

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510231

KEVIN WEGENKE,  
EMPLOYEE

CLAIMANT

MARK MARTIN FORD MERCURY,  
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
THIRD PARTY ADMINISTRATOR

RESPONDENT

**OPINION FILED AUGUST 9, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Batesville, Independence County, Arkansas.

The claimant was represented by HONORABLE JIM BURTON, Attorney at Law, Jonesboro, Arkansas.

The respondents were represented by HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 6, 2006 in Batesville, Arkansas. A prehearing order was entered in this case on April 5, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employer-employee relationship existed on or about September 1, 2005.
3. No benefits have been paid in this case.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. Attorney's fees.

The record consists of the June 6, 2006 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

Mr. Wegenke was employed by Mark Martin Ford Mercury working on automobiles as a technician until April of 2006, when he left to begin work for Freedom Ford in Melbourne, Arkansas. In this workers' compensation claim, Mr. Wegenke contends that he developed lateral epicondylitis (tennis elbow) arising out of his job duties as a technician for Mark Martin Ford Mercury.

Arkansas Code Annotated § 11-9-102 (4) (A) (Suppl. 2003) defines "compensable injury" in relevant part as follows:

- (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[.]

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Id. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); Ark. Code Ann. § 11-9-102(16). For a gradual onset injury caused by rapid repetitive motion, including carpal tunnel syndrome, the resulting condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark.

Code Ann. § 11-9-102(4)(E)(ii); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

In the present case, Mr. Wegenke has described a number of repetitive type job duties required to perform his job as a technician repairing automobiles. These repetitive type job duties include lifting, and using hand tools including a wrench, an air ratchet, an impact gun, and screwdrivers. While Mr. Wegenke's testimony has certainly described what could be considered repetitive job duties, there is no evidence in the record to indicate that these job activities were performed rapidly. See Holland Group, Inc. v. Hughes, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (CA05-1376 Opinion Delivered June 14, 2006).

In addition, Mr. Wegenke is a right handed individual. Mr. Wegenke candidly acknowledged at the hearing that the hand tools are usually a one handed operation, and that he uses those tools with his right hand except under circumstances where he is required by physical constraints of the job to switch to his left hand. Under these circumstances, I find that Mr. Wegenke has failed to establish that his lateral epicondylitis in the left elbow arose out of his employment duties.

Finally, I note that the medical evidence consists of two pages from Dr. Allen in Batesville, and I do not glean anything in those two pages which would be considered "objective findings" as that term is defined in the Arkansas Workers' Compensation Law and has been construed by decisions of the Commission and the Arkansas Courts.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employer-employee relationship existed on or about September 1, 2005.

3. No benefits have been paid in this case.

4. The claimant has failed to establish that he sustained a compensable lateral epicondylitis condition. Specifically, the claimant failed to prove by a preponderance of the evidence that his condition arose out of his employment duties at Mark Martin Ford Mercury; the claimant has failed to establish that his work duties were performed rapidly, and the claimant has failed to establish the existence of his diagnosed lateral epicondylitis with medical evidence supported by objective findings.

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**ORDER**

For the reasons discussed herein, this claim must be,  
and hereby is, respectfully denied.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge