

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407003

BILL VICKERS, EMPLOYEE

CLAIMANT

**COOPER TIRE & RUBBER CO.,
SELF-INSURED EMPLOYER**

RESPONDENT

CROCKETT ADJUSTMENT, TPA

RESPONDENT

OPINION FILED APRIL 26, 2005

Hearing before Administrative Law Judge J. Mark White on April 7, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Paul Miller, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

STATEMENT OF THE CASE

On April 7, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on January 24, 2005, and a Prehearing Order was entered that same day. A copy of the January 24, 2005, 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/self-insured employer

relationship existed at all relevant times, including February, 2004; and that the claimant earned sufficient wages to be entitled to the maximum compensation rates. At the hearing, the parties further stipulated that the claimant received short-term disability benefits in the amount of \$375 per week from March 29, 2004, through May 18, 2004.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome; whether the claimant is entitled to temporary total disability benefits; and controversion and attorney's fees. The issue of permanent benefits was expressly reserved.

The claimant contends that he developed bilateral carpal tunnel syndrome as a result of his on-the-job activities, resulting in bilateral carpal tunnel release surgery by Dr. Norris Knight on March 29, 2004; and that he should receive temporary total disability benefits from March 29, 2004, through May 18, 2004.

Respondents contend that the claimant did not sustain an injury to his wrist(s), carpal tunnel(s), hand(s), arm(s), neck or shoulder(s) which is compensable under Act 796 of 1993; that the claimant will be unable to meet his burden of proof; that the claimant will be unable to show any injury related to his employment by objective medical findings, and will be unable to show that his work for respondent

was the major cause of his condition(s), if any, his treatments, if any, or his lost time, if any; and that in the event an award is rendered in favor of claimant, respondent is entitled to an offset against any disability benefits found to be owing the amount of money paid to claimant by respondent pursuant to his group health plan, its Accident & Sickness (A&S) benefit plan, and any other employee benefit plan meeting the definitions set forth in Ark. Code Ann. § 11-9-411.

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 his 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 proven by a preponderance of the evidence that he sustained an injury causing internal or external physical harm to the body,

requiring medical services and resulting in disability; and that the existence and extent of his injury is established by medical evidence supported by objective findings.

4. The claimant has proven by a preponderance of the evidence that his injury is the major cause of his disability and need for treatment.
5. The claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment.
6. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable gradual-onset injury in the form of bilateral carpal tunnel syndrome.
7. The claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from March 29, 2004, until May 18, 2004.
8. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant has worked for the respondent for more than thirty years. At the time of his alleged injury, he had been working for several years as a tire repairman. He estimated that on average he repaired between 550 and 600 tires per 12-hour shift. Each tire varied in the repairs it required, but he testified that the vast majority of repairs required his use of an air-powered grinder and an electric-powered rag buffer. Both of these items of equipment required the use of both his hands. He also occasionally used a knife to cut flash from the tires.

In February 2004 he sought medical treatment for recurring numbness in his fingers. He was seen first by Dr. Craig Ditsch on February 18, 2004. Dr. Ditsch noted positive Tinel's signs bilaterally, worse on the left, and recommended nerve conduction studies. Dr. Ditsch went ahead and referred the claimant to a specialist, Dr. Norris Knight, because the claimant also had a trigger finger in his left ring finger. The parties agree this trigger finger condition was unrelated to the present claim, and that it had no impact on the claimant's disability or need for treatment herein.

Dr. Knight first saw the claimant on March 23 and noted positive Phalan and Tinel's signs. The nerve conduction studies ordered by Dr. Ditsch had revealed

“bilateral, fairly symmetric, carpal tunnel syndrome superimposed on a mild underlying polyneuropathy of the upper extremities.” Dr. Knight recommended surgery, a bilateral carpal tunnel release and left trigger finger release. Surgery was performed by Dr. Knight on March 29, the sutures were removed on April 6, and the claimant was released to return to work on May 18. In a June 7, 2004, letter, Dr. Knight offered his opinion as to the causation of the claimant’s carpal tunnel syndrome:

This patient had recent surgery for bilateral carpal tunnel syndrome, left ring trigger finger both related to repetitious work and his occupation required repetitious work and therefore is etiologic.

The claimant has had a number of prior work injuries, including a trigger finger in the right small finger in 2002. He was diagnosed with diabetes in 1976 and remains insulin dependent.

II. Adjudication

A. Compensability

To prove the compensability of a gradual-onset injury, a claimant must establish by a preponderance of the evidence that the injury arose out of and in the course of his employment; that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and that

the injury was a major cause of the disability or need for treatment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001); ARK. CODE ANN. § 11-9-102 (4)(A)(ii). Objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores v. Leach, supra*; ARK. CODE ANN. § 11-9-102 (4)(D). Most gradual-onset injuries must be shown to have been caused by rapid repetitive motion. ARK. CODE ANN. § 11-9-102 (4)(A)(ii)(a). Carpal tunnel syndrome, however, is statutorily presumed to be caused by rapid repetitive motion. *Id.* Proof of rapid repetitive motion is therefore not necessary to establish the compensability of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

It is undisputed that the claimant had bilateral carpal tunnel syndrome, an injury causing physical harm to the body requiring medical services. Nothing in the record contradicts the diagnosis of carpal tunnel syndrome made by Dr. Knight, nor does the record contain any medical opinion questioning the *per se* reasonableness of his diagnosis and treatment. The diagnosis of carpal tunnel syndrome was supported by the objective findings of a nerve conduction study. Therefore, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury causing internal physical harm to the body, requiring medical services and

resulting in disability; and that the existence and extent of his injury is established by medical evidence supported by objective findings.

On cross-examination the respondents' counsel noted that the nerve conduction study found bilateral carpal tunnel syndrome "superimposed on a mild underlying polyneuropathy of the upper extremities," suggesting that the polyneuropathy might be related to the claimant's diabetes. I can find no indication in the record that the claimant was ever treated for this polyneuropathy. Rather, he was treated specifically for the carpal tunnel syndrome, including a carpal tunnel release surgery. By all indications, the carpal tunnel syndrome is the sole cause of the claimant's need for a carpal tunnel release. Therefore, I find that the claimant has proven by a preponderance of the evidence that his injury is the major cause of his disability and need for treatment.

In his testimony, the claimant described in detail the mechanics of his daily work routine. The work he described is heavily hand-intensive, requiring frequent repetitive movements of the hands and extensive use of vibratory equipment. His surgeon, Dr. Knight, opined that the carpal tunnel syndrome is connected to his work. Given this evidence, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. I note that I would make the same finding even if Dr. Knight's opinion

were not considered.

The claimant has proven every element of a compensable injury. Therefore, I conclude that the claimant has proven by a preponderance of the evidence that he sustained a compensable gradual-onset injury in the form of bilateral carpal tunnel syndrome.

B. Temporary Total Disability

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Injuries to the wrist generally, and carpal tunnel syndrome specifically, are considered scheduled injuries. *See, e.g., Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002); *Woods v. Tony Bull Motor Co.*, Workers' Compensation Commission E901847 (Sept. 5, 2000). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant contends he is entitled to temporary total disability benefits

from March 29, 2004, until the date he was released to return to work, May 18, 2004. The parties stipulated that the claimant received short-term disability benefits through the respondent's Accident & Sickness plan for that time period. The claimant was released by his doctor on May 18, 2004, and he returned to work the following day. I find that the claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from March 29, 2004, until May 18, 2004. The respondents are entitled to the appropriate offsets per Ark. Code Ann. § 11-9-411.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable gradual-onset injury in the form of carpal tunnel syndrome, and that he was entitled to temporary total disability benefits from March 29, 2004, until May 18, 2004. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Paul Miller, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge