

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304369

JESSIE M. MARKS, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, CARRIER	RESPONDENT

OPINION FILED AUGUST 24, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on May 26, 2006, at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE MELISSA LEE, Attorney at Law, Springdale, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of additional medical expenses.

At issue is whether the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102; whether the claim is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702; and whether expenses incurred with Dr. Williams were authorized pursuant to Ark. Code Ann. §11-9-514. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on January 1, 2003 at which time the claimant developed a compensable scheduled injury. The last medical expense paid on this claim concerned a bill from Dr. Verma (date of service June 2, 2004/check issued July 6, 2004). An order was entered on February 8, 2005 dismissing this claim without prejudice pursuant to a Rule 13 Dismissal Motion filed by the respondents and a letter from the claimant dated January 2, 2005, indicating she had no objection. The claimant retired from Tyson Foods on July 25, 2002 prior to filing this claim for carpal tunnel syndrome (CTS) on May 1, 2003. The claimant remains symptomatic and seeks additional medical treatment with Dr. Rhodes.

The respondents contend this claim was dismissed and therefore additional benefits are barred by the statute of limitations. Respondents also contend that there is no objective evidence to substantiate a compensable injury (Dr. Verma's EMG/NCV studies on June 2, 2004 were negative). Furthermore, her treating physician, Dr. David Rhodes, diagnosed "early" carpal tunnel syndrome in his reports of October 13, 2004 and October 27, 2004 which was two years after the claimant left the respondents' employ. Alternatively, in the event of an award, the respondents would not be liable for expenses incurred with the claimant's family physician, Dr. Nancy Williams, who was unauthorized.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the

transcript.

The following witnesses testified at the hearing:

The claimant, age 58 (D.O.B. October 2, 1947) worked for the respondent-employer from January 13, 1972 until her retirement on July 25, 2002. She filed a claim for a January 27, 1998 carpal tunnel syndrome injury and a November 10, 1999 neck injury.

The history of the claim is as follows:

WCC AR-C (claim form)	05/01/03	Neck & CTS
Claimant's correspondence	06/02/03	hearing request
Legal Advisor's Mediation		
Conference	01/23/04	
Last medical treatment	06/02/04	
Claimant's correspondence	12-28-04	hearing request
Order of Dismissal w/o		
Prejudice	02/08/05	
Claimant's correspondence	12/07/05	hearing request

MEDICAL EVIDENCE

The claimant received conservative medical care from general practitioners with Health Care Plus, orthopedic surgeons Dr. John Lytle, Dr. Robert Gullet, and Dr. David Rhodes and Dr. Nancy Williams, the claimant's family physician. No evidence was presented to show that Dr. Williams was an authorized treating physician.

The claimant's treatment began on March 25, 1998 for complaints of bilateral wrist pain, worse on the left. The claimant had been treated by the plant nurse with Tysons but those records were not introduced into evidence. She was diagnosed with a "strain, possibly secondary to overuse injury" based on her history

of repetitive motion work in the cold on January 8, 1998. The doctor recommended a splint, medication and light duty. The claimant's symptoms persisted and physical therapy was recommended on April 13, 1998 for pain and swelling. In a report dated April 27, 1998, the claimant related a ten to twelve year history of symptoms and she was referred to Dr. Lytle for evaluation of chronic over-use syndrome and ganglia of both wrists. The claimant continued to work despite the doctor's recommendation to rest.

Dr. Lytle examined the claimant on May 11, 1998. He noted a right ganglion cyst, present for one year, tenderness and swelling. He diagnosed DeQuervain's syndrome and tendinitis and continued her conservative treatment and work restrictions. He released her to full duty on June 17, 1998.

The claimant returned to Health Care Plus on May 10, 2001 complaining of a one month history of tingling and numbness in her hands at night. She also developed a new ganglion cyst with a history of duration of 1 to 4 weeks. The doctor recommended a splint, medication and physical therapy for tendinitis of the right wrist. For reasons unknown, an x-ray was taken which was negative. On May 18, 2001 the claimant was referred to a specialist.

Dr. Gullett diagnosed deQuervain's Syndrome of the right wrist and probable bilateral CTS based on the claimant's complaints of pain, numbness and tingling. An EMG/NCV study was conducted by D. Verma on May 22, 2001 which revealed severe CTS on the left and moderate CTS on the right. On May 30, 2001 Dr. Gullett prescribed a splint and injections to treat the right deQuervain's Syndrome.

She was released on June 13, 2001.

Dr. Gerald Morris saw the claimant on April 8, 2003, and prescribed medication and a thumb splint and referred her to Dr. Gullett.

“This lady comes in with swelling and pain of the right thumb for a month. She denies any kind of injury.

An x-ray of the right thumb was not remarkable. There were a few, very small, barely visible spurs, but the area where she is hurting at the base of her thumb at the carpophalangeal joint was not particularly abnormal on the x-ray.

ASSESSMENT: Tendinitis of the right thumb.

I told her if he (Dr. Gullett) felt this was part of her carpal tunnel syndrome and she was worsening, he could call workman's comp and reactivate the paperwork. It has been about three years since he saw her for carpal tunnel.”

Dr. Gullett treated the claimant on May 30, 2003, with an injection for a right trigger thumb and possible surgery. He recommended repeat NCV studies for bilateral CTS.

The claimant saw Dr. David Rhodes on May 12, 2004, for bilateral CTS. Dr. Verma performed repeat NCV studies on June 2, 2004, which were interpreted as showing “no electrodiagnostic evidence of carpal tunnel or ulnar nerve entrapment in any of the upper extremities.” Based on this report, Dr. Rhodes diagnosed “early carpal tunnel syndrome” and prescribed injections and a brace in his reports of October 13 and October 27, 2004. The claimant was released on November 24, 2004.

The claimant saw her family physician, Dr. Nancy Williams, on October 20,

2005, and requested pain medication for CTS symptoms. Dr. Williams referred the claimant back to Dr. Rhodes.

FINDINGS AND CONCLUSIONS

The statute of limitations is set forth in A.C.A. §11-9-702. The claimant must file a claim within two (2) years of the date of injury or one (1) year from the last payment of compensation.

In the case at bar, the claimant's hearing request was filed on December 7, 2005, which exceeds two (2) years from the date of injury and one (1) year from the last medical treatment paid by the respondents. Accordingly, I find the statute of limitations bars any further liability.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer/employee existed on January 1, 2003, at which time the claimant sustained a compensable, scheduled injury. Medical expenses were paid until June 2, 2004.
2. This claim was dismissed on February 8, 2005.
3. The claimant's hearing request for additional medical treatment with Dr. Rhodes filed December 7, 2005, is barred by the statute of limitations.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge