

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F312424

**MARIE ANN THOMAS,
EMPLOYEE**

CLAIMANT

**DILLARDS, INC.,
EMPLOYER**

RESPONDENT

**FIDELITY & GUARANTY
INSURANCE CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED MAY 26, 2006

Pursuant to a hearing conducted March 1, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Thomas W. Mickel, Attorney at Law, Conway, Arkansas, appearing for the claimant and

Mr. James C. Baker, Jr., Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to address the issue of compensability of the claimant's bilateral carpal tunnel syndrome and entitlement to related benefits.

The claimant contended that she sustained compensable bilateral carpal tunnel syndrome and should be awarded benefits, including temporary total disability benefits from November 19, 2003, to November 30, 2003, and from March 1, 2004, until September 2, 2004, as well as reasonably necessary medical care, including her treatment by Dr. Michael M. Moore. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that: (1) the claimant's only compensable injuries were contusions to the fingers of her right hand; (2) the claimant did not sustain compensable carpal tunnel syndrome; (3) bilateral median nerve compression neuropathy diagnosed by Dr. Carlee

November 19, 2003, was not work related in his opinion; (4) carpal tunnel syndrome diagnosed by Dr. Moore was not the result of the claimant's employment, but may have been due to obesity; (5) the healing period for the compensable contusions to her fingers ended on or before November 19, 2003, so that she is not entitled to additional benefits for temporary total disability or medical care as a result of her compensable finger injuries.

The record, which included documentary evidence, the testimony of the claimant, and the deposition testimony of Dr. Michael M. Moore, was closed at the conclusion of the hearing, consistent with the Prehearing Order, Rule 25, and Ark. Code Ann. §11-9-705(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record: (a) the employment relationship existed at all pertinent times; (b) the claimant sustained a compensable injury to her right hand June 12, 2003; (c) her average weekly wage was \$317.00; (d) an Order changing physicians from Dr. Scott Carlee to Dr. Michael M. Moore was entered June 18, 2004; (e) additional benefits have been controverted as of November 19, 2003, based primarily upon the letter of Dr. Scott Carlee.

3. The preponderance of the evidence fails to show that the claimant's carpal tunnel syndrome arose out of and in the course of her employment.

DISCUSSION

Since August, 2002, the claimant worked for Dillards at its Distribution Center where merchandise received from the manufacturer was processed for distribution to the retail outlets. The claimant worked in the hang department where her primary duties were to remove clothing from boxes and hang the clothing onto trolleys which were suspended on an overhead rail system. When a trolley was filled, it was moved down the system for additional processing.

On June 12, 2003, the trolleys momentarily stopped moving on the line and the claimant reached up to attempt to move the trolleys along. At this point, the trolleys unexpectedly moved and the fingers of the claimant's right hand were caught between the wheels and the overhead rail.

The medical record shows that the claimant was examined on that day and found to have a small abrasion on the dorsal aspect of the right middle finger but that the hand showed no deformity, no ecchymosis, no effusion, no erythema, no swelling, and that grip strength and interosseous muscle strength were normal. It concluded that the remainder of the hand examination was unremarkable. X-rays of the wrist and hand were normal. The claimant was diagnosed as having a hand contusion and a finger abrasion, and medication and physical therapy were prescribed. The claimant's symptoms at that time included subjective discomfort and numbness of the fingertips. Tinel's sign for carpal tunnel syndrome was negative bilaterally.

The claimant received treatment including physical therapy and was off work for a short period and returned to work but began to have problems with her thumb cramping. The medical record for November 17, 2003, shows that the claimant returned for a recheck and indicated that she was having problems with numbness, pain and strength, and was being awakened at night. The report of nerve conduction studies conducted November 18, 2003, indicated evidence of severe right and

left carpal tunnel syndrome. After a Change of Physician Order was entered, the claimant was also seen by hand specialist Dr. Michael M. Moore in August, 2004.

The respondents accepted as compensable injuries to the fingers on her right hand but denied that she sustained compensable carpal tunnel syndrome. The claimant has requested benefits related to carpal tunnel syndrome, including medical care and temporary total disability benefits.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

The claimant's testimony was that on only one occasion prior to June 12, 2003, she had noticed some tingling in her right hand and mentioned it to a supervisor who advised her not to report it because she would lose her job. She testified that she had had some problems with tingling when she was pregnant, which had resolved. When she was seen on November 11, 2004, the examining physician did not record any symptom related to the claimant's left hand.

However, when the claimant was seen by Dr. Moore in August, 2004, over a year after the initial incident, Tinel's sign was positive for both wrists and he diagnosed her condition as bilateral carpal tunnel syndrome. Even at this time, he indicated that the claimant's symptoms were less severe in the left hand although she had persistent numbness in the fingers of her right hand and pain that radiated into the thenar eminence from the hand into the forearm on the right.

In his deposition, Dr. Moore indicated that the incident in June, 2003, involving the trolley would not cause left carpal tunnel syndrome. In reviewing the medical record, he testified that the claimant's complaints of pain in her thumb were not related to the original injury and her complaints of pain were more consistent with hand pain than with median nerve entrapment. Dep. at 12. He also reviewed the opinion of Dr. Carlee written November 19, 2003, indicating that the claimant's carpal tunnel syndrome was not causally related to the June 12, 2003, incident and that her condition is constricted to non-mechanical factors such as obesity. Dr. Moore indicated that he did not agree or disagree primarily because he did not examine the claimant at that time. However, he indicated that the left hand was not related to the June 12, 2003, injury and the right hand injury, if merely contusions to the fingers and not the hand, would not likely precipitate a carpal tunnel syndrome. Dep. at 13. He also testified that he would suspect but could not say with certainty that the claimant probably had a pre-existing tunnel at the time of the June, 2003, injury. Dep. at 14. He also agreed that many patients who develop bilateral carpal tunnel syndrome as a result of overuse-type syndrome or repetitive motion usually associate pain and numbness with those activities but the claimant did not provide a history of pain originating as a result of repetitive activities at work. Dep. at 17. He further agreed that after reviewing the record he did not see where the claimant gave previous physicians that type of history.

The claimant's burden includes proof that her condition arose out of and in the course of her employment. Carpal tunnel syndrome may be occupational if related to work activities or may arise for other reasons. This claimant has a history of similar symptoms arising because of a non-job-related condition, her pregnancy. In general, the record does not relate her condition to the injury in June, 2003, or otherwise to her employment, although there may be a possible connection between the two. Nevertheless, the preponderance of the evidence fails to show that her condition arose out of and in the course of her employment.

Among the benefits requested by the claimant is medical care including treatment by Dr. Michael M. Moore. The respondents are responsible for the initial examination by Dr. Moore, which was conducted pursuant to the Change of Physician Order. However, they are not responsible for benefits connected with her bilateral carpal tunnel syndrome, based on this record.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge