

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307543

BRENDA YOUNG, EMPLOYEE	CLAIMANT
CONAGRA POULTRY COMPANY, SELF-INSURED EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENT

OPINION FILED OCTOBER 26, 2005

Hearing held, before the HONORABLE DALE DOUTHIT, Administrative Law Judge, on August 2, 2005 at El Dorado, Union County, Arkansas.

Claimant represented by HON. GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by HON. NORWOOD PHILLIPS, Attorney at Law, El Dorado, Arkansas.

STATEMENT OF THE CASE

A hearing was held in this matter on August 2, 2005, in El Dorado, Arkansas. A prehearing conference was conducted on June 15, 2005, and a prehearing order was filed on that same date. A copy of the prehearing order was marked as Commission Exhibit "1" and made a part of the record without objection; subject to any modifications agreed to by the parties on the record at the August 2, 2005 full hearing.

During the August 2, 2005 full hearing, the parties agreed to the following stipulations.

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- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times.
- 3) The claimant's average weekly wage was \$341.36, which would entitle her to compensation rates of \$228.00 and \$177.00 for temporary total disability and permanent partial disability, respectively.
- 4) That any issues regarding possible permanent impairment would be reserved.

During the hearing the parties agreed the issues to be litigated would be limited to the following:

- 1) Whether the claimant sustained a compensable gradual onset neck injury while in the respondents' employ.
- 2) Whether the claimant sustained a compensable carpal tunnel injury while in the respondents' employ.
- 3) If compensability is overcome, whether the claimant is entitled to associated medical benefits, TTD benefits from February 19, 2003 through January 15, 2004, and/or attorney fees.

The claimant contended she sustained compensable carpal tunnel injuries and/or compensable cervical injuries due to the rapid, repetitive nature of her work. She further contended the medical treatment she has received to date has been reasonable, necessary and related to her compensable injuries. Additionally, claimant contended she is entitled to TTD benefits from February 19, 2003, through January 15, 2004, additional pain management treatment recommended by Dr. Vora and Dr. Gati, and attorney fees.

The respondents contended the claimant did not sustain a compensable injury of

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any kind while in the respondents' employ. Further, respondents contended there were no objective findings of impairment to the claimant's neck or sufficient objective findings to suggest a compensable carpal tunnel injury. Additionally, respondents contended that whatever problems the claimant may have regarding her neck are not related to her employment with the respondents of only seven months, and that she was not engaged in rapid, repetitive duties.

The testimony of Brenda Young, the claimant, Mona Johnson, and Jody Workas, together with the deposition testimony of Dr. Shailesh Vora and Angela Dorsey, along with medical records and other documents comprise the record in this claim.

DISCUSSION

A) History

The claimant, Brenda Young, age forty-four (44), began her employment with the respondent around June of 2002. The claimant testified that by November of 2002, her job in the respondents' food production process was primarily that of a "stacker." The claimant testified as follows:

- Q. Let's talk about how this chicken comes down the line. Is it coming in individual pieces or - - - -
- A. No, it's wrapped up. It's wrapped up in different size packages, different size trays.
- Q. Okay. So the chicken, by the time you are touching it, it is not - it's already been wrapped and in a package, right?

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A. It's been wrapped on this end.

Q. Okay. What kinds of chicken are we talking about? Is this like wings and breasts?

A. I worked on the wing line.

Q. Okay. So these are chicken wings that are coming along?

A. Yes.

Q. How many chicken wings are in an individual tray?

A. Oh, I can't tell you that because they have different size trays that we do. It's small medium and large family packs, it's just different sizes.

Q. All right. So there are different sizes of trays coming along the line in front of you. As this tray comes in front of you, what were you supposed to do with it?

A. We have to pull them off the belt and stack them.

Q. Okay. So how would you do that?

A. Pull with the left, pass it to the right hand, put it in the crate. We have to stack them eight high. This is over and over, all day long, from right to left, from right to left.

Q. Now, you are doing that from your left to your right so - - - -

A. From left to right. I'm sorry.

Q. As you are showing it to us you are moving from your left to your right, correct?

A. Yes. And it's all day until you get a break.

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Q. Now, these trays, I think you told us that they come in three different sizes. What is the most you think that the biggest tray would weigh?

A. On, maybe two to four pounds or - I'm not good at weight.

Q. In your deposition you guesstimated about two to three pounds maybe at the most. Is that fair to say?

A. Yes.

Q. And the smaller ones weighed maybe even less than a pound? Is that fair to say?

A. Yes.

Q. All Right. And so you are saying that you grab the tray with your left hand - - - -

A. A tray with the chicken.

Q. Whether it was small, medium or large, were you able to pick them up and just hold them with your left hand or did you have to use both hands to get certain sizes?

A. Well, the big trays, you probably have to pick them up with both hands. It depends on how much the weight is. As far as me, the small ones - - - -

Q. I'm asking you how you recall doing it.

A. The small trays, I picked them up with the left, just one hand. When it come to the big family pack trays, sometimes you could pick them up with one and sometimes you couldn't you had to use both hands. It just depend on the strength of your hands, how good you are doing.

Q. Okay. After you have picked these trays up, what do you do with them?

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A. You place them on the racks in front of us.

Q. So there is a rack over to your right?

A. Yes.

Q. And as I understand it, this rack has different shelving units about eight high. Is that right?

A. Yes. (T. pgs 19-21)

Sometime in January of 2003, the claimant began experiencing loss of strength in her left hand and pain in her neck. Claimant denied ever experiencing any problem with her arms or neck prior to her employment at the respondents. (T. pg. 14, lns 21-25 & pg 15, lns 1-5). Upon experiencing the pain in her neck and arms, the claimant went to the nurses station at the plant and started receiving a heat pad or ice packs on her neck.

After two weeks of treatment with the nurse at the plant, the claimant went to the company doctor, Dr. Greg Smart. Dr. Smart saw the claimant on February 19, 2003. In his February 19, 2003 report, Dr. Smart stated, "I would be more concerned that this might be neurological in origin." and wanted to refer her for further neurological evaluation. (JX-1, p. 5), Dr. Smart took the claimant off work, (JX-1, pg. 6), and the claimant then went to see a neurologist, Dr. Vora.

According to the medical records, Dr. Vora first examined the claimant on February 26, 2003; assessed her with left arm and neck pain and ordered Nerve Conduction/EMG Studies and a cervical spine MRI. The nerve conduction study of

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February 28, 2003 supported a diagnosis of:

- 1) Abnormal study.
- 2) Denervation seen in the muscles supplied by the right C7, C8 nerve root.
- 3) Right median motor sensory distal neuropathy.
- 4) Bilateral ulnar sensory distal neuropathy. (JX-1, pg. 16)

Dr. Vora's nerve conduction study of February 28, 2003, found right side carpal tunnel syndrome. (JX-1, pg. 16)

On March 4, 2003, Dr. Vora had the following impression of the claimant's MRI of the cervical spine without contrast:

C5-6 disc posterior and the right herniation with impingement
of the neural foramina at that level.

Dr. Vora continued treating the claimant conservatively through April 28, 2003, at which time he recommended she remain off work and see a neurosurgeon. Dr. Vora referred the claimant to Dr. Simpson for evaluation.

Dr. Simpson saw the claimant on May 5, 2003, and had a different opinion than Dr. Vora regarding any disc impingement on the cervical cord. Dr. Simpson stated "I do not see any abnormalities whatsoever." (JX-1, pg. 30) However, Dr. Simpson did note a disc protrusion at C5-6. Dr. Simpson followed up with a cervical myelogram and post-myelogram CT on May 1, 2003. Dr. Simpson reported no significant findings on the

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myelogram or post-myelogram CT, and said she could go back to work in two weeks if she is doing well. Dr. Simpson could not find anything that would require surgical intervention. Dr. Simpson did note the non-filling of the root far laterally at C5-6. (JX-1, pg. 34)

The claimant continued to treat with Dr. Vora through August 4, 2003. On August 20, 2003, the claimant was examined by a second neurosurgeon, Dr. Eric Akin, who diagnosed her with neck pain. At the initial visit Dr. Akin did not have the myelogram available to him, and therefore did not issue a surgical determination at that time. On May 10, 2004, Dr. Akin reported he then saw the myelogram and felt surgery was not an option, and recommended conservative treatment. (JX-1, pg. 69)

On September 7, 2004, the claimant was seen by Dr. Warren Long for an independent medical evaluation. Dr. Long, in his report, found that the claimant had left side carpal tunnel and needed a release. Dr. Long indicated "the most this lady has in her neck is cervical sprain." (JX-1, pg. 105) On November 11, 2004 the claimant was seen by Dr. Kenneth Gati who assessed her with musculoskeletal pain of the cervical spine and carpal tunnel syndrome. Dr. Gati also recommended the claimant undergo another EMG/Nerve Conduction Study using someone different than Dr. Vora. (JX-1, pg.107)

On December 13, 2004, the claimant underwent a second EMG/Nerve Conduction Study. According to Dr. Gati (JX-1, pg. 116), the study showed no evidence of

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carpal tunnel within her left upper extremity, but did recommend a left sidecarpal tunnel release.

A repeat cervical MRI was completed on January 4, 2005, and Dr. Gati diagnosed the claimant with multilevel degenerative disc disease with bulges at C5-6, C6-7, and C7-8. Dr. Gati then recommended cervical epidural steroid injections, but no surgery. (JX-1, pg. 117)

The claimant continued to treat with Dr. Vora. The last medical report submitted into the record from Dr. Vora is dated February 7, 2005. At that time, Dr. Vora continued with conservative treatment and recommended the claimant remain off work. (JX-1, pg. 120) Through the date of the hearing, the claimant continued to complain of neck and left upper extremity pain.

B) Adjudication

In order to establish a compensable gradual onset neck injury, the claimant must prove by a preponderance of the evidence that she sustained an injury, 1) which arose out of and in the course of her employment; 2) which caused internal or external physical harm to the body requiring medical services; 3) which was caused by rapid repetitive motion, and 4) which was the major cause of her disability or need for medical treatment.

It must first be noted that this examiner found the claimant to be a credible witness. The claimant credibly testified she had never experienced neck or upper extremity pain prior to her employment with the respondent. Further, there were no

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medical records submitted that evidenced the claimant ever experienced neck or upper extremity pain prior to her employment with the respondent-employer. The preponderance of the credible evidence shows the claimant's problems arose out of and in the course of her employment with the respondents.

The claimant presented credible testimony regarding the movement that she physically performed in discharging her employment duties as a "stacker."

Q. And what is it about the stacker job that you felt like was more difficult?

A. You have more to do. You have to pull and place the chicken on the racks. You have more work than the other person at the watcher place, because all the watcher do is stand there and just pack the chicken, make sure it is in place, but the stacker have to pull the meat off the line and stack it.

Q. Now, you've showed us - you are moving your arms from your left and then over across your body over this rack. Is that right?

A. Yes.

Q. Was there anything about your head movement that you feel like would be characterized as rapid and repetitive?

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A. Well, you have to move it back and forth all day long.

Q. What would have to move back and forth?

A. You have to move your head back and forth to see what you are doing.

Q. From left to right?

A. From left to right. (T. pgs. 29 & 30, lns 23-35 & 1-10)

The respondents called their Safety and Environmental Manager, Ms. Jody Workas, to testify about the movements of the “stacker” position. She testified the position did not entail moving ones neck back and forth. The claimant and Ms. Angela Dorsey, who testified by deposition, stated the stacker job did require repetitive neck movement. It is clear to this examiner from the full hearing, that the “stacker” job has a line of pre-packed chicken that requires the “stacker” to take the package off the line in front of them and place it in trays to the “stacker’s” right, according to size. This left to right stacking of various pounds of meat all day is repetitive and obviously contained neck movement for the claimant. The respondents alleged the movements were not rapid because they say the line of meat fell into a bin, and therefore the stacker could work at his/her own pace. I find that position to be without merit based on the testimony. The respondents’ Safety and Environmental Manager, Ms. Jody Workas, testified the overflow basket (or bin) would hold 200-250 packages of meat, and that the meat packages come out at about 36 packages

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per minute. In that case, the bin would be full in about six minutes. I highly doubt the respondent-employer would allow the “stacker” to let the overflow bin fill and have the meat fall onto the floor. The claimant testified she performed her “stacker” duties seven and one-half hours per day. Based on Ms. Workas’ testimony, that would equate to the claimant stacking approximately 16,000 trays of meat per work day. Whether these trays were being stacked directly off the line or out of the “bin” has no bearing on whether the work was rapid , repetitive. Quite obviously it was.

The Arkansas Court of Appeals has stated that four movements per minute was the best example of rapid repetitive motion. **High Capacity Prods. v. Moore**, 61 Ark. App. 1, 962 S.W. 2d 831 (1998) Clearly, 36 plus neck movements per minute is an example of rapid repetitive motion.

Dr. Vora was absolutely certain regarding causation. In his August 19, 2003 report, he was clear that the claimant’s work activities caused her symptoms. (JX-1, pg. 40) Dr. Vora was also clear on his assessment of major cause. Dr. Vora was asked directly that, based upon his examination, test results and history provided, did the work-related activities constitute the major cause of the claimant’s need for treatment, and Dr. Vora responded affirmatively.

There are objective findings to evidence the claimant’s purported physical harm to her neck. According to Dr. Vora, he witnessed neck spasms. (JX-1, pg. 39) Additionally,

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per Dr. Simpson's May 9, 2003 report, the radiologist noted a small non-filling of the root far laterally at C5-6. C5-6 is the same level Dr. Vora noted disc posterior and to the right herniation with impingement of the neural foramina at that level. (JX-1-pg. 47) Dr. Alfonso found evidence of chronic cervical multilevel radiculopathy on the left C5-C6 and left C7-C8. (JX-1, pg. 113) The Arkansas Courts have long held muscle spasms alone are objective medical findings.

This examiner finds the claimant has satisfied her burden of proof regarding her compensable gradual onset neck injury. The more complex question is to what benefits she is entitled. Clearly the respondents are responsible for all medical treatment associated with the claimant's neck. Two neurosurgeons have stated they do not feel surgery is needed; however, respondents are responsible for the future pain management of the claimant's neck.

The issue of appropriate TTD benefits regarding the claimant's neck injury must be addressed. Dr. Vora continually kept the claimant off work since he first treated the claimant. Dr. Vora did opine that claimant had reached MMI in his January 15, 2004 report. Dr. Simpson reported the claimant could return to work two weeks after his May 9, 2003 examination, which would have been May 23, 2003. The claimant is only entitled to TTD from that period in which she was still within her healing period and unable to work. The medical records vary on the issue of MMI. The claimant's functional capacity evaluation

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was not much help because the test reported unreliable effort by the claimant.

With the benefit of perfect hindsight, after looking at all the medical reports and listening to the claimant's testimony; I find the claimant is entitled to TTD for the period February 19, 2003 through May 23, 2003. I find the neurosurgeon's report of May 9, 2003 to be highly probative. (JX-1, pg. 34). Dr. Simpson, at that time, reviewed the myelogram and post-myelogram CT and found her cervical injuries could allow her to go back to work within two weeks. The medical records clearly show Dr. Vora was unable to treat the claimant with anything other than pain management after Dr. Simpson's May 23, 2003 return to work date. In fact, to date the only recommendation for the claimant's cervical injuries is basically pain management. Therefore, I find the claimant reached MMI with regard to her cervical injuries no later than May 23, 2003.

The issue of a compensable carpal tunnel injury is a strange one. After the first nerve conduction study performed by Dr. Vora, Dr. Vora found the claimant to have right side carpal tunnel syndrome. However, the claimant has consistently complained of left upper extremity pain and weakness. The claimant has been relatively asymptomatic regarding her right upper extremity since her first visit with Dr. Vora on February 26, 2003. Two nerve conduction studies were performed, and neither one indicated objective medical findings to support left sided carpal tunnel. As such, with the lack of objective medical findings regarding the left side, I find the claimant has failed to prove by a preponderance

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of the evidence that she sustained compensable left sided carpal tunnel syndrome.

It is worth noting that although Dr. Gati couldn't objectively support a left sided carpal tunnel injury, he still recommended a left side release based solely upon the claimant's subjective complaints. (JX-1, pg. 116) Also, Dr. Warren Long, who conducted an IME on September 7, 2004, recommended a left sided carpal tunnel release. Dr. Long did not have the benefit of the second EMG/Nerve Conduction Studies at the time he rendered his opinion. It seems Dr. Long too based his left side carpal tunnel diagnosis on the subjective complaints of the claimant. These subjective findings do not suffice to prove compensability. Further, Dr. Long's assessment barely mentioned the first EMG and found no right sided carpal tunnel. In fact, the claimant's attorney in closing stated "I will be the first to tell you that the nerve conduction studies do not reflect objectively carpal tunnel." (T. pg. 99, lns 8-11)

Dr. Vora opined the first nerve conduction study objectively proved right sided carpal tunnel; however, as mentioned, the claimant was virtually asymptomatic on the right side. As such, there has been no recommended treatment for the claimant's right side. A.C.A. §11-9-102(4)(E)(ii) stated that the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Here, the claimant isn't even really alleging right sided carpal tunnel disability and there certainly has been no recommended need for treatment regarding her right sided carpal

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tunnel. Accordingly, I find the claimant has failed to meet her burden regarding a compensable carpal tunnel injury.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over 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 she sustained a compensable gradual onset neck injury as the result of her rapid, repetitive work with the respondents which culminated in her disability beginning February 19, 2003.
- 4) The healing period for the claimant's gradual onset neck injury ended on May 23, 2003. The respondents are responsible for TTD benefits for the period February 19, 2003 through May 23, 2003, at the stipulated rate.
- 5) The respondents are responsible for all medical treatment related to the claimant's compensable gradual onset neck injury, as well as future pain management now recommended by her treating physician.
- 6) The claimant has failed to prove by a preponderance of the evidence that she sustained compensable carpal tunnel

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injuries.

- 7) All issues related to possible permanent impairment are reserved.

AWARD

Respondents are directed and ordered to pay the claimant TTD benefits at the stipulated weekly rate for the period February 19, 2003 through May 23, 2003. Further, respondents are to pay for all medical treatment associated with the claimant's compensable neck injury pursuant to the findings of fact and conclusions of law recited herein.

Maximum attorney fees are herein awarded to the claimant's attorney, the Honorable Gregory Giles, pursuant to A.C.A. §11-9-715.

This award shall bear interest at the legal rate pursuant to A.C.A. §11-9-809 until paid.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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