

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F510517

JUDY SKINKIS, Employee

CLAIMANT

NEXT SOURCE, Employer

RESPONDENT

HARTFORD INSURANCE COMPANY, Carrier

RESPONDENT

OPINION FILED MAY 4, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On April 12, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 8, 2006, and a pre-hearing order was filed on February 13, 2006. 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 employee-employer-carrier relationship existed among the parties at all relevant times.
3. The claimant was earning an average weekly wage of \$373.50 which would entitle her to compensation at the weekly rates of \$249.00 for temporary total disability benefits and \$187.00 for permanent partial disability benefits.

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

1. Compensability of bilateral carpal tunnel syndrome.
2. Medical.

3. Temporary total disability benefits from October 14, 2005 through a date yet to be determined.

Prior to the hearing the parties withdrew the stipulation regarding claimant's average weekly wage and the appropriate compensation rates. Instead, claimant's correct compensation rate is now an issue for consideration.

The claimant contends she suffered a compensable injury in the form of bilateral carpal tunnel syndrome. She requests medical and temporary total disability benefits.

The respondents contend that claimant's physical condition, whatever it is, was not caused by her employment and, notwithstanding, the alleged injury or injuries is not substantiated by medical evidence supported by objective findings.

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 Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed among the parties at all relevant times.

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 while employed by the respondent.

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

5. Claimant is entitled to temporary total disability benefits beginning September

13, 2005 and continuing through a date yet to be determined.

6. Claimant earned an average weekly wage of \$409.70 which would entitle her to compensation at the rate of \$273.00 per week for temporary total disability benefits.

FACTUAL BACKGROUND

The claimant is a 40-year-old woman with a twelfth grade education who began working for respondent in March 2005. The respondent is a temporary agency which performed payroll for Symbol. At Symbol the claimant initially performed a job called "scanner refresh." Symbol received hand-held scanner units from Wal-Mart which were "refreshed." This included charging the batteries, testing the scanner, and reshipping them back to Wal-Mart. Claimant testified that after that job ended she did other jobs for Symbol such as shipping which involved sending the scanner units to Wal-Mart. According to claimant this required a lot of computer work. Claimant also testified that she worked at a job at a table which required her to open boxes, take out scanner units, and place them on racks.

Claimant testified that in late June of early July of 2005 she began noticing pain and aching in her hands while at work. Claimant initially believed that this was the result of sore muscles since she had not had these problems before. Claimant testified that she eventually reported these problems to Mark England, the supervisor in shipping and receiving. Claimant was moved to the warehouse "doing star pallets," and was eventually referred to Dr. Sitzes. Claimant was first evaluated by Dr. Sitzes on September 12, 2005 and he diagnosed claimant's condition as bilateral carpal tunnel syndrome. Dr. Sitzes gave claimant an injection in her right wrist and provided her with splints which she was to use at work. Dr. Sitzes also indicated that claimant should alternate her places on the line at Symbol and that she should return for a re-check in 10 days.

Claimant testified that after this visit with Dr. Sitzes she had a conversation with

Mark England and also with Nita Morrone, manager of Symbol's customer service center.

According to claimant's testimony she was informed that respondent did not have any work available for her and she has not worked since that date.

Claimant next returned to Dr. Sitzes on September 27, 2005. On February 17, 2006 claimant was evaluated by Dr. Bond who ordered electro-diagnostic studies. According to Dr. Bond's report the study was abnormal and was consistent with bilateral carpal tunnel syndrome. At respondent's request claimant was subsequently seen by Dr. Johnson on March 16, 2006, who also ordered electro-diagnostic studies which were interpreted as consistent with bilateral carpal tunnel syndrome, moderate on the right, moderately severe on the left. Dr. Johnson recommended that claimant be referred to an orthopaedist for an evaluation of a bilateral carpal tunnel release.

Claimant has filed this claim contending that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while working for the respondent. She seeks payment of related medical treatment and temporary total disability benefits.

ADJUDICATION

The claimant contends that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of her job activities with the respondent. In order to establish compensability of carpal tunnel syndrome claimant does not have the burden of proving by a preponderance of the evidence that her work duties required rapid repetitive motion. However, claimant does have the burden of proving by a preponderance of the evidence that her carpal tunnel syndrome arose 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 v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998).

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.

First, I find that claimant has met her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome injury arose out of and in the course of her employment with the respondent. The claimant testified regarding various jobs she had performed for the respondent which involved the use of her hands. Most recently, claimant had been placed on a job which required her to open boxes, remove scanner units, and place them on racks. Claimant testified that it was after she began performing this job in late June or early July of 2005 that she began noticing pain and aching in her hands while at work.

In addition to claimant's testimony, I note that the medical report of Dr. Sitzes indicates that claimant gave a history of injury consistent with her job duties with the respondent. In a letter dated September 12, 2005, Dr. Sitzes stated:

She reports that she has never had any problems in the past with her hands, wrists, or arms. On approximately May 05, 2005, she was placed on a line position in which she describes opening boxes daily, pulling off labels, untaping, opening, and removing scanner, closing the box, throwing it in a cage, putting on the label, then the scanner gun, and placing in a rack. She describes 12 layers of 15 guns per pallet and processing four to six pallets per day.

The day after claimant first sought medical treatment from Dr. Sitzes, he was apparently contacted by an adjuster for the respondent's workers' compensation carrier and provided a job description for the claimant. After reviewing that job description Dr. Sitzes indicated that these types of activities are considered causes of carpal tunnel syndrome.

In response to your communication addressed to me dated 09/13/05, I have had the opportunity to review the job description you have provided to me in regards to the job of Judy Skinkis. The description includes repetitive use of the hands bilaterally as well as constant handling and grasping. This type of repetitive activity is considered to be a cause of carpal tunnel syndrome.

In response to claimant's contention respondent introduced testimony from representatives of Symbol indicating that no other employee had ever developed carpal tunnel syndrome as a result of performing these job duties. However, the fact that no other employee had ever developed carpal tunnel syndrome as a result of performing those job duties is not dispositive of the issue as to whether or not this particular claimant suffered that type of injury. This is particularly true given Dr. Sitzes' letter of September 13, 2005 indicating that the job duties claimant was performing are considered a cause of carpal tunnel syndrome.

After consideration of the claimant's testimony which I find to be credible and the medical evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome injury arose out of and in the course of her employment with the respondent.

I also find that claimant's work-related injury was the major cause of her disability or need for medical treatment. Major cause is defined by A.C.A. §11-9-102(14(A)) as more than fifty percent of the cause. In my opinion, the medical evidence presented in this case establishes that claimant's work-related injury was the major cause of her disability or need for medical treatment. Claimant testified that she had no prior hand or wrist problems before working for the respondent. Significantly, her problems did not begin until she was placed on a new job in approximately May of 2005. Given this evidence, I find that claimant has satisfied the major cause requirement for compensability.

Finally, I also find that claimant has established her compensable injury by objective

medical findings. Objective medical findings are defined at A.C.A. §11-9-102(16)(A)(i) as those findings which cannot come under the voluntary control of the patient. Here, claimant underwent two separate electro-diagnostic studies and according to both Dr. Bond and Dr. Johnson those studies were abnormal and consistent with bilateral carpal tunnel syndrome. The results from these electro-diagnostic studies constitute objective medical findings establishing an injury.

In summary, 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 as a result of her job activities with the respondent.

The 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 payment of any outstanding medical treatment as well as any future medical treatment deemed to be reasonable and necessary.

The next issue for consideration involves claimant's request for temporary total disability benefits. According to the testimony, claimant last worked for the respondent on or about September 7, 2005. Claimant was first evaluated by Dr. Sitzes on September 12, 2005. At that time Dr. Sitzes indicated that claimant could return to work for respondent with braces and indicated that she should rotate to alternative positions on the respondent's production line. When claimant was next evaluated by Dr. Sitzes on September 27, 2005, he indicated that claimant could return to work with no repetitive wrist work.

Claimant testified that she returned to Symbol after her visit with Dr. Sitzes and informed Mark England and Nita Morrone of her restrictions. According to claimant, she was informed by both England and Morrone that no work was available for her within her restrictions.

The injury to claimant's hands and wrists is a scheduled injury. An employee 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 returned to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

I find that claimant has remained within her healing period since the date she first sought medical treatment from Dr. Sitzes. Dr. Sitzes provided some medical treatment to claimant and instructed her to return for a recheck which she did on September 27, 2005. Since that time the claimant has also been evaluated by Dr. Bond who has recommended additional medical treatment and an orthopaedic hand consultation if claimant showed no improvement. At the respondent's request claimant was evaluated by Dr. Johnson who recommended a referral to an orthopaedist for an evaluation of a bilateral carpal tunnel release. Claimant has not yet undergone this evaluation. Based upon this evidence, I find that claimant has remained within her healing period.

In addition, I find that claimant has not yet returned to work as a result of her compensable injury. While Dr. Sitzes did indicate that claimant could return to work, he placed restrictions on claimant's ability to do so. Claimant was required to wear braces on both hands and was instructed to alternate positions on the line at Symbol. According to claimant's testimony, she had a discussion with Mark England, the shipping and receiving supervisor, and Nita Morrone, Symbol's environmental health and safety person, after her evaluation by Dr. Sitzes. According to claimant's testimony both Morrone and England informed her that respondent did not have any work available for her.

While there was some indication made during cross examination of the claimant that Morrone would testify that claimant made no effort to return to work after she saw Dr. Sitzes, Morrone gave no such testimony. Furthermore, while Marsha Davis, a team lead for shipping and receiving, testified that she was not aware of any attempt claimant made

to return to work, I note that claimant did not testify that she had a conversation with Davis regarding her return to work. Instead, claimant testified that her conversation occurred with England and Morrone, Davis' supervisor. Therefore, I find that Davis' testimony regarding any attempts of claimant to return to work is entitled to little weight.

Accordingly, based upon the foregoing evidence, I find that claimant has remained within her healing period and that she has not returned to work for the respondent because respondent informed her that work was not available within her restrictions. Accordingly, I find that claimant is entitled to temporary total disability benefits beginning September 13, 2005, the day after she was evaluated by Dr. Sitzes, and continuing through a date yet to be determined.

The final issue for consideration involves claimant's correct compensation rate. The respondent introduced into evidence an exhibit which included claimant's regular wages and overtime wages for the 22 weeks she worked for respondent. During that 22-week period the claimant earned total wages of \$9,013.52. Dividing that amount by the 22 weeks worked results in an average weekly wage of \$409.70. This translates to a compensation rate of \$273.00 for temporary total disability benefits.

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 injury. Claimant is entitled to temporary total disability benefits beginning September 13, 2005 and continuing through a date yet to be determined.

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