

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505210

BRENDA JONES, EMPLOYEE

CLAIMANT

**ZIMMERMAN'S NURSING HOME, INC., EMPLOYER
UNINSURED**

RESPONDENT

OPINION FILED DECEMBER 7, 2006

Hearing before Administrative Law Judge Barbara Webb on September 8, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondent represented by Mr. William Blevins, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on September 8, 2006, to determine whether claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

A prehearing conference was conducted in this case on July 24, 2006, and a Prehearing Order was filed on July 24, 2006. At the hearing, respondent amended the stipulations to include a stipulation that claimant was paid \$80.00 every two weeks. The parties announced that the stipulations, as amended, and issues, together with their respective contentions, were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as Commission's Exhibit 1.

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The employer/employee relationship existed on or about February 24, 2005.
2. Respondent has paid \$1,000.00 in benefits.
3. The claimant was paid \$7.00 an hour and earned \$80.00 every two weeks in wages.

By agreement of the parties, the issue to be presented at the hearing is the compensability of all additional benefits. The claimant contends that she is entitled to additional benefits including medical benefits and temporary total disability benefits. The respondent contends that he has paid all benefits to which claimant is entitled.

At the hearing, the claimant testified on her own behalf. Shawna Isbell and Wade Isbell were called as witnesses for the Respondent. The record is composed solely of the transcript of the September 8, 2006 hearing containing the testimony of the claimant, Shawna Isbell, Wade Isbell, and documentary evidence consisting of Commission Exhibit No. 1 (the Pre-hearing Order); Claimant's Exhibit No. 1 (Medical Records); Claimant's Exhibit No. 2 (Nerve Conduction Study); Claimant's Exhibit No. 3 (Encounter Form); Respondent's Exhibit No. 1 (Rule 99.37); Respondent's Exhibit No. 2 (Employee Counseling Form); and Respondent's Exhibit No. 3 (Return to work slips).

SUMMARY OF TESTIMONY

Claimant, Brenda Jones, testified in her own behalf. Claimant is forty-nine (49) years old. (bd. 11-27-57). At the time of the hearing, she was employed as a cook at Chambers Nursing Home in Carlisle, Arkansas, and had been working for approximately three months. Jones was previously employed by the Zimmerman Nursing Home as a cook from June 17, 2003, until May of 2005. As a cook, she

explained that her job included cooking, lifting heavy pots and pans, mopping and sweeping, and washing dishes. Claimant testified that approximately one week prior to February 24, 2005, she began experiencing pain in her right hand. She sought medical treatment with Dr. Kleinbeck and was diagnosed with carpal tunnel syndrome. She reported the injury to the Director of Nursing on February 25, 2005. Jones explained that she had previously had tendonitis surgery on her right wrist in 1985 but had returned to work as a cook and worked until the carpal tunnel injury in 2005. She was referred for evaluation to Dr. Siems. Siems took an x-ray and referred Jones to Dr. McCoy for a nerve conduction study. Based on the study, she underwent carpal tunnel surgery in May of 2005. Following the surgery, she had physical therapy three times a week for a month. Jones testified that she was released by Siems on August 27, 2005, but did not return to work for approximately a year and a half. She explained that her hand was still bothering her and she had other issues which prevented her from going back to work. She explained that she was currently treating with Kleinbeck every two weeks for pain management and steroid shots in her wrist and that he was trying to get her in to see another orthopedic. She went back to work and wears an arm brace at work as a cook. She explained that she can perform the required duties at work but she suffers afterwards.

On cross-examination, the claimant testified that she had sought treatment with Dr. Marla Henry at DeValls Bluff Health Center in 2002 and 2003 but had been returned back to work before the surgery. She testified that she was paid \$1,000.00 after a mediation conference with Zimmerman after her surgery.

The respondent offered the testimony of Shawna Isbell, a certified nursing assistant, employed by Zimmerman's Nursing Home. S. Isbell testified that she was told by the claimant that she had arthritis in her hand that was caused at her previous job prior to her employment with Zimmerman. Wade Isbell testified that he knew the claimant from his trips to the nursing home to see his wife. He explained that he was on the front porch complaining about his bad knee when the claimant began complaining about having arthritis in her arm:

everyone goes out here on the front porch. And I have a bad knee and I was complaining about my knee, and she was complaining about her arm, that she had arthritis in her arm too, you know and that she – she was going to get up out of there, she was going to take some money with her

The medical records reflect that claimant sought treatment with Hazen Family Medical Clinic on February 25, 2005, and was diagnosed with carpal tunnel syndrome and hypertension. She was treated conservatively with prescription medication and a splint. She returned on April 4, 2005. She received an injection. Clinic notes dated August 9 and 28, 2006, September 19, 2005, and December 20, 2005, reflect that she returned with complaints of pain and mild swelling in her hand after a carpal tunnel release procedure performed in June of 2005. Records from Stuttgart Regional Medical Center reflect that the claimant had physical therapy on eight visits from July 21, 2005 until August 8, 2005.

DISCUSSION

Ark. Code Ann. § 11-9-102(4)(A) defines “compensable injury”: (a)n accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied.

When a claimant requests benefits for an injury characterized by gradual onset, Ark. Code Ann. §11-9-102(5)(A)(ii) (Repl. 1996) controls, defining “compensable injury” as:

(5)(A)(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of the employment if it is not caused by specific incident or is not identifiable by the time and place of occurrence, if the injury is: (a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

Claimant is not required under the provisions of Act 796 of 1993 to establish that her work duties involved rapid repetitive motion as an element of her claim. Kildow v. Baldwin Piano and Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, claimant

must still establish that her carpal tunnel syndrome injury arose out of and in the course of her employment, that the work-related injury is the major cause of her disability or need for medical treatment, and claimant must establish the compensable injury with objective medical findings.

Although the parties have stipulated that claimant received \$1,000.00 from respondent in connection with her claim, the evidence demonstrates that the payment was made by the respondent without waiver of its right to dispute compensability of the claim or any additional benefits claimed in connection therewith.

In the present case, I find that claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment. In support of her claim, claimant testified that it was not until February of 2005 when she experienced pain and sought medical attention. She further contends that she was unable to return to work notwithstanding the release by Dr. Siems. However, I find that claimant's testimony is contradicted by her own previous statements and other evidence in the case. Significantly, the claimant has testified that she was seeking medical treatment in connection with her hand in 2002, 2003, and 2004. This is corroborated by the exhibits reflecting that claimant was under the treatment of the Hazen Medical Clinic and DeValls Bluff Health Center.

Claimant's testimony regarding her lack of pain until the incident is further contradicted by the testimony of Shawna and Wade Isbell. Both witnesses testified that the claimant had complained of pain in her hand prior to February of 2005 and had indicated that the pain was the result of arthritis or prior injuries related to a prior job.

In regard to claimant's contentions that she was not able to return to work for a year and a half after she was released by the doctor, the evidence in the record reflects that claimant agreed there were other issues which precluded her from being able to work. Finally, while the medical evidence reflects objective medical findings that the claimant suffered from carpal tunnel syndrome, the only evidence offered to demonstrate that the injury was caused by performance of her work duties while employed by the respondent is the testimony of the claimant.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief.

Brotherton v. White River Area Agency, ___ Ark. App. ___, ___ S.W.3d ___ (Dec. 14, 2005); Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). It is important to note that the claimant's testimony is never considered uncontroverted.

Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). In the instant case, I find that the testimony of the claimant that her hand began hurting in February of 2005 is simply not credible in light of her failed memory of prior treatment as well as her prior complaints and inconsistent statements made to co-workers and friends. Accordingly, after considering the evidence submitted in the record and observing the demeanor of the witnesses during their testimony at the hearing conducted in this matter, I find that

the preponderance of the credible evidence fails to support a conclusion that claimant sustained an injury arising out of and in the course of her employment with Zimmerman.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 Ark. Code § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. Claimant failed to prove by a preponderance of the evidence the elements of a compensable injury under the Arkansas Workers' Compensation laws.

ORDER

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

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge