

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408694

CLEO MARTIN	CLAIMANT
TYSON POULTRY, INC.	RESPONDENT
TYNET CORPORATION INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 27, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 18, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 4, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On May 10, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to both arms on May 10, 2004.

4. The claimant is entitled to a weekly compensation rate of \$291.00 for temporary total disability and \$218.00 for permanent partial disability.

5. Medical expenses have been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical from March 15, 2005.

2. Temporary total disability from October 26, 2005, to a date to be determined.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to continuing medical treatment for both arms on and after January 31, 2005. Her treating physician refused to allow further treatment, and Respondents denied a request for change of physician, thus the claimant subsequently sought medical treatment on her own, additional surgery has been recommended and is being conducted by Dr. Jeffery Evans. The claimant is further entitled to temporary and total disability benefits from October 26, 2005, through a date yet to be determined, as well as statutory attorney's fees.

In regard to the foregoing issues the respondents contend that they have accepted the bilateral injury to both arms claim as compensable and that all appropriate medical benefits have been paid to date. The respondents contend that no temporary total disability benefits are owed. The respondents contend that the claimant was returned to regular duty work by Dr. James Kelly on

September 20, 2004, and had reached maximum medical improvement on February 28, 2005. That Dr. Kelly's clinic notes of February 28, 2005, and March 14, 2005, indicated that he did not feel that the claimant had been truthful with her strength testing and that she had presented suboptimal effort. That the claimant continues to be untruthful in that she indicates to Dr. David Henderson her initial visit with him on July 22, 2005, that "she has been let go from employment, patient states, secondary to injuries and inability to lift and perform repetitive lifting." Claimant had been performing her regular duties at work from September 20, 2004, until such time as she was terminated on December 16, 2004, due to failure to use appropriate Lock Out Tag Out procedures and was, therefore, terminated for violation of a Tyson Core Safety Mandate. The reason for her termination is further discussed in the Decision of Hearing Officer of the Arkansas Appeal Tribunal for unemployment benefits dated February 3, 2005, (see Respondents' Non-Medical Index, Page 5-6), wherein he indicated that "The claimant was discharged from last work for misconduct in connection with the work on account of a willful violation of the bona fide rules of the employer pertaining to the safety of persons." That any medical issues the claimant had after her release from Dr. Kelly's care on March 14, 2005, are not work related as to her employment at Tyson Poultry, Inc. That the claimant was terminated for cause on December 16, 2004, and had a last day of work on December 9, 2004. The respondents reserve the right to supplement the contentions upon the completion of pre-trial discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical documentation marked Respondents' Exhibit No. 1, non medical documents marked Respondents' Exhibit No. 2 and the deposition of the claimant marked Respondents' Exhibit No. 3. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty-three years old and had worked for the respondent for three and a half years. The claimant testified that in May 2004 she was working as a floor person which involved picking up tubs of chicken and putting it on a roller. The claimant testified that she would roll it up to the scales and pack it out noting that some of the boxes weighed forty pounds. The claimant was asked to explain packing out and the claimant testified that she would take a scoop and put it in a box or sometimes in bags and then she would take the box and put it on a pallet. The claimant testified that she is right-handed and that she would use the scoop in her right hand and rarely did much with her left hand except when she was moving boxes. The claimant testified that during this period of time she also worked cutting up chicken with scissors and deboning. The claimant again testified that she does this job with her right hand and that she was cutting the thigh from the leg. The claimant testified that she would do this job anywhere from thirty minutes to an hour at a

time. The claimant testified that once the tub was full she would pack it out.

The claimant testified that on May 10, 2004, she reported an injury to her arms to the plant nurse, Cindy Dorr. The claimant testified that the respondents initially sent her to Dr. Bennett and he put her on light duty, gave her braces and had some tests run. The claimant testified that she went back to work and continued working until her right wrist and thumb locked up one day at the plant. The claimant testified that the plant nurse sent her to Dr. Kelly who did surgery on her hand. The claimant testified that she was still having problems with her hand when Dr. Kelly released her sometime in September 2004. The claimant testified that the respondents refused to pay for further medical treatment after she was seen by Dr. Kelly on January 31, 2005. The claimant agreed that Dr. Kelly in his medical reports had indicated that he thought that she was faking and that there really was not anything wrong with her.

The claimant testified that after January 31, 2005, she continued to have problems with her hands so she sought medical treatment from Dr. Henderson. The claimant testified that she could not afford the tests recommended by Dr. Henderson. The claimant testified that she went to see Dr. Cruz when she had pneumonia and at that time told him about her hand and he set an appointment for her with Dr. Evans. Dr. Evans x-rayed the claimant's hand and also set up a nerve conduction test. The claimant testified that Dr. Evans operated on her hand which helped

her problem some but her thumb continued to lock up. The claimant testified that Dr. Evans then did surgery on her right thumb on April 5, 2006, and she has now been released by Dr. Evans as of April 12, 2006. The claimant testified that she has not worked between January 1, 2005, through the date of this hearing. The claimant further testified that she has not done anything to aggravate her hands or wrists, noting that she does not do much of anything during the day but sit and watch television.

On cross examination, the claimant agreed that her job was that of a packer and that her job involved picking up tubs, rolling them around, scooping the chicken out of the barrel, putting it in a box or bag and then she would take the box up. The claimant indicated that the packer job does not involve cutting but that when there was nothing to do, she was encouraged to work on the debone or cutting line. The claimant agreed that Dr. Kelly released her to regular duty on September 20, 2004. The claimant testified that from September 20, 2004, and January 31, 2005, she did not receive any medical treatment from Dr. Kelly. The claimant agreed that when she saw Dr. Kelly on January 31, 2005, he had her do a repeat NCV test which to her knowledge was normal. The claimant indicated that she had a repeat visit with Dr. Kelly on February 28, 2005, and again saw him on March 14, 2005. The claimant testified that the tests which she was given she had problems moving her hand and that she could not get her hand to work as hard as they wanted her to. The claimant agreed that Dr. Kelly released her on or about March 14, 2005, with a 0 impairment

rating. The claimant testified that she has not looked for work since she left the employment of the respondent in December 2004. The claimant testified that she did apply for unemployment benefits but that after her hearing her application for unemployment was denied. The claimant agreed that she was on layoff pending an investigation of a charge that she had violated a safety regulation but that after three days she was terminated. The claimant testified that after she was terminated she sought medical treatment in July 2005 with Dr. Henderson but that he refused to take her Medicaid insurance. The claimant testified that Medicaid has paid for some of her medical treatment but not all. The claimant agreed that she was seen by her family physician, Dr. Cruz, who then referred her to Dr. Evans. The claimant agreed that the x-rays which Dr. Evans took did show that her wrists were normal and that the nerve conduction studies which Dr. Evans had run also were normal. The claimant testified that she continued to use the cockup splint which Dr. Evans gave her. The claimant agreed that Dr. Evans operated on her wrists on November 16, 2005. The claimant testified that following her right carpal tunnel release she continued to have problems with her right thumb. The claimant agreed that Dr. Evans gave her a shot in her right hand in hopes of relaxing and calming down her thumb. The claimant testified that Dr. Evans, after trying conservative treatment, did a right trigger thumb release on April 5, 2006. The claimant testified that Dr. Evans released her on April 11, 2006. The claimant testified that she had complained to Dr. Kelly about her

trigger thumb problem and described to him that her hand would lock up. The claimant testified that she thought that Dr. Kelly would work on her thumb but he never did. The claimant agreed that she was returned to normal duty by Dr. Kelly and returned to work for the respondent on September 20, 2004. The claimant testified that she has not injured her right hand between then and December 2004.

Cindy Dorr testified on behalf of the respondents stating that she had worked for the respondent for approximately twelve years although currently she is employed elsewhere. Ms. Dorr testified that while working for the respondent she was the complex nurse manager and was acquainted with the claimant. Ms. Dorr was handed a document from the respondents' medical index and read a note from Dr. Kelly releasing the claimant to regular duty work on September 20, 2004. This witness testified that the claimant had been working at light duty prior to that date. Ms. Dorr testified that on light duty the claimant had worked in the laundry room because she was able to do this job one handed but after she was released to full duty she returned to her regular job in packing as a floor person. Ms. Dorr testified that as a floor person the claimant would fill in for people when they were on breaks or having their lunch so that this job was varied and she was always moving to something different. This witness testified that when the claimant was not filling in for an employee she would be out on the floor picking up chicken and getting whatever was needed for the line. This witness was asked about a trimming position and the response was that the claimant might have been at this job for about an hour

but not often. Ms. Dorr testified that after September 20, 2004, she has no recollection of the claimant coming back into the nurse's station complaining about her right wrist. Ms. Dorr testified that the claimant did not request to go back to a physician at any time after her release to full duty work.

On cross examination, Ms. Dorr agreed that she was not out on the floor watching the claimant work every day.

The medical records set forth that the claimant was seen by Dr. Nathan Bennett on May 2, 2003, for complaints of right hand and wrist pain. Dr. Bennett assessed the claimant with having right carpal tunnel syndrome and recommended that she wear night splints take medication and undergo a nerve conduction test. Dr. Bennett writes on May 20, 2003, that the claimant's nerve conduction tests were normal and her right wrist pain and paresthesias have resolved. Dr. James Kelly writes on June 21, 2004, that he has seen the claimant for two problems. Dr. Kelly opines that the claimant has a stenosing tenosynovitis of the first extender compartment, i.e., DeQuervain's syndrome which is leading to her locking sensation of her wrist. Dr. Kelly also opines that the claimant has bilateral carpal tunnel and ordered nerve conduction tests. On August 9, 2004, Dr. Kelly writes that the claimant's nerve conduction studies were normal although clinically she does have some carpal tunnel syndrome. Dr. Kelly recommended that the claimant undergo right wrist surgery in hopes of relieving her symptoms. Dr. Kelly writes that once he releases the stenosing tenosynovitis she should do better. The claimant underwent surgery

for her right wrist for a right first extender compartment release and a right first extender compartment synovectomy performed by Dr. Kelly on August 17, 2004. The claimant was released to one handed on August 17, 2004. Dr. Kelly released the claimant to regular duty work on September 20, 2004. Dr. Kelly saw the claimant on January 31, 2005, for complaints with both of her wrists. Dr. Kelly notes that he cannot follow the claimant's problems with her left wrist, noting that she has never had a history of left wrist problems. Dr. Kelly notes that the claimant is still complaining of numbness and pain in her right hand, noting that they never did a carpal tunnel release because her EMG studies were normal. Dr. Kelly recommended that the claimant undergo nerve conduction tests. Again, the claimant's nerve conduction tests for her right wrist was normal as indicated by a report dated February 15, 2005. Dr. Kelly writes on February 28, 2005, that he has seen the claimant following her EMG/NCV study which was normal, noting that she is not a candidate for carpal tunnel surgery. Dr. Kelly writes that he will make arrangements for the claimant to be evaluated for her DeQuervain's syndrome and he instructed her that she needs to be truthful with her tests as he has a feeling that she will fail due to lack of compliance. Dr. Kelly writes to the respondent on March 2, 2005, concerning the claimant noting that he does not feel that she has any carpal tunnel syndrome in either hand although she does have complaints about symptoms, noting that her physical examination as well as her EMG and NCV studies do not support carpal tunnel. Dr. Kelly notes that the claimant did have

DeQuervain's syndrome which is tendinitis due to repetitive use of her hand which he does relate to her job environment. On March 14, 2005, Dr. Kelly assesses the claimant with a 0 impairment rating, noting that she gave suboptimal effort in her various tests further writing that DeQuervain's syndrome usually has full recovery.

The claimant was seen by Dr. David Henderson on July 20, 2005, for her complaints of right wrist pain and swelling. After taking down the claimant's history as well as an examination, Dr. Henderson assessed the claimant with having right carpal tunnel syndrome recommending that she wear braces bilaterally and he scheduled an EMG to assess nerve damage. The claimant was seen by Dr. Jeffery Evans on October 6, 2005, for her complaints of right-hand pain and numbness, noting that she had surgery by Dr. Kelly for her locking up wrists. Dr. Evans writes that the claimant states that she had a nerve study done at Dr. Kelly's office which showed that she also had carpal tunnel syndrome. After examination, Dr. Evans assessed the claimant with having right carpal tunnel syndrome and ordered a nerve conduction study and gave her a cockup splint to use on her right wrist. On October 6, 2005, the claimant also had x-rays done of her right wrist which showed no significant abnormality. The claimant underwent an EMG nerve conduction study on October 11, 2005, which showed normal medial and ulnar motor and sensory distal latencies and condition velocities on the right. Dr. Evans writes on October 20 that the claimant's nerve conduction study was normal but that her fasting blood sugar was noted to be slightly high. Dr. Evans assessed the

claimant with right carpal tunnel syndrome and scheduled a right carpal tunnel release. Dr. Evans writes on November 1, 2005, that the claimant is unable to work but should be able to return to work after her upcoming surgery. Dr. Evans operated on the claimant's right carpal tunnel on November 16, 2005. On November 22, 2005, Dr. Evans writes that he has seen the claimant on follow up after her carpal tunnel release and that her wound is well healed. Dr. Evans saw the claimant on January 12, 2006, for follow up of her right carpal tunnel release. At that time the claimant complained of her right thumb triggering which she reported has been going on for some time. After examination, Dr. Evans assessed the claimant with having right trigger thumb as well as right carpal tunnel syndrome which has been surgically treated. Dr. Evans injected the claimant's right thumb with medication. The claimant was seen by Dr. Evans on March 2, 2006, for follow up for her right carpal tunnel release as well as her right trigger thumb. The claimant notes that her thumb is still locking up on her despite the injection the doctor gave her. After examination, Dr. Evans recommended a right thumb A1 pulley release. Dr. Evans operated on the claimant's right trigger thumb on April 5, 2006, and Dr. Evans saw the claimant for follow up on April 11, 2006, noting that she is doing very well, recommended that she discontinue her sutures and return to activity as tolerated.

After a complete review of this case, I find that the claimant has failed to prove that she is entitled to additional medical treatment for her compensable injury. Dr. Kelly, on March 14,

2005, assessed the claimant with a 0 percent impairment rating noting that she had given suboptimal effort in her various tests further noting that the DeQuervain's syndrome which he had treated her for usually has a full recovery. It is noted that Dr. Evans has been treating the claimant for right carpal tunnel, however, her nerve conduction studies have been consistently normal. Dr. Evans does note that her blood sugar was noted as being slightly high. It is further noted that the claimant has not worked for the respondent since December 2004 and any problems which she may be experiencing as to her arms, wrists or thumbs are likely not related to her work for the respondent. Therefore, this claim for benefits should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On May 10, 2004, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to both arms on May 10, 2004.
4. The claimant is entitled to a weekly compensation rate of \$291.00 for temporary total disability and \$218.00 for permanent partial disability.
5. Medical expenses have been paid.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment since March 15, 2005. See discussion above.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from October 26, 2005, to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional benefits as a result of her compensable injuries. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE