

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F412221

BARBARA FARMER, Employee	CLAIMANT
WAL-MART STORES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED OCTOBER 26, 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 CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On October 4, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 2, 2006, and a pre-hearing order was filed on August 3, 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 prior opinion is final and res judicata.

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

1. Claimant's entitlement to additional medical treatment.

At the time of the hearing the parties clarified that the basic issue in this case is whether claimant's DeQuervain's tendinitis is causally related to her compensable fractured wrist injury.

The claimant contends she is entitled to additional medical treatment for her compensable injury.

The respondents contend that it has paid and will continue to pay all authorized reasonable and necessary medical expenses arising out of the compensable injury. The respondents contend that any treatment for DeQuervain's is not related to the compensable injury of a fracture to her distal radius.

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 August 2, 2006, and contained in a pre-hearing order filed August 3, 2006, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that her DeQuervain's tendinitis is causally related to her compensable right wrist injury of November 10, 2004.

FACTUAL BACKGROUND

The claimant is a 57-year-old woman who began working for the respondent in 2000 in its bakery department at a store in Siloam Springs.

A prior hearing was conducted on April 13, 2005, and an opinion filed on May 6, 2005 finding that the claimant had suffered a compensable injury to her right wrist as a result of a slip and fall on November 10, 2004. The compensable injury to claimant's right wrist consisted of a distal radial fracture for which claimant was placed in a cast. The claimant was treated by various physicians for her wrist fracture and was eventually sent by the respondent to Dr. Peter Heinzelmann for the purpose of assigning an impairment

rating for the claimant's right wrist fracture. In addition to assigning claimant an impairment rating for her right wrist fracture, Dr. Heinzelmann also diagnosed claimant as suffering from DeQuervain's tendinitis of the right wrist and he recommended a cortisone injection along with a forearm based thumb splint.

Claimant has filed this claim contending that her DeQuervain's tendinitis is causally related to her compensable right wrist fracture. Accordingly, she seeks medical treatment for this condition.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that a causal connection exists between her compensable right wrist fracture and the DeQuervain's tendinitis. In support of her contention claimant relies primarily upon a letter written by Dr. Heinzelmann dated July 5, 2006 in which he states:

I am responding to your letter of June 23, 2006, regarding Barbara Farmer. You asked if I felt that the deQuervain's tendinitis of her right wrist was related to her right wrist fracture of November 2004. The patient stated to me that her deQuervain's tendinitis symptoms began shortly after she sustained a fracture and I feel that the tendinitis could have been caused by the fracture. (Emphasis added.)

Pursuant to A.C.A. §11-9-102(16)(B) any medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. In *Frances v. Gaylord Container Corporation*, 341 Ark. 527, 20 S.W. 3d 280 (2000), the Arkansas Supreme Court held that "expert opinions based upon 'could,' 'may,' or 'possibility' lack the definiteness required to meet the claimant's burden of proving causation pursuant to §11-9-102(16)(B)." *Id.*, 341 Ark. at 533, 20 S.W. 3d at 284.

The Arkansas Supreme Court again reiterated in *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000), that a medical opinion based upon "could" lacks the

definitiveness required to meet claimant's burden of proving causation pursuant to A.C.A. §11-9-102(16)(B).

In this particular case, Dr. Heinzelmann in his letter of July 5, 2006 indicated that the claimant's DeQuervain's tendinitis "could" have been caused by claimant's compensable wrist fracture in November 2004. However, Dr. Heinzelmann's opinion is not sufficient pursuant to the rulings in *Crudup* and *Frances* to satisfy a finding of compensability.

Given the fact that Dr. Heinzelmann's opinion is not sufficient to satisfy a finding of compensability, I find insufficient credible evidence proving that a causal connection exists between claimant's DeQuervain's tendinitis and her compensable right wrist fracture in November 2004.

ORDER

Claimant has failed to prove by a preponderance of the evidence that a causal connection exists between her compensable right wrist fracture in November 2004 and her subsequent diagnosis of DeQuervain's tendinitis. Therefore, her claim for additional compensation benefits relating to the DeQuervain's tendinitis is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE