

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F601310

SHERYL HUMBERT, Employee	CLAIMANT
COOPER POWER SYSTEMS, Employer	RESPONDENT
CROCKETT ADJUSTMENT, Carrier	RESPONDENT

OPINION FILED JULY 5, 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 NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 31, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 5, 2006, and a pre-hearing order was filed on that same date. 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 relationship of employee-employer existed in November 2005 and at all relevant times.
3. The respondent has controverted this claim in its entirety.

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

1. Compensability of bilateral carpal tunnel syndrome.
2. Related medical.
3. Temporary total disability benefits.
4. Attorney fee.

At the time of the hearing the claimant clarified her request for temporary total disability benefits to include the period from December 20, 2005 through April 20, 2006. Subsequent to the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$532.00 which would entitle her to compensation at the rates of \$355.00 for temporary total disability benefits and \$266.00 for permanent partial disability benefits.

The claimant contends she was injured on November 1, 2005. Both of her wrists were injured by rapid and repetitive work that was required at her job at Cooper Power Systems. She requests temporary total disability, related medical, and an attorney fee.

The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act.

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 witnesses and to observe their 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 April 5, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant was earning an average weekly wage of \$532.00 which would entitle her to compensation at the rates of \$355.00 for temporary total disability benefits and \$266.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of her job activities with the respondent.

4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable bilateral carpal tunnel syndrome.

5. Claimant is entitled to temporary total disability benefits beginning January 16, 2006 and continuing through April 20, 2006, as a result of her bilateral carpal tunnel syndrome. Respondent is entitled to a credit for short-term disability benefits claimant received during this period of time.

6. Respondent has controverted claimant's entitlement to all indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 48-year-old woman who began working for the respondent through Staffmark in October 2001. In January 2002 the claimant became a full-time employee of the respondent. During her employment with the respondent the claimant has performed a variety of job duties, all of which have required extensive use of her hands. Claimant testified that some of her job duties involved "swedging" which she described as: "Swedging is basically where you are fitting out the solder on the cable after they dip - - they dip the solder in cable. They can't have any lumps or anything on the cable - - the ends - - because tubes won't go down on them." In order to perform this job activity it was necessary for the claimant to feed cables into a machine by hand. Claimant also testified that she operated a punch press which required her to pick up cable and place it in a machine in order to press it. Claimant also "dipped and split" which required her to take a fused cable, bend the wires apart, and dip them into solder. Claimant also described a job known as "tubing" the cables which required her to get a handful of cables that had been soldered and place "ferrules" on them and also a tube. Claimant was then required to use a machine which would press the ferrule in place.

Claimant testified that she began noticing problems with her hands in September

2005 and sought medical treatment from her family physician, Dr. Gaston.

The medical records indicate that claimant actually suffers from three conditions which are causing symptoms. First, claimant has been diagnosed as suffering from fibromyalgia by Dr. Dykman as noted in his report of October 25, 2005. In addition, MRI testing in February 2006 revealed a fracture in the claimant's right wrist. Finally, claimant has also been diagnosed as suffering from bilateral carpal tunnel syndrome for which she underwent surgery by Dr. Mitchell.

Because of the nature of claimant's complaints the medical evidence regarding each particular diagnosis is somewhat confusing. However, with respect to the claimant's bilateral carpal tunnel syndrome, I note that the medical evidence indicates that claimant has sought medical treatment from her family physician, Dr. Gaston, from Drs. Moffitt and Berestnev at the request of respondent, and from Drs. Coker, Heinzelmann, and Mitchell, who eventually performed carpal tunnel releases on the claimant.

Claimant has filed this claim contending that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. She seeks payment of related medical treatment, temporary total disability benefits beginning December 20, 2005 and continuing through April 20, 2006, as well as a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a work-related gradual onset injury in the form of bilateral carpal tunnel syndrome. Claimant is not required to establish that her work duties required rapid repetitive motion in order to establish the compensability of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998). However, claimant must still prove by a preponderance of the evidence that she suffered a carpal tunnel syndrome injury arising out of and in the course of her employment; that a work-related injury is the major cause of her disability or need for

medical treatment; and the compensable injury must be established by objective medical findings. *Kildow, supra*.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent. While the claimant also suffers from two other conditions in the form of fibromyalgia and a fracture in her wrist, the evidence also establishes that claimant suffers from bilateral carpal tunnel syndrome.

As previously noted, claimant first noticed problems involving pain and swelling in her wrists and hands in late 2005. According to claimant's testimony she reported those hand problems to Roger Baird, her supervisor, in November 2005. As a result of these complaints claimant was eventually diagnosed as suffering from both fibromyalgia and carpal tunnel syndrome. Two of claimant's physicians have indicated that claimant's fibromyalgia complaints are separate and distinct from her carpal tunnel syndrome. In a letter dated January 10, 2006, Dr. Dykman stated:

This individual is under my care for fibromyalgia. She reports other physicians have documented carpal tunnel syndrome. Her carpal tunnel syndrome would not relate to fibromyalgia since fibromyalgia does not produce joint or muscle inflammation.

Likewise, Dr. Mitchell in a report dated February 23, 2006 stated: "Carpal tunnel syndrome is not related to fibromyalgia."

In addition, two treating physicians have specifically opined that claimant's carpal tunnel syndrome is causally related to her job activities with the respondent. First, Dr. Gaston completed a disability request form for claimant in January 2006 indicating that claimant's carpal tunnel syndrome arose out of her employment with the respondent. Furthermore, Dr. Coker in a report dated January 13, 2006 indicated that claimant's

bilateral carpal tunnel syndrome was related to her employment: "I think her diagnosis is carpal tunnel. I do believe it's related to her work and not her fibromyalgia....."

Based upon the testimony of the claimant which I find to be credible regarding her job activities with the respondent as well as the medical evidence presented including the opinions of Dr. Gaston and Dr. Coker which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that the carpal tunnel syndrome arose out of and in the course of her employment with the respondent.

I also find based upon this same evidence that claimant has met her burden of proving by a preponderance of the evidence that her work-related injury is the major cause of her disability or need for medical treatment. Finally, I find that claimant has established her compensable injury by objective medical findings. Here, claimant underwent a nerve conduction study which was performed by Dr. Miles Johnson in December 2005 and it was interpreted as being consistent with a diagnosis of mild bilateral carpal tunnel syndrome.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while working for the respondent.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable bilateral carpal tunnel syndrome. This includes the surgery which was performed by Dr. Mitchell. However, respondent is not liable for any medical treatment provided to claimant in connection with her fibromyalgia. Neither is respondent liable for any medical treatment associated with a fracture in claimant's right wrist. An MRI taken of claimant's right wrist in February 2006 revealed a small fracture. According to Dr. Heinzelmann's medical report before the MRI the claimant gave a history of having fallen six months ago and catching herself on an outstretched right hand which resulted in wrist pain the next day. Accordingly, I do not find that this condition

is causally related to claimant's carpal tunnel syndrome or to her work activities with the respondent; therefore, respondent is not liable for payment of any medical treatment attributable to this fracture.

I also find that claimant is entitled to temporary total disability benefits beginning January 16, 2006 and continuing through April 20, 2006. The injury to claimant's wrist is a scheduled injury. A claimant who suffers a scheduled injury is entitled to receive temporary total disability benefits or temporary partial disability benefits during their healing period or until they return to work. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). In this particular case, claimant's entitlement to temporary total disability benefits is again complicated by the fact that she suffers from conditions other than her compensable bilateral carpal tunnel syndrome. The medical evidence contains reports indicating that claimant has been taken off work by her treating physicians specifically for her fibromyalgia. There are also medical reports indicating that claimant has been taken off work, but do not indicate the condition for which claimant has been taken off work.

After my review of the relevant evidence, I find that claimant is entitled to temporary total disability benefits beginning January 16, 2006. On that date, Dr. Gaston completed a disability request form indicating that he was treating claimant for bilateral carpal tunnel syndrome. He also indicated that claimant was disabled and it was unknown at that point when the claimant would be able to return to work. While there are medical records indicating that claimant was taken off work for periods of time prior to that date, many of those reports indicate that claimant was taken off work for her fibromyalgia or they do not mention the condition for which claimant was taken off work. However, I believe that Dr. Gaston's completion of the report on January 16, 2006 constitutes credible evidence finding that claimant was within her healing period and that she was unable to work as of that date as a result of her bilateral carpal tunnel syndrome. I find that claimant is entitled

to temporary total disability benefits beginning January 16, 2006 and continuing through the requested date of April 20, 2006. On April 6, 2006, Dr. Mitchell in a follow-up visit after claimant's surgery noted that claimant could return to work in two weeks. Two weeks from the date of that report would have been April 20, 2006, claimant's requested period.

Based upon the foregoing evidence, I find that claimant is entitled to temporary total disability benefits as a result of her compensable bilateral carpal tunnel syndrome beginning January 16, 2006 and continuing through April 20, 2006. I also find that respondent is entitled to a credit for short-term disability benefits the claimant received during this period of time. The evidence indicates that claimant began drawing short-term disability benefits at the rate of \$150.00 per week beginning when she last worked in December 2005. Claimant testified at the hearing that she is currently drawing short-term disability benefits as a result of her fibromyalgia and indeed she completed a disability request form for short-term disability benefits based upon her diagnosis of fibromyalgia. The disability request form was signed by the claimant on January 24, 2006. However, prior to that date the claimant had also on January 12, 2006 signed a request for disability based upon bilateral carpal tunnel syndrome. As a result, Dr. Gaston completed the attending physician's statement indicating that claimant was unable to work at that time as a result of bilateral carpal tunnel syndrome. Thus, it appears for at least a period of time claimant drew the short-term disability benefits for both conditions. Because claimant drew short-term disability benefits for her carpal tunnel syndrome, respondent is entitled to a credit for those disability benefits pursuant to A.C.A. §11-9-411.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by the respondent. Respondent is liable for payment of all reasonable and

necessary medical treatment provided in connection with claimant's compensable bilateral carpal tunnel syndrome. Claimant is also entitled to temporary total disability benefits beginning January 16, 2006 and continuing through April 20, 2006. Respondent is entitled to a credit for any short-term disability benefits claimant received during this period of time. Respondent has controverted claimant's entitlement to all indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE