

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509924

LEANA EAKLE, EMPLOYEE	CLAIMANT
WOLVERINE WORLD WIDE, INC., EMPLOYER	RESPONDENT
SENTRY INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 28, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on January 13, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John C. Bartelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Ms. Melissa Ross, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted January 13, 2006, to determine whether the claimant sustained compensable injuries within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on December 7, 2005, and a Prehearing Order was filed on said date. At the conference, the parties stipulated that the employment relationship existed at all relevant times through August, 2005, and that respondents have controverted this claim in its entirety. At the hearing, the parties stipulated to an average weekly wage of \$315.00 which would entitle the claimant to disability benefits at the rate of \$210.00 per week for temporary total disability and \$158.00 per week for permanent partial disability in the

event the claim was found compensable. Further, at the hearing, the parties announced that the issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an affirmative defense raised by the respondents subsequent to the prehearing conference. A copy of the Prehearing Order was introduced without objection as "Commission's Exhibit 1."

The primary issue for presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed. In addition, respondents raised the issue of whether the claim(s) are barred by statute of limitations. Further, an issue was raised during the hearing concerning respondents' entitlement to a credit for benefits paid under health and accident insurance and/or disability policies as discussed further below.

Claimant contended, in summary, that she sustained gradual onset injuries which arose out of and during the course of her employment with respondent, specifically, bilateral thumb joint injuries, as well as bilateral carpal tunnel syndrome injuries; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; that she was entitled to temporary total disability benefits beginning August 25, 2005, and continuing through a date yet to be determined, maintaining that her healing period had not ended; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant did not sustain compensable

injuries within the meaning of the Arkansas workers' compensation laws, and that the claimant's need for medical treatment was the result of her underlying osteoarthritis rather than a work-related injury. Respondents pointed out that it received medical records from claimant's primary care physician, Dr. William Hurst, just seven (7) days prior to the hearing which reflected an entry dated July 16, 2003. Based on this medical, respondents raised the statute of limitations as a defense.

The claimant, Leana Eakle, testified in her own behalf. The record is composed solely of the transcript of the January 13, 2006, hearing containing numerous exhibits.

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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed between the parties at all relevant times through at least August 25, 2005, at which time the claimant's average weekly wage was \$315.00, entitling her to compensation rates of \$210.00 per week for temporary total disability and \$158.00 per week for

permanent partial disability.

3. The claimant has proven, by a preponderance of the credible evidence, that she sustained a gradual onset, bilateral carpal tunnel injury which arose out of and during the course of her employment with Wolverine World, Inc., entitling her to appropriate workers' compensation benefits.
4. The claimant has proven, by a preponderance of the credible evidence, that she sustained gradual onset, bilateral thumb joint injuries which arose out of and during the course of her employment with Wolverine World, Inc., entitling her to appropriate workers' compensation benefits.
5. The claimant is entitled to temporary total disability benefits beginning August 25, 2005, and continuing through a date yet to be determined.
6. The claimant's healing period has not yet ended.
7. Respondents are responsible for all hospital, medical, and related treatment for the claimant's bilateral carpal tunnel injuries, as well as claimant's bilateral thumb joint injuries, and respondents remain responsible for continued, reasonably necessary medical treatment.
8. Respondents are entitled to a credit or offset equal to, dollar-for-dollar, the amount of benefits the claimant has previously received in medical services and for disability benefits received from other providers pursuant to Ark. Code Ann. §11-9-411 (Repl. 2002).
9. This claim is not barred by the statute of limitations.

10. Respondents have controverted this claim in its entirety.
11. All additional issues are, by necessity, specifically reserved.

DISCUSSION

_____The facts in this case are basically undisputed. The claimant, Leana Eakle, was the only witness to testify. I found her to be a most credible witness. The claimant began working for the employer in December, 2002. The employer is a shoe manufacturer. The claimant worked as a sewing machine operator. She worked for the employer from December, 2002, through August 25, 2005. The claimant's job duties in the assembly plant were described as "a dog tailor." Specifically, the claimant's job was to sew the half-moon tab at the back of a shoe, above the heel. Although the process was extremely hard to conceptualize, the claimant, with the use of a shoe part provided by the employer, described in detail the functions she performed as a dog tailor. The record reflects that the claimant was constantly pinching and holding the material in place with her thumbs and index fingers while sewing the shoe part. The record further reflects that the claimant was required to meet a production quota of 120 pairs of parts per hour, which was actually sewing 240 pieces of material per hour. (Tr.7-13)

Based on the claimant's description of her work activities, it is undisputed that the claimant's work involved rapid and repetitive activities involving both upper extremities, specifically, both hands and wrists, together with extensive use of both thumbs required to perform the job using a pinch technique. In fact, respondents do

not dispute that the job duty was rapid and repetitive, but, rather, contend that the claimant's need for medical treatment was the result of her underlying osteoarthritis rather than a work-related injury. In addition, just prior to the hearing, respondents raised the statute of limitations as a defense based upon a medical report reflecting that the claimant had seen her family physician, Dr. William Hurst, on July 16, 2003.

The claimant testified that she first noticed problems with her hands during the spring of 2005 at which time her production started slowing down, causing her to miss her quota of 240 shoes per hour. She stated that she began having bilateral thumb joint pain, as well as pain in her wrists and arms, and numbness in her fingers. The claimant acknowledged that she had seen her family physician, Dr. Hurst, previously on July 16, 2003, at which time she first reported pain and tenderness in her thumbs without any known trauma. However, the claimant testified that the primary reason she went to see Dr. Hurst on July 16, 2003, was for medication refills related to chronic asthma problems rather than any thumb problems. Indeed, Dr. Hurst's records reflect that the claimant's chief complaint involved medication refills for the breathing problems. Dr. Hurst did diagnose polyarthralgia pain in the joints. He refilled several medications for the claimant's breathing problems, and also prescribed medication for the joint pain. (Tr.13-15)(Resp. Ex. A, pp.1-3)

The record reflects that the claimant did not receive any further treatment related to her thumbs, save, taking either over-the-counter medications or prescription medications. The medical record from Dr. Hurst reflects that the

claimant returned to his office on June 30, 2005, with complaints of persistent hand pain and joint pain that was getting progressively worse. Dr. Hurst's history reflects that the claimant performed a lot of sewing at work and that her husband was concerned that she could not keep up the pace. He further noted that there was no family history of arthritis, but that the claimant's hands bothered her on a daily basis. Dr. Hurst prescribed medications and lab work, indicating that he was going to refer the claimant to a rheumatologist. (Cl. Ex. A, pp.1-3)

The claimant returned to Dr. Hurst on July 14, 2005, at which time the claimant was referred to both a rheumatologist, Dr. Roberts, as well as an orthopedic surgeon, Dr. John F. Ball, with Arkansas Orthopedics in Jonesboro, Arkansas. It is unclear the exact date that the claimant first reported a work-related injury to her employer; however, a Commission Form AR-N filed July 28, 2005, reflects that the employer was notified on July 7, 2005. (Resp. Ex. B, p.3)

The claimant was promptly sent to the company doctor, Dr. Michael Lack, with Occupational Health Partners in Jonesboro, Arkansas. The claimant was first seen by Dr. Lack on July 28, 2005. He pointed out that the claimant had worked for the employer for two and one-half (2-1/2) years as a sewing machine operator. The history reflects that the claimant was having numbness in both hands. It was clear that the claimant attributed her problems to her work. Dr. Lack diagnosed osteoarthritis of the thumbs and permitted the claimant to return to work as long as she did not use any pinching with her thumbs. Apparently, the claimant returned to

work and was provided with alternative work through August 25, 2005. The claimant was followed by Dr. Lack through August 25, 2005. Following additional diagnostic studies, it was determined that the claimant had bilateral carpal tunnel injuries, as well as severe osteoarthritic changes noted in the first carpal-metacarpal joint, more severe on the right thumb than the left. Respondents initially accepted and paid for the medical treatment provided by Dr. Lack prior to controverting the claim in its entirety while maintaining that the claimant's problems were related to her pre-existing osteoarthritis. The claimant has not returned to gainful employment since August 25, 2005. After the respondent's insurance adjustor denied the claim, the claimant applied for, and began receiving disability benefits, as well as health insurance through benefits provided by the employer. The claimant stated that she has been receiving \$141.00 per week since August 25, 2005.

The claimant was next examined and evaluated by Dr. John Ball. Dr. Ball first saw the claimant on August 30, 2005, by referral from Dr. Hurst. Dr. Ball subsequently referred the claimant to Dr. William L. Bourland, a hand specialist.

It is clear that the claimant has sustained two (2) separate injuries, specifically, bilateral carpal tunnel injuries, as well as CMC joint thumb arthritis, bilaterally. Both injuries require surgical correction. In a September 7, 2005, report, Dr. Ball addressed the causal connection between the claimant's injuries and her employment. His report is set out in its entirety below:

Ms. Eakle was seen here on 8/30/05. She had 2 related but somewhat separate

complaints of pain at the 1st metacarpal carpal joints in both hands. She had pain with pinching activities and numbness in the median nerve distribution. Her radiographs showed advanced osteoarthritic changes with subluxation of the metacarpal carpal joints of both hands. She was sent for NCV testing. These show very severe carpal tunnel syndrome of the L upper extremity, severe carpal tunnel syndrome of the R upper extremity, no evidence of other entrapment or polyneuropathy to account for her symptoms. The pt very reasonably feels that both her arthritic problems and her carpal tunnel syndrome are caused by the repetitive nature of her work at the shoe factory. This has not been the posture of the Workman's Compensation carrier and in fact, she brought a letter of denial from the insurance company.

As I discussed with Ms. Eakle last time, I am certainly qualified to advise her on the medical aspects of her condition and to provide treatment for it. I can render an opinion as to whether her conditions are related to, caused by, or exacerbated by her work. I am not qualified to determine for her whether these opinions justify a coverage under Workman's Compensation because that depends on the statutes. I have a passing familiarity with those statutes because of my profession but I am certainly not a specialist in Workman's Compensation matters or Workman's Compensation law.

She has subluxation of the metacarpal carpal joints, marked pain with use of the thumbs and limited use of her thumbs because of that arthritis. I don't know of a single job in a shoe factory that she could do with her thumbs in this condition because of the pain and loss of strength associated with this arthritis. Arthritis in the 1st metacarpal carpal joint is a very common condition. However, arthritis of this severity is usually seen in those with advanced age or underlying condition such as rheumatoid arthritis with Ms. Eakle does not have. It is conjectural but I think reasonable conjecture, that the long period of stress on these joints at her work place has **definitely** caused a rapid progression of that arthritis which has led to the loss of her use of her hands and her inability to work. Even though one must acknowledge that this would probably require some genetic predisposition to arthritis in those joints in the first place.

The carpal tunnel syndrome is much more straight forward. The carpal tunnel syndrome is caused by repetitive stress to her wrists and clearly is caused by her work activities. Although idiopathic carpal tunnel syndrome exists and is relatively common, the severe carpal tunnel syndrome seen in this patient followed repetitive work is clearly related to over-stress of her hands in her work activities. She is unable to work because of the loss of grip strength and the numbness in her fingers that arises from her carpal tunnel syndrome. This would be true even if she didn't

have the arthritis at the 1st metacarpal carpal joint.

