

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407040

DIANE WHEELER

CLAIMANT

J. B. HUNT TRANSPORT, INC.

RESPONDENT

INSURANCE COMPANY OF PENNSYLVANIA,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in  
Springdale, Washington County, Arkansas.

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

Respondents represented by JOSEPH PURVIS, Attorney, Little Rock,  
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 26,  
2005, in Springdale, Arkansas. The deposition of Dr. Rodger C.  
Dickinson, Jr. was taken on September 13, 2005, and has been  
admitted as Respondents' Exhibit No. 2.

A pre-hearing order was entered in this case on April 19,  
2005. This pre-hearing order set out the stipulations offered by  
the parties and outlined the issues to be litigated and resolved at  
the forthcoming hearing. A copy of the pre-hearing order has made  
Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are  
hereby accepted:

1. On all relevant dates, the relationship of employee-  
employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$373.00 for  
total disability and \$261.00 for permanent partial

disability.

3. The claim is controverted in its entirety.

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

1. whether the claimant sustained compensable injuries to her wrist/hands in the form of bilateral carpal tunnel syndrome.
2. The claimant's entitlement to the payment of medical expenses.
3. Controversion and appropriate attorney's fee.

In regard to these issues, the claimant contends:

"That the claimant's injury date is August 1, 2003. She injured both hands, wrists, and arms as a result of the continual and repetitive typing she has done while working at J. B. Hunt."

In regard to these issues, the respondents contend:

"That the claimant's carpal tunnel syndrome does not constitute a compensable injury under the terms of the Act."

#### DISCUSSION

\_\_\_\_\_The central issue in this case is the question of whether the claimant sustained "compensable" injuries to her wrists/hands, in the form of carpal tunnel syndrome, during her employment with this respondent. The burden rests upon the claimant to prove by the greater weight of the credible evidence the occurrence of physical injuries to her wrists/hands that satisfy all of the requirements for "compensable injuries" which are mandated by the Act.

The first of these requirements are found in Ark. Code Ann.

§11-9-102(4)(D). This subsection requires that the claimant prove by the greater weight of the credible medical evidence the actual existence of the physical injuries alleged to be compensable. It further requires that she prove that the actual existence of these physical injuries is supported by “objective findings,” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The greater weight of the medical evidence presented in this claim does “establish” the actual existence of a physical injury or condition involving the claimant’s wrists and hands, which takes the form of bilateral carpal tunnel syndrome. This diagnosis has been reached by every physician who has evaluated and treated the claimant. This includes Dr. Rodger Dickinson, Jr., Dr. Jacob Kaler, and Dr. Miles Johnson. Dr. Dickinson and Dr. Kaler are both orthopaedic surgeons and Dr. Johnson is a neurologist. These physicians have considerable expertise in this area. I find their diagnosis of the etiology of the claimant’s wrist/hand complaints to be compelling. Further, this diagnosis of bilateral carpal tunnel syndrome is supported by “objective findings” of abnormalities shown on electrodiagnostic studies (EMG/NCV). Thus, the claimant has satisfied the statutory requirements for a “compensable injury” that are set out in Ark. Code Ann. §11-9-102(4)(D).

As no specific accident or incident has been alleged as the cause of the claimant’s medically established and objectively documented bilateral carpal tunnel syndrome, the claimant must next prove that her bilateral carpal tunnel syndrome satisfies the

definitional requirements for a “compensable injury” that are found in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are:

- (1) That the injury arose out of and occurred in the course of the employment;
- (2) That the injury caused internal or external physical harm to the claimant’s body;
- (3) That the injury was caused by rapid or repetitive motion or is in the form of carpal tunnel syndrome.

The claimant must further prove that her bilateral carpal tunnel syndrome also satisfies the statutory requirements of Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection requires that the claimant prove by the greater weight of the credible evidence that the employment related injury or contribution to her resultant condition of bilateral carpal tunnel syndrome was the “major cause” of either her need for medical treatment or of any disability she has experienced.

The evidence presented by the claimant to prove that her bilateral carpal tunnel syndrome satisfies the requirements of both of these subsections is essentially the same. For this reason and due to the fact that these subsections are to some extent interrelated, the discussion of the evidence dealing with these two subsections will be discussed at the same time.

The claimant testified that she began working with the respondent on December 5, 2000, she stated that her initial position with the respondent required her “to do a lot of data entry” during her regular work day (T.5-6). However, she did not indicate any difficulties with her wrists or hands until August or

possibly late July. She also conceded that she did not report these difficulties to the respondent nor did she seek any medical treatment, at that time.

The testified that in September of 2002, she changed positions with the respondent. She described this job as less hand intensive and stated that her symptoms with her wrists/hands "seemed to subside" (T.10) once she changed jobs. She testified that she continued to perform less hand intensive positions with the respondent for a "few months" in one position and an additional two months in another (T.6-7).

The claimant stated that she was then placed in a position where she worked at home. She indicated that this position was again extremely hand intensive. It was her testimony that after performing this position for a period of time, she again began experiencing night pain and symptoms in her hands and arms. However, the claimant again concedes that she did not report these symptoms to the respondent, nor did she seek any medical treatment.

The claimant acknowledged that she was terminated by the respondent on October 3, 2003 for failing to pass a random drug screen. However, she still reported no difficulties with her hands or wrists to the respondent, even at the time of her termination.

The claimant testified that, following her termination by the respondent, her wrist/hand complaints again "seemed to subside" (T.11). She stated that she did not work for wages for any employer between her termination by the respondent on October 3, 2003, and the commencement of her employment at the Community Development

Center of Bentonville, in April of 2004.

The claimant described a variety of tasks required by this new employment required her to perform a variety of tasks, which included picking up and cleaning “residences” that were maintained by the Community Development Center. This involved such things as packing up articles of property left on the premises, general cleaning of the premises, and general laundry work (T.11-12). She stated that with the performance of these new employment activities, she immediately began having significant problems with her wrists/hands. Although she again did not report these difficulties to her new employer these difficulties were sufficient to cause her to seek in medical services, once she obtained group insurance coverage on May 1, 2004.

The medical evidence confirms that the claimant first sought medical treatment for difficulties involving her wrists/hands on May 17, 2004. At that time, the claimant consulted Dr. Rodger C. Dickinson, Jr. She gave Dr. Dickinson a history that her problems started in August of 2002 “when she was doing a lot of key punching at J. B. Hunt.” Although she related that her difficulties had significantly worsened (approximately a month prior to her visit), she failed to advise Dr. Dickinson that this occurred shortly after she began performing hand intensive employment for the Community Development Center of Bentonville. There is also no indication that she advised Dr. Dickinson that the initial difficulties in August of 2002 had significantly improved if not essentially resolved by September or October of 2002.

In order to prove that her bilateral carpal tunnel syndrome “arose out of and occurred in the course of her employment” with J. B. Hunt, as required by Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the claimant must establish a causal relationship between her bilateral carpal tunnel syndrome and her employment related activities for J. B. Hunt. The only direct evidence presented by the claimant to prove this causal relationship is her own testimony, to the effect that she first experienced symptoms indicative of carpal tunnel syndrome when she was required to perform certain hand intensive activities by her employment position at J. B. Hunt.

Although the testimony of a party is never considered to be uncontradicted, this does not mean that it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient to prove any fact it is legally competent to address. Clearly, the claimant’s testimony would be legally competent to prove when the initial onset of her symptoms indicative of carpal tunnel syndrome occurred and the temporal relationship between this onset and her employment activities with the respondent.

However, the evidence presented in this case casts significant doubt on the claimant’s credibility. The evidence presented (including the claimant’s own testimony) undeniably shows that during the period of employment with the respondent, the claimant remained physically able to perform rather hand intensive activities. She reported no complaints to her employment in performing her assigned duties and sought no medical treatment. In fact, the first independent record of the claimant reporting any

complaints indicative of carpal tunnel syndrome did not occur until seven months after she had been terminated from her employment at J.B. Hunt.

The actual episode of complaints that caused the claimant to seek medical treatment and resulted in her experiencing disability did not occur until shortly after the claimant began her employment with the Community Development Center of Bentonville. Clearly, the claimant's required employment activities for the Community Development Center of Bentonville also required strenuous hand intensive activities of a slightly different type than those required by her employment for J. B. Hunt. The strenuous grasping and holding of objects while manipulating her hands and wrists, which was required by her employment with the Community Development Center, would reasonably produce more trauma or stress than merely keyboarding.

After consideration of all the evidence presented, I simply cannot afford the claimant's testimony (concerning the factors surrounding the initial onset of her symptoms indicative of carpal tunnel syndrome), to be sufficiently credible to constitute a preponderance of the credible evidence. I find it insufficient to prove the existence of a causal relationship between her bilateral carpal tunnel syndrome and her employment activities for the respondent, either in August of 2002, or at any other time during her employment with the respondent. The claimant's failure to prove this causal relationship prevents a finding that her bilateral carpal tunnel syndrome arose out of and occurred in the course of

her employment with this respondent. The claimant's failure to prove this requirement of Ark. Code Ann. §11-9-102(4)(A)(ii)(a), prevents a finding that her bilateral carpal tunnel syndrome represents a "compensable injury" as that term is defined by this section of the Act.

In reaching this decision, I am aware that Dr. Dickinson (in his reports and deposition), expressed his opinion that the claimant's bilateral carpal tunnel syndrome was causally related to and had its inception in the claimant's employment activities for the respondent. However, this opinion is clearly based upon the assumption that the claimant's history concerning the initial onset of her carpal tunnel syndrome is accurate. Such a fact has not been prove by the greater weight of the credible evidence presented.

Curiously, Dr. Dickinson also seems to place no significance to the fact that the claimant's symptoms appeared or at least increased to the point where she felt the need for medical services, only after she began her employment with the Community Development Center of Bentonville, an employment that appears to have required even more hand intensive and hand strenuous activities than that with J. B. Hunt.

Finally, it appears from Dr. Dickinson's reports and depositions that he also assumed that once the claimant's bilateral carpal tunnel syndrome difficulties began (in August of 2002), they remain essentially unchanged, until approximately April of 2004, when they spontaneously worsened.

I find that his medical opinion on causation is based upon the assumption of the accuracy of facts not proven by the evidence and, in fact, contrary to the greater weight of the evidence. Thus, it is entitled to no weight and credit.

Even if the claimant had proven the causal relationship between her employment for this respondent and her bilateral carpal tunnel syndrome, which is required by Ark. Code Ann. §11-9-102(4)(A)(ii)(a), there would still remain the “major cause” requirement of §11-9-102(4)(E)(ii). In order to satisfy the requirements of this section, the claimant must show that the physical injury or damage caused by her employment activities for this respondent was the “major cause,” (i.e. more than 50% of the cause) of her need for medical services or of any disability she has experienced.

Assuming that the claimant’s testimony (concerning the initial appearance of carpal tunnel syndrome difficulties during her employment with this respondent) is credible, it would still appear that these initial difficulties were not sufficiently severe to cause the claimant to seek or require medical treatment or to cause her to cease work so as to cause disability. In fact, these complaints were not even severe enough to cause her to complain of such difficulties to her employer. Her testimony also reflects that these initial or prior episodes of difficulties, which she contends that she experienced during her employment with this respondent, substantially improved (if not totally resolved) when she is ceased performing such activities.

All of the evidence presented, including the claimant's own testimony, shows that the claimant's bilateral carpal tunnel syndrome symptoms only became sufficiently severe to cause her to seek medical treatment and to result in disability months after her termination of employment with the current respondent. All of the evidence presented, including the claimant's testimony also shows that the onset of symptom shows that the onset of these severe symptoms only occurred shortly after the claimant began working for another employer (the Community Development Center of Bentonville), performing employment that required strenuous hand activities that would be even more likely to produce carpal tunnel syndrome, than the activities she was performing for J. B. Hunt. These new employment activities involved strenuous prolonged gripping of objects while moving the hands and wrists. Clearly, the stress or trauma to the claimant's wrists by these new employment activities would be at least equal to, if not greater than, her employment activities for J. B. Hunt. The onset of difficulties with her wrists that caused her to seek medical treatment and resulted in disability was clearly more closely linked in time to the performance of her new employment activities, rather than her employment activities for J. B. Hunt.

After consideration of all the evidence presence, it is my opinion that the greater weight of the credible evidence would also fail to prove that the claimant's employment activities for this respondent would be the "major cause" (more than 50%) of the claimant's need for the medical services she obtained from Dr.

Dickinson, Dr. Kayler, and Dr. Johnson or of any disability which she may have experienced due to her wrists/hands difficulties, Thus, the claimant has failed to satisfy the necessary requirements for a “compensable injury,” as set out in Ark. Code Ann. §11-9-102(4)(E)(ii) in regard to her bilateral carpal tunnel syndrome. Her failure to prove this statutory requirement prevents a finding that her bilateral carpal tunnel syndrome represents a “compensable injury” as that term is used in the Act.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$373.00 for total disability and \$261.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove that her bilateral carpal tunnel syndrome represents a “compensable injury” within the meaning of the Act. Specifically, she has failed to prove that her bilateral carpal tunnel syndrome arose out of and occurred in the course of her employment with this respondent and has failed to prove that any injury to this portion of her body that was sustained during her employment with this respondent was the “major

cause” of her subsequent need for medical treatment or any disability which she subsequently has experienced.

5. The respondents have denied that the claimant’s bilateral carpal tunnel syndrome is compensable and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

---

MICHAEL L. ELLIG  
Administrative Law Judge