

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F410921**

<b>LAVERN CARTHAN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>SCHOOL APPAREL, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CONTINENTAL CASUALTY COMPANY, INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 13, 2006**

Hearing before Administrative Law Judge Barbara W. Webb on June 9, 2006, in Pine Bluff, Jefferson County, Arkansas.

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

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

**STATEMENT OF THE CASE**

A Prehearing Order was entered in this case on April 24, 2006. The Prehearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Prehearing Order was made Commission Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties and the Prehearing Order as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including August 2, 2004, to a date yet to be determined.
3. The claimant earned sufficient wages to entitle her to a temporary total disability rate of \$267.00 and permanent partial disability rate of \$200.00.

By agreement of the parties, the issue to be litigated is:

1. Compensability of the claimant's alleged carpal tunnel syndrome.
2. Claimant's entitlement to temporary total disability benefits, medical benefits, and attorney's fees.
3. Claimant reserves all other issues.

The record consists of a one volume transcript of the June 9, 2006, hearing consisting of the testimony of the claimant, Lavern Carthan, and all documentary evidence consisting of Claimant's Exhibit 1-2 (medical reports) and Exhibit 3 (Job Description and Job Evaluation) and Respondents' Exhibit 1 (medical reports), Exhibit 2 (deposition of Smelz) and Exhibit 3 (deposition of Carthan). In addition, the post-hearing letter brief of claimant received June 27, 2006, and the post-hearing letter brief of respondents received June 15, 2006, have been blue-backed and will be made part of the record of this case.

#### **FACTUAL BACKGROUND**

The claimant is fifty-one (51) years of age (b. 4/24/55). She graduated high school. She has worked for School Apparel for 18 years. In August of 2004, the claimant's job entailed setting sleeves on a sweater and then doing arm binders on vests. The claimant's testimony was that she produces around 800 sweaters daily therefore performing 1600 sewing operations. It was estimated that claimant attached one sleeve every five seconds in addition to re-threading, tying and using scissors. The claimant testified that in August of 2004 she began having symptoms in her hands. She testified that her fingers started getting numb and at night she could hardly sleep due to the pain. She testified that in 2002 she experienced some of the same condition and went to a doctor. At that time, Dr. Clark treated her with a shot. The claimant testified that she reported her injury in 2004 to her supervisor, Laura Mays. At that time, she reported that her primary doctor had advised her that he was going to monitor her condition of her hands and in light of a potential

diagnosis of carpal tunnel. Two weeks later she went back to see Dr. Clark again and was still having problems. He referred the claimant for a nerve conduction test. The nerve conduction test was performed by Dr. Silas. Dr. Silas then referred the claimant to an orthopedic specialist, Dr. Clark. The claimant continued to work from the time she began having the problems until the day before her surgery which was performed on September 29, 2004. She returned to work following the surgery on January 10, 2005. She had surgery on both hands. She testified that the surgery had helped a whole lot but that her hands still hurt.

The medical records reflect that the claimant was diagnosed with bilateral carpal tunnel syndrome by Dr. Clark on September 8, 2004. A copy of the doctor's notes indicates that the claimant was actually seen by Dr. Clark in 2002, at which time the diagnosis of bilateral carpal tunnel syndrome was established. He further noted that he believed the reason she cancelled surgery the last time was because she could not get it filed under workers' comp. He further noted that the claimant continued to have significant pain and problems and that in all likelihood, based on her history, was work related.

Respondents offered the testimony of Dr. Johnny Smelz. Dr. Smelz testified that claimant's condition stemmed from a disease process and not a work related injury. She based her determination on the fact that claimant had a number of risk factors including, but not limited to, age and weight. Further, Dr. Smelz indicated that based on her knowledge of the job performed by the claimant, the job would not involve "high torque" activities and therefore was not the likely cause of her condition. Dr. Smelz further testified that the claimant had a hypertrophic transverse carpal ligament. Dr. Smelz concluded from the combination of hypertrophy as well as the lack of inflammation noted during the surgery, it was unlikely that the claimant's carpal tunnel problems were due to repetitive force and stress.

The claimant filed a claim for workers' compensation on December 22, 2004, noting that the date of injury was 8/2/04 and that the cause of injury was carpal tunnel. While there appears to be differing medical opinions as to the cause of the claimant's carpal tunnel condition, I find that it is not necessary for me to resolve the conflict in light of the fact that I find that the claim is barred by the statute of limitations.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). 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; (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4) (A) (ii) and (E)(ii) (Repl. 2002). 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. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

It has long been held that the statute of limitations does not commence to run until the true extent of the injury manifests and causes an incapacity to earn wages sufficient to give rise to a claim for disability benefits. Hall's Cleaners v. Wortham, 311 Ark. 103, 842 S.W.2d 7 (1992). In Pina v. Wal-Mart Stores, Inc., \_\_\_ Ark. App. \_\_\_, at \_\_\_, \_\_\_ S.W.3d \_\_\_, at \_\_\_ (May 11, 2005), the Court of Appeals held that the statute of limitations in a carpal tunnel case begins to run when the scheduled injury becomes apparent to the claimant. Similar to the case in Pina, the claimant in the instant case reported symptoms of pain and numbness to her supervisor in 2002 and was in fact provided medical treatment for the same. It is true that the

claimant testified that she believed her symptoms had improved after she received the shots. However, she admitted at the hearing that her symptoms never fully resolved. In fact, the medical records reflect that the claimant was diagnosed with severe carpal tunnel in June of 2002. At that time, Dr. Clark recommended carpal tunnel release surgery. However, the claimant apparently cancelled her scheduled surgery in 2002 for the reason that she could not get it filed under workers' compensation. Dr. Clark further notes that the claimant "continued to have significant pain and problems. Now, Dr. Silas has repeated NCVs again indicating this is a worsening problem." In the instant case, the claimant's condition became apparent to her by at least May of 2002. Because the claimant did not file her claim for benefits until December of 2004, the claim is barred by the statute of limitations.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including August 2, 2004.
3. The claim is barred by the applicable statute of limitations.

#### **ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

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BARBARA W. WEBB  
Administrative Law Judge