

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F607554

DEBRA STOCKTON, Employee	CLAIMANT
HARP'S FOOD STORES, INC., Employer	RESPONDENT
CCMSI, Carrier	RESPONDENT

OPINION FILED NOVEMBER 16, 2006

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 1, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 6, 2006, and a pre-hearing order was filed on that same date. 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 relationship existed between the parties at all relevant times.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$260.00 for temporary total disability benefits and \$195.00 for permanent partial disability benefits.

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

1. Compensability of injury to right wrist and thumb.
2. Temporary total disability benefits.
3. Medical.

4. Attorney fee.

At the time of the hearing the parties agreed that all temporary total disability benefits have previously been paid and that if the claim is compensable claimant's attorney would be entitled to a controverted fee on those previously paid temporary total disability benefits.

The claimant contends she sustained a compensable injury to her right wrist and thumb while working as a cake decorator for Price Cutter. She contends she is entitled to temporary total disability, medical, and a controverted attorney fee.

The respondents contend that based on the present medical evidence the claimant did not sustain a compensable injury arising out of and in the course of her employment, including but not limited to the issue of whether there are measurable and objective findings to determine whether the claimant sustained a compensable injury.

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 witness and to observe her 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 stipulations agreed to by the parties at the pre-hearing conference conducted on September 6, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist and thumb. This injury includes right carpal tunnel syndrome, deQuervain's tendinitis of the right wrist, and right trigger thumb.

3. Respondent is liable for payment of all reasonable and necessary medical

treatment provided in connection with claimant's compensable injury. Respondent is also liable for continued medical treatment in the form of occupational therapy as recommended by Dr. Moore.

4. Respondent has previously paid temporary total disability benefits; however, respondent is liable for a controverted attorney fee on all previously paid temporary total disability benefits.

FACTUAL BACKGROUND

_____ The claimant is a 43-year-old woman who began working for the respondent in 1998 or 1999. Claimant has primarily worked in the respondent's bakery department and has also performed some work in its deli. Initially, claimant worked in the bakery department as a baker, baking bread and rolls. At some point the claimant continued to work in the respondent's bakery, but her primary job duties consisted of working as a cake decorator. As a cake decorator the claimant was responsible for frosting and decorating cakes. Claimant testified that she performed this job function primarily by using an icing bag which she used to squeeze the frosting onto the cake and then using a spatula to smooth it out. Claimant would also use an icing bag to decorate the cake. In addition to cake decorating, the claimant also continued to perform some baking jobs such as breads, pies, cakes, and rolls.

Claimant testified that she first noticed problems with her right wrist and thumb approximately one to one and a half years ago. Claimant testified that it bothered her for a while but she thought it was something that would go away, but instead it worsened when she began to decorate cakes.

Claimant initially sought medical treatment from her family physician, Dr. Wilson, whom she saw on a couple of occasions before being referred to Dr. Moore, an orthopaedic surgeon. Claimant was first evaluated by Dr. Moore on March 14, 2006, at

which time his impression was that claimant suffered from carpal tunnel of the right hand, deQuervain's tendinitis of the right wrist, and a right trigger thumb. Dr. Moore gave claimant a splint and medications and he also ordered a nerve conduction test. The nerve conduction test was performed on March 15, 2006, and was read by Dr. Morse as documenting mild right carpal tunnel syndrome. Following the nerve conduction test Dr. Moore in a report dated March 17, 2006 recommended that claimant undergo surgery for treatment of her right hand and wrist conditions. Prior to the claimant undergoing surgery she was evaluated on several occasions by Dr. Berestnev at the request of the respondent. However, Dr. Berestnev eventually referred claimant to the orthopaedic surgeon for further treatment. Claimant returned to Dr. Moore and he performed surgery on the claimant's right hand and wrist on May 30, 2006. Following the surgery Dr. Moore ordered occupational therapy and placed work restrictions on the claimant. He also ordered the claimant to wear a "edema glove". The medical records reflect that claimant last saw Dr. Moore on September 28, 2006, at which time he was still recommending occupational therapy which had been denied by the respondent.

The respondent initially accepted this claim as compensable and paid some medical benefits as well as all periods of temporary total disability benefits. Respondent subsequently controverted the claim and as a result claimant has filed this claim contending that she suffered a compensable injury to her right wrist and thumb.

ADJUDICATION

CARPAL TUNNEL.

Claimant's primary diagnosis in this case has been carpal tunnel syndrome in her right wrist as diagnosed by both Dr. Moore and Dr. Berestnev. A claimant contending a compensable injury in the form of carpal tunnel syndrome is not required to establish that her work duties require rapid repetitive motion. *Kildow v. Baldwin Piano and Organ*, 333

Ark. 335, 969 S.W. 2d 190 (1998). However, a claimant must still prove by a preponderance of the evidence that she suffered a carpal tunnel syndrome injury which arose out of and in the course of her employment with respondent, that the work-related injury is the major cause of her disability or need for medical treatment, and that the compensable injury is established by objective medical findings.

After reviewing the evidence in this case impartially, 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 carpal tunnel syndrome while employed by the respondent.

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 respondent and that the work-related injury is the major cause of her disability or need for medical treatment. As previously noted, claimant has worked in the respondent's bakery since 1998 or 1999. Claimant's job as a baker and more recently as a cake decorator have both required her to perform various job duties which require the use of her hands. Claimant testified that as a baker she was responsible for making rolls by hand and she was required to lift large bowls which were filled with dough up to the table in order to get the dough out. Claimant also testified that she performed other baking jobs including breads, pies, cakes, and rolls. Claimant testified that she was required to make some pies by hand by rolling out the dough for both the bottom and top crust. Claimant also testified that her baking job required her to place bread and rolls in packaging and use twist ties to close the bag. Claimant was also responsible for packaging cookies. As a cake decorator, the claimant was required to use an icing bag to cover the entire cake with frosting. The claimant would then use a spatula to smooth the frosting. After the cake was covered in frosting, claimant would again use an icing bag to decorate the cake. Claimant testified at the hearing that she would decorate as few as 4 or 5 cakes a day up to 20 or more, depending on the number sold. At her deposition,

claimant testified that she would decorate 6 to 7 to 14 cakes per day. Claimant estimated that she spent approximately 60 to 70 percent of her day decorating cakes, 20 percent of her day packaging, and the rest of the day baking. Finally, claimant also testified that she occasionally had to work in the respondent's deli where she used a fryer to fry chicken and corn dogs. Claimant also sliced meat and cheese.

In short, claimant testified that her job as a baker and a cake decorator required constant use of her hands.

In addition to claimant's testimony regarding her job activities, I also note that Dr. Moore addressed the issue of the cause of claimant's condition in his report of March 17, 2006. In his report of that date, Dr. Moore stated:

It does appear this is a work related problem. She has worked there for 8 years in various positions at the bakery, deli, but cake decorating for the past 6-12 months.

In connection with this issue, it should also be noted that respondent apparently referred claimant to Dr. Berestnev for an evaluation after surgery had been recommended by Dr. Moore. Dr. Berestnev's medical reports indicate that claimant did have some risk factors at work such as cutting meat and decorating cakes. Nevertheless, he ordered various tests to rule out other possible causes such as thyroid abnormalities or connective tissue disorders. There is no indication in the remainder of Dr. Berestnev's medical reports indicating that claimant's carpal tunnel syndrome resulted from other causes.

In summary, I find based upon the testimony of the claimant, which I find to be credible, and the opinion of Dr. Moore, that claimant's carpal tunnel syndrome arose out of and in the course of her employment and that her work-related injury was the major cause of her disability or need for medical treatment.

Finally, I also find that claimant has established her carpal tunnel syndrome by objective medical findings. Here, the nerve conduction study performed on March 15, 2006

was read by Dr. Morse as documenting mild right carpal tunnel syndrome. This constitutes an objective finding and satisfies that element of compensability.

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 right-sided carpal tunnel syndrome while employed by the respondent.

DEQUERVAIN'S TENDINITIS/RIGHT TRIGGER THUMB.

As previously noted, claimant did not have to prove that her job duties required rapid repetitive motion in order to prove compensability of a carpal tunnel injury. However, in order to prove compensability of deQuervain's tendinitis and a right trigger thumb, claimant would have the burden of proving by a preponderance of the evidence that her job activities required rapid repetitive motion.

The evidence indicates that the claimant performed multiple job activities over the course of the day and did not perform the exact or almost the exact same movement when performing her job. However, a claimant does not have to prove that they performed the exact or almost exact same movement again and again to show rapid repetitive motion. Instead, multiple job tasks when considered together may satisfy the statutory requirement. *Baysinger v. Air Systems, Inc.*, 55 Ark. App. 174, 934 S.W. 2d 230 (1996).

I find that claimant's job duties when considered together constituted rapid repetitive motion. While claimant did not perform any one particular job function throughout the course of the day, her various jobs in the bakery and as a cake decorator taken together do constitute rapid repetitive motion. As claimant testified, she is required to use her hands constantly all day long performing her job as a baker and as a cake decorator. While claimant testified that she could decorate as few as four or five cakes per day, she also testified that she might decorate as many as fourteen to twenty. Claimant testified that respondent preferred that a cake be decorated in approximately five minutes. However, claimant testified that she could not decorate a cake that fast but nevertheless

decorated the cakes as quickly as possible. Claimant estimated that she spent approximately 60 to 70 percent of her day decorating cakes. This cake decorating would include using both hands to squeeze icing out of a bag to frost the cake and also to decorate it. Claimant was required to use a spatula to smooth out the frosting which covered the cakes. In addition to her job duties as a cake decorator, claimant's job duties as a baker also required rapid repetitive motion of her hands making rolls and baking other goods, as well as the packaging and the use of twist ties on the packaging itself.

In short, based upon the evidence presented, specifically the testimony of the claimant which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that her job activities as a baker and as a cake decorator involved rapid repetitive motion.

I also find that claimant has satisfied the remaining elements of compensability with regard to deQuervain's tendinitis and right trigger thumb. This includes finding that these conditions arose out of and in the course of her employment with the respondent based upon claimant's testimony as well as the previously discussed opinion of Dr. Moore indicating that claimant's condition was a work-related problem. Furthermore, I also find that claimant's deQuervain tendinitis and right trigger thumb were established by objective findings and were the major cause of claimant's need for medical treatment. Objective findings of these conditions are found in Dr. Moore's operative report dated May 30, 2006. With respect to claimant's deQuervain's tendinitis, Dr. Moore noted in his operative report that after exposing the abductor tendons, "There was found to be irritation in both of these compartments and very tight constrictions and thick sheath."

As for claimant's trigger thumb, Dr. Moore also discovered some tightness and thickening during the procedure:

The neurovascular bundles were protected from harm. The A-1 pulley was identified and opened. The findings here were much less impressive than either the carpal tunnel or the de Quervain's, but there was a tightness

which was released but it was not excessively thick.

This tightness and thickness noted by Dr. Moore constitutes an objective finding of trigger thumb. Furthermore, with respect to this issue, I also note that Dr. Berestnev at the time of his initial report of April 6, 2006 noted swelling over the base of claimant's thumb on the dorsal surface.

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 deQuervain's tendinitis and a right trigger thumb.

MEDICAL.

Respondent is liable for payment of all reasonable and necessary unpaid medical treatment provided in connection with claimant's compensable injury. In addition, respondent is also liable for continued medical treatment as recommended by Dr. Moore. At the time of claimant's last visit to Dr. Moore on September 28, 2006, Dr. Moore was still recommending that claimant undergo occupational therapy. He noted in that report that the carrier was denying this treatment. I find that claimant has met her burden of proving by a preponderance of the evidence that this additional occupational therapy is reasonable and necessary and causally related to her compensable injury.

TEMPORARY TOTAL DISABILITY BENEFITS.

The parties agreed at the time of the hearing that the respondent has paid all periods of temporary total disability benefits to which claimant would be entitled. However, the parties also agreed that if the claim was compensable claimant's attorney would be entitled to a controverted fee on these previously paid temporary total disability benefits. Accordingly, I find that respondent is liable for payment of a controverted attorney fee on all previously paid temporary total disability benefits. Pursuant to A.C.A. §11-9-715(a)(1)(B), respondent is liable for payment of a fee in the amount of 12 and one-half percent of all previously paid temporary total disability benefits. Claimant is responsible

for payment of the remaining 12 and one-half percent. Since all temporary total disability benefits have previously been paid, respondent cannot withhold the claimant's portion from indemnity benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered compensable injuries in the form of right-sided carpal tunnel syndrome, deQuervain's tendinitis, and a right trigger thumb. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injuries. Respondent is also liable for payment of additional medical treatment in the form of occupational therapy as recommended by Dr. Moore. While respondent has paid claimant all periods of temporary total disability benefits, respondent is liable for payment of an attorney fee in the amount of 12 and one-half percent on all previously paid temporary total disability benefits. Claimant is responsible for payment of the remaining 12 and one-half percent attorney fee.

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