

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F411367

CAROLYN STROUD, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT
TYNET, Carrier	RESPONDENT

OPINION FILED NOVEMBER 6, 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 M. MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

On October 11, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 26, 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 sustained a compensable injury to her right hand and wrist in July 2004.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$275.00 for temporary total disability benefits and \$206.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to medical treatment as recommended by Dr. Heinzelmann.

2. Temporary total disability benefits.

3. Attorney fee.

The claimant contends she is entitled to medical treatment as recommended by Dr. Heinzelmann, including injections. She also requests temporary total disability and an attorney fee.

The respondents contend they have paid all reasonable, related and authorized benefits on this claim and that the claimant has not worked for the respondent since she voluntarily left their employment in December 2004. Respondents contend the claimant had been released by her then authorized treating physician, Dr. Ledbetter, to full duty with no restrictions on October 14, 2004. The claimant requested and received a change of physician from Dr. Ledbetter to Dr. Heinzelmann on June 7, 2006. Respondents contend that no temporary total disability are due, and that light duty work has been and is currently available at the respondent's location but for the claimant choosing to leave the respondent's employ.

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 stipulations agreed to by the parties at the pre-hearing conference conducted on July 26, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is

entitled to additional medical treatment or temporary total disability benefits as a result of her compensable injury.

FACTUAL BACKGROUND

The claimant is a 62-year-old woman who was hired by the respondent in July 2003. Claimant has primarily performed four different job duties for the respondent. Initially, claimant worked as a grader where she was responsible for grading different sized portions of chicken as it came out of a freezer on a conveyor belt. The claimant would use her right hand to pick up portions of chicken and place them in plastic bags which were then placed in a tub. When the tub was full claimant would have to lift and dump the chicken “over the side” where it would go into a cardboard tub that was lined with plastic.

Claimant was eventually moved to a job in packing which required her to take pieces of chicken off of a conveyor, place it in a box, close the lid, and shove the box on a conveyor belt which then took the box to a taping machine. Claimant testified that she mainly used her right hand to perform this job and that she performed it as fast as she could grab the bags of chicken.

Claimant was next placed in a job in labeling which required her to put the appropriate label on boxes of chicken as it came out of the freezer for shipping. Claimant testified that she peeled labels off a roll with her thumb and placed the label onto the box. Claimant testified that she had to perform this job at a fast pace and used her right hand.

The last job claimant performed for the respondent involved quality control.

Claimant testified that she began noticing problems with her right hand while working in packing. Additional evidence indicates that claimant apparently moved from her labeling job to quality control on June 7, 2004, and that she reported problems with her right hand to the nurse on July 15, 2004.

After claimant reported the problems to the respondent she initially received medical

treatment from the respondent's nurses before she was referred to Dr. Ledbetter. Dr. Ledbetter ordered an NCV which revealed carpal tunnel syndrome and he performed a carpal tunnel release surgery on September 15, 2004. Dr. Ledbetter subsequently released the claimant to return to work with no restrictions and assigned her a permanent physical impairment rating in an amount equal to 5% to the body as a whole.

The claimant did return to work for the respondent for a period of time but subsequently terminated her employment with the respondent on November 5, 2004. On July 6, 2006, claimant sought additional medical treatment from Dr. Heinzelmann following a change of physician request. Dr. Heinzelmann has diagnosed claimant as suffering from a right trigger thumb which he believed is related to claimant's work activities as well as a mild flexor tenosynovitis of her middle and ring fingers of the right hand which he also believed is related to claimant's work activities. Dr. Heinzelmann recommended cortisone injections and if that treatment was not effective a trigger thumb release.

The respondent accepted as compensable an injury to the claimant's right hand and wrist and paid some compensation benefits including the medical treatment provided by Dr. Ledbetter. However, respondent has not accepted liability for additional medical treatment recommended by Dr. Heinzelmann. As a result, claimant has filed this claim requesting additional medical treatment as recommended by Dr. Heinzelmann as well as temporary total disability benefits.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment for her compensable injury as recommended by Dr. Heinzelmann. Claimant has the burden of proving by a preponderance of the evidence that the additional medical treatment is reasonable and necessary and causally related to her original compensable injury. *Daulton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What

constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Galloway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as a result of her compensable right hand and wrist injury.

While Dr. Heinzelmann has stated in his report dated July 6, 2006 that claimant suffers from a right trigger thumb and mild flexor tenosynovitis of the middle and ring fingers which he believes are related to claimant's work activities, I note that the prior diagnosis by Dr. Ledbetter was carpal tunnel syndrome. As a result of that diagnosis Dr. Ledbetter performed a carpal tunnel release on claimant's right wrist on September 15, 2004. With the exception of some sensation in her long finger, Dr. Ledbetter in his report of October 14, 2004, indicated that claimant had recovered from her injury and that she could return to her regular job with no restrictions.

Carolyn is 4 weeks post CTR on the right. She has excellent ROM of her wrist. She has had complete return of sensation except the long finger. I am sending her to her regular job with no restrictions.

On that same day, Dr. Ledbetter completed a form indicating that claimant was discharged with no further treatment or impairment anticipated.

After her release by Dr. Ledbetter, the claimant worked for the respondent only an additional two to three weeks before she terminated her employment. Claimant did not seek any additional medical treatment for her right wrist until she saw Dr. Heinzelmann on July 6, 2006, almost two years later.

Given Dr. Ledbetter's indication that claimant could return to her regular job with no restrictions and his opinion that claimant was discharged with no further treatment or

impairment anticipated other than the previously assigned 5 percent, as well as the fact that claimant did not seek any additional medical treatment for her right wrist until almost two years later, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that the additional medical treatment recommended by Dr. Heinzelmann is reasonable and necessary and causally related to her original compensable injury.

I also find that claimant has failed to prove by a preponderance of the evidence that she is entitled to any additional temporary total disability benefits as a result of her compensable injury. Here, claimant was released by Dr. Ledbetter on October 14, 2004, to return to her regular job with no restrictions. There is no indication that claimant was taken off of her job for her compensable injury subsequent to Dr. Ledbetter's release. Even if Dr. Heinzelmann's report of July 6, 2006 could be interpreted as taking claimant off work due to his opinion that claimant was not capable of performing repetitive activities, I have found that claimant has failed to prove that her medication condition for which she sought medical treatment from Dr. Heinzelmann is causally related to her compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or additional temporary total disability benefits for her compensable right hand and wrist injury. Therefore, her claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE