical treatment after June 8, 1999, so that her healing period ended on that date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Existence of employment relationship from January 20, 1999 to March 29, 1999.

2. Claimant earned \$7.15 per hour.

3. Respondent has controverted the claim.

4. The claimant alleges a gradual onset scheduled injury (carpal tunnel syndrome) sustained at work between 1/20/99 and 3/29/99.

5. Claimant's average weekly wage was \$286 yielding compensation rates of \$191 per week for TTD and \$154 per week for PPD.

6. The claimant has proven by a preponderance of the evidence that she sustained a compensable carpal tunnel syndrome injury in the right upper extremity that arose out of her employment duties performed between January 20, 1999 and March 29, 1999.

7. The claimant has proven by a preponderance of the credible evidence that the medical treatment that she received for her carpal tunnel syndrome injury between March 29, 1999 and June 8, 1999 was reasonably necessary for

diagnosis and treatment of her compensable carpal tunnel syndrome injury.

8. The claimant has proven by a preponderance of the credible evidence that she remained off work and within the healing period for her right carpal tunnel syndrome injury beginning the day after March 29, 1999 and continuing through June 8, 1999. The claimant has therefore proven by a preponderance of the evidence that she is entitled to a period of temporary total disability which begins on March 30, 1999 and continues through June 8, 1999.

AWARD

The respondent is directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to the maximum statutory attorney's fees on benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715; and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge