

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F507898

MARILYN E. CANADY, EMPLOYEE

CLAIMANT

ST. VINCENT HEALTH SERVICE, EMPLOYER

RESPONDENT

**INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA/ALTERNATIVE
INSURANCE MANAGEMENT SERVICES, CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 28, 2006

A hearing in this case was conducted on March 23, 2006, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Morrilton, Conway County, Arkansas.

Claimant appeared on her own behalf.

Respondents were represented by William C. Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on February 6, 2006; a Prehearing Order was filed in this matter on February 9, 2006. A copy of the Prehearing Order was entered into the record as Commission Exhibit #1.

The parties agreed to two stipulations. These stipulations are listed in the Prehearing Order and were confirmed by the parties at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on July 28, 2005 and at all other relevant times.

2. Respondents controvert this claim.

At the March 23, 2006 hearing, the parties discussed the issue set forth in the

Prehearing Order. The parties agreed that the sole issue to be litigated and resolved is limited to the following:

1. Whether Claimant sustained a compensable carpal tunnel syndrome injury.

DISCUSSION

_____The Respondent employer hired Claimant in June of 1982 to work as an LPN responsible for patient care. In 1990, she became a charge nurse in the hospital's OB wing; in 1992, she became the supervisor in labor and delivery; and in 1996, she became house supervisor while retaining her labor and delivery duties. As of the date of the hearing, Claimant still served as the house supervisor while also working in labor and delivery.

Claimant first noticed "numbness and tingling and the pain and burning" in her hands in 1996 or 1998. She reported her pain to her primary care physician, who advised her to take Advil. She did so until the pain "kinda subsided" and then quit taking the Advil. She remembered "it really being aggravated [in] 2005, when it started hurting really bad again and waking me up in the middle of the night." She described the symptoms she felt in both hands:

Q. Can you describe the sensation for me?

A. (Indicating) Pain, and it seems like the burning and stinging is mostly in the fingers of both hands. My thumb has locked on my left hand. The pain and burning and stinging wakes me up in the middle of the night sometimes, and then it just feels numb.

Q. Is this the way your hands have felt since 2005 when it became unbearable again or not controllable with aspirin?

A. Yes, sir.

On cross-examination, Claimant affirmed that she first noticed her pain when she was at

home at night. She did not recall doing anything in particular when she noticed that her left thumb was unable to bend.

Claimant identified writing, keyboarding, and certain medical procedures as the work activities causing her carpal tunnel syndrome. Her job requires a lot of charting and documentation, which both involve writing. She performs medical research on the internet and completes certain forms on the computer, so she must use a keyboard; but she conceded that she spent “[m]aybe 15 minutes” a day actually typing in a typical week. She identified several medical procedures which require use of her hands. However, she spends a good part of her day on the phone.

Q. You also told me that in the House Supervisor job, you spend about 75 percent of your day talking on the telephone?

A. Somewhere like that.

Q. I guess a lot of that has to do with staffing?

A. Yes.

Q. And the other 25 percent is doing the things we’re visiting about; is that a fair statement?

A. Yes.

Claimant denied that she engaged in any other activity that could have caused her condition.

I just want to say that my job - this is the job that I do. I don’t do anything else. I don’t knit or do any needlework or things they’re saying could cause the carpal tunnel. My hands are just not getting any better. They’re getting progressively worse.

Several of the medical records in evidence relate to preexisting conditions not relevant to this claim. A note dated May 8, 2003, addressing some of these previous

concerns, records that Claimant's weight is 184 pounds. A note dated October 21, 2003 gives her weight as 195 pounds. A note dated February 5, 2004 gives Claimant's weight as 203 pounds. Dr. Morgan Norton's note dated October 11, 2004 observes that Claimant "is continuing to gain weight." A note dated November 2, 2004 gives her weight as 233 pounds. However, a note dated February 18, 2005 gives Claimant's weight as 220 pounds.

The first medical record addressing Claimant's carpal tunnel syndrome claim is dated July 15, 2005. Claimant was examined on that date by Dr. Norton. He recorded her history, in part, as follows:

She is having some pain in her hands, which is a very symmetric pain. She also does have some numbness. She does work at keyboarding some on her job.

Upon examination, he recorded her weight as 233 pounds. He expressed concern about Claimant's symmetrical joint pain and ordered an EMG nerve conduction study for carpal tunnel syndrome. Claimant underwent an electromyogram and nerve conduction study on July 22, 2005. One impression produced by this study is a finding of "moderately severe bilateral carpal tunnel syndrome present...."

Claimant presented to Dr. Lynn Davis on October 13, 2005, for unrelated issues. In his note of that date, the doctor recorded that Claimant "has gained a lot of weight."

Dr. Scott Carle performed an independent medical evaluation concerning Claimant on October 14, 2005. He recorded Claimant's history, provided an examination, and reviewed Claimant's records and studies. Claimant's weight was recorded at 243 pounds, with a body mass index of approximately 37.5. He noted that "[t]he examination finds the client to be overweight." Regarding Claimant's carpal tunnel syndrome, he recorded an

impression of “[c]arpal tunnel syndrome, idiopathic with a body mass index of 37, estrogen deficiency over the age of forty.” Regarding causation and Claimant’s prognosis, the doctor opined:

With respect to causation in a diagnosis of carpal tunnel syndrome, there are several sufficient and component causes that can be identified that are not related to her occupation. Corresponding odds ratios or risk ratios are given, with respect to the strength of association for the development of the condition or diagnosis as apportioned to each particular risk factor. The highest risk factor for the development of this condition is her body mass index of 37. This is consistent with an odd[s] ratio of 4.02 for the development of the diagnosis of carpal tunnel syndrome. The next highest ration is associated with her age, with an odds ratio of 1.14. There is no routine use of vibratory tools and/or highly repetitive use of either hand or palmar instruments. She does not have any risks apportioned to her activity at work. It should be noted that any repetitious activity is only associated with an odds radio of 1.05 and is not considered a risk factor for her.

....

The client’s prognosis is good. It is apparent, by virtue of the causation analysis with regards to strength of association for the development of this condition; it is most likely caused by her weight and age. She is also estrogen deficient and this, in itself, can be a risk factor, as hormones tend to be protective for the diagnosis.

She does not have a high-risk job or with respect to use of vibratory tools, as mentioned above. Causation would therefore be considered idiopathic and within reasonable certainty, not related to her occupation. It is understood that this condition can certainly cause activity intolerance with her work, but is not the cause of her condition. Therefore, her current condition is not attributed causally to her employment. It is likely that this diagnosis, in addition to the diagnosis of ulnar neuritis or entrapment is related to personal health conditions.

As to impairment, Dr. Carle opined that “[t]here is a 0% impairment apportioned to any occupationally acquired or illness.”

Dr. John Wilson examined Claimant on December 8, 2005; his report documents her history, but does not shed much light on the issues otherwise. Dr. Thomas Roberts examined Claimant on January 9, 2006; his report is somewhat more relevant. He noted

Claimant's complaints of "bilateral wrist pain and numbness" and that Claimant "works as a nurse and does a lot of keyboarding entering and uses her hands a lot. She wonders if this could be related to her work." Upon examination, Dr. Roberts offered an impression of bilateral carpal tunnel syndrome. He then recorded the following:

PLAN: I have discussed the treatment options with her. She probably needs to have this surgically repaired. She wonders if this could be related to work. I told her that it is not possible to tell completely, and with the description for the type of work she has done, it could be related to her carpal tunnel syndrome.

She is going to talk with the people at work and see where to go with things from there. I told her that nobody could ever completely know how much this is related to our work, but I do think there is probably some component of it that is.

There are no other records from Dr. Roberts in evidence.

Claimant argues that she sustained a compensable carpal tunnel syndrome injury.

Thus, she must prove a gradual onset injury.

A compensable injury must be established by medical evidence supported by objective findings. A claimant seeking workers' compensation benefits for a gradual-onset injury must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. Because carpal-tunnel syndrome is by definition a gradual-onset injury, it is not necessary that the claimant prove that this injury was caused by rapid repetitive motion.

Cottage Café, Inc. v. Collette, ___ Ark. App. ___, ___ S.W.3d ___ (February 1, 2006) (citations omitted). See Ark. Code Ann. § 11-9-102(4)(A)(ii) and (E)(ii); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Thus, among other requirements, Claimant must prove a causal connection between her employment and the injury. See Crudup v. Regal Ware, Inc., 341 Ark. 804, 811, 20 S.W.3d 900, ___ (2000).

Claimant must sustain her burden of proof by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(ii). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

This is a difficult case. Claimant is a sincere witness and is credible in her testimony. However, under the legal requirements cited above, I must find that Claimant did not sustain her burden of proving a compensable carpal tunnel syndrome injury. Specifically, she did not prove a causal connection between her employment and her injury by a preponderance of the evidence.

While Claimant emphasized her work activity, that is not the only possible cause for carpal tunnel syndrome. As noted by Dr. Carle in his report, Claimant’s weight and age are greater risk factors for this condition. Dr. Carle’s opinion concerning Claimant’s weight as a risk factor is supported by the other medical records, which document an increase in Claimant’s weight coinciding with the onset of her carpal tunnel syndrome in 2005; her weight did increase sufficiently to be commented on by Doctors Norton and Davis. Dr. Carle specifically denied a causal connection between Claimant’s employment and her injury.

I acknowledge Dr. Roberts’ statement in his January 9, 2006 note: “I told her that nobody could ever completely know how much this [Claimant’s carpal tunnel syndrome] is related to our work, but I do think there is probably some component of it that is.” The term “probably” has been held sufficient to support a finding of causation. See Wackenhut Corp. v. Jones, 73 Ark. App. 158, 162, 40 S.W.3d 333, ___ (2001). However, Dr. Roberts’

statement is equivocal: What does it mean to say that “some component” of Claimant’s carpal tunnel syndrome is related to her work? Further, this statement is inconsistent with an earlier statement in that same medical record, opining that Claimant’s work “could be related to her carpal tunnel symptoms.” Use of the term “could” does not help Claimant meet her burden. See Crudup, 341 Ark. at 811, 20 S.W.3d at ___. Dr. Roberts’ equivocal and inconsistent statements regarding causation are not persuasive.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on July 28, 2005 and at all other relevant times.
3. Respondents controvert this claim.
4. Claimant did not sustain her burden of proving by a preponderance of the evidence that she sustained a compensable carpal tunnel syndrome injury. Dr. Carle’s opinion, as supported by the medical records, establishes that there is not a causal connection between Claimant’s employment and her injury; rather, her condition is related to her weight and age.

ORDER

Claimant failed to sustain her burden of proving that she suffered a compensable injury. Therefore, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml