

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410094

VELMA HOLLISTER, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., SELF-INSURED EMPLOYER	RESPONDENT
TYNET CORPORATION, TPA	RESPONDENT

OPINION FILED SEPTEMBER 26, 2006

Hearing before Administrative Law Judge J. Mark White on August 22, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondent represented by Mr. Kenneth Buckner, Attorney at Law, Pine Bluff, Ark.

STATEMENT OF THE CASE

On August 22, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on June 19, 2006, and a Prehearing Order was entered that same day. A copy of the June 19, 2006, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/self-insured employer relationship existed at all relevant times; that the claimant sustained compensable

gradual-onset injuries in the form of bilateral carpal tunnel syndrome; and that respondent accepted the bilateral carpal tunnel syndrome injuries as compensable and paid benefits, including an anatomical impairment rating of 20 percent to the right upper extremity.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable consequence of her compensable injuries; whether the claimant is entitled to additional medical treatment; whether the respondent should be estopped from denying liability for certain medical bills; and determination of the claimant's average weekly wage and corresponding compensation rate.

The claimant contends that her left shoulder problems are a compensable consequence of her compensable gradual-onset injuries; that additional medical treatment for her left shoulder is reasonably necessary in connection with her compensable injuries; that the respondent initially approved her to see Dr. Charles Pearce and physical therapist Sharon Buratowski; that after she had treated with these medical providers, the respondent denied liability for these medical bills; that respondent should be estopped from denying liability for these medical bills; and that she earned an average weekly wage of \$404 at the time of her injury.

The respondent contends that the problems with the claimant's left shoulder are not causally connected to her work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that a causal connection exists between her compensable carpal tunnel injury and her subsequent left shoulder problems; and that her left shoulder problems were a natural consequence of her compensable carpal tunnel injury.
4. The claimant has therefore proven by a preponderance of the evidence that the medical treatment provided by and at the referral of Dr. Charles Pearce was reasonably necessary in connection with the compensable injury.
5. The claimant has proven by a preponderance of the evidence that she earned an average weekly wage of \$401.01, entitling her to a compensation rate of

\$267.00 for total disability benefits.

6. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

In March 2004, the claimant was diagnosed with “severe” carpal tunnel syndrome in her right arm by Dr. Michael Moore. The respondent accepted this condition as a compensable gradual-onset injury and paid benefits. Dr. Moore performed surgery, a right carpal tunnel release, on May 24, 2004, and he released her from his care on September 2, 2004.

In November 2004, the claimant was diagnosed with carpal tunnel syndrome in her left arm, again by Dr. Moore. The respondents likewise accepted this condition as a compensable gradual-onset injury and paid benefits. Dr. Moore performed surgery on January 5, 2005, and he released her from his care as of March 1, 2005. However, in the interim, the claimant began to complain of pain and stiffness in her left shoulder.

The claimant testified that the pain and stiffness in her left shoulder developed when she kept her left arm immobilized, holding her left hand up, as directed by Dr. Moore while recovering from her left carpal tunnel surgery. She

described the onset of symptoms as follows:

The doctor had me sit -- you know, at first I was -- I couldn't do anything, so I just went in there and I sat with my hand like this (indicating).

Q. Now, is this after your first surgery?

A. This is after the second surgery on my left hand.

Q. Second.

A. And, because my left hand was not as bad as my right hand, I could actually do everything he told me to do, and I did. And my shoulder was hurting, but it hurt on the right side when I had my surgery too, so I wasn't really worried about it. And I used the heat like they al-- I could do -- I asked and he said I could do.

Q. The heat on your shoulder?

A. Heat on my shoulder. You know, it would get stiff and stuff. Except this time the stiffness didn't get out; it got worse, and the pain got worse. Then finally, when it got to the point where it was just not going anywhere, I reported it to the nurses and I reported it to the therapist at that time. And then they decided I should go to the shoulder doctor.

...

Q. You were working light duty?

A. I was working light duty.

Q. All right. Now, were you using your left hand?

A. No, at first I was not using my left hand. I was

holding it up just like he told me to.

Q. So, you're holding it bent at the elbow?

A. Uh-huh.

Q. Your hand pointed up?

A. Right.

Q. And you just held it there or did you have a strap or a sling?

A. I held it up like he told me to, because this time it was a lot easier than with the right hand because I had the permanent damage, and I hadn't had a whole lot of problems with the left hand. But, after a while, after the heat and the massage, the shoulder still wasn't getting any better. It was getting tighter, and so that's when I reported it.

The claimant's left shoulder symptoms were initially treated with physical therapy ordered by Dr. Moore, but when he released her from care Dr. Moore referred her to a shoulder specialist, Dr. Charles Pearce, for evaluation. Dr. Pearce first saw her on March 9, 2005. He diagnosed her with "Left shoulder pain with probable rotator cuff overuse, tendinosis, bursitis and now developing adhesive capsulitis." Dr. Pearce treated her conservatively over the following months, and the claimant described the treatment as successful. She last saw Dr. Pearce on May 18, 2005, and as of the hearing, she was having no shoulder problems.

II. Adjudication

A. Compensable Consequence

The claimant alleges that she sustained a compensable consequence of her compensable left-arm carpal tunnel injury, specifically pain and stiffness in her left shoulder sustained while recovering from her carpal tunnel surgery. If an injury is compensable, then every natural consequence of that injury is also compensable, including injuries from medical treatment. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

Dr. Pearce successfully treated the claimant's left shoulder problems. In his clinic note of April 6, 2005, he opined: "It is my opinion that her shoulder pain is due to the fact that she required immobilization of her arm following carpal tunnel surgery and is now resolving." Dr. Pearce's opinion is balanced by competing opinions from Dr. Michael Moore and Dr. Ray Jouett.

Dr. Moore was the claimant's hand surgeon. He opined in a letter of March 24, 2005: "At this time, I cannot relate Ms. Hollister's left shoulder pain symptoms to the carpal tunnel syndrome or subsequent surgery." It must first be noted that Dr. Moore's admittedly tentative opinion ("At this time...") does not expressly contradict that of Dr. Pearce. Neither the claimant nor Dr. Pearce contend the shoulder problems were the direct result of the surgery or the carpal tunnel syndrome.

Rather, they contend the problems were the result of how the claimant was forced to hold her left hand and arm during her recovery period. One can only guess what Dr. Moore would opine if he were fully aware of the facts. Because of this uncertainty, and because Dr. Moore is not a shoulder specialist, I give his opinion less weight than that of Dr. Pearce.

Dr. Jouett, an employee of the respondent, opined that the claimant's left shoulder problems were not causally related to her carpal tunnel surgery and recovery therefrom. Dr. Jouett's rationale is essentially that since the claimant did not have problems in the *right* shoulder from her right carpal tunnel surgery, she should not have had problems in the *left* shoulder from the left carpal tunnel surgery. Aside from the questionable reasoning utilized by Dr. Jouett, his opinion is based on a mistake of fact. The claimant did, in fact, have problems with the right shoulder, but she testified that those problems resolved without medical intervention. One can only guess whether Dr. Jouett would express the same opinion if he were aware of this fact. Because I do not find Dr. Jouett's opinion to be persuasive in and of itself, because his opinion is based on an error of fact, because Dr. Jouett has neither spoken with nor physically examined the claimant, and because Dr. Jouett is not a shoulder specialist, I assign his opinion little weight.

On balance, I find the opinion of Dr. Pearce to be far more persuasive than

that of Drs. Moore and Jouett. Given this finding, and given the success of Dr. Pearce's treatment, I find that the claimant has proven by a preponderance of the evidence that a causal connection exists between her compensable carpal tunnel injury and her subsequent left shoulder problems; and that her left shoulder problems were a natural consequence of her compensable carpal tunnel injury. Given this finding, and given the success of the treatment, I therefore find that the claimant has proven by a preponderance of the evidence that the medical treatment provided by and at the referral of Dr. Charles Pearce was reasonably necessary in connection with the compensable injury.

Because I so find, the issue of estoppel raised by the claimant is moot and need not be addressed. In addition, since the record establishes that the claimant was referred to Dr. Pearce by Dr. Moore, an authorized physician, it follows that Dr. Pearce was likewise an authorized physician. Thus, I need make no finding as to whether his treatment was authorized.

B. Average Weekly Wage

Compensation is payable at a rate computed from the claimant's average weekly wage under the contract of hire in force at the time of the accident. Ark. Code Ann. § 11-9-518 (a)(1). In no case may the average wage be computed on less

than a full-time workweek in the employment. *Id.* In computing the compensation rate, the base weekly rate calculated from the contract of hire must be added to the weekly average of any overtime earned by the claimant in the fifty-two weeks preceeding the date of injury. Ark. Code Ann. § 11-9-518 (b).

The claimant testified that she received a raise in January 2005, but her left carpal tunnel compensable injury developed in November 2004. Because the average weekly wage must be computed on the basis of wages “at the time of the accident,” Ark. Code Ann. § 11-9-518 (a)(1), the claimant’s 2005 pay raise cannot be taken into account when computing her compensation rate for this injury.

The claimant’s wage records were introduced into the record by the respondents. It appears from the records that as of the time of her left carpal tunnel injury, the claimant was working 40 hours per week at the rate of \$9.80 per hour, producing a weekly wage of \$392. In the fifty-two weeks preceeding the injury, the claimant earned total overtime of \$468.72, or an average of \$9.01. Adding these two figures together, I find that the claimant has proven by a preponderance of the evidence that she earned an average weekly wage of \$401.01, entitling her to a compensation rate of \$267.00 for total disability benefits.

AWARD

The claimant has proven by a preponderance of the evidence that the medical treatment provided by and at the referral of Dr. Charles Pearce was reasonably necessary in connection with the compensable injury; and that she earned an average weekly wage of \$401.01, entitling her to a compensation rate of \$267.00 for total disability benefits. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge