

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210337

MARIA O. WEST, EMPLOYEE	CLAIMANT
GENERAL DYNAMICS CORP., EMPLOYER	RESPONDENT
NEW HAMPSHIRE INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED APRIL 27, 2005

Hearing held February 1, 2005, before the Honorable S. Dale Douthit, Administrative Law Judge, at El Dorado, Union County, Arkansas.

Claimant was represented by Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 1, 2005, in El Dorado, Arkansas. A prehearing order was entered in this case on September 1, 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 full hearing. A copy of the prehearing order was made Commission's Exhibit #1 to the hearing record without objection.

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) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2) The employer/employee/carrier relationship existed at all relevant times.

3) The claimant was earning an average weekly wage of \$277.62, which would entitle her to a weekly TTD rate of \$185.00, and a weekly PPD rate of \$154.00.

4) The respondents have controverted this claim in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the full hearing were limited to the following at the start of the hearing.

1) Whether the claimant sustained a compensable carpal tunnel injury under Ark.

Workers' Compensation Law.

2) If compensability is overcome, whether the claimant is entitled to any benefits prior to the date she reported the injury to her employer.

3) If compensability is overcome, whether the claimant is entitled to associated medical benefits and/or TTD from the date she last worked for the respondent to a date yet to be determined.

4) The claimant specifically reserved the issue of permanent physical impairment to be heard at a later date.

The claimant contends she sustained a carpal tunnel syndrome injury as a result of the hand intensive nature of her employment duties. That as a result, she is entitled to TTD benefits and to reasonably necessary medical treatment.

The respondents contend the claimant cannot meet her burden of proof for establishing the elements necessary to prove a compensable injury of carpal tunnel syndrome. Respondents also contend the claimant is not entitled to any benefits prior to the date she actually reported the

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injury to her employer. Further, respondents contend if the claim is found compensable, that the claimant cannot sustain her burden of establishing the elements necessary to prove her entitlement to any benefits.

## DISCUSSION

### A. HISTORY

The claimant became employed at General Dynamics on October 9, 2001. She testified her job primarily consisted of four different tasks; loading cans, capping cans, tying bags and the dot line. Ms. Florene Harris, a current employee of General Dynamics testified as follows regarding the bag tying portions of the claimant's work.

A. Okay, the tie table, it consists of tying igniter bags together and you make a knot.

Q. How would you do that?

A. It's kind of like you take your string - it's almost like you are going to tie your shoe and then you take it over and you take it under and you make the knot, just to keep it from coming untied.

Q. So you've got a bag on a table in front of you?

A. Uh-huh.

Q. And you are tying the top of the bag? (T. pg. 32, line 25)

A. Yes.

Q. And making a knot?

A. Yes, with the string. Right.

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Q. How many bags would you tie in a minute? Would you tie more than one bag in a minute?

A. Yes. I would say maybe seven or eight. You did say a minute, right?

Q. Yes.

A. Yes about seven or eight bags in a minute. (T. pg. 33, lines 1-9)

Ms. Harris also testified the claimant worked on the dot line, which consisted of the following:

A. Like she may have worked on the dot line. After these cans are finished you put a dot on it, which what it does is it protects the bag from slipping out of the bag. I think that - yes, she worked on the line.

Q. Worked on the dot line?

A. Yes, on the dot line.

Q. So what would you do if you were working on the dot line?

A. Well, you take the can off the conveyor ----

Q. How much would a can weigh?

A. Approximately five pounds.

Q. And so the conveyor goes by the person working on the dot line?

A. No - yes.

Q. And that person takes the can off and does what with it?

A. Puts the dot on it.

Q. And how big a can are we talking about?

A. About like that.

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Q. Is it like a coffee can only a little bit bigger?

A. A little bit wider, but maybe about the (T. pg. 36 lines 3-25)  
height of a coffee can.

Q. And how would you put the dot on it?

A. You peel your dot off - about like you do a stamp, you peel your dot off of the paper and you place your dot over the hole of the can.

Q. So there is a hole in the lid of the can or the bottom?

A. Where the igniter bag is in, to keep the bag from slipping out. To keep it from leaking pressure or whatever.

Q. And so you slap something, a self-sticking label or something over the hole?

A. Right, a self-stick label. That's it.

Q. How many times would you do that every minute?

A. How many times you put a dot on a can every minute?

Q. I'm assuming that you would do - would you do that one can a minute, two cans a minute?

A. Well, you could do three to four cans a minute.

Q. And what would you do with the can after you put the self-sticking ----

A. Place it back on the conveyor and let it go on to pack out. (T. pg. 37, lines 1-25)

Ms. Harris also testified the claimant performed both jobs associated with the loader machines; capping and loading:

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A. She worked on the loader, like the lady said before. She used the word bucket but we use the word can at work.

Q. Tell us what that job is about. (T. pg. 23, lines 22-25)

A. It consists of putting powder in the can.

Q. How do you put the powder in the can?

A. She pressed the bottom there on the machine and the machine let the powder in.

Q. Do you press the button with your foot or with your hand?

A. Hand.

Q. You put the can under a spout or something?

A. Right.

Q. And hit a button?

A. Right.

Q. And the machine fills the can. Then what do you do?

A. And it passes on to the next person to put the cap on it.

Q. And how many ----

A. The lid.

Q. And how many cans would you do in a minute?

A. Oh, maybe three. I would say approximately three to four. (T. pg. 35, lines 1-20)

The claimant testified that after only nine days on the job she began having problems with

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her hands and wrist, (T. pg. 55, lines 3-7) and that she reported the problems within the first two weeks to a supervisor. (T. pg. 45, lines 8-25 & pg 46, lines 1-15)

On October 18, 2001, nine days after beginning employment with General Dynamics, the claimant went to see Dr. Judson Hout and reported numbness of her right hand. Dr. Hout diagnosed the claimant with carpal tunnel syndrome, right hand at the initial visit. (RX 1, pg. 3) The claimant then underwent nerve conduction studies which confirmed bilateral carpal tunnel syndrome according to Dr. Charles Fohn's 2/11/02 report. (CX 1, pg. 78)

“This patient was referred by Mike Hebert with bilateral carpal tunnel syndrome. She's had nerve conduction studies which confirmed this. The right wrist is the worst. She's been wearing an immobilizer but it doesn't help that much. We have her scheduled for surgery on 2/15/02 under general anesthesia. I discussed the surgery with her. I told her I could repair one side first and then repair the other side.”

On 2/15/02, Dr. Fohn did a carpal tunnel release of the claimant's right wrist. (RX 1, pg. 6) After the claimant's surgery she had other medical needs that were admittedly not work related. One such need was an anterior cervical decompression and fusion at C6-C7 around April of 2003. (RX 1, p. 20) Another was a thyroidectomy on 9/24/02. (CX 1, p. 70) Following her right wrist release surgery on 2/15/02, the claimant testified she never returned to work.

The claimant did; however, work between her first diagnosis of carpal tunnel syndrome, (10/18/01), up to a day before her right wrist release surgery (2/14/04). The respondents, through their exhibit #2, indicate the first they knew of the claimant's wrist problems was upon her reporting it to them on 1/22/02. (RX 2, p. 1) Upon notification respondents seem to indicate they immediately had a safety meeting to discuss the claimant's work options within Dr. Lon

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Burba's work restrictions he had placed upon the claimant. As evidenced in a Memo for the Record dated 1/22/02 from Mark Rice, General Dynamics EH & S Manager, it was decided the claimant could do certain tasks and stay within her restrictions. (RX 2) The respondents controverted this claim in its entirety.

## II. Adjudication

### A. Compensability

A.C.A. §11-9-102(4)(A) defines "compensable injury":

(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.

It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. Kilgore v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W. 2d 190 (1998). A compensable injury must be established by medical evidence supported by objective findings.

A.C.A. §11-9-102(4)(D). The burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii)

A claimant seeking benefits for an allegedly work related carpal tunnel syndrome injury must prove by a preponderance of the evidence that 1) the carpal tunnel syndrome arose out of and in the course of employment; 2) the injury caused internal or external physical harm to the

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body that required medical treatment or resulted in disability or death; 3) the injury was the major cause of the disability or need for treatment. In addition, the compensable injury must be established by medical evidence supported by objective findings. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W. 2d 760 (2001) .

Although rapid repetitive motion is not necessary to prove a compensable carpal tunnel injury, it is a factor with regard to causation in this case because there is no medical evidence in the record that attempts to address causation. To prove the connection between an injury and employment, one does not need medical evidence; however, if a medical opinion is given, it must be stated within a reasonable degree of certainty. Freeman v. Con-Agra, 27 S.W. 3d 732. Since there is no medical evidence related to causation, I look to the other facts. First, the medical evidence submitted is basically void of any wrist or hand problems on the part of the claimant prior to her employment by the respondents. Second, the hand intensive nature of her employment cannot be overlooked.

As outlined earlier in this opinion, the claimant performed different jobs for the respondent; however, in this examiner's opinion they were primarily rapid, repetitive and hand intensive. For example, every hour the claimant worked on the tie table, she would tie between 420 and 480 bags according to the credible testimony of Florene Harris. For every hour the claimant worked on the dot line she would remove, place a sticker, replace a can weighing about five pounds on a conveyor between 180 and 240 times. When the claimant worked the loader she would fill or cap between 180 and 240 cans per hour.

I find her carpal tunnel injury arose out of and in the course of her employment in spite of

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her testimony. I did not find the witness to be the most credible. Originally the claimant testified she hadn't worked for the six years preceding her employment with General Dynamics.

Q. So before you went to work for General Dynamics - let me get into your work history a little bit. The last time that you had worked was in 1995, right? You had worked for a factory in Mooresville, Indiana? (T. pg. 55, lines 21-25)

A. Yes, sir.

Q. So you had been off work entirely for about six years?

A. Yes, sir. (T. pg. 56, lines 1-4)

Then the claimant did a complete turn around on re-cross, and suddenly remembered all kinds of employment before she went to work for General Dynamics.

Q. Ms. West, I'm looking at a copy of your application for employment that I provided to your attorney earlier. On it it says that - is this your handwriting?

A. Yes, sir.

Q. It says that you worked at Holiday Inn Express?

A. Uh-huh.

Q. Trim carpenter's helper.

A. Uh-huh.

Q. Cleaning, hung doors and frames, hardware, placing furniture. Is that what you did?

A. I was working as a carpenter's helper, yes, and that is what they did, hang the doors and stuff like this. What we would do is we would help them get the tools

together, the parts, whatever they needed together.

Q. Then it says in the year 2000 you worked for Camden Comfort Inn Hotel as an assistant supervisor/carpenter. (T. p. 78, lines 6-25)

A. Uh huh. I watched the carper - what I did is I helped my boss. I would go up there and - well, that's the title he gave me. All I had to do was hold the clipboard and make sure the carpenters done what they had to do and I'd go from one room to the other and make sure like the plugs were right, that everything was right in there, but all I did was hold the clipboard and make sure that was intact and oversee it I guess is what you would say.

Q. And in 1995 and 1998 it says carpenter's helper, framer, siding, windows and doors, custom painting. Did you work as a framer and installing siding?

A. Okay. What I did is went in as a helper and pick up the nails, you bring them the equipment that they would need and that's what you did. That is what we would list under helpers or whatever. (T. p. 79, lines 1-18)

To top off the claimant's deception, she remembered an incident while working for Camden Comfort Inn in the year 2000.

Q. Do you remember having any problem causing you pain while you were working for Camden Comfort Inn in the year 2000?

A. Like I said, right there is where I had the clipboard and I was supposed to be overseeing everything that was going on in the hotel. I went up and got underneath one of the trucks that they were (T. pg. 79, lines 19 - 25) unloading and one of the mattresses fell

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on top of me and that's where I messed up. They were unloading the truck and I just didn't see the mattress.

Q. What part of your body was hurt?

A. My back, my lower back, but every job that I had was just like for a helper. You are sweeping and picking up nails or whatever. (T. pg. 80, lines 1-7)

As mentioned earlier, the claimant went on to have a cervical fusion. Could it have been related to a mattress falling off a forklift? Could her carpal tunnel have any relation to her work prior to being employed by the respondents? The claimant's lack of credibility still does not outweigh the evidence in the record regarding the compensable injury and the record is void of any medical evidence regarding the claimant's 2000 mattress incident.

Dr. Fohn and Dr. Hout both clearly established medical evidence supported by objective findings showing the claimant has suffered an internal injury that required medical treatment. (CX 1, pg. 709 & RX 1 pg. 3 respectively). Further, the nerve conduction studies along with the right wrist release surgery show that the major cause for the surgery was the carpal tunnel injury. The respondents' attorney stated in his closing argument that he didn't believe one could develop full blown carpal tunnel in nine days, (T. pg. 81, lines 7-9); however, no evidence was submitted on this point and as such is merely speculation. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W. 2d 692 (1991) The claimant has proven by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel syndrome injuries.

B. Notice defense and associated medical.

The respondents raised the notice defense from the onset of this litigation. A.C.A. §11-9-701 (a)(1) states:

“Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers’ Compensation Commission and to a person at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee’s report of injury.

As stated, the claimant proved herself to be uncredible and that premise was further substantiated when she testified about reporting her carpal tunnel syndrome.

Q. Do you remember what supervisor you reported it to?

A. There was a female, you know, that stayed in that one section and it was like Mandy or - I don’t remember her name. (T. pg. 46, lines 11-15)

The respondents submitted evidence the first they knew of the alleged injury was 1/22/02. (RX 2) This examiner highly questions why Dr. Hout’s findings of carpal tunnel syndrome was not turned in to the employer by the claimant. In any event, the credible evidence indicates the claimant did fail to report her injury until 1/22/02, and, as such, the respondents are not liable for medical treatment related to the claimant’s carpal tunnel syndrome prior to 1/22/02. The respondents are liable for all medical treatment related to the claimant’s bilateral carpal tunnel syndrome after 1/22/02, including, but not limited to, her right wrist release surgery on 2/15/02.

C. Temporary Total Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Arkansas State Highway & Transportation Dept. v. Breashers, 288 Ark. 244, 713 S.W. 2d 391 (1981).

In the present case, no medical evidence submitted addresses the claimant's ability to work after her right wrist release surgery. However, according to both parties, the claimant was able to work prior to her release surgery within restrictions from Dr. Burba when she had full blown carpal tunnel in both hands. In fact, the claimant testified she did work within Dr. Burba's restrictions from the time of reporting the injury, (1/22/02), up to the day before the surgery (2/14/02). If the claimant could work for the same wages within restrictions prior to the surgery, there is nothing in the record to indicate she couldn't do the same after a reasonable healing period following the surgery. The claimant testified her doctor advised her she should be able to return to work six weeks after her surgery.

Q. And what was the nature of the meetings? What went on in the meetings?

A. Basically check to see, you know, my progress. And I would explain to them, you now, like what the doctor said and that I was supposed to go for surgery and then I let them know that the doctor said that within six weeks I could return to work and I was going to make sure that I had my job when I returned. (T. pg. 52, lines 13-20)

I find the six weeks recovery period following surgery is a sufficient healing period, and as such the claimant's healing period ended six weeks after her surgery on 2/15/02. Additionally,

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the claimant was totally incapacitated to work for those six weeks and is entitled to TTD for the six weeks following her 2/15/02 surgery, for a total of \$924.00

It is also worth noting Dr. Fohn's report of 3/21/02 wherein he states "I don't think she wants to go back to work." (CX 1, p. 78)

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The stipulations agreed to by the parties are reasonable and are herein accepted as fact.
- 2) The claimant has established by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel syndrome injuries.
- 3) The claimant is entitled to TTD benefits for the six weeks following her 2/15/02 surgery totaling \$924.00 for her carpal tunnel syndrome injury.
- 4) The respondent has proven their affirmative defense pursuant to A.C.A. §11-9-701 and as such the respondents are not liable for any benefits related to the compensable injury prior to 1/22/02. The respondents are; however, to provide medical benefits related to the claimant's compensable bilateral carpal tunnel syndrome after 1/22/02.

#### AWARD

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

The claimant's attorney, Mr. Philip Wilson, is entitled to a 25% attorney fee on any indemnity benefits to which the claimant is entitled as a result of the findings herein, one-half of

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which is to be paid by the claimant, and one-half to be paid by the respondents in accordance with A.C.A. §11-9-715.

IT IS SO ORDERED.

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DALE DOUTHIT  
Administrative Law Judge

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