The next topic is treatment. The severe and very severe carpal tunnel syndrome should be treated with surgical carpal tunnel release because this will lead to progressive permanent loss of neurologic function of her hands. This will not however, result in any improvement in the pain or arthritic changes in her 1st metacarpal carpal joints. Steroid injections to these joints will result in some temporary improvement in her arthritic symptoms but probably not to the extent that she could return to the shoe factory. Surgical intervention for this level of arthritis has a less certain outcome than carpal tunnel release. These can be treated with joint arthroplasties of which there are several kinds or they can be treated with soft tissue interposition arthroplasty to relieve pain. I think that such intervention should be done by an upper extremity specialist rather than a general orthopedic surgeon. Such upper extremity specialists (hand surgeon) could give her more specific information as to whether they could construct a reconstruction sufficiently durable to return to that type of work. Of course, it would seem to be reasonable that the hand surgeon would do both the arthroplasty and the carpal tunnel release at the same setting, doing each hand individually. This of course becomes problematic if the carpal tunnel syndrome is determined to be a Workmen's Compensation matter and the arthritis isn't.

At this point, all of these matters are documented and will be turned over to the patient. She can address them further with the insurance company, Workman's Compensation Commission or legal counsel of her choice. Regardless of this, it is my definite opinion that her inability to work is caused by her carpal tunnel syndrome which is caused by her work activities and her current release from work should be a Workman's Compensation matter. (Cl. Ex. A, pp.26-27)(Emphasis Supplied)

As previously noted, the claimant was referred by Dr. Ball to Dr. William Bourland. Again, Dr. Bourland recommended surgical correction for both the carpal tunnel syndrome and also recommended a silastic joint replacement of both thumbs. Because the claimant was primarily right handed, the right hand surgeries were performed first on November 4, 2005. At the time of the within hearing, the surgeries on the left had not yet been performed. (Cl. Ex. A, pp.29-33)

In the present claim, the claimant does not contend that her injury was caused

by a specific incident and identifiable by time and place of occurrence. Instead, she contends that she sustained an injury the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

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 vs. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998). However, because claimant's bilateral thumb joint injury is not recognized as a per se rapid repetitive injury, the claimant is required to additionally prove, by a preponderance of the evidence, that this gradual-onset injury to her thumbs was

caused by rapid repetitive motion. See, *Freeman vs. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

From a review of the entire record, I find that the claimant has satisfied each and every requirement necessary to establish compensability for both of her injuries.

There is no evidence whatsoever that the claimant experienced any physical problems with her hands and thumbs prior to going to work for the respondent in December, 2002. Again, the claimant sustained two (2) separate and distinct injuries. Clearly, the bilateral carpal tunnel injuries were caused by rapid repetitive motion. Respondents' assertion that the claimant's injury and need for medical treatment is the result of her underlying osteoarthritis rather than a work-related injury is without merit. An argument can be made that the claimant's thumb injuries are related, in part, to the underlying pre-existing condition; however, the law is clear that aggravation of a pre-existing condition is compensable. As previously noted, the claimant did not experience any physical problems of any nature or kind related to her upper extremities prior to going to work for the respondent. I find it particularly noteworthy that the only joints which were aggravated and caused need for medical treatment and disability were the claimant's thumb joints which she was required to use in a pinching motion more than 240 times per hour. Dr. Ball opined that it was reasonable conjecture that the long period of stress on those joints at the work place had definitely caused a rapid progression of the arthritis which led to the loss of the use of claimant's hands and her inability to work.

Under our workers' compensation law, an employer takes the employee as it finds her, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple vs. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. *Oliver vs. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. *Crudup vs. Regalware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). An aggravation, being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Ins. Co. vs. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996); *Ford vs. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Under our law, since an employer takes an employee as he finds them, a pre-existing disease or infirmity does not disqualify a claim if the employment circumstances aggravate, accelerate, or combine with the disease or infirmity to produce the disability for which compensation is sought. *Jim Walter Homes vs. Beard*, 82 Ark. App. 607 120 S.W.3d 160 (2003). Furthermore, if the claimant can prove that an injury occurred, major cause is not necessary to establish compensability. *Williams vs. L & W Janitorial, Inc.*, 85 Ark. App. 1, ___ S.W.3d ___ (February 4, 2004, Opinion).

STATUTE OF LIMITATIONS

Just prior to the hearing, respondents raised the statute of limitations as an affirmative defense based upon the receipt of a report from Dr. Hurst dated July 16, 2003, which was the first date that the claimant complained of tenderness in her thumbs. Admittedly, the claimant first experienced some symptoms at least as early as July 16, 2003, which she did not attribute to her employment and for which she did not seek any benefits. It was only after the claimant returned to Dr. Hurst on June 30, 2005, that she notified her employer that she wished to file a workers' compensation claim as reflected by the Commission Form AR-N, aforementioned.

When the substantial character of the injury becomes known, then the claimant must file her claim within a specified period of time, or be barred thereafter by the statute of limitations. *McDonald Equip. Co. vs. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989). For purposes of commencing the statute of limitations under A.C.A. §11-9-702(a)(1), the word "injury" is to be construed as "compensable injury" and an injury does not become "compensable" until: (1) the injury develops or becomes apparent, and (2) the claimant suffers a loss in earnings on account of the injury. The statute of limitations does not begin to run until both elements of the rule are met. *Hall's Cleaners vs. Wortham*, 311 Ark. 102, 842 S.W.2d 7 (1972).

In *Minnesota Mining & Manufacturing vs. Baker*, 337 Ark. 94, 982 S.W.2d 11 (1999), our Supreme Court addressed when a scheduled injury becomes compensable for statute of limitations purposes. The Court reasoned that the loss of earnings are conclusively presumed in scheduled injury cases, and,

therefore, the statute of limitations begins to run when the scheduled injury becomes apparent to the claimant. See, also *Pina vs. Wal-Mart Stores, Inc.*, ___ Ark. App. ___, ___ S.W.3d ___ (May 11, 2005).

I recognize that it can be argued that because the claimant's symptoms first manifested themselves on July 13, 2003, and that she did not file a claim until July, 2005, that her claim is barred by the statute of limitations. In my opinion, this claim is clearly distinguishable from the *Minnesota Mining & Mfg. vs. Baker* and *Pina vs. Wal-Mart* claims. In July, 2003, the claimant's injury had not fully manifested itself. Rather, the claimant first began experiencing symptoms of her subsequent injury. Thereafter, for more than two (2) years, the claimant gradually aggravated her pre-existing condition, resulting in injuries which required medical services and resulted in disability. The claimant timely reported her injuries, and filed an appropriate claim.

I feel compelled to point out that even if the claimant's bilateral thumb injuries are barred the statute of limitations, which is not conceded herein, nevertheless, the claimant's bilateral carpal tunnel injuries did not manifest themselves until substantially after the initial symptoms involving the thumbs.

The only remaining issue concerns respondents' entitlement to a credit or offset pursuant to Ark. Code Ann. §11-9-411.

The Full Workers' Compensation Commission has previously addressed this issue and concluded that respondents are entitled to a credit or offset. See, *Norman*

vs. North Hills Service, Inc., AWCC #F408828, Opinion filed November 21, 2005.

AWARD

Respondent, Sentry Insurance Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$210.00 per week beginning August 25, 2005, and continuing through the present, and until a date yet to be determined.

All accrued benefits shall be paid in lump sum and without discount; however, respondents may claim credit for disability benefits that the claimant has previously received, pursuant to A.C.A. §11-9-411.

Respondents are further directed and ordered to pay and/or reimburse the appropriate medical providers for all hospital, medical, and related expenses, to be paid in accordance with the medical cost containment guidelines of Commission Rule 30, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. John C. Bartelt, is hereby awarded the maximum statutory attorney's fee to be paid pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge