

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F411619

DORETHA LOCKET, EMPLOYEE **CLAIMANT**

**ARKANSAS CHILDREN'S HOSPITAL,
EMPLOYER** **RESPONDENT**

**SELF-INSURED (RISK MANAGEMENT
RESOURCES, TPA),
INSURANCE CARRIER** **RESPONDENT**

OPINION FILED JANUARY 9, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 20, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Sheila F. Campbell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 20, 2005, to determine the compensability of claimant's alleged carpal tunnel syndrome, as well as any nerve damage she contends she sustained as a result of carpal tunnel surgery.

The parties stipulated to the existence of the employee-employer relationship on May 27, 2003, when claimant sustained a compensable hand injury for which benefits were paid. The parties also stipulated to the existence of the employee-employer relationship on May 26, 2004, at which time claimant alleges that carpal

tunnel syndrome had manifested itself in the same hand that was previously injured in May of 2003. It was further stipulated that claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$253.00 for temporary total disability, based on an average weekly wage of \$380.00.

Claimant contends that as a result of a hand injury that she indisputably sustained on May 27, 2003, which was accepted as compensable, she developed carpal tunnel syndrome, which manifested itself on May 26, 2004. Claimant further contends that she has sustained nerve damage as a result of the carpal tunnel surgery she has had for her alleged carpal tunnel injury. Claimant contends she is entitled to medical benefits, as well as temporary total disability indemnity benefits from May 26, 2004, through September 14, 2005, the date she reached maximum medical improvement, and attorney's fees. Claimant requests that the issue of permanency be reserved.

Respondents admit that claimant sustained a compensable hand injury in May of 2003, for which benefits were paid as a medical-only claim. Respondents contend that claimant last sought treatment for that condition in July of 2003. Respondents contend that claimant cannot prove that her alleged carpal tunnel syndrome or any further injury resulting from her alleged carpal tunnel syndrome, is compensable under Ark. Code Ann. § 11-9-102; respondents take the position that the carpal tunnel syndrome and any treatment that she has received from that, as well as any disability

that she might have, either temporary total or permanent partial, is not causally related to her employment with respondent-employer.

Respondents further assert that claimant received short-term disability from June of 2004 until August of 2004, when she returned back to work, as well as long-term disability from November of 2004 to present. As such, in the event the claim is found to be compensable, respondents contend they are entitled to a credit, pursuant to Ark. Code Ann. § 11-9-411, for any short-term and/or long-term disability received by claimant.

STATEMENT OF THE CASE

At the time of the hearing, claimant was a fifty-six-year-old female who testified that she had worked for respondent-employer for twelve years. On the date of alleged injury, she was a deli worker for Nutritional Services, prepping, preparing, and selling food such as salads, sandwiches, and wraps; claimant also had to do the cleaning daily. Claimant testified that she had to prepare, on average, 200 sandwiches per day and wrap approximately 100 of them in paper.

Claimant testified that in order to prepare the food daily, she was required to use a large can opener, knives, all size spoons and all size scoops, depending on what she was preparing that particular day. Claimant testified that most days she worked by herself and if she asked for help, some days someone would come to help her and

sometimes they would not. Claimant testified that in the twelve years she worked there, she would never have had help more than one day a week.

Claimant testified that she worked each day, Monday through Friday, from 6:00 a.m. until 2:30 p.m. Testimony revealed that claimant had approximately four hours to prepare the food prior to the lunch time, which was from 11:00 a.m. to 1:00 p.m. During the lunch period, she would put together sandwiches, as needed, for customers. Claimant admitted that her job included a wide variety of activities and that she was *not* doing the same thing over and over for eight hours per day.

However, during cross-examination at the hearing on this matter, the following colloquy occurred between counsel for respondents and claimant:

Q Are you claiming that your carpal tunnel syndrome related back to the May 2003 incident with the cart, or are you relating it to just your work at Children's Hospital?

A *I relate it to my work, my rapid and my work.*

Q So you're not relating it to the incident with the cart?

A I can't say.

[Emphasis added.] Claimant's job requirements for a deli worker were introduced into evidence. Claimant testified that she has not had to slice meat since the late 1990s, because they have someone who does that now. Further, she testified that she does not have to physically chop ingredients with a knife, because they have an automatic chopper.

Claimant testified that before coming to work for respondent-employer, she had worked in laundry at a number of hotels. She testified that she basically folded towels and sheets all day long. She further testified that she has been trained in cosmetology and worked for a while as a beautician. In fact, she admitted that even when she was working for respondent-employer, she would do hair for friends and family at night or on weekends.

Claimant testified, in regard to her first, compensable hand injury, that on May 27, 2003, as she was pushing a rolling cart through a door by the grill, her hand was caught between the door facing and the cart, injuring her hand. Claimant testified that her hand began swelling and hurting and stated, “[T]hat was the first time I really had bad problems.” This injury was accepted as a compensable medical-only claim by respondents. Claimant testified that her work caused her more pain, she reported this to her supervisor, and sought further treatment for her pain.

Medical records indicate that claimant continued to see the doctor for her May 2003 injury through July 1, 2003, including physical therapy. She testified that the therapy helped her symptoms. She continued working following the May 2003 injury; and, she testified that after about one year, her hand began swelling again. She testified, however, that it was “different” this time in that her fingers were becoming numb. She testified that by May of 2004, her symptoms had progressed, with numbness in her right hand, swelling, and pain going up her arm.

Medical records indicate that she had seen Dr. Robin Jeffers-Perry in October of 2003, complaining of numbness and a burning sensation in her *left* hand, and Dr. Perry noted at that time that claimant said she had taken “some medication that she had from a *previous right carpal tunnel injury* without relief.” [Emphasis added.]

Medical records indicate that claimant did not see a doctor for her alleged *right* carpal tunnel symptoms until May 25, 2004, when she saw Dr. Perry. Dr. Perry’s notes from that day state that claimant “presents with complaint of carpal tunnel.” Moreover, she noted that *claimant* “felt this was [an] old workman’s comp injury.” Dr. Perry referred her back to Concentra who had treated her before for her May 2003 hand injury. Claimant testified that she returned to her employer to report this and was told to return to Concentra Medical for reevaluation of her hand.

On May 26, 2004, claimant was seen by Dr. Scott Carle at Concentra Medical Centers. Dr. Carle ordered a nerve conduction study and noted as follows:

There is *no underlying pathology or ongoing active medical condition that is attributed to an occupational illness or injury*, which would preclude this individual from returning to full and unrestricted work if he/she so chooses.

[Emphasis added.]

On May 28, 2004, following the nerve conduction study, Dr. Carle assessed claimant as having bilateral carpal tunnel syndrome and noted “not work related.” He

released her from care and advised her to see her primary care physician (PCP) for this “non-work related condition.”

Claimant was referred by her PCP to Dr. Edward Weber for possible surgery.

Dr. Weber saw her on June 9, 2004, and noted:

Doretha Lockett is a 55-year-old female, employee of Arkansas Children’s Hospital. She complains of right hand pain with radiation to her arm and shoulder, which has been present for one year. . . .

Nerve conduction and EMG studies reveal a moderate carpal tunnel syndrome on the right a mild left carpal tunnel syndrome.

I believe she would benefit from carpal tunnel release on the right for which she is scheduled on 06-17-04.

Dr. Weber’s notes mention nothing about a work-related injury or in any way attribute claimant’s condition to her job.

Following the right carpal tunnel release, claimant continued to have pain. She saw Dr. Reginald Rutherford, who ordered another nerve conduction and EMG study, as well as a bone scan. The triphasic bone scan revealed findings consistent with reflex sympathetic dystrophy. In addition, the nerve conduction and EMG study revealed significant denervation of the abductor pollicis brevis muscle.

Dr. Rutherford recommended “revision carpal tunnel surgery with exploration and possible repair of the recurrent motor nerve.” He referred claimant to Dr.

Michael Moore for a consultation. Dr. Rutherford's notes mention nothing about a work-related injury or in any way attribute claimant's condition to her job.

Dr. Moore saw claimant on September 14, 2004, and found as follows:

It is my opinion that exploration and repair of the motor branch of the median nerve would not significantly improve her right hand pain symptoms. In addition, repair may not be technically possible. I suspect the ends of the motor nerve have retracted into the median nerve and thenar nerve. Dissection of the motor branch in the median nerve carries a risk of further injury to the nerve. At this time, it is my opinion Ms. Lockett should begin treatment for the reflex sympathetic dystrophy. She will be seen in the Therapy Unit where she will begin scar massage, scar phoresis, and desensitization. She will also begin stress-loading therapy exercises. Finally, the sensation in her right hand will be evaluated with a Semmes-Weinstein monofilament sensory examination. Ms. Lockett understands if she does not respond to conservative treatment, exploration of the median nerve may be indicated. She understands and agrees with the treatment plan as outlined and all questions were answered.

Again, as with Drs. Weber and Rutherford, Dr. Moore's notes mention nothing about a work-related injury or in any way attribute claimant's condition to her job.

Claimant submitted to a Functional Capacity Evaluation (FCE) on September 14, 2005. She was found to be able to work at least at the "sedentary" work level over the course of an eight-hour day; however, the FCE noted: "Ms. Lockett demonstrates inappropriate behaviors and inconsistent effort. Her true abilities remain unknown." The FCE further found that claimant had given "very inconsistent effort throughout"

the process and “demonstrates numerous inconsistencies.” Claimant testified that she disagrees with the FCE results.

Claimant admitted that she has never attempted to return to work following the FCE. Claimant admits that she does have high blood pressure and heart problems, as well as back problems, and that these conditions, combined with her hands/wrists, were reasons she gave the Social Security Administration when applying for disability. However, she testified that the problem that is keeping her from being able to return to her job with respondent-employer is her inability to function with her hands in the way that she previously could.

Claimant testified that after her workers’ compensation claim was denied, she applied for and received short-term disability from June 1, 2004, through August 2, 2004. She testified that her medical treatment has been paid by her group health insurance. She further testified that she was approved for long-term disability, for which she receives \$967.00 per month. She also testified that she receives \$720.00 per month for social security disability and \$607.00 per month from General Motors from her deceased husband’s pension. Claimant testified that, today, she is able to prepare meals for herself, do some of the housecleaning, drive, shop, sweep her floors, babysit her grandchildren on occasion, and that she is active with her church in developing programs.

FINDING OF FACT

Claimant has failed to prove by a preponderance of the credible evidence that her alleged carpal tunnel syndrome, or any further injury resulting from her alleged carpal tunnel syndrome, is compensable; specifically, claimant has failed to prove that these conditions are causally related to her employment with respondent-employer.

DISCUSSION

Carpal tunnel syndrome is both compensable and falls within the definition of rapid repetitive motion; and, therefore, proof of rapid and repetitive motion by a claimant is not required. *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). However, a claimant is not relieved of his or her burden of establishing a causal connection between the injury complained of and the employment. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

To sustain a claim for compensation for carpal tunnel syndrome, a claimant is not required to prove that the syndrome was caused by rapid and repetitive motion, but he or she must prove the following by a preponderance of the evidence:

- (1) that the injury arose out of and in the course of his or her employment;
- (2) that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and
- (3) that the injury was a major cause of the disability or need for treatment.

See Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); *Crudup v. Regal Ware, Inc.*, *supra*; *Stevenson v. Frolic Footwear*, 70 Ark. App. 383, 20 S.W.3d 413 (2000); *Kildow v. Baldwin Piano*, *supra*.

In addition to satisfying the “major cause” requirement, however, a claimant must also prove a causal connection between his employment and the injury. *Id.* Causation remains an essential element to be proven by a claimant in order to establish a claim of compensability.

Finally, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, *supra*; *Kildow v. Baldwin Piano*, *supra*. Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. See *Smith-Blair, Inc. v. Jones*,

supra; *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra*; *Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, the only mere mention made in any medical record in evidence with regard to claimant's carpal tunnel syndrome is her visit to her PCP on May 25, 2004, wherein Dr. Perry notes that claimant, "felt this was [an] old workman's comp injury." However, claimant admitted on cross-examination that she does *not* relate her carpal tunnel to her May 2003 hand injury. None of the other doctors claimant saw in regard to her carpal tunnel syndrome even mention her work being a possible cause, except Dr. Carle, the first doctor she saw after her PCP, who specifically found that it was *not* work-related. Clearly, no objective medical findings exist to establish that a work-related carpal tunnel injury, or aggravation of same, occurred in May of

2004, as claimant alleges. In short, Claimant has simply failed to prove by a preponderance of the credible evidence that her alleged carpal tunnel syndrome, or any further injury resulting from her alleged carpal tunnel syndrome, is compensable; specifically, claimant has failed to prove that these conditions are causally related to her employment with respondent-employer

For all of the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge