

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611422

LA DENA BARTLEY	CLAIMANT
ASAP SERVICES, INC.	RESPONDENT
COMMERCE AND INDUSTRY INSURANCE COMPANY INSURANCE CARRIER/TPA	RESPONDENT

**OPINION FILED JUNE 11, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

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

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on April 2, 2007 in Springdale, Arkansas.

A pre-hearing conference was previously held in this claim, and as a result thereof, a pre-hearing order was entered in the claim on February 5, 2007. At the time of the Prehearing Order, ConAgra Foods and Sedgwick CMS were named respondents in this case. Prior to the hearing, all parties agreed that the relationship of employee/employer never existed, on any relevant dates, between the claimant and ConAgra Foods. Therefore, by agreement, an Order was entered on April 3, 2007, that dismissed ConAgra Foods and Sedgwick CMS as party respondents in this case. The Prehearing Order was thus amended to withdraw the question of whether the employee/employer relationship existed. on any relevant dates, between the claimant and ConAgra. The issue was also withdrawn in regard to liability between ConAgra and respondent ASAP Services and Commerce and Industry Insurance Company for any benefits. A copy of the Prehearing Order with these amendments noted thereon was made Commission's Exhibit No. 1 at the hearing.

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

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

2. The relationship of Employee-employer-carrier existed between the claimant, ASAP Services, Inc., and Commerce and Industry Insurance Company for the period of March 27, 2006 through June 26, 2006.
3. The claim is controverted in its entirety by the respondents.

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

1. Whether the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.
2. The claimant's entitlement to benefits for medical services.

In regard to these issues the claimant contends:

1. The claimant was injured on or about April 1, 2006. Her hands and arms were injured in the course of her employment from repetitive work.

In regard to these issues the respondents ASAP Services, Inc. and Commerce and Industry Insurance Company contend:

1. Respondents contend the claimant did not suffer a compensable injury under the Arkansas Workers' Compensation Act. Respondents also assert they did not receive notice of any alleged injury until October 3, 2006, when claimant filed a Form AR-C.

### **DISCUSSION**

\_\_\_\_\_The central issue in this case is whether the claimant sustained a "compensable injury," as that term is used in the Act, particularly in the form of bilateral carpal tunnel syndrome. The burden rests upon the claimant to prove all of the elements necessary to establish the alleged "compensable injury."

Under Ark. Code Ann. §11-9-102 (4) (B), the claimant must “establish by medical evidence” the actual existence of the physical injury alleged to be compensable. Further, the actual existence of this physical injury must be supported by “objective findings,” as that term is defined in Ark. Code Ann. §11-9-102 (16) (A) (i).

In the present case, none of the medical evidence presented “establishes” that the claimant has or is experiencing carpal tunnel syndrome, bilateral or otherwise. None of the medical reports and records that have been introduced contain such a diagnosis. Further, none of the symptoms recorded would be indicative of the presence of carpal tunnel syndrome.

The medical evidence presented does establish the existence of some type of defect in the area of the claimant’s right wrist and forearm. There is no medical evidence of any defect involving the claimant’s left hand or wrist. Further, the defect involving the claimant’s right wrist or forearm is supported by “objective findings” in the form of swelling. The diagnosis of the nature of this defect is given as a ganglion cyst.

The claimant alleges no specific employment related incident or injury as the cause of her upper extremity difficulties. Therefore, the claimant’s alleged compensable injury would fall under the definition contained in Ark. Code Ann. §11-9-102 (4) (A) (ii) (a). Thus, she must show that her alleged employment related injury arose out of and occurred in the course of her employment with the respondent, caused internal or external physical harm to her body, and was caused by rapid repetitive motion or was in the form of carpal tunnel syndrome.

In order to prove that her alleged injury arose out of and occurred in the course of her employment with this respondent, the claimant must show, by the greater weight of the credible evidence, the existence of a causal relationship between her injury or difficulties and her employment. The only direct evidence presented by the claimant to prove this causal relationship is her own testimony.

Although the testimony of the party is never considered uncontradicted, neither can it be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact that is legally competent to address

At the hearing, the claimant testified that she had no prior complaints with her wrists/hands prior to her employment with the respondent. She further stated that on the second or third day after she commenced her employment with the respondent, her hands and wrists started to swell and a knot came up on her right wrist. It was her testimony that when her complaints started, they were more severe on the right than on the left, but subsequently became about the same. She stated that she reported her difficulties immediately to her supervisor. At that time she was sent to ConAgra's plant nurse. She stated that she went to the emergency room of Washington Regional Medical Center, in order to get a release to return to work. After she returned to work, she contends that she continued to experience difficulties and was treated by ConAgra's nurse with hot wax and ice on her breaks.

The claimant's testimony is in conflict with the other evidence presented. The claimant conceded that she had previously experienced a cut on her right wrist in October 2005, but contended that this injury healed without any subsequent difficulties. The medical record shows that the claimant experienced a significant laceration to her right wrist on October 3, 2005, when she fell and landed on her outstretched right hand. At the time of her initial treatment for this injury, the claimant also was complaining of pain and numbness of the fingers of her right hand.

The claimant was sent, on April 10, 2006 by ConAgra, to obtain a release to return to work, the release itself recited that the claimant had a cyst or bump on her right wrist with two scars on her right middle inner arm close to the bump. It was noted that the claimant attributed these defects to an incident where she fell and cut her arm on glass. It was further related that the claimant thought that the bump or cyst might be related to the way the doctor

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stitched her up. It was also noted that the claimant denied pain or problems and that this request for a release was merely precautionary, in light of the type of work the claimant would be required to do.

When the claimant was actually seen at Washington Regional Medical Center on April 10, 2006, she gave no history of any difficulties with her forearms, wrists, or hands as a result of her employment related activities. Instead, she merely gave a history of an old arm injury that had occurred approximately a year prior. Although she denied any pain or difficulties at that time, she further indicated that she had occasionally experienced numbness and swelling in her right hand and wrist since the prior injury. No mention was made of any problems with her left forearm, wrist, or hand. On the physical examination that was performed at that time, it was noted that, although the claimant was asymptomatic, she did exhibit some swelling on the ventral aspect of her right wrist that resolved with position change. Scar tissue was also noted in this same area.

When the claimant was seen on April 13, 2006, at the Boston Mountain Rural Health Center, her primarily complaints appeared to be right jaw pain and upper respiratory congestion. However, she also mentioned a problem with her right wrist, in that it swelled up when she was working. No problems were mentioned with the claimant's left forearm, wrist, or hand. On physical examination, some swelling was noted in the area of the claimant's right forearm, which (in the opinion of the examiner) looked like a ganglion cyst.

A ganglion cyst, unlike carpal tunnel syndrome, is not a condition generally considered to be attributable to rapid, repetitive motion or even cumulative trauma in general. They may, however, result from substantial trauma or strain, such as falling on an outstretched hand.

After consideration of all of the evidence presented, it is simply my opinion that the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between the medically established and objectively documented defect

with her right forearm/wrist and her employment activities with the current respondent. She has also failed to prove by the greater weight of the credible evidence the existence of a causal relationship between her employment activities for this respondent and any difficulties that she may now be experiencing with her left forearm, wrist, or hand and, in fact, has even failed to show the existence of any injury, condition, or defect involving her left forearm, wrist, or hand. As the claimant has failed to prove this definitional requirement for a “compensable injury,” I have no alternative but to find that she has failed to prove that she sustained “compensable injuries” to her forearms, wrists, or hands, during her employment with this respondent.

### **FINDINGS & CONCLUSIONS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates between March 27, 2006 and June 2, 2006, the relationship of employee-employer-carrier existed between the claimant, ASAP Services, Inc., and Commerce and Industry Insurance Company.
3. The claimant has failed to prove that she sustained a “compensable injury” to either of her forearms, wrists, or hands during her employment with this respondent. Specifically, she has failed to establish by medical evidence, which is supported by objective finding, the actual existence of any physical injury or condition involving her left forearm, wrist, or hand, as required by Ark. Code Ann. §11-9-102 (4) (B). She has also failed to prove by the greater weight of the credible evidence that she has or is suffering from carpal tunnel syndrome either in her right, left, or both wrists and hands. She has further failed

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to prove by the greater weight of the credible evidence the existence of a causal relationship between her employment related activities for this respondent and any medically established and objectively documented injuries or conditions she may have that involve her right forearm, wrist, or hand (i.e. the ganglion cyst).

4. The respondents have denied the occurrence of any compensable injuries to the claimant's forearms, wrists, or hands, and have controverted this claim in its entirety.

**ORDER**

Based upon the foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE