

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504401

LORI A. STUTZMAN, EMPLOYEE	CLAIMANT
BAXTER HEALTHCARE CORPORATION, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 16, 2006

Hearing held before the HONORABLE DALE DOUTHIT, Administrative Law Judge, on November 23, 2006, at Mountain Home, Baxter County, Arkansas.

Claimant represented by HON. FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HON. TOM HARPER, JR., Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 23, 2005, in Mountain Home, Arkansas. A prehearing order was entered in this case on August 23, 2005. The prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the full hearing. A copy of the prehearing order was included in the hearing record as Commission Exhibit #1.

The following stipulations were submitted by the parties at the full hearing and are hereby accepted.

- 1) The employee/employer/carrier relationship existed at all relevant times, including April of 2004.
- 2) The claimant's average weekly wage was \$470.17, which would entitled the claimant to a TTD rate of \$313.00 per week, and a PPD rate of \$235.00 per week.

3) The respondents have controverted this claim in its entirety.

It must be noted that the prehearing order listed TTD benefits, associated medical, attorney fees, and §11-9-411 off sets as issues to be determined at the full hearing; however, at the full hearing both parties announced their desire to reserve all issues except for compensability. (T. pg. 4, lns 4-25) Therefore, the sole issue to be determined at the full hearing was whether the claimant sustained gradual onset compensable bilateral carpal tunnel injuries. The claimant also raised the issues of Administrative Law Judge recusal and Constitutionality of the Arkansas Workers' Compensation Law; those issues will be addressed herein as well.

## **DISCUSSION**

### **A. History**

The claimant, age 46, began working for the respondent on November 11, 1994. (RX-2, pg. 46) She worked for the respondents in their production lines assembling different products during the course of her employment.

The claimant testified at length about the hand intensive nature of her job duties with the respondents over the course of her employment. The claimant testified that most, if not all, of her duties as an assembler in the production lines involved rapid repetitive hand movements. Mr. Jeff Rowbothen credibly testified at the full hearing. Mr. Rowbothen was the claimant's supervisor during much of the claimant's employment with the respondents. Mr. Rowbothen testified that the respondents had production quotas on "everything". (T. pg. 14, lns 14-15) Mr. Rowbothen stated he agreed that everything on the production line was done in a rapid manner. (T. pg. 14, lns 23-25)

On April 24, 1995, according to the respondents own records, the claimant was

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diagnosed with carpal tunnel syndrome. ( RX-2, pg 46) The records indicate the claimant continued to have problems with her hands during the course of her employment with the respondents. On November 12, 2004, the claimant resigned from her employment with the respondents.

The claimant contended at the full hearing that she sustained compensable gradual onset bilateral carpal tunnel injuries during the course of her employment with the respondent employer.

The respondents contended at the full hearing that the claimant did not receive compensable bilateral carpal tunnel syndrome.

B. Adjudication

Ark. Code Ann. §11-9-102(4)(A) defines "Compensable injury":

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

A compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(D). The claimant's burden of proof shall be a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii)

The parties discussed at length the issue of the rapid repetitive nature of the claimant's work; however, the claimant was diagnosed with carpal tunnel syndrome as early as

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1995 and the claimant does not have to demonstrate that her job duties were rapid, repetitive in nature. **Kildrow v. Baldwin Piano & Organ**, 333 Ark. 335, 969 S.W. 2d 190 (1998)

The respondents have emphasized causation and major cause as arguments against compensability. The respondents rely heavily on the reports from Drs. Walker and Smelz. I find the respondents have convoluted the two arguments. First, Dr. Walker's October 1, 2004 report states:

"...my opinion is, with a reasonable degree of medical certainty, that the assembly line work at Baxter Healthcare does not contribute greater than 50% to the causation of her carpal tunnel syndrome symptoms nor does her assembly line work contribute greater than 50% to any aggravation of her bilateral carpal tunnel syndrome symptoms. (RX-1, pg. 6)

The respondents argue the above report quashes the "major cause" element of compensability. However, the claimant's employment is not at issue with regard to major cause; the standard is whether the work-related injury is the major cause of her disability or need for medical treatment. Obviously, the claimant was diagnosed with bilateral carpal tunnel (CX-1, pg. 4) and the recommended medical treatment is carpal tunnel release surgery. (CX-1, pg. 4) I find the claimant's carpal tunnel is the major cause of her need for the release surgery. Dr. Smelz' report from August 19, 2005 has language similar to that quoted from Dr. Walker, but once again, those statements do not address major cause as outlined in the Code.

The respondents then go on to argue that based on the reports of Dr. Walker and Smelz, the claimant cannot prove her injury arose out of and in the course and scope of her employment. I find that argument to be without merit. The respondents' own exhibit states:

"Her nerve conduction screening that we do here in the plant was

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negative when she was hired on November 11, 1994...."  
"On 4/19/95 she reported a strain to both hands due to using unsafe speed...."  
"I found a document that Dr. Burnett signed with a diagnosis of early CTS. It was dated 4/24/95." (RX-2, pg.46)

Clearly, the claimant did not have CTS prior to her employment with the respondent but developed it during the course of her employment with the respondent.

The respondents also seem to argue that because some of the time claimant worked for them she also worked elsewhere, that causation cannot be overcome. I find the credible evidence presented preponderates in favor of the claimant in all regards when it comes to compensability. I do acknowledge that the claimant had other employment while she worked for the respondents; however, when viewing all the evidence I find the claimant has presented sufficient evidence to establish each element for compensable injuries (CTS) to both upper extremities, which arose out of and in the course of her employment with the respondent, and that her injuries are the major cause for her need for carpal tunnel release surgery.

**C) Motion to Recuse and Constitutional Issues.**

The claimant challenges the constitutionality of this administrative law judge and all administrative law judges and the Commissioners conducting hearings and deciding claims for compensation. The claimant generally asserts that claims being decided by the Arkansas Workers' Compensation Commission, being a part of the Executive Branch of Government, violates the Due Process Clause of the United States and the Arkansas Constitution, violates Ark. Const. Art. 4, §§ 1 and 2; Ark. Const. Art. 5, §32; Ark. Const. Art. 2, §§2 and 3; Ark. Const. Art. 2, §18; and Ark. Const. Art. 2, §29. The claimant's motion to recuse alleges that all of the administrative law judges appear tainted with potential bias, prejudice, and impropriety, and a

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financial interest in the outcome of the claimant's constitutional challenge. The claimant only requested to submit the attached exhibit in support of these matters rather than to address them on the record at the full hearing.

The Arkansas Workers' Compensation Commission adopted recusal guidelines for its administrative law judges by memorandum dated April 7, 2003. Under these guidelines, a judge shall hear cases assigned to the judge except when disqualification is required. A judge shall disqualify himself in cases where the judge's impartiality might reasonably be questioned, including but not limited to instances where (1) the judge has a personal bias or prejudice concerning a party or lawyer, including personal knowledge of disputed facts; (2) the judge knows that he has anything more than a de minimis interest that could be substantially affected by the proceeding; or (3) the judge or a family member is a party to the proceeding, is a lawyer in the proceeding, has more than a de minimis interest in the proceeding, or is likely to be a material witness in the proceeding.

Members of administrative agencies that perform quasi-judicial functions are also required to follow the disqualification rules provided in the Arkansas Code of Judicial Conduct. **Acme Brick Co. v. Missouri Pacific R.R.**, 307 Ark. 363, 821 S.W. 2d 7 (1991). The Arkansas Code of Judicial Conduct contains essentially the same disqualification rules adopted by the Commission in 2003. See generally, Ark. Code of Judicial Conduct Canon 3.

After applying the Commission Rules, the Code of Judicial Conduct and Arkansas Case Law, I find the claimant's motion for all Administrative Law Judges to recuse is without merit and must be denied. The Full Commission has previously considered and rejected the claimant's constitutional arguments in a prior published decision, I find the claimant's request

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that I recuse in order to avoid rendering a decision on her constitutional challenge is also moot.

Based on the factual and legal conclusions of the Full Commission in **Leslie E. Bland v. Baxter Regional Medical Center**, Full Workers' Compensation Commission, Opinion filed August 16, 2005 (F204378), copy of which is blue backed as Commission Exhibit "2". I find that the claimant's constitutional challenges are without merit.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the witnesses and to observe their demeanor, and without giving the benefit of the doubt to either party, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The parties stipulations are hereby accepted as fact.
- 2) The claimant has proven by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondents employ.
- 3) All other issues related to the claim are expressly reserved.
- 4) Claimant did not submit credible evidence of bias, pressure or any other legitimate reason evidencing sufficient grounds for the recusal of the ALJ, and therefore the claimant's motion is denied.
- 5) Claimant's constitutional challenges to the Commission's adjudication process should be, and are hereby rejected. Claimant has failed to show how the Commission's adjudication process violates the separation of powers principle or does not comport with procedural due process.

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**ORDER**

Based on the reasons recited herein, I hereby find the claimant has proven by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondents' employ. All other issues are reserved.

IT IS SO ORDERED.

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DALE DOUTHIT  
Administrative Law Judge

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