

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F311328

MARGARET SCHRADER, Employee	CLAIMANT
WAL-MART STORES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED JANUARY 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 10, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 29, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury in the form of a ganglion cyst on her left wrist on or about September 26, 2003.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of right-sided carpal tunnel syndrome.
2. Temporary total disability benefits.
3. Related medical.

4. Attorney fee.

The claimant contends she suffered a compensable injury in the form of right-sided carpal tunnel syndrome while employed by respondent.

The respondents contend they have accepted and paid all medical benefits for the compensable injury of the claimant's ganglion cyst of her left wrist. The respondents controvert the claimant's bilateral carpal tunnel syndrome contending that it did not arise out of and in the course of her employment with the respondent.

From a review of 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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 29, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of right-sided carpal tunnel syndrome while employed by respondent.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's right-sided carpal tunnel syndrome.

4. Claimant has not missed sufficient time to entitle her to temporary total disability benefits.

FACTUAL BACKGROUND

The claimant is a 47-year-old woman with an eighth grade education who has

obtained her GED. Claimant began working for the respondent in its cafeteria at the home office in Bentonville in 1998. Claimant's job duties initially required her to wash pots and pans. After performing this job for approximately one year the claimant was moved to a job which required her to make sandwiches and work on the cafeteria serving line.

According to claimant's testimony she prepared sandwiches for approximately four to four and a half hours each day. This including peanut butter and jelly, egg salad, chicken salad, pimento cheese, tuna fish, ham, turkey, and hoagies. In order to make these sandwiches it was necessary for claimant to spread food such as peanut butter and jelly on the bread itself. For some of the sandwiches such as egg salad, ham salad, and chicken salad, the claimant prepared those spreads from scratch and used her hands to mix them in large mixing bowls. After the sandwiches were prepared the claimant cut them, wrapped them in cellophane, and used an "ironing" machine to shrink wrap the cellophane around the sandwich. After claimant spent approximately four to four and a half hours preparing sandwiches, she worked on the serving line placing various food items on plates as requested by employees.

In September 2003 the claimant's left wrist popped as she attempted to hold onto a pan which was filled with food. Claimant was sent by the respondent to Dr. Berestnev for treatment and he diagnosed claimant's condition as a ganglion cyst. Respondent accepted the ganglion cyst as compensable and paid claimant for her medical treatment. Claimant was evaluated by Dr. Berestnev on several occasions; however, when her condition did not improve he referred claimant to Dr. Heinzelmann, an orthopaedic surgeon, for further evaluation.

Claimant testified that after her ganglion cyst injury she was required to perform virtually all of her job duties with her right hand only and in November 2003 she began noticing problems with her right hand. When claimant sought medical treatment from Dr. Heinzelmann on December 23, 2003, she complained of intermittent numbness in her right

wrist. Dr. Heinzelmann indicated in his report of that date that it was his impression that claimant was suffering from carpal tunnel syndrome of the right hand. Dr. Heinzelmann ordered a nerve conduction study and prescribed claimant a wrist splint to wear at night to alleviate symptoms. The nerve conduction study which was recommended by Dr. Heinzelmann was not performed, but instead respondent sent claimant to Dr. Michael Moore in Little Rock for a second opinion. Dr. Moore's first evaluation of the claimant occurred on February 24, 2004. Dr. Moore noted that claimant's right hand symptoms could be related to carpal tunnel syndrome and recommended an EMG/NCV study. This testing was performed on April 20, 2004, and revealed that claimant suffered from bilateral carpal tunnel syndrome. Dr. Heinzelmann has recommended that claimant undergo a carpal tunnel release on her right wrist.

Claimant has filed this claim contending that her right-sided carpal tunnel syndrome is a compensable injury. She seeks payment of temporary total disability benefits, medical benefits, and a controverted attorney fee. Although the medical reports also mention left-sided carpal tunnel syndrome, that issue was not litigated at the time of the hearing.

#### ADJUDICATION

\_\_\_\_\_ Claimant's claim is for carpal tunnel syndrome pursuant to A.C.A. §11-9-102(4)(A)(ii)(a). Because her claim is for carpal tunnel syndrome, claimant is not required to prove that her job involved rapid repetitive motion. *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, claimant's compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(D). Furthermore, the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for medical treatment. A.C.A. §11-9-102(4)(E)(ii); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W. 2d 239 (1998).

After reviewing the evidence in this case impartially, without giving the benefit of the

doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that her right-sided carpal tunnel syndrome is causally related to her employment with the respondent. First, I note that claimant testified that she has worked for the respondent since 1998 and since 1999 she has spent approximately four hours each day making sandwiches which has involved constant use of her hands.

In denying that claimant has met her burden of proof, respondent relies in part upon the fact that claimant engaged in hand intensive activities outside her work with respondent. The evidence indicates that claimant has engaged in various craft activities including making her own greeting cards by drawing, painting, cross stitching, crocheting, embroidery, knitting, wood work, quilting, and tatting. Claimant testified that prior to November 2003 she spent approximately six to seven hours per week making crafts. Since her right wrist began bothering her in November 2003 she has spent a total of approximately 12 hours performing craft activities. Even when one considers the six to seven hours per week claimant was engaged in craft activities prior to November 2003, that amount of time is significantly less than the four to four and a half hours per day claimant was working for the respondent making sandwiches with her hands.

The testimony of Dr. Heinzelmann is significant with regard to the issue of causation. Dr. Heinzelmann testified at his deposition that he had stated in his medical records that he believed the claimant's carpal tunnel syndrome was caused by her job activities with the respondent. Dr. Heinzelmann testified that his opinion was based upon the history given to him by the claimant. Dr. Heinzelmann went on to testify that he was not aware of the claimant's crafting activities and he noted that those activities could cause and contribute to carpal tunnel syndrome. However, even after being confronted with claimant's crafting activities, it was Dr. Heinzelmann's opinion that claimant's work activities would be the greater cause of her carpal tunnel syndrome.

Q. If in fact she did use her hands crocheting and

knitting and all the activities I previously said, can you state within a reasonable degree of medical certainty that it was her work that caused the Carpal Tunnel Syndrome?

A. I guess to me it would be a tremendous amount of handiwork that would amount to more repetitive stress than what she did at work. It would be very unusual, and I guess that's maybe why I didn't, you know, ask her about what she did with her hands at home. But it would be very unusual for someone to do that much handiwork, it seems to me, that would be more stress than what her work activities were.

My reading of Dr. Heinzelmann's testimony leads me to conclude that it is his opinion that while claimant's craft activities may have been a contributing factor, it would be unusual for those activities to be greater stress than the activities at work.

Furthermore, claimant does not have the burden of proving that her job activities were the "major cause" of her carpal tunnel syndrome. Instead, she must prove a causal relationship and prove that the "compensable injury" not the "work activity" is the major cause of her need for medical treatment. This issue was addressed by the Commission in *Buckley v. PACTIV Corporation*, Full Commission opinion filed August 18, 2003 (F106766), wherein it stated:

The Administrative Law Judge determined in the present matter, "The claimant has established by a preponderance of the evidence that her work activities are the 'major cause' of her disability and need for treatment." The Administrative Law Judge erred as a matter of law. Ark. Code Ann. §11-9-102(4)(E)(ii) expressly requires a claimant to prove that the "compensable injury," not "work activity," is the major cause of her disability or need for treatment. *Medlin, supra*.

Based upon the claimant's testimony which I find to be credible as well as the testimony of Dr. Heinzelmann, I find that claimant has met her burden of proving a causal connection between her carpal tunnel syndrome and her employment with the respondent. I also find that claimant has met her burden of proving by a preponderance of the evidence

that her compensable carpal tunnel syndrome was the “major cause” of her need for medical treatment.

Finally, I also find that claimant has offered medical evidence supported by objective findings establishing an injury. Here, the nerve conduction study which was performed by Dr. Rutherford revealed right-sided carpal tunnel syndrome. This is an objective finding and I find it sufficient to establish claimant’s burden of proof.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that her right-sided carpal tunnel syndrome is a compensable injury. Having found that claimant suffered a compensable injury in the form of right-sided carpal tunnel syndrome, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with that injury.

Although claimant requested payment of temporary total disability benefits, claimant testified that she has continued to work for the respondent. According to claimant’s testimony she has missed only two or three days of work as a result of both the cyst and her carpal tunnel syndrome. Given this testimony, claimant is not entitled to temporary total disability benefits. See A.C.A. §11-9-501(a)(1).

Because claimant’s compensable injury occurred after July 1, 2001, the claimant’s attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that

she suffered a compensable injury in the form of right-sided carpal tunnel syndrome while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE