

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F607655

DONNA BOWLING, Employee	CLAIMANT
WAL-MART ASSOCIATES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED NOVEMBER 29, 2006

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

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

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 8, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 13, 2006, and a pre-hearing order was filed on September 14, 2006. 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 employee-employer relationship existed between the parties on April 27, 2006.

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

1. Compensability of gradual onset injury to claimant's left hand.
2. Related medical.
3. Notice.

The claimant contends she was injured on April 27, 2006. She contends her left hand injury was caused by the daily work she did in the deli, and contends she is entitled to related medical expenses.

The respondents controvert the claim on the issue of compensability based upon the lack of objective measurable findings and that the claimant's gradual onset condition was not caused by rapid and repetitive work. Solely in the alternative, should the Commission find in the claimant's favor on compensability, the respondent would plead a lack of timely notice of the alleged work injury. The respondent's first notice of the alleged injury was through the filing of the claimant's AR-C on June 22, 2006, and therefore respondent would not owe for any of the medical treatment received by the claimant prior to the date of her first notice of the alleged work related problem.

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 13, 2006, and contained in a pre-hearing order filed September 14, 2006, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left hand which arose out of and in the course of her employment with the respondent.

FACTUAL BACKGROUND

The claimant is a 54-year-old woman who began working for the respondent in

October 2002 as a cashier. The claimant had a prior work-related injury to her right shoulder in July 2005 which resulted in surgery in September 2005. Prior to her surgery the claimant was given a restriction of one-handed work with her left hand only. As a result, claimant was placed in a job which required her to stock shelves. After claimant's surgery in September 2005 she was off work for approximately six weeks before she returned to unrestricted work in the respondent's deli.

In the deli claimant was primarily responsible for frying various foods including chicken and potatoes. Claimant was also responsible for operating a rotisserie, waiting on customers, and performing some cleaning. Frying the food required claimant to place a particular food in a wire basket and lower it into grease. Once the food was cooked claimant was required to lift the basket with the food and dump it into a holding bin. Claimant testified that in performing her job duties it was necessary for her to use her left hand more because of the prior right shoulder injury.

Claimant testified that she first began experiencing problems in her hands in November 2005 and that these gradually progressed until April 2006 when her left hand began swelling and she was unable to make a fist. As a result, claimant sought medical treatment from her family physician, Dr. Magre. Dr. Magre diagnosed claimant's condition as acute joint pain in the hand and referred her to an orthopaedist. Claimant was next evaluated by Dr. Benafield, orthopaedist, on April 27, 2006. Dr. Benafield diagnosed claimant's condition as "left long trigger digit with developing synovial tenosynovitis of all the digits of the hand." Dr. Benafield gave claimant an injection in her left long finger and prescribed anti-inflammatories. Claimant was next evaluated by Dr. Benafield on May 30, 2006, at which time her condition was improved. Dr. Benafield in his report of that date noted that his plan was to wait and see if claimant's condition continued to improve. If claimant's condition did not improve, another injection would be considered or a trigger digit release. Dr. Benafield also indicated that claimant should continue to take her anti-

inflammatory medication. After the May 30, 2006 visit with Dr. Benafield, claimant's condition apparently worsened and she reported her continued problems to the respondent for the first time. As a result, respondent sent claimant for an evaluation by Dr. Vandergriff on July 26, 2006. Dr. Vandergriff diagnosed claimant's condition as bilateral hand pain/swelling and ordered a carpal tunnel lab as well as physical therapy. Claimant has not undergone this recommended treatment because the claim has been controverted.

Claimant has filed this claim contending that she suffered a compensable gradual onset injury to her left hand. She requests medical treatment related to that compensable injury.

ADJUDICATION

Claimant contends that she suffered a gradual onset injury to her left hand as a result of her job duties with the respondent. In order to prove a gradual onset injury claimant must prove by a preponderance of the evidence (1) that she sustained an injury which arose out of and in the course of her employment; (2) that caused internal or external harm to the body which resulted in disability or the need for medical treatment; (3) that was caused by rapid repetitive motion; (4) that the injury was the major cause of the disability or need for medical treatment; and (5) establish the injury by medical evidence supported by objective findings. A.C.A. §11-9-102.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment with the respondent. In short, I find no causal relationship between claimant's job duties with the respondent and her bilateral hand condition.

First, I believe it should be noted that claimant's current claim involves only her left hand for which she has been diagnosed as suffering from a left long trigger digit and

synovitis of all of her digits. Claimant attributes this condition to the job activities she was performing with the respondent which required the use of her left hand. As previously noted, the claimant had a prior work-related injury to her right shoulder. Although claimant was eventually released to return to work with no restrictions in the respondent's deli, it was claimant's contention that she continued to primarily perform her job with her left hand because of continued problems with her right arm. Claimant also noted that prior to her right shoulder surgery she was restricted to left hand work only. Accordingly, claimant attributes the gradual onset injury in her left hand to the excessive use of her left hand when performing job activities.

However, with the exception of the left long trigger digit, claimant's problems exist in both hands. Claimant testified at the hearing that while her left hand is worse, she also experiences these same problems in her right hand. Indeed, a review of the medical records indicates that claimant was complaining of pain in both hands and that the doctors have diagnosed claimant's condition as bilateral. Given the fact that claimant's symptoms are bilateral in nature, not exclusive to the left hand, claimant's use of her left hand more than her right hand would not explain why her symptoms exist in both hands.

Furthermore, I note that there is insufficient credible evidence linking the claimant's left hand condition to her job activities with the respondent. Claimant initially sought medical treatment from her family physician, Dr. Magre, on April 26, 2006. Dr. Magre's medical report of that date indicates that claimant's problem had an onset of several months ago. She also notes that claimant had no history of trauma. Nowhere in Dr. Magre's report does she relate the claimant's symptoms to her job activities with the respondent. Likewise, Dr. Benafield did not attribute claimant's condition to her job activities with the respondent. Dr. Benafield did note that the claimant worked at the respondent's deli, but he did not indicate that claimant's condition was causally related to any job activities she performed for the respondent. Finally, Dr. Vandergriff did not draw

any relationship between claimant's job activities and her bilateral hand pain.

Furthermore, with respect to this issue, I note that claimant did not initially report her hand problem as work related. Claimant admitted on cross-examination that she did not report the problem as work related until after the first injection had worn off and her condition worsened. When claimant did report the injury as work related, she did so for the following reason:

Q. Well, what was it when it started getting worse again when it went off in your mind that said, 'Hey,' you know, 'I think this is my work. I need to file a lawsuit'?

A. Because that's all I had done.

Regardless of how sincere a claimant's belief may be, that belief does not constitute sufficient competent evidence establishing a causal connection between an injury and their employment. *Jerry Flemister v. MonArk Boat Company*, Full Commission Opinion filed March 26, 1990 (D816261).

In summary, in order for the claimant to prove a gradual onset injury, she must prove by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment with the respondent. In this particular case, I find the claimant has failed to meet that burden of proof. While claimant's job duties did require her to use her hands, there is insufficient credible evidence linking the claimant's bilateral hand pain to her job activities with the respondent. There is insufficient medical evidence establishing a causal connection, and claimant's mere belief is not sufficient. Accordingly, I find that claimant has failed to meet her burden of proof.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable gradual onset injury to her left hand while employed by the respondent.

Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